

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

REID A. GEHRING, )  
 )  
 Plaintiff, ) TC-MD 031106E  
 )  
 v. )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON, )  
 )  
 Defendant. ) **DECISION**

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 February 3, 2004. Reid A. Gehring appeared on his own behalf. Appearing with Plaintiff was Joseph L. Gehring. Randy Gernhart appeared on behalf of Defendant.

**I. STATEMENT OF FACTS**

Plaintiff, who is a resident of Colorado, is a member of an Oregon partnership. For tax years 1999, 2000, 2001, and 2002, Plaintiff failed to file Oregon returns reporting income received from the Oregon partnership. Instead, the professionals preparing his returns reported the income to Colorado. Defendant became aware of the error and assessed tax for the subject years. Defendant also assessed interest and penalties of 100 percent.

Plaintiff paid the assessed tax but wrote a letter contesting the penalties and interest. Defendant reduced the penalties to 25 percent. Plaintiff appeals to this court seeking a complete waiver of the penalties and interest.

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## II. ANALYSIS

Plaintiff requests that the court waive the assessed penalties and interest. Plaintiff explains he did not intend to avoid taxation of the income but simply relied on professional advice when reporting the income on his Colorado returns. As explained by the court at the conference, the court does not have authority to waive penalties and interest based on a taxpayer's particular situation. The legislature has vested Defendant with that discretionary power. See ORS 305.145(3);<sup>1</sup> ORS 305.560; *Pelett v. Dept. of Rev.*, 11 OTR 364, 365 (1990) ("The issue of whether defendant should have waived penalties imposed under ORS 314.400 is not reviewable by this court."). As a result, the court finds this case should be dismissed because it lacks jurisdiction to provide Plaintiff with the relief he requested. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is dismissed.

Dated this \_\_\_\_\_ day of February 2004.

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COYREEN R. WEIDNER  
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 COYREEN R. WEIDNER ON**

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

**FEBRUARY 6, 2004. THE COURT FILED THIS DOCUMENT ON FEBRUARY 6, 2004.**