

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Income Tax

FRANK D. CALVIN,	)	
	)	
Plaintiff,	)	TC-MD 070560C
	)	
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 Plaintiff’s appeal for lack of jurisdiction. The matter was addressed briefly with the parties during a July 20, 2007, telephone hearing.

I. STATEMENT OF FACTS

Plaintiff appealed Defendant’s imposition of a five percent penalty and interest as part of a May 22, 2007, Notice of Deficiency Assessment. The disputed charges amounted to approximately \$1,420 as of the date of assessment. Plaintiff requested that the court reduce the penalty and interest. Defendant, in its Answer, requested that the court uphold those charges. Plaintiff has not challenged Defendant’s assertion, included in its Answer, that a deficiency was issued April 3, 2007, based on a federal revenue agent’s report disallowing a net operating loss carryover claimed on Plaintiff’s federal return. That disallowance increased Plaintiff’s tax liability. The July 20, 2007, initial court hearing on the matter was abruptly terminated by Plaintiff who, prior to hanging up his phone, informed the court that he was indifferent about the disputed charges and that he would “just pay the fu\_ \_ ing thing.”

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## II. ANALYSIS

The Department of Revenue (department) is statutorily required to impose interest on every deficiency. ORS 305.220(1).<sup>1</sup> That was noted by Defendant in its Answer. Moreover, ORS 314.400(1) requires Defendant to impose a five percent delinquency penalty whenever a taxpayer fails to pay the tax on or before the due date. Defendant noted that in its Answer as well. Defendant's deficiency imposed additional taxes that were not paid by the applicable due date, which for the 2003 tax year was April 15, 2004. Plaintiff seeks a discretionary waiver of the interest and penalty based on certain circumstances briefly stated by Plaintiff during the July 20, 2007, hearing, that Plaintiff believes warrant favorable action.

Subsections (3) and (4) of ORS 305.145, along with the corresponding administrative rules, authorize the department to waive or reduce interest and penalties where appropriate. The court, however, has no such authority. As noted by this court in *Pelett v. Dept. of Rev.*, 11 OTR 364, 365 (1990), the court may review the question of whether the department correctly imposed a penalty, but it may not review the question of whether the penalty should be waived. The same is true for the imposition of interest. The court in *Pelett* cited ORS 305.560(1)(a), which provides in relevant part:

“Except for an order, or portion thereof, denying the *discretionary waiver of penalty or interest* by the department, an appeal [under ORS 305.275] \* \* \* may be taken by filing \* \* \* a complaint with the clerk of the Oregon Tax Court \* \* \*.”  
(Emphasis in original.)

The upshot of the statute is that tax matters other than discretionary penalty and interest waiver requests may be appealed to the court, but the court cannot consider requests to waive penalty or interest where the basis for the request is not a challenge to the department's legal authority to impose the charge, but rather a request for the court to consider certain facts in the individual's life that the taxpayer believes warrant a reduction of the charges. Plaintiff's request falls into the latter category and no appeal to this court is allowed.

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2005.

As a final matter, the court wishes to address Plaintiff's behavior during the July 20, 2007, telephonic proceeding. Tax Court Rule-Magistrate Division (TCR-MD) 14 provides:

“The proceedings and participants shall at all times be subject to the direction and authority of the magistrate. All persons shall treat the court and each other with respect and courtesy. The magistrate shall be addressed as ‘Your Honor,’ ‘Magistrate,’ or ‘Judge.’ ”

During the hearing, Plaintiff was rude and belligerent, and used foul language. Plaintiff then hung up, effectively ending the proceeding. Plaintiff's behavior violated TCR-MD 14. Such behavior may be sufficient to warrant dismissal by the court on its own motion, per TCR 54 B(1), made applicable to the Magistrate Division by the Preface to the Magistrate Division rules. The court in this case is not taking such action because the matter is dismissed for lack of jurisdiction. However, Plaintiff and those who appear in this court in the future should bear in mind that behavior of the type exhibited in this case may result in dismissal.

### III. CONCLUSION

For the reasons set forth above, the court concludes that it lacks jurisdiction to consider Plaintiff's request for a discretionary waiver of interest and penalty. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal of Defendant's May 22, 2007 assessment is dismissed.

Dated this \_\_\_\_\_ day of July 2007.

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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 on July 26, 2007. The Court filed and entered this document on July 26, 2007.***