

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Tobacco Tax

MICHAEL R. KELLY,)	
)	
Plaintiff,)	TC-MD 080587D
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss, filed May 16, 2008, as part of its Answer, requesting that the above-entitled matter be dismissed.

A case management conference was held Thursday, July 17, 2008. Plaintiff appeared on his own behalf. Fred Nichol (Nichol), Auditor, appeared on behalf of Defendant.

During the conference, Plaintiff clearly stated that he is not appealing the tobacco tax properly assessed on his internet purchase of cigarettes. Rather, he is appealing interest and penalty assessed for his failure to timely file tax returns. Plaintiff explained in detail the difficulty he encountered locating the proper tax forms and communicating with Defendant which resulted in filing late returns or failing to file returns. The court reviewed the statutory provisions that allow Defendant to charge interest and to adopt rules governing when penalties may be waived. *See* ORS 305.220(1); ORS 305.229 (2007).

At the conclusion of the discussion, Nichol told Plaintiff that he could put his request for waivers of interest and penalty in writing to Defendant. Plaintiff stated that he will pursue his requested relief, specifically waiver of interest and penalty, with Defendant. In response, the court stated that it would grant Defendant’s request that Plaintiff’s case be dismissed. Now, therefore,

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

Dated this _____ day of July 2008.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on July 31, 2008. The Court filed and entered this document on July 31, 2008.