

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

NANCY J. JONES,)	
)	
Plaintiff,)	TC-MD 080541C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s request for dismissal of Plaintiff’s request for discretionary waiver of penalties and interest for tax years 1991 and 1992. Defendant’s dismissal request was discussed with the parties at an initial case management conference held by telephone July 16, 2008. Plaintiff was represented by Ethan L. Smith. Defendant was represented by James Carter. For the reasons set forth below, and as explained during the July 16, 2008, proceeding, the court has granted Defendant’s request.

One of the statutes governing appeals to the Oregon Tax Court is ORS 305.560(1)(a),¹ which provides in relevant part: “[e]xcept 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 * * *.” (Emphasis added.) Plaintiff has appealed Defendant’s tax collection efforts, seeking a waiver of the penalties and interest imposed because of the circumstances involved in Defendant’s collection efforts (primarily the passage of time in locating Plaintiff in California). Plaintiff’s representative acknowledged that Plaintiff’s request was for discretionary (as opposed to legally based) waiver.

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¹ All references to the Oregon Revised Statutes (ORS) are to 2007.

Penalties and interest are imposed by ORS 314.400 and ORS 305.220, respectively. This court has previously ruled that, although Defendant has the authority to waive those charges upon a showing of good cause, the Tax Court has no such authority because of the statutory limitation in ORS 305.560. *See Pelett v. Dept. of Rev.*, 11 OTR 364, 365 (1990). The *Pelett* court stated: “[t]he clear import of th[e] language [in ORS 305.560] is that the legislature did not intend this court to review defendant’s discretion in waiving penalties and interest.” *Id.* at 366.

Although the Department of Revenue’s authority to waive penalties and interest is somewhat broader now than it was when *Pelett* was rendered in 1990, the legislative injunctive barring this court from reviewing Defendant’s discretionary waiver determinations regarding penalty and interest has not changed. The pertinent language in ORS 305.560 is identical to that in effect when this court ruled on *Pelett*. Moreover, Defendant has not yet even ruled on whether it will waive the disputed charges because Plaintiff has not made such a request of the Defendant.² Assuming Plaintiff makes that request, Defendant’s determination will be final. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed because the court lacks jurisdiction to waive penalties and interest under the circumstances here presented.

Dated this _____ day of July 2008.

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 25, 2008. The

² Plaintiff will pursue relief from Defendant. Defendant’s representative agreed to forward to Plaintiff the relevant waiver request form(s).

Court filed and entered this document on July 25, 2008.