

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

GURJIT S. GHUMAN,)	
)	
Plaintiff,)	TC-MD 040945D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s Notice of Proposed Adjustment and/or Distribution, assessing Plaintiff interest on his underpayment of estimated tax for tax year 2003.

At the case management conference held Thursday, December 2, 2004, Plaintiff and Defendant asked the court to make a decision. Neither party wanted more time to submit additional information.

I. STATEMENT OF FACTS

Plaintiff filed a part-year Oregon resident state income return on April 7, 2004. (Def’s Answer.) The return showed a self-assessed tax of \$4,461.00. (*Id.*) Plaintiff paid the tax liability. However, during the year, Plaintiff did not make estimated tax payments. Defendant assessed Plaintiff interest on the underpayment of estimated tax in the amount of \$168.54. In response to Defendant’s assessment, Plaintiff wrote a letter dated June 4, 2004, to Defendant. In his letter, Plaintiff wrote, in pertinent part:

“I respectfully ask you to consider the waiver of the penalty and/or interest charges assessed on the notice.

“I moved to Oregon from California in April 2003 and opened the business on April 16, 2003. I filed Part Year Residence tax form for the year 2003 and paid the tax due in the amount of \$4,461.00 Since I had no tax liability in Oregon for the 2002 year, and since there was no way of determining the final outcome at the end of the year, no estimated Oregon taxes were paid.

“As this was my first (part-year) year in business in Oregon and no way to predict the final income or loss, again, I ask you to consider to cancel the assessed charges for the year 2003.”

Defendant denied Plaintiff’s request to waive the interest. After receiving Defendant’s denial, Plaintiff filed his Complaint with the court. In his Complaint, Plaintiff requested that he “be excused from payment of interest.” (Ptf’s Compl.)

At the December case management conference, Plaintiff made a second request for relief. After filing his part-year resident return prior to the original due date, Plaintiff filed an amended return in July 2004. (Ptf’s Compl., Attach. 6.) Plaintiff asked that, if the interest for underpayment of estimated taxes cannot be waived, the interest should be computed on the lower state taxable income he reported on the amended return.

II. ANALYSIS

Taxpayers who underpay their estimated tax are assessed an interest charge.

ORS 316.587¹ provides in relevant part:

“(1) Except as provided in subsection (5) of this section, if an individual makes an underpayment of estimated tax, interest shall accrue at the rate established under ORS 305.220 for each month, or fraction thereof, on the amount underpaid for the period the estimated tax or any installment remains unpaid. The penalty provisions contained in ORS chapter 314 for underpayment of tax shall not apply to underpayments of estimated tax under ORS 316.557 to 316.589.

Subsection (5) of the statute provides an exception, as follows:

“(b) Interest accruing under subsection (1) of this section shall not be imposed with respect to any underpayment of estimated tax to the extent that **the Department of Revenue determines** that by reason of casualty, disaster or other unusual circumstances the imposition of interest would be against equity and good conscience.”

ORS 316.587(5)(2003). (Emphasis added.)

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¹ All references to the Oregon Revised Statutes (ORS) are to year 2001 unless otherwise noted.

The language of subsection (5) makes it clear that the Defendant, not the court, has the authority to determine whether the interest should be imposed. *See* OAR 150-305.265(1)-(B)(2).² Plaintiff requested on June 4, 2004; July 13, 2004; and during the case management conference held on October 25, 2004, that Defendant waive the interest. Defendant wrote to the court that “[u]nusual circumstances will be determined on a case by case basis.” (Def’s Letter to court dated Oct 28, 2004.) After reviewing Plaintiff’s requests that the interest be waived, Defendant determined that Plaintiff did not meet any of the special circumstances (“casualty, disaster or other unusual circumstance”) and denied Plaintiff’s requests. (*Id.*) Defendant’s determination is final and cannot be appealed to the Oregon Tax Court. *See Young v. Dept. of Rev.*, TC-MD 010881C (Mar. 29, 2002) (Decision and Judgment) (concluding that the statute is clear that “it is the department, not the court, who has authority to determine whether the interest should be imposed.”) .

Plaintiff challenged Defendant’s computation of the interest assessment. Plaintiff stated that the interest on underpayment of estimated tax payments is being assessed based on the tax liability stated on the original return, and he believes it should be assessed based on the tax liability stated on his amended return. To address Plaintiff’s issue, the court looks to ORS 316.587(3) which explains the period of interest on an underpayment:

“The period of underpayment shall run from the date the installment was due to the earlier of the following dates:

“(a) The 15th day of the fourth month following the close of the taxable year; or

“(b) With respect to any portion of the underpayment, the date on which the portion is paid.”

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² All references to the Oregon Administrative Rules are to 2003.

In this case, the first and only payment was made at the time he filed his original return, April 7, 2004. (Def's letter to the court dated Oct 28, 2004.) Defendant assessed interest to that date. In its administrative rule, Defendant explains that the "[t]ax used to compute underpayment of estimated tax" is the tax liability shown on the original return unless the amended return is filed before the "statutory due date" or "within the extension period granted for the original return." (OAR 150-316.587(1); *see* Example 2.) Plaintiff's amended return was filed after the statutory due date of April 15, 2004. Under the law, Defendant's assessment was correct.

Defendant noted in its letter to the court that "[i]f the income is not received evenly throughout the tax year, taxpayer may benefit from using the annualization method to calculate UND. However, Mr. Ghuman chose not to use the annualization method to calculate UND." (Def's letter to the court dated Oct 28, 2004.) The court also discussed the annualization method with Plaintiff, but he expressed no interest in pursuing this option.

III. CONCLUSION

Defendant's denial of Plaintiff's request to waive the interest on underpayment of estimated taxes for tax year 2003 is final and cannot be appealed to the Oregon Tax Court. Based on the evidence submitted, Defendant correctly computed the amount of interest due for Plaintiff's failure to make estimated tax payments. Now, therefore,

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

Dated this _____ day of January 2005.

JILL A. TANNER
PRESIDING MAGISTRATE

THIS DOCUMENT WAS SIGNED BY PRESIDING MAGISTRATE JILL A. TANNER ON JANUARY 24, 2005. THE COURT FILED THIS DOCUMENT ON JANUARY 24, 2005.

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.