

IN THE OREGON TAX COURT  
REGULAR DIVISION  
Income Tax

CINDY GUA, )  
)  
Plaintiff, ) **TC 5453**  
v. )  
)  
DEPARTMENT OF REVENUE, )  
State of Oregon, )  
) **ORDER GRANTING DEFENDANT’S**  
Defendant. ) **MOTION TO DISMISS**

This personal income tax case is before the court on Defendant’s Motion to Dismiss dated September 28, 2023. The basis for Defendant’s motion is that Plaintiff has failed to pay the tax, penalty, and interest assessed to her, or to establish that doing so would be an undue hardship, as required by ORS 305.419(3). (Def’s Mot to Dismiss at 1-2.) In a December 8, 2023, order on Plaintiff’s motion to stay the requirement to pay her assessment, the court:

- (1) Recited the proceedings and the parties’ arguments;
- (2) Found that Plaintiff had failed to establish that payment of the assessed tax, penalty, and interest would be an undue hardship under ORS 305.419(3);
- (3) Denied Plaintiff’s motion to stay the requirement to pay the assessment;
- (4) Allowed Plaintiff until January 8, 2024, to pay the assessment; and
- (5) Directed Defendant to report on or before January 17, 2024, whether Plaintiff had paid the amounts assessed.

On January 17, 2024, Defendant filed its report, stating that Plaintiff had made payments totaling \$4,000 for certain of the tax years at issue. The total amount assessed, not counting those payments, was \$871,426.72. Defendant added: “Plaintiff does not have an agreed upon

and accepted payment plan with the defendant regarding payment of the taxes, penalties, and interest assessed in this case.” Defendant urged the court to grant its motion to dismiss.

On January 31, 2024, Plaintiff filed a “Motion to Vacate” the court’s December 8, 2023, order. The motion declares the proceedings to date to be a “substantive and procedural nullity,” fraudulent, and the result of a “conspiracy” to violate provisions of the federal Internal Revenue Code. Nothing in the motion disputes Defendant’s report regarding the amount of Plaintiff’s payments or the non-existence of an agreed payment plan.

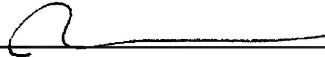
Based on the foregoing, the court finds that Plaintiff has failed to pay the tax, penalty, and interest assessed, to the extent of the difference between the total assessment (\$871,426.72 including interest as of September 28, 2021), and the payments made (\$4,000 as of January 17, 2024). Plaintiff having neither paid the assessment nor established hardship, now, therefore,

IT IS ORDERED that Defendant’s Motion to Dismiss is granted; and

IT IS FURTHER ORDERED that Plaintiff’s Motion to Vacate Order Denying Plaintiff’s Motion for Stay of Payment of Income Tax and Denying Plaintiff’s Second Motion for Abeyance is denied.

Dated this 31st day of January, 2024.

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**Judge Robert T. Manicke**