

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Small Claims

Property Tax

DAVID RITACCO, dba Electric Beach of Monmouth	)	
	)	
Plaintiff,	)	No. 000443C
	)	
v.	)	
	)	
POLK COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION AND JUDGMENT OF DISMISSAL</b>

Plaintiff has appealed the 100 percent penalty imposed by the county for failure to file the statutorily required personal property return by August 1, 1999. The court discussed the appeal with the parties on May 22, 2000. Mr. Ritacco appeared on his own behalf. Defendant appeared through Ms. Loretta Hodous, Assessment Records Supervisor, Polk County Assessor's Office.

The appeal concerns personal property identified in the Polk County Assessor's records as Account No. 496645. The tax year at issue in 1999-00.

Mr. Ritacco apparently acquired the business which owns the personal property in 1998. The personal property return mailed by the county in December 1998 (blank form) was sent to the previous owner. This is most likely due to the fact that plaintiff did not notify the county of the new address after he acquired the business. At any rate, plaintiff did not receive the form. Mr. Ritacco was unaware of the need to report the value of personal property used for business purposes and, because he did not receive the blank form from the county, he did not submit a return in 1999. Then in the fall of 1999 the

tax statement mailed by the county in October was mailed to the old address. It nonetheless found its way to plaintiff, apparently because of the efforts of the postal carrier. Plaintiff phoned the tax collector's office to discuss the tax bill and learned that a \$270.70 penalty was assessed because the return was not submitted.

Following that phone conversation, Ms. Hodous sent a letter to plaintiff dated November 10, 1999, indicating that the county's records had been updated to reflect the new address and explaining that plaintiff must file an appeal with the county board of property tax appeals (board) to request a penalty waiver. Ms. Hodous indicated she would recommend relief be granted. A board petition form was included with that letter.

Plaintiff insists he completed the form and mailed it to the board before the December 31, 1999, deadline. For reasons unknown to the court, the board never received that petition. Plaintiff's wife later contacted the county about the subsequent year personal property return (2000-01) and during that conversation discovered the board had not received their earlier petition. The county advised the Ritaccos that the deadline for petitioning the board had passed and that their only recourse was to file a Complaint with the Tax Court.

The penalty in this case was imposed because plaintiff did not file the statutorily required annual personal property tax return as provided by ORS 308.290.<sup>1</sup>

ORS 308.296, the penalty provision, provides in relevant part:

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<sup>1</sup> ORS 308.290 provides in relevant part:

“(1)(a) Every person and the managing agent or officer of any firm, corporation or association owning, or having in possession or under control taxable personal property shall make a return of the property for ad valorem tax purposes to the assessor of the county in which such property has its situs for taxation; \* \* \* Upon the failure of either party to file a personal property tax return on or before March 1 of any year, both parties shall be jointly and severally subject to the provisions of ORS 308.296.

“(1) Each person, firm, corporation or association required by ORS 308.290 to file a return reporting only taxable personal property, who or which has not filed a return within the time fixed in ORS 308.290 or as extended, shall be subject to a penalty as provided in this section.

“\* \* \* \* \*

“(4) After August 1, a taxpayer who files a return to which this section applies or who fails to file a return shall be subject to a penalty equal to 100 percent of the tax attributable to the taxable personal property of the taxpayer.” (Emphasis added).

The county board is the only body vested with the power to consider a penalty waiver request and their decision cannot be appealed. ORS 308.296 provides:

“(6) The county board of property tax appeals, upon application of the taxpayer, may waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause. However, an application made under this subsection shall not be considered by the board unless filed timely and in the same manner as an appeal under ORS 309.100. There shall be no appeal from the determination of the board under this subsection. (Emphasis added).

Plaintiff feels the fault lies entirely with the county for failing to mail the blank return to his address in December 1998. As stated previously, that “error” was likely as much, if not entirely, his fault for not updating the county records after he acquired the business. By law a property owner is required to notify the tax collector of the mailing address for the property he acquires. ORS 311.555.

Having said that, were the court inclined to grant relief, it could not do so because it lacks authority to waive or reduce penalties or interest in these situations.

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The appeal must therefore be dismissed.<sup>2</sup> Now, therefore;

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<sup>2</sup> The county’s witness testified she would recommend a penalty waiver. As mentioned during the court proceeding, the Department of Revenue may have general jurisdiction under ORS 306.115 to consider plaintiff’s case. The court has no opinion as to whether the penalty

DECISION AND JUDGMENT OF DISMISSAL

IT IS THE DECISION OF THE COURT that plaintiff's Complaint is dismissed for lack of jurisdiction. Penalty waiver requests can only be considered by the county board and the court lacks authority to review cases where the petition is not received by the board. The Complaint does not allege facts which bring the claim within the specialized jurisdiction of this court. See ORS 305.410. Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that plaintiff's Complaint is dismissed.

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

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DAN ROBINSON  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON JUNE 6, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 6, 2000.**