

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

GENE PFEIFER and DONA PFEIFER)	
)	
Plaintiffs,)	TC-MD 040029B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	DECISION and GENERAL
Defendant.)	JUDGMENT

This matter is before the court on the Defendant's motion to dismiss Plaintiffs' appeal. Defendant's motion was made in its Answer filed January 30, 2004. During the case management conference held March 5, 2004, the parties agreed that the court would decide the case on written submissions. Gene Pfeifer appeared on behalf of Plaintiffs. Bruce McDonald appeared on behalf of Defendant.

I. STATEMENT OF FACTS

The facts are undisputed. Plaintiffs timely filed joint income tax returns for tax years 2000 and 2002. The taxes assessed were due April 15, 2001, and April 15, 2003, respectively. Due to financial difficulties following the collapse of three businesses owned by Plaintiffs, they did not pay the assessed taxes in full by the due dates. Accordingly, Defendant imposed penalties in the amount of \$283.00 for tax year 2000 and \$204.75 for tax year 2002. Defendant also imposed interest charges on the unpaid taxes.

On December 9, 2003, Plaintiffs sent a letter to Defendant requesting a reduction of the penalties. Defendant did not directly respond to that letter. On January 9, 2004, Defendant sent a notice to Plaintiffs demanding that they make arrangements for payment of all delinquent taxes and debts owed to Defendant. Plaintiffs filed their appeal to this court January 20, 2004.

Plaintiffs now seek a waiver of the penalties and interest imposed by Defendant for untimely payment of their 2000 and 2002 taxes. Plaintiffs' waiver request is based on their present inability to pay those debts. Defendant requests that the court dismiss the appeal because the penalties and interest were correctly charged and therefore not subject to review by this court.

II. ANALYSIS

ORS 314.400¹ requires the Department of Revenue to impose a penalty for the untimely payment of income taxes. *See also* ORS 314.402. The Tax Court has authority to determine whether a taxpayer is subject to penalties under ORS 314.400. *Pelett v. Dept. of Rev.*, 11 OTR 364, (1990). Because Plaintiffs' 2000 and 2002 taxes were not paid by the respective due dates, Defendant assessed penalties and associated interest on the unpaid taxes. The court finds that Defendant properly assessed the penalties pursuant to that statute.

When the Department of Revenue properly imposes penalties pursuant to the statute, a taxpayer may still seek a waiver of these penalties under ORS 305.145. Defendant has the discretionary authority under ORS 305.145 to reduce or waive penalties and interest imposed on delinquent taxes. ORS 305.145(3), in pertinent part, 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 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.”

It is clear that the Tax Court does not have authority to review the Department of Revenue's decisions to waive penalties and interest. *Pelett*, 11 OTR at 365.

ORS 305.560(1)(a), which governs appeals to the Tax Court provides, in part:

"Except for an order, or portion thereof, denying the discretionary waiver of penalty or interest by the Department of Revenue, an appeal under ORS 305.275 may

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
DECISION and GENERAL JUDGMENT TC-MD 040029B

be taken by filing an original and one certified copy of a complaint with the clerk of the Oregon Tax Court * * *."

Because Plaintiffs seek a reduction only of penalties and interest, this court may not hear their appeal as to the merits of the waiver request. The fact that a taxpayer failed to pay the tax on time because of "extraordinary economic conditions" does not change that result. *Blevins v. Dept. of Rev.*, TC-MD 030895C (Sept 30, 2003).

III. CONCLUSION

This court cannot review Defendant's discretionary decision to waive penalties and interest. Although the court is unable to modify the sums imposed, it does encourage the parties to work together to reach suitable payment arrangements. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted;
and

IT IS FURTHER DECIDED that Plaintiffs' appeal is dismissed.

Dated this ____ day of July 2004.

JEFF MATTSON
MAGISTRATE

THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE JEFF MATTSON ON JULY 23, 2004 . THE COURT FILED THIS DOCUMENT JULY 23, 2004.