

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

HAROLD L. CENTER PRO LAND SURVEY	)	
and HAROLD L. CENTER,	)	
	)	
Plaintiffs,	)	No. 020069C
	)	
v.	)	
	)	
JACKSON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs request a reduction in the value of certain personal property for the 2001-02 tax year and waiver of the 100 percent penalty imposed as part of an omitted property assessment for tax years 1999-2000 and 2000-2001. For the years at issue, the subject property is identified in the Jackson County Assessor's records as Account No. 2-028355-0.

The May 15, 2002, case management conference was converted to a trial because both parties were ready to proceed. Harold L. Center appeared for the Plaintiffs. John Cacka, Personal Property Appraiser, Jackson County Assessor's Office, appeared for Defendant.

**STATEMENT OF FACTS**

Plaintiffs timely filed the 2001-02 personal property return in accordance with ORS 308.296<sup>1</sup>. The return was prepared by an accountant. Defendant used the information in the return to set the value of the property at \$15,200. Plaintiffs were made aware of this information through the issuance of the property tax statement mailed by Defendant in October 2001. Plaintiffs did not contest the value by filing a petition with the county board of property tax appeals (the board) before the December

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<sup>1</sup> All References to the Oregon Revised Statutes are to 2001.  
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31, 2001, statutory deadline.

In January 2002 Defendant sent Plaintiffs a letter announcing Defendant's intent to add the value of Plaintiffs' property to the assessment and tax rolls for tax years 1999-2000 and 2000-2001 as omitted property. Defendant was unaware of the existence of the property because Mr. Center had not filed personal property tax returns in 1999 or 2000. Mr. Center testified he was unaware that the property was subject to tax. Mr. Center then met with an appraiser in the assessor's office to discuss the value being placed on the rolls. Based on those discussions, Defendant lowered the value ultimately placed on the rolls for 1999-2000 and 2000-2001. The assessment for these two tax years included a penalty equal to 100 percent of the tax due because Plaintiffs did not file personal property tax returns for these tax years.

The parties have submitted to the court a stipulated agreement reducing the value of the subject property for the 2001-02 tax year from \$15,200 to \$12,900. Plaintiffs also request waiver of the penalties for 1999 and 2000.

### **COURT'S ANALYSIS**

#### Value Appeal For Tax Year 2001-02

The process established for appealing property tax values is to file a petition with the board on or before the December 31 deadline provided in ORS 309.100. A party dissatisfied with the decision of the board may appeal to this court as provided in ORS 309.110(7) and ORS 305.275(1). Plaintiffs did not petition the board. The court nonetheless has limited authority to consider the appeal under the provisions of ORS 305.288. Because the subject property is not used as a dwelling the court can accept the appeal and the stipulated reduction upon a showing of "good and sufficient cause" for Plaintiffs' failure to petition the board and timely appeal the board's order to the court.

ORS 305.288 provides in relevant part as follows:

“(3) The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.

“\* \* \* \* \*

“(5) For purposes of this section:

“\* \* \* \* \*

“(b) ‘Good and sufficient cause’:

“(A) Means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal; and

“(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.”

The reason Plaintiffs did not first petition the board before appealing to this court is because of a lack of knowledge as to how Defendant established the value. Plaintiffs became aware of the valuation error when talking with the staff at the assessor’s office in January 2002 about the proposed assessment for prior tax years. A lack of knowledge does not constitute good and sufficient cause.

#### Penalty Waiver Request

Ordinarily requests for penalty waivers must be filed with the board as provided in ORS 308.296, and the board’s decision is final. However, when the penalty is imposed as part of an omitted property assessment, the taxpayer may appeal to the Tax Court. ORS 311.223(4). The court reviews the matter under the provisions of RS 305.422, which provides:

“If a penalty under ORS 308.295 or 308.296 for the failure to timely file a real, combined or personal property return as required by ORS 308.290 is the subject of an appeal to the tax court, the court may waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause.”

Again the inquiry is based on a standard of “good and sufficient cause.” The statute does not specifically define the term as used in this context. The statutory provision is a recent legislative enactment adopted in 2001. There is no case law on point. The court finds the definition in ORS 305.288 a useful guide and will rely upon that language.

The penalty was imposed by Defendant because Plaintiffs did not file personal property tax returns in 1999 or 2000. As indicated in the statement of facts set forth above, the reason no returns were filed is that Mr. Center was not aware that the property was subject to tax. Lack of knowledge does not constitute good and sufficient cause. Adopting such a wide definition would effectively nullify the penalty, as lack of knowledge is generally the reason for not filing these returns and it is a claim easy to make and difficult to disprove.

### **CONCLUSION**

Plaintiffs have not established good and sufficient cause for not properly pursuing the statutory right of appeal. Accordingly, the court cannot accept the parties’ agreed-upon reduction in value for Plaintiffs’ personal property for the 2001-02 tax year. Neither can the court waive the 100 percent penalty imposed by Defendant for Plaintiffs’ failure to file personal property tax returns in 1999 or 2000 because Plaintiffs have not established good and sufficient cause for the omission. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs’ request for relief both as to the value reduction for tax to 2001-02 and the penalty waiver for tax years 1999-2000 and 2000-2001 is denied.

Dated this \_\_\_\_\_ day of July, 2002.

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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 97301-2563. 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 JULY 18, 2002. THE COURT FILED THIS DOCUMENT ON JULY 18, 2002.**