

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

DENNIS CORNISH and LINDA S. CORNISH	)	
(Deceased),	)	
	)	
Plaintiff,	)	TC-MD 030053F
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals the department's assessment of penalty and interest for tax year 2001. He does not claim the department erred in its assessment of the penalty and interest. Defendant, in its Answer, asks the court to uphold the interest. Defendant waived the penalty. Defendant claims the court lacks authority to consider interest waiver requests. The court held a case management conference on May 20, 2003. The court discussed the issue with the parties. Dennis Cornish appeared for himself. Laurie Fery, Auditor, appeared on behalf of Defendant.

**STATEMENT OF FACTS**

Plaintiff filed his personal income tax return for tax year 2001 in October 2002. He neglected to include a check when he filed the return. Defendant imposed a 5 percent penalty (later waived), interest on underpayment of estimated tax, and interest on the late payment. Plaintiff asks for a waiver due to hardship. Linda Cornish, who was "the primary bill payer and preparer of tax information" during their 41 year marriage, died. (Ptf's Compl.) During her illness, she decided she would rather die at home than in a hospital. Hence, he was her primary caregiver as she was dying. Plaintiff's former tax preparer died as well so Plaintiff had to find a new preparer.

## ANALYSIS

When the department properly imposes interest pursuant to the statute, taxpayers may still seek a waiver of the interest under ORS 305.145(3).<sup>1</sup> That statute provides:

“The Department of Revenue may, in its discretion, upon good and sufficient cause, according to and consistent with its rules and regulations, upon making a record of its reason therefor, waive, reduce or compromise any tax balance of \$50 or less or any part or all of the penalties and interest provided by the laws of the State of Oregon which are collected by the Department of Revenue.”

ORS 305.145(3).

The power to waive interest is a discretionary one that lies with the department. The legislature chose to vest the department with this discretion, not the court. The Tax Court has previously held that “[t]he issue of whether defendant should have waived penalties imposed under ORS 314.400 is not reviewable by this court.” *Pelett v. Dept. of Rev.*, 11 OTR 364, 365 (1990). The same reasoning applies to the waiver of interest. Plaintiff needs to submit his waiver request to the department.<sup>2</sup>

## CONCLUSION

The court concludes that Plaintiff is subject to the interest. Whether he has a good reason for the interest to be waived is not within the court’s authority to consider. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal is denied.

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

<sup>2</sup> The court discussed a waiver request with the parties at the case management conference. Defendant stated that there is a good chance that Defendant will be willing to work with Plaintiff to reduce the penalties and possibly even the tax. Any reduction to the tax would reduce the interest accordingly.

Dated this \_\_\_\_\_ day of May, 2003.

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SALLY L. KIMSEY  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON MAY 29, 2003. THE COURT FILED THIS DOCUMENT ON MAY 29, 2003.**