

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

GARY SEAGRAVES,	)	
	)	
Plaintiff,	)	TC-MD 040822F
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant's (the department) assessment of penalties and interest for tax years 1999, 2000, and 2001. He does not claim the department erred in its assessment of the penalties and interest, but requests their waiver. Defendant, in its Answer, asks the court to uphold the penalties and interest. Defendant claims the court lacks authority to consider penalty and interest waiver requests. The court held a case management conference September 1, 2004. Gary Seagraves appeared for himself. Laurie Fery, Auditor, appeared on behalf of the department.

Plaintiff filed his personal income tax returns for tax years 1999, 2000, and 2001 on February 5, 2004. Defendant imposed 100 percent penalties.

ORS 305.992(1)<sup>1</sup> sets forth when Defendant must impose the 100 percent penalty. It states as follows:

“If any returns required to be filed under ORS chapter \* \* \* 316 \* \* \* are not filed for three consecutive years by the due date (including extensions) of the return required for the third consecutive year, there **shall be a penalty** for each year **of 100 percent** of the tax liability determined after credits and prepayments for each such year.”

(Emphasis added.) Defendant is also required to impose interest. ORS 305.220. The penalties

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

and interest were properly imposed.

When the department properly imposes penalties pursuant to the statute, taxpayers may still seek a waiver of the penalties under ORS 305.145(3). That statute 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 tax balance of \$50 or less or 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.”

The power to waive penalties and interest is a discretionary one that lies with the department. The legislature chose to vest the department with that discretion, not the court. The Tax Court has previously held that “[t]he issue of whether defendant should have waived penalties imposed under ORS 314.400 is not reviewable by this court.” *Pelett v. Dept. of Rev.*, 11 OTR 364, 365 (1990). Plaintiff needs to submit his waiver request to the department.<sup>2</sup>

Plaintiff is subject to the 100 percent penalty and interest. Whether he has a good reason for the penalties and interest to be canceled is not within the court’s authority to consider. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal is denied

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

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SALLY L. KIMSEY  
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.**

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<sup>2</sup> Fery stated that there is a good chance that the department will be willing to work with Plaintiff to reduce the penalties.

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE KIMSEY SEPTEMBER 28, 2004.  
THE COURT FILED THIS DOCUMENT SEPTEMBER 28, 2004.**