

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

ROBERT C. JOHNSTON and BECKY L. JOHNSTON,)	
)	
Plaintiffs,)	TC-MD 030521A
)	
v.)	
)	
DEPARTMENT OF REVENUE, STATE OF OREGON,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiffs have appealed Defendant's imposition of interest and penalty for the 1997 and 1998 tax years. Robert Johnston became disabled in 1997 as a consequence of his service-related injuries. As a result, Plaintiffs filed delinquent returns for 1997 and 1998. Plaintiffs reason that it is particularly onerous to impose interest and penalties on one who, because of a service-related disability, became less able to file the returns and pay the tax when due.

In the course of proceedings before this court, Defendant chose to waive all penalties for both the 1997 and 1998 tax years. The only matter remaining is Plaintiffs' request that the interest imposed because taxes were not paid when due also be removed.

The court simply cannot do that. The legislature has not given this court the power to supersede Defendant's decision as to the discretionary waiver of interest. That is made clear by ORS 305.560,¹ as well as an earlier decision of the Tax Court, *Pelett v. Dept. of Rev.*, 11 OTR 364 (1990). In *Pelett*, the court stated "[t]he clear import of

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

this language [in ORS 305.560(1)] is that the legislature did not intend this court to review defendant's discretion in waiving penalties or interest." *Pelett*, 11 OTR at 366.

Defendant, in waiving penalties for the years at issue, has already extended substantial relief to Plaintiffs. The court does not have the ability to expand that relief to the removal of interest. Now, therefore,

IT IS ADJUDGED AND DECREED that this appeal is dismissed.

Dated this _____ day of November, 2003.

SCOT A. SIDERAS
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON
NOVEMBER 7, 2003. THE COURT FILED THIS DOCUMENT ON NOVEMBER 7,
2003.**