

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

FAN'S CHINA KITCHEN,)
)
 Plaintiff,) No. 001160F
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

This matter is before the court on its own motion to dismiss the Complaint for lack of authority to grant the requested relief. After reviewing the matter the court finds the motion should be granted.

Plaintiff appeals the penalty assessed by the county for the 1999-00 tax year on its personal property used in connection with its business. Plaintiff appeared through Jack Liu, a Licensed Tax Consultant. Defendant appeared through Dan Howard, county appraiser. The property is identified in the Multnomah County Assessor's records as Account No. P496161.

STATEMENT OF FACTS

Fan's China Kitchen started in December 1998. Plaintiff was unaware of the need to file a personal property return. Defendant was unaware of plaintiff and so did not send plaintiff a blank form. Consequently, plaintiff did not file a personal property return with the defendant.

COURT'S ANALYSIS

ORS 308.296 sets forth the penalty when a personal property return is not filed. It provides, in relevant part:

“(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 court lacks authority to grant the relief requested in the appeal. The penalty was imposed because plaintiff did not file the annual personal property tax return required by ORS 308.290. Imposition of the penalty was mandatory.

Mr. Liu asked if the penalty was required to be imposed even though the form was not received. The assessor is required by ORS 308.290(2)(c) to mail a blank return to the owner of taxable personal property each year. That statute provides:

"Prior to December 31 preceding the assessment year, the department or assessor shall cause blank forms for the returns to be prepared and distributed by mail, **but failure to receive or secure the form shall not relieve the person, managing agent or officer from the obligation of making any return required by this section.**"

(Emphasis added.)

Plaintiff remained obligated to file a return regardless of whether it received the blank form. The county board of property tax appeals is the only body with the authority to consider such a request and their decision cannot be appealed. ORS 308.296(6) provides:

“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. * * * **There shall be no appeal from the determination of the board** under this subsection.

(Emphasis added).

The court lacks authority to waive or reduce penalties or interest under the circumstances of this case and the appeal must therefore be dismissed. Now, therefore;

IT IS THE DECISION OF THE COURT that plaintiff's Complaint is dismissed..

Dated this _____ day of January, 2001.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON JANUARY 17, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 17, 2001.