

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

SYSCO FOOD SERVICES OF PORTLAND,)
INC.,)
) No. 000917E
Plaintiff,)
)
v.)
)
DOUGLAS COUNTY ASSESSOR,)
)
Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on defendant's Motion to Dismiss, filed as part of its Answer on July 26, 2000. The court discussed the motion with the parties during the case management conference held August 30, 2000. Todd Harbron, Controller, appeared on behalf of plaintiff. Ali Vincent-Lough, Deputy Assessor, appeared on behalf of defendant (the county).

STATEMENT OF FACTS

Sysco Food Services of Portland, Inc. (Sysco) leases beverage dispenser machines to various businesses in Douglas County. Each lease agreement provides that the lessee "shall be responsible for and pay any personal property taxes or any other taxes that may be levied or otherwise assessed against the property at all times during which the property is in the possession or under the control of the [lessee]." (Ptf's Amended Complaint at 8). At some point, the county became aware that some of Sysco's property was not being reported by the lessees. It notified Sysco of the problem but was unable to advise Sysco which businesses had not reported the property. As a result, Sysco filed a 2000 personal property tax return listing all of the machines it leases in Douglas County.

After reviewing that list and comparing it to the returns filed by the lessee businesses, the county determined that none of the equipment had ever been reported. As a consequence, the county set up an omitted property assessment for tax years 1994-95 through 1999-2000. As part of that assessment, the county assessed penalties for Sysco's failure to file a personal property tax return.

Sysco appeals initially claiming it should not be responsible for the failure to file penalty because its lessees were responsible for filing the returns. At the conference, Sysco further questioned whether it should be responsible for the tax.

COURT'S ANALYSIS

ORS 308.290(1) requires businesses owning or having within their control taxable personal property to file a personal property tax return each year. It states:

“(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; **however, as between a mortgagor and mortgagee or a lessor and lessee, the actual owner and the person in possession may agree between them as to who shall make the return and pay the tax, and the election shall be followed by the person in possession of the roll who has notice of the election.** 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 [penalty assessed under ORS 308.296 for failing to file a return].**” ORS 308.290(1)(a) (emphasis added).

The statute provides that a lessor and lessee can agree between themselves who is responsible for filing the return and paying the tax. In this case, Sysco entered into a contract with each of its lessees providing that the lessee is responsible for the tax, which entails both filing the return and paying the tax. The statute is clear, however,

that “both parties” are jointly liable for the penalty. *Id.* As a consequence, even though its lessees had a contractual obligation to file the returns, by statute, Sysco is equally liable for the penalty.

As for the tax, the statute does allow lessors and lessees to elect who is the responsible party. The assessor is statutorily bound to follow this election, but only if it has “notice of the election.” *Id.* It is unclear to the court exactly when the county became aware of the lease clause pertaining to the lessee’s responsibility. However, it is clear the county became aware of the lease clause only after the relevant years had passed. It is the court’s opinion that the county needs to be timely notified of the election before it is required to pursue the lessee for payment. If the county does not have timely notice of an election, it is entitled to seek payment from the owner. Notice of the election may come in the form of the return filed each year or, perhaps, by filing with the county a copy of each lease agreement.

CONCLUSION

It is the conclusion of the court that, because the county did not have timely notice of the election by Sysco and its lessees to have the lessees file the returns and pay the tax, the county is entitled to seek payment from Sysco. Any remedy Sysco may have against its lessees is not a matter for the Tax Court. The court further finds that Sysco is statutorily liable for the penalty. 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 September, 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 SEPTEMBER 19, 2000. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 19, 2000.