

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

TRACEY L. COATS,)	
)	
Plaintiff,)	TC-MD 031072C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant's Motion to Dismiss, filed December 23, 2003, requesting that the Complaint be dismissed. The motion was discussed during the February 17, 2004, case management conference. Plaintiff appeared on her own behalf at that proceeding. Defendant was represented by James Wallace, Assistant Attorney General. Lynn Barry, an employee of Defendant also participated in that conference. For ease of reference, the parties will be referred to as taxpayer and the department.

Taxpayer appealed the department's denial of her settlement offer. Taxpayer does not challenge the amount of the tax on legal grounds, but rather would like to come to an agreement with the department that would allow her to pay less than the full amount due. The tax at issue is for 1988, 1999, and 2000, and was determined by taxpayer's returns each of those years. Taxpayer's settlement offer was rejected by the department and this appeal followed.

The legal authority for the department to accept settlement offers is found in ORS 305.155.¹ That statute provides, in relevant part:

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

"(2) The department may cancel any tax imposed by laws of the State of Oregon which is collected by it or any portion thereof assessed against a person, including any penalty and interest which has not been collected, if the department determines that the administration and collection costs involved would exceed the amount that can reasonably be expected to be recovered.

"(3) When taxes are canceled under subsection (1) or (2) of this section, the department shall make an order canceling the tax, penalties and interest. The order shall be filed in the records of the department. Upon making the order, the department also shall cause to be canceled or released any lien of record in the counties which may have been filed and entered therein."

ORS 305.155. That statute gives the department broad discretion to determine whether to cancel all or a portion of a tax due, including penalties and interest. The department "may" cancel a tax, but is never required to do so, and the determination is based on its cost/benefit analysis.

There is an administrative rule that sets forth the process to be followed by a taxpayer requesting relief and by the department in responding thereto. The decision is based on a taxpayer's ability to pay. OAR 150-305.155(7). The rule includes a list of factors that the department will consider in determining whether a taxpayer has the ability to pay. *Id.* The list is not intended to be comprehensive.

The department asked the court to dismiss the Complaint because taxpayer has not made a claim over which this court has jurisdiction. Taxpayer indicated in her Amended Complaint that the department "denied" her settlement offer and that the explanation given was "unreasonable." Taxpayer requested that "relief be allowed and that we can come to some sort of an agreement." (Ptf's Am Compl at 1.) The decision of whether to accept or reject a taxpayer's settlement offer is wholly within the discretion of the department.

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It is not clear that this court has authority to review taxpayers appeal because it essentially involves a matter of payment rather than a determination of tax. Any review by this court is limited to the question of whether the department abused its discretion. Abuse of discretion involves arbitrary and capricious action. This court has previously stated the rule as follows:

“The rule is well established that where discretion has been vested in an administrative officer by the legislature, the court's view of the officer's actions must be confined to the consideration of whether or not the officer exercised his discretion judiciously rather than capriciously and did not arrive at a conclusion which was clearly wrong. * * *”

Jim Fisher Motors, Inc. v. Dept. of Rev., 7 OTR 90, 93-94 (1977), citing *Pratum Co-Op Whse. v. Dept. of Rev.*, 6 OTR 130 (1975).

The court finds no such action in this case. The department reviewed information provided by taxpayer and concluded the offer should not be accepted. The review appears to have been very thorough. The department gave clear reasons for rejecting the offer. Taxpayer disputes certain conclusions of the department, but did not timely provide the substantiating information.² The department in no way acted capriciously, and this court cannot say its conclusion was clearly wrong. Now, therefore,

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² As a practical matter, Plaintiff is not without options. Lynn Barry indicated during the court's conference that she was willing to continue to work with Plaintiff on a settlement offer. Defendant denied Plaintiff's previous offer because certain information it requested from Plaintiff was not provided. Defendant apparently also concluded that certain daycare expenses were not ongoing. Defendant is willing to explore those matters further in the administrative context.

IT IS THE DECISION OF THIS COURT that the department's request for dismissal is granted.

Dated this _____ day of March, 2004.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 DAN ROBINSON ON MARCH 22, 2004. THE COURT FILED THIS DOCUMENT ON MARCH 22, 2004.