

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

3301 CORP,)
)
 Plaintiff,) No. 001075C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff has appealed the 100 percent penalty assessed by the county tax collector for failure to file a timely personal property tax return for the 1999-00 tax year. The November 14, 2000, case management conference was converted to a trial. Plaintiff was represented by Mr. Thomas Riley, the Controller for 3301 Corp. Defendant was represented by Mr. Chris Johnson, an appraiser with the County assessor's office.

STATEMENT OF FACTS

The property at issue is personal property owned by Stanley R. Culver. Mr. Riley, who appeared at the trial, works for Mr. Culver. Mr. Riley is responsible for filing the personal property tax returns and paying the tax on Mr. Culver's property. The subject property was being used by a company known as Innbiz, under a lease/option arrangement. Innbiz apparently exercised the option to purchase the property in 1997 or early 1998. Innbiz did not file a personal property tax return in 1998. Eventually, Mr. Riley filed the 1998 return. Mr. Riley made a mistake on the return in reporting the address. As a result, the blank personal property tax return form sent by the county in December 1998 for the upcoming tax year (1999-00) was sent to an erroneous address. Mr. Riley did not receive that form.

In 1999, the year under appeal, Mr. Riley did not timely file the personal property tax return due by March 1. This was because he did not receive the blank form, which generally serves as a reminder. The return was eventually filed on October 22, 1999. That return reported a new owner and address. Meanwhile, the county mailed the property tax statement in October of 1999. It is not clear from the evidence whether that statement was sent to the newly reported address appearing on the untimely filed 1999 tax return or the earlier erroneous address to which the blank form was directed. In any event, Mr. Riley testified that he did not receive the 1999-00 property tax statement. The tax statement included a penalty of approximately \$4,600, which was equal to the amount of the tax otherwise due on the property. The penalty was assessed by the county because plaintiff failed to file the statutorily required personal property tax return before August 1, 1999. Plaintiff asks the court to waive the penalty.

COURT'S ANALYSIS

All real and personal property in Oregon is taxable unless specifically provided by law. ORS 307.030. The parties agree that the personal property at issue in this case is taxable. Persons owning taxable personal property in Oregon are required to make a return to the assessor each year reporting the value of the property. ORS 308.290. By law, “[a]ll returns shall be filed on or before March 1 of each year []” unless the assessor approves a written request for extension to April 15. ORS 308.290(3). There is a graduated penalty for the failure to file the annual return. ORS 308.296. The penalty begins at five percent for late returns filed on or before June 1 and goes as high as 100 percent for returns filed after August 1. ORS 308.296 (2) through (4).

Plaintiff’s 1999 return was filed in October. The county imposed a penalty of 100

percent. The statute provides:

“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.” ORS 308.296(4).

The penalty is mandatory, as evidenced by the use of the word shall. Appeal of the penalty is to the County Board of Property Tax Appeals (board). ORS 308.296(6) and 309.026(4). The board can reduce or completely waive the penalty upon a satisfactory showing of good and sufficient cause. ORS 308.296(6). However, a timely application must be filed with the board as provided under ORS 309.100 and the board’s decision is final. *Id.* Plaintiff did not petition the county board.

CONCLUSION

The court does not have the authority to waive the penalty assessed by the county under ORS 308.296 because the legislature limited such authority solely to the county board. *See Bruner v. Multnomah County Assessor*, OTC-MD No. 000530E, 2000 WL 1060478 (June 14, 2000).

Dated this _____ day of November, 2000.

DAN ROBINSON
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 DAN ROBINSON ON NOVEMBER 27, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 27, 2000.

DECISION