

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

GARY LOYD HUGHES,)	
)	
Plaintiff,)	TC-MD 040118A
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiff appealed personal income tax matters for the 1989 through 2002 tax years, inclusive. A telephonic trial was held May 20, 2004, at 9:00 a.m. Plaintiff appeared and made his arguments. Laurie Fery appeared for Defendant.

I. STATEMENT OF FACTS

Plaintiff's specific request is that all penalties and interest be dropped or stopped for the 1989 through 2002 tax years. Plaintiff testified that he has no money, no job, and no income.

A review of the record reveals that a 100 percent penalty was imposed for the 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1997, 1998, and 1999 tax years. For the 1996 tax year, no return was filed and no assessment was issued. Refunds were issued for the 2000 and 2001 tax years. A 5 percent penalty was imposed for the 2002 tax year.

II. ANALYSIS

The 1996, 2000, and 2001 tax years may be removed from controversy because no penalties and interest were charged. As to the balance of the appeal, there is no relief that the court can extend to Plaintiff.

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The 100 percent penalty was properly placed upon the 1989, 1990, 1991, 1992, 1993,

1994, 1995, 1997, 1998, and 1999 tax years. ORS 305.992(1)¹ states that this sanction is imposed on each year “if any returns * * * are not filed for three consecutive years by the due date * * * for the third consecutive year * * *.” As mandated by ORS 314.400, the 5 percent penalty was added to the 2002 tax year because the tax was not paid when due. Interest, as a charge for the State's loss of the use of the money, is set out in ORS 305.220.

Plaintiff makes the claim that, because he has no means to pay interest and penalties, he should be relieved of that burden. If so, that is a matter for Defendant to decide. This court has the ability to determine whether tax, penalties, and interest were properly imposed. Whether or not interest and penalties should be lifted out of recognition of an individual's special circumstances is a question exclusively reserved for Defendant. ORS 305.145(3).

III. CONCLUSION

Plaintiff asserted he has no income or assets and seeks relief from paying penalties and interest. That is a different issue than that which the court might consider, which is whether or not penalties and interest were properly charged. Plaintiff is urged to make a frank and complete disclosure to Defendant and cooperate fully with Defendant's revenue agent when that individual subsequently contacts Plaintiff. Plaintiff is not the first person to fall behind in their taxes. Many citizens have had their situation dramatically improved by cooperating with Defendant's revenue agent.

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Plaintiff filed a Motion for Waiver or Deferral of Filing Fee and Affidavit of Indigence

¹ Those statutes have not been modified in pertinent part for any of the years at issue.

(motion) March 8, 2004. The court, having considered Plaintiff's motion, finds that it should be granted, and Plaintiff's filing fee should be waived. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's filing fee is waived; and

IT IS FURTHER DECIDED that this appeal is dismissed.

Dated this _____ day of July 2004.

SCOT A. SIDERAS
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 SCOT A. SIDERAS JULY 12, 2004. THE COURT FILED THIS DOCUMENT JULY 12, 2004.