

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

|   |   |                 |
|---|---|-----------------|
| GENE MCCONNELL, dba Starfire Graphics,<br>Inc., | ) |                 |
|   | ) |                 |
| Plaintiff,                                      | ) | No. 020105A     |
|   | ) |                 |
| v.  | ) |                 |
|   | ) |                 |
| JACKSON COUNTY ASSESSOR,                        | ) |                 |
|   | ) |                 |
| Defendant.                                      | ) | <b>DECISION</b> |

On July 9, 2002, this court entered an Order Granting Partial Summary Judgment in this case. The court will not repeat points addressed in that document. Two matters now remain before the court. The first is the valuation of the subject property. The second is the penalty imposed for the failure to timely file a return reporting taxable personal property.

*The valuation of the subject property:* Mr. McConnell and Jackson County have agreed to the following corrections to the roll as to property identified by Account No. 2-014752-0 for the 2001-02 tax year:

|                   | <u>From</u> | <u>To</u> |
|-------------------|-------------|-----------|
| Real Market Value | \$93,500    | \$32,680  |
| Assessed Value    | \$93,500    | \$32,680  |

*The penalty:* The personal property return at issue was not filed until November 13, 2001. Looking to ORS 308.296(4),<sup>1</sup> Jackson County imposed a penalty. Mr. McConnell reasons that some relief from the penalty is in order, first because the instructions accompanying the return do not tell as to how entities in the process of dissolving ought to complete the return, and second, because the Jackson County

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<sup>1</sup> All reference to the Oregon Revised Statutes (ORS) are to 2001.  
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Board of Property Tax Appeals (Board), in hearing his appeal, were prepared to reduce or eliminate the penalty, and would have done so were it not for an inadvertent error Jackson County made in testifying to the Board as to its mailing of notices to Mr. McConnell.

There are only two ways a penalty imposed by ORS 308.296 might be waived or reduced. The first is through the action of the board of property tax appeals under ORS 308.296(6). Mr. McConnell took advantage of this process, and according to his statement, would have achieved success were it not for Jackson County's inadvertent error, which provided false information to the board. However, the particular problem is that, even if Mr. McConnell's conclusion is given its greatest possible weight, ORS 308.296(6) dictates that there can be no appeal from the order of the board. This court has previously tested the legislature's ability to impose a penalty while cutting off appeal rights in *Staley Enterprises, Inc. v. Dept. of Rev.*, 15 OTR 63 (1999). In its analysis the court found that the result, while harsh, was a legitimate legislative choice. While that conclusion, especially from Mr. McConnell's perspective, seems unfair, this court cannot say that it violates constitutional standards.

The second way a penalty imposed by ORS 308.296 might be waived or reduced is through an application of the Tax Court's own power, set out in ORS 305.422, which permits relief upon a showing of "good and sufficient cause." In a similar statutory setting, ORS 305.288(5)(b), the standard for "good and sufficient cause" has been defined. "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."

Under the points made by Mr. McConnell, the reasons he did not file the return on time were that his business was dissolving, and that the instructions for completing the return did not explain how the return related to his circumstances. These explanations are precluded as instances of “good and sufficient cause” by the language of ORS 305.288(5)(b)(B) set out above.

While it is understandable how Mr. McConnell came to file his personal property tax return late, there is simply no statutory or constitutional measure that permits relief from the penalty imposed by ORS 305.296.

### **CONCLUSION**

Now, therefore,

IT IS THE DECISION OF THIS COURT that the roll shall be adjusted as stipulated by the parties. Relief as to penalty is limited to the consequences of changing the value on which the penalty is based.

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

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SCOT A. SIDERAS  
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 SCOT A. SIDERAS ON SEPTEMBER 24, 2002. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 24, 2002.**