

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BAKER BURGER and KAREN JO,)
)
 Plaintiffs,) No. 020107C
)
 v.)
)
 WASHINGTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiffs have appealed to the court requesting a waiver of the late filing penalty imposed by Defendant for the untimely filing of the personal property return for tax year 2001-2001. The case management conference held on May 8, 2002, was converted to a trial. Karen Jo, co-owner of Baker Burger, appeared for Plaintiffs. Kathleen Southwick, Personal Property Appraiser, Washington County Assessor's Office, appeared for the Defendant.

STATEMENT OF FACTS

Defendant imposed a 100 percent penalty on Plaintiffs' 2001-02 personal property account because it did not receive Plaintiffs' personal property return by August 1, 2001. Plaintiffs petitioned the county board of property tax appeals (the board) for a waiver of the penalty on January 23, 2002. The board dismissed the petition as untimely on February 7, 2002. (Ptf's' Complaint at 2.) Plaintiffs ask the court to waive the penalty.

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COURT'S ANALYSIS

The return was due on or before March 1, 2001. ORS 308.296(1)¹ and ORS 308.290(3). The statute further provides penalties for untimely filed returns.

“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).

Only the board can hear taxpayer requests to waive the penalty for the late filing of personal property returns. 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. However, an application made under this subsection shall not be considered by the board unless filed timely and in the same manner as an appeal under ORS 309.100. There shall be no appeal from the determination of the board under this subsection.”

As can be seen from the statute set out above, the waiver application to the board “shall not be considered * * * unless filed timely * * * under ORS 309.100.”

ORS 309.100(2) provides that petitions to the board “shall be filed * * * during the period following the date the tax statements are mailed for the current tax year and ending December 31.” Use of the word “shall” makes compliance with the deadline mandatory. This is understandable because the board begins meeting each year in February and must complete all of its work by April 15. ORS 309.026(1). Plaintiffs missed the December 31, 2001, deadline. Moreover, had the petition been timely, the board’s decision would be final as provided in subsection (6) of ORS 308.296.

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¹ All references to the Oregon Revised Statutes are to 1999.

CONCLUSION

The board acted appropriately in dismissing Plaintiffs' untimely filed petition, and the court lacks authority to waive penalties imposed for the untimely filing of a required personal property tax return.

IT IS THE DECISION OF THE COURT that Plaintiffs' requested relief must be denied.

Dated this _____ day of May, 2002.

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 MAY 31, 2002. THE COURT FILED THIS DOCUMENT ON MAY 31, 2002.