

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

PLAZA INN RESTAURANT and JIM)	
JUNGLING,)	
)	No. 000369B
Plaintiffs,)	
)	
v.)	
)	
MALHEUR COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

A trial was held on June 15, 2000. Jim Jungling participated for plaintiffs.

Kirt Bledsoe, Certified Public Accountant, testified as a witness. Richard W. Thurmond represented the defendant.

This case was filed as a small claims matter. It should have been entered as a "standard designation" case. ORS 305.514. The court will, on its own motion, transfer the case to the "standard designation," with appropriate appeal rights, and waive any additional filing fees at this level.

STATEMENT OF FACTS

Plaintiffs operate a restaurant in Ontario. They are required to submit an annual personal property return to defendant. Plaintiffs' accountant testified he prepared the return for the 1999-00 tax year on February 23, 1999. He believed that Mr. Jungling signed it on February 25, 1999. He agreed to furnish a copy of the **signed** return as an exhibit after trial. The form received was not completed. Neither this court nor the defendant have seen a **signed** copy of the 1999-00 form that was reportedly timely mailed on plaintiffs' behalf.

Mr. Bledsoe testified he personally deposited the 1999-00 form in a U.S. mail receptacle. He stated it was in a postage paid envelope addressed to defendant. He believed he did this on February 25, 1999.

Defendant did not timely receive a 1999-00 personal property return from plaintiffs. As a result, a statutory penalty was imposed in the amount of \$851.89. For 1999-00, that penalty was affirmed by the county Board of Property Tax Appeals in an order dated February 7, 2000.

Plaintiffs now appeal to this court and seek a review of that penalty. Plaintiffs argue the sum should be reduced or canceled, due to compelling reasons beyond their control.

Defendant requests the penalty be upheld.

COURT'S ANALYSIS

ORS 305.820(1)(a)¹ concerns writings or remittances lost or delayed in transmission. It states, in material part, that;

"(a) Transmitted through the United States mail * * * shall be deemed filed or received on the date shown by the cancellation mark * * * **or on the date it was mailed or deposited if proof satisfactory to the addressee establishes that the actual mailing or deposit occurred on an earlier date.**" (Emphases added).

The addressee in this case is Malheur County. That county determined, through the assessor, tax collector and appeals board, that plaintiffs had not made an adequate demonstration of mailing.

Here, the test on review is "abuse of discretion." In a similar case, *Jackson*

¹All references to the Oregon Revised Statutes are to the 1997 Replacement Part.
DECISION

County Tax Collector v. Dept. of Rev., 12 OTR 498 (1993), the court upheld a similar finding by a county. The facts of this case do not show any abuse of discretion by defendant's agents.

ORS 308.290(1)(a) requires such business owners to file a property tax return by March 1. The return was not received by defendant.

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) 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, plaintiffs ask the court to utilize its discretion and order the penalty waived based on the taxpayers' 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 penalty is affirmed.

Dated this ____ day of July, 2000.

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.