

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

DENNIS E. BRUNER,)
)
 Plaintiff,) No. 000530E
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on defendant's Motion to Dismiss, which was filed as part of its Answer on May 1, 2000. The court discussed defendant's motion with the parties during the case management conference held June 7, 2000. Dennis E. Bruner appeared on his own behalf. Kurt Hamm, Appraiser, appeared on behalf of defendant (the county).

STATEMENT OF FACTS

The subject property is a floating home located in Multnomah County and is identified as Account No. P351360. Mr. Bruner bought the property through a purchase contract with the seller in December 1998. The county mailed the 1999-2000 personal property return form for the subject property to the prior owner because it had not received notice of the transfer. The prior owner did not forward the form onto Mr. Bruner or otherwise make him aware of the need to file a personal property tax return.

When Mr. Bruner received the tax statement in the fall of 1999, he noticed the county had assessed a 100 percent penalty for his failure to file a personal property tax return. Mr. Bruner appealed the assessed penalty to the Multnomah County Board of Property Tax Appeals (BOPTA). BOPTA declined to waive or reduce the penalty

assessment. Mr. Bruner appeals BOPTA's determination asking the court to waive the penalty based on the fact he was a first-time owner of a floating home and had no knowledge of the filing requirements for taxable personal property. The county moves the court to dismiss the case arguing the court lacks jurisdiction over the matter.

COURT'S ANALYSIS

ORS 308.290(1)(a) requires every person owning taxable personal property to file a personal property tax return by March 1.¹ The statute goes on to state that, if a party fails to file a return by the March 1 deadline, they "shall be * * * subject to the provisions of ORS 308.296." ORS 308.290(1)(a). ORS 308.296(1) states that any person or company responsible for filing a personal property return who or 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 a return. ORS 308.296(4), the provision applicable here, states:

"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."

Mr. Bruner admittedly did not file a return until after August 1, 1999. Pursuant to the statute, he is responsible for a 100 percent penalty. Mr. Bruner claims, however, that justice requires his penalty be reduced or waived because he simply did not know he was supposed to file a return for his floating home.

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ORS 308.296(6) allows waiver of a late-filing penalty when there is good and sufficient cause to waive the penalty. The statute states:

¹ All references to the Oregon Revised Statutes are to the 1999 Edition.

“(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.**” ORS 308.296(6) (emphasis added).

The legislature, however, only vested the *county board* with this authority. In doing so, the legislature specifically provided there would be no appeal from the board’s determination, thus precluding an appeal to the Tax Court. The court finds, therefore, that it lacks authority to review Mr. Bruner’s appeal. The court recognizes the harshness of the penalty under these circumstances but, unfortunately, the court is without authority to order the penalty reduced. The state of Oregon has placed a priority on the timely filing of personal property tax returns by its imposition of the statutory penalty. It is not the office of the court to question the legislature’s wisdom or policy. The Tax Court has no authority in this matter.

CONCLUSION

The court finds it lacks authority to waive a penalty assessed under ORS 308.296 because the legislature expressly granted the county board with this authority. Now, therefore;

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IT IS THE DECISION OF THIS COURT that the above-entitled matter be
DECISION OF DISMISSAL

dismissed.

Dated this _____ day of June, 2000.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON JUNE 14, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 14, 2000.