

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Income Tax

JOYCE GASSETT and DAVID E. GASSETT,)	
)	
Plaintiffs,)	TC-MD 040985C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION and JUDGMENT

Plaintiffs appealed Defendant’s Notice of Tax Assessment for the 2001 tax year. In its Answer, Defendant explained that Plaintiffs’ income increased by \$3,537 based on income Plaintiffs received from Standard Insurance Company, and that the subtraction for Social Security income was disallowed because Plaintiffs’ Social Security income was not included in their reported income. Joyce Gasset (Gasset) advised the court, during the November 22, 2004, case management conference, that she agreed with Defendant’s adjustments to the return. Gasset asked the court to waive or reduce the “penalties and interest.”

Defendant did not impose a penalty on Plaintiffs. Defendant did charge Plaintiffs interest in the amount of \$110.14 as of June 22, 2004. According to Defendant’s June 22, 2004, assessment notice, interest continues to accrue at a daily rate of \$0.12. Gasset requested waiver of the interest because the two errors on the return were due to an honest mistake. Gasset also explained that she and her husband were both experiencing serious medical problems when the return was completed and that it was generally a stressful period of time in their lives.

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Plaintiffs can request a waiver of the interest pursuant to ORS 305.145(3).¹ That provision allows the Department of Revenue (department) “in its discretion, upon good and sufficient cause,” to reduce or waive interest “consistent with its rules and regulations.” However, the department’s decision cannot be appealed to the Tax Court and the court does not have the independent authority to reduce the interest.

Appeals to the Tax Court are governed by ORS 305.275 and ORS 305.560. ORS 305.275(a)(A) requires that the person appealing “must be aggrieved by and affected by an act, omission, order or determination of [t]he Department of Revenue.” ORS 305.560 sets forth the procedure to be followed when appealing under ORS 305.275. ORS 305.560(1)(a) prohibits a taxpayer from appealing from “an order, or portion thereof, denying the discretionary waiver of penalty or interest by the Department of Revenue[.]” What Plaintiffs seek is a discretionary waiver based on extenuating circumstances.

In this case, Plaintiffs do not have an order denying a request to waive the interest because they have not presented that issue to the department. Moreover, if the department had rendered an unfavorable decision on the interest waiver request, the provisions of ORS 305.275 and ORS 305.560 discussed above preclude a taxpayer from appealing such a decision to the Tax Court. *See also Pelett v. Dept. of Rev.*, 11 OTR 364, 366 (1990). (The legislature did not intend the Tax Court to review the department’s discretionary decisions on requests to waive penalty or interest.)

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For the foregoing reasons, the court concludes that Plaintiffs’ appeal is dismissed because

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.
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Plaintiffs' withdrew their objections to Defendant's adjustments to their 2001 state tax return and the court does not have the authority to waive interest. Now, therefore,

IT IS ADJUDGED that Plaintiffs' appeal is dismissed.

Dated this ____ day of December 2004.

DAN ROBINSON
MAGISTRATE

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

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON
DECEMBER 21, 2004. THE COURT FILED THIS DOCUMENT DECEMBER 21, 2004.**