

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

RICHARD I. LOCK,	)	
	)	
Plaintiff,	)	No. 000158B
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	
	)	<b>DECISION</b>

A case management conference was held on April 25, 2000. At the request of the parties, that proceeding was converted to a trial. Arguments were made and evidence was examined. Subsequently, the parties submitted written information. The record closed on June 12, 2000.

Richard Lock participated on his own behalf. Kurt Hamm represented the defendant.

STATEMENT OF FACTS

Plaintiff did not timely file personal property returns with defendant for the tax years 1997-98, 1998-99 and 1999-00. As a result, an "omitted property" notice was issued on December 10, 1999. ORS 308.105 and 311.205 through 311.232. Late penalties were imposed. For 1999-00, the penalty was affirmed by the county Board of Property Tax Appeals in an order dated March 6, 2000.

Plaintiff now appeals to this court and seeks a review of those penalties. Plaintiff argues the sums should be reduced or canceled, due to compelling reasons

beyond his control. He contends he provided prior written notice of his acquisition of the subject property. However, he does not have a copy of any notes or correspondence. Mr. Lock did not inquire about taxes, returns that were due or how to get the necessary forms.

Defendant requests the penalties be upheld.

#### COURT'S ANALYSIS

ORS 308.290(1)(a) requires houseboat owners to file a property tax return by March 1. Plaintiff failed to meet the deadline.

A party who files after March 1 "shall be \* \* \* subject to the provisions of ORS 308.296." ORS 308.290(1)(a). In turn, ORS 308.296(1) mandates that any person or company responsible for filing a personal property return which has not done so "shall be subject to a penalty as provided in this section." The penalty is graduated based on when the taxpayer files its return. In this case, ORS 308.296(4) (1997) states that anyone who files "after August 1 **shall** be subject to a penalty equal to 100 percent of the tax on the return." (Emphasis added).

The court finds that defendant properly calculated and imposed the statutory penalty. Nonetheless, plaintiff asks the court to utilize its discretion and order the penalty waived based on the taxpayer's circumstances. This cannot be done.

The court's review under ORS 308.296 is limited to whether the penalty was imposed pursuant to the law. There is no grant of authority to make a discretionary review based on "good and sufficient cause" or the like. This finding is consistent with other cases decided by this division of the court. *Fast Break Inc. v. Multnomah Co.*, OTC-MD No. 990126A, (May 3, 1999).

While the amount of the penalty may appear harsh, it was the level selected

by the legislature. Under these specific facts, it is not subject to judicial review.

#### CONCLUSION

IT IS THE DECISION OF THE COURT that defendant's assessed personal property tax penalties are affirmed.

Dated this \_\_\_\_ day of July, 2000.

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JEFF MATTSON  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 JEFF MATTSON ON JULY 13, 2000. THE COURT FILED THIS DOCUMENT ON JULY 13, 2000.**