

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

PACIFIC GUNDRILL & MACHINE,)	
KEN KUMLEY, Agent,)	
)	
Plaintiff,)	No. 020137F
)	
v.)	
)	
JACKSON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiff appeals Defendant’s omitted property assessment for tax years 1997-98 through 2000-2001. In particular, Plaintiff appeals the 100 percent penalty assessed for Plaintiff’s failure to timely file personal property tax returns for the years at issue. The subject property is identified in the Jackson County Assessor’s records as Account No. 2-028405-1.

A case management conference was held on April 30, 2002. Ken Kumley appeared for Plaintiff. John Cacka, Personal Property Appraiser, appeared for Defendant. The court allowed the parties to submit written materials after the case management conference.

STATEMENT OF FACTS

At some point before the assessment date for tax year 1997-98, Plaintiff started its business operations in Jackson County. Because Defendant was unaware of Plaintiff, it did not mail Plaintiff personal property return forms for tax years 1997-98 through 2000-2001. Plaintiff, unaware it owed a personal property tax, did not file personal property returns for those tax years. Sometime in the spring of 2001, Defendant became aware of Plaintiff and mailed Plaintiff a personal property return

form for tax year 2001-02. Plaintiff paid the personal property tax for tax year 2001-02 in full in November 2001.

In December 2001, Defendant mailed Plaintiff a second personal property return form. On January 30, 2002, Defendant sent Plaintiff an omitted property notice proposing to add the value of Plaintiff's property to the tax rolls for tax years 1997-98 through 2000-2001. The omitted property notice also included a penalty equal to 100 percent of the tax due for each of the years at issue. Plaintiff appeals only the 100 percent penalty.

COURT'S ANALYSIS

ORS 308.290(1)(a)¹ requires a business owning taxable personal property to file a personal property tax return by March 1 of each year. The statute goes on to state that, if a party fails to file a return by the March 1 deadline, they “shall be * * * subject to the provisions of ORS 308.296.” ORS 308.290(1)(a). ORS 308.296(1) states that any taxpayer responsible for filing a personal property tax return who fails to do so “shall be subject to a penalty as provided in this section.” The penalty is graduated based on when the taxpayer files its return. A penalty of 100 percent is imposed if a return is not filed by August 1 of the tax year. ORS 308.296(4).²

As noted above, Defendant added the property to the tax rolls through the omitted property process. A taxpayer is entitled to appeal a penalty assessed under the omitted property statutes to this court. ORS 311.223(4) (2001). The court has authority to waive “the liability for all or a portion of the penalty upon a proper showing of good

¹Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 1999.

² ORS 308.296(4) states:

“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.”

and sufficient cause.” ORS 305.422 (2001). Plaintiff points to Defendant's failure to mail it a personal property tax return as required by ORS 308.290(2)(c). However, ORS 308.290(2)(c) also provides that a “failure to receive or secure the form [from the county] *shall not relieve* the person, managing agent or officer *from the obligation of making any return required by this section.*” (Emphasis added.) Under the statute, failing to receive the return is not a sufficient reason for not timely filing the return. To find "good and sufficient cause" within the meaning of ORS 305.422 (2001) in the present circumstances would render nugatory the provision of ORS 308.290(2)(c) quoted above. This the court declines to do.

CONCLUSION

To waive a penalty assessed under ORS 308.296, the court must find that a taxpayer has good and sufficient cause for not timely filing a return. ORS 305.422 (2001). The court finds that neither generally being unaware a return is due nor failing to receive a return form from the county constitutes good and sufficient cause. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's request for a waiver of the 100 percent penalty is denied.

Dated this _____ day of November, 2002.

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 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 SALLY L. KIMSEY ON NOVEMBER 19, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 19, 2002.