

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Income Tax

JAN E. SHERRICK,)	
)	
Plaintiff,)	No. 001134E
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT OF DISMISSAL

This matter is before the court on its own motion to dismiss the above-entitled appeal. The court discussed its motion with the parties during the case management conference held January 10, 2001. Jan E. Sherrick appeared on her own behalf. Laurie Fery, Auditor, appeared on behalf of defendant (the department.)

Ms. Sherrick appeals the department's assessment of penalty and interest for tax year 1994. Ms. Sherrick is willing to pay the assessed tax but wants the penalty and interest canceled. She does not claim the department violated the statutes in imposing the charges. As explained to Ms. Sherrick at the conference, the court does not have authority to waive penalties and interest. The legislature has vested the department with this discretionary power. See ORS 305.145(3); *Pelett v. Dept. of Rev.*, 11 OTR 364 (1990). As a result, the court finds this case should be dismissed because it lacks authority to provide Ms. Sherrick with the relief she has requested. To seek a waiver of the assessed charges, Ms. Sherrick must submit her waiver request and/or settlement offer to the department. Now, therefore;

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IT IS HEREBY ADJUDGED AND DECREED that the above-entitled matter is dismissed.

Dated this _____ day of January, 2001.

COYREEN R. WEIDNER
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON JANUARY 17, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 17, 2001.