

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

|                                   |   |                 |
|-----------------------------------|---|-----------------|
| KEITH HARDIN and GENA HARDIN, and | ) |                 |
| CHARLES STANTON,                  | ) |                 |
|                                   | ) |                 |
| Plaintiffs,                       | ) | No. 020200C     |
|                                   | ) |                 |
| v.                                | ) |                 |
|                                   | ) |                 |
| MULTNOMAH COUNTY ASSESSOR,        | ) |                 |
|                                   | ) |                 |
| Defendant.                        | ) | <b>DECISION</b> |

Plaintiffs have appealed the penalty imposed by Defendant for failure to file the personal property tax return for the 2000-01 tax year. Defendant moved for dismissal, contending that the court lacks jurisdiction to consider the matter. Hearing on the motion was held May 20, 2002. Dennis Wardwell argued the motion for Defendant. Keith Hardin and Charles Stanton appeared for the Plaintiffs.

**STATEMENT OF FACTS**

The subject property is a floating home. Stanton is purchasing the property from the former owner Lewis. Hardins hold the first mortgage on the property. Defendant mailed Lewis a blank personal property reporting form prior to the March 1, 2000, filing deadline. Stanton obtained the form from Lewis and allegedly completed the form and returned it to Defendant before the filing deadline. Defendant has no record of receiving the return. Defendant therefore imposed a penalty equal to 100 percent of the tax due on the property. The penalty was reflected in the property tax statement mailed to Stanton by the tax collector in October 2000. Stanton received the tax statement but did not appeal the penalty to the county board of property tax appeals (board). In mid-February, 2002, Hardins were advised by Lewis that the outstanding tax and penalties on the property exceeded \$7,000. Hardins initiated the current appeal,

which included Stanton as a named Plaintiff. Hardins request the penalty be canceled because of lack of notice. Stanton requests the penalty be canceled because he did in fact timely file the required return.

### **COURT'S ANALYSIS**

The owner or person in possession or control of “taxable personal property shall make a return of the property for ad valorem tax purposes to the assessor of the county in which such property has its situs for taxation \* \* \*.” ORS 308.290(1).<sup>1</sup> All property in Oregon, both real and personal, is subject to tax unless specifically exempt. ORS 307.030. Floating homes are considered tangible personal property under ORS 307.020(3). They are not exempt from property tax. Therefore, a personal property return was required.

The filing of personal property returns is governed by the provisions of ORS 308.296. The return was due on or before March 1, 2000. ORS 308.296(1) and ORS 308.290(3). The statute provides for a graduated penalty for untimely filed returns. The penalty begins at five percent of the tax due and, for the year in question, rose to 100 percent for returns filed after August 1. ORS 308.296(2), (3) and (4). Stanton insists he timely filed the return so there should be no penalty. Defendant did not receive the return and imposed a 100 percent penalty as provided in subsection (4) of ORS 308.296.

Appeal of the penalty is to the board as provided in subsection (6) of ORS 308.296. The statute provides that the board “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.” The statute further provides:

“However, an application made under this subsection shall not be

---

<sup>1</sup>All references to the Oregon Revised Statutes are to 1999.  
DECISION CASE NO. 020200C

considered by the board unless filed timely and in the same manner as an appeal under ORS 309.100.” ORS 308.296(6)

ORS 309.100(2) provides that a petition “shall be filed with the clerk of the board during the period following the date the tax statements are mailed for the current tax year and ending December 31.” The statement for the current year (2000-01) was mailed in October 2000 and the petition to the board was due between then and December 31, 2000. There was no petition to the board in this case because Stanton did not pursue the matter even though the penalty was clearly reflected on the tax statement. Hardins appealed to the Tax Court in March 2002 on the county’s advice. That advice was not unreasonable because it was clearly too late to petition the board for the 2000-2001 tax year and the county is in a delicate position advising taxpayers how to pursue their interests without misadvising the taxpayer and/or hurting its own interests (e.g., estoppel).

The court’s ability to provide relief is at least very limited because the court lacks authority to waive penalties imposed for the untimely filing of (or failure to file) a personal property return. The final sentence of the statute providing for the penalty and appeal reads: “[t]here shall be no appeal from the determination of the board under this subsection.” ORS 308.296(6). Stanton’s testimony is that he timely filed the return but it was not received by Defendant. However, the board was the place to make that argument and Stanton simply missed the deadline.

Hardins request that the penalty be canceled because they were not notified that the penalty had been imposed. The court understands Hardins’ frustration but the argument fails because the penalty was announced in the tax statement mailed to Stanton in October 2000 as provided in ORS 311.250(1). Defendant was not required to mail the statement to Hardins. Hardins have now taken steps to ensure the tax

statement is mailed to them rather than Stanton but the record owner at the time the 2000-01 tax statement was mailed was Stanton. Defendant was not required to notify Hardins that the penalty had been imposed.

### **CONCLUSION**

After carefully considering the matter, the court concludes it cannot cancel, waive or reduce the penalty imposed for the alleged failure to file the personal property tax return required by statute because the court lacks jurisdiction. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted.

Dated this \_\_\_\_\_ day of June, 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 JUNE 19, 2002. THE COURT FILED THIS DOCUMENT ON JUNE 19, 2002.**