

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

MATEO SMITH,	)	
	)	
Plaintiff,	)	TC-MD 051001C
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on its own motion to dismiss the above-referenced appeal for lack of jurisdiction.

Plaintiff appeals the imposition by Defendant of a five percent penalty and interest for late payment of taxes stemming from a federal adjustment to his 2002 income taxes. Plaintiff's return was adjusted by the Internal Revenue Service (IRS) to correct an error in the reporting of certain business-related travel expenses. According to Plaintiff, while the IRS increased his taxes, it agreed to waive penalty and interest charges. Plaintiff seeks a similar outcome with the state adjustment. Plaintiff asserts that Defendant unnecessarily delayed correcting his state return, after the federal adjustment, and that that delay increased his state liability.

Defendant had two years from the date it was notified of the federal correction in which to issue a deficiency. *See* ORS 314.410(3)(b)(A).<sup>1</sup> Defendant was notified of the federal correction in August 2004. Defendant issued a Notice of Deficiency sometime in September or October 2005, followed by a Notice of Tax Assessment dated November 22, 2005. (Ptf's Comp at 2.) Defendant, therefore, acted well within the statutory period.

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<sup>1</sup> Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 2003.

As for the additional interest imposed as a result of the time it took Defendant to issue its Notice of Deficiency, the notice may well have been issued earlier had Plaintiff complied with his statutory obligation under ORS 314.380(2)(a) to notify Defendant of the federal change. According to Plaintiff, the IRS completed its audit sometime in calendar year 2003. Plaintiff did not notify Defendant of the results of that audit, and the notice from the IRS was about a year in coming.

As for the penalties and interest, ORS 314.400(1) requires Defendant to impose a five percent delinquency penalty in instances where the taxpayer fails to pay the tax on or before the due date. Defendant imposed a penalty of five percent because the adjustments to Plaintiff's return increased the tax liability, and that liability was not paid on or before April 15, 2003, which is the statutory due date for payment of the 2002 tax. Moreover, Defendant is statutorily required to impose interest on deficiencies in accordance with ORS 305.220(1).

Plaintiff hoped that the court could waive or reduce the penalty and interest charges because of Defendant's delayed action, as discussed above. However, as the court explained during the March 14, 2006, hearing, it lacks the authority to grant discretionary waiver requests. Defendant has the discretionary authority under ORS 305.145 to reduce or waive penalties and interest imposed on delinquent taxes. Regarding interest, ORS 305.145(3) (2005), 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 interest provided by the laws of the State of Oregon that are collected by the Department of Revenue.”

Similarly, the department may waive or reduce penalties consistent with its rules “in cases where:

“(a) Good and sufficient cause exists for the actions of a taxpayer that resulted in the imposition of a penalty;

“(b) The actions of a taxpayer that resulted in the imposition of a penalty constitute a first-time offense on the part of the taxpayer; or

“(c) The actions of the department enhance long-term effectiveness, efficiency or administration of the tax system.”

ORS 305.145(4) (2005).

However, while it is clear that Defendant may adjust penalties and interest, it is equally clear that the Tax Court does not have such authority. Moreover, “[t]he issue of whether [the department] should have waived the penalties imposed under ORS 314.400 is not reviewable by this court.” *Pelett v. Dept. of Rev.*, 11 OTR 364, 365 (1990). ORS 305.560(1)(a) (2005), 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 be taken by filing a complaint with the clerk of the Oregon Tax Court \* \* \*.*” (Emphasis added.)

For the reasons set forth above, the court lacks authority to grant Plaintiff’s appeal. Defendant acted timely in issuing its Notice of Deficiency, the penalties and interest were properly imposed pursuant to the statute, and the court does not have the authority to waive the penalties and interest. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this \_\_\_\_\_ day of March 2006.

\_\_\_\_\_  
DAN ROBINSON  
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 Dan Robinson. The Court filed and entered this document March 22, 2006.***