

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

BTN PROPERTIES, LLC dba New Seasons Market,	)	
	)	
	)	
Plaintiff,	)	No. 020554D
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on Defendant's motion to dismiss, filed April 25, 2002, requesting that the Complaint be dismissed.

A case management conference was converted to a telephone trial on Tuesday, July 9, 2002. Mr. Jeremy Fogle, Controller, appeared on behalf of Plaintiff. Mr. Bob Steiner, Appraiser, appeared on behalf of Defendant.

Mr. Fogle testified that New Seasons is appealing the 100 percent penalty assessed for failure to file its 2001-2002 personal property tax return. He stated that while it is his responsibility to handle such matters for the business he was unaware that the landlord had only paid the real property taxes and not the personal property taxes. In addition, Mr. Fogle explained that New Seasons was rapidly expanding the number of its stores in various locations and it was understaffed. He explained that there is no disagreement as to the real market value and New Seasons "had no intention of avoiding taxes or filing late."

Mr. Fogle stated that he never received any tax forms from Multnomah County for tax year 2001-2002. He did receive tax forms from Washington County and he filed timely for Washington County. Mr. Steiner testified that when he heard New Seasons filed timely in Washington County he contacted Washington County. He stated that

Washington County added Plaintiff to its tax roll after researching the business permits for the county. Mr. Steiner stated that the value of Plaintiff's property in Multnomah County for tax year 2001-2002 was determined based on Plaintiff's personal property filing for tax year 2002-2003. Plaintiff has never filed a personal property tax return for tax year 2001-2002.

Mr. Fogle testified that the 100 percent penalty is "extremely excessive and unfair." The law states when a taxpayer fails to file a personal property tax return, the taxpayer "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).<sup>1</sup>

This court has consistently held that the penalty may only be waived in instances where the explanation for the failure to file is for a reason beyond the taxpayer's control, an extraordinary circumstance. Being unaware of the statutory requirements or an oversight does not rise to the level of reasonable cause. The legislature provided no exception for reducing, or eliminating, the penalty in such instances. The court cannot give Plaintiff the relief requested. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

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

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JILL A. TANNER  
PRESIDING 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 JILL A. TANNER ON JULY 19, 2002. THE COURT FILED THIS DOCUMENT ON JULY 19, 2002.**

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<sup>1</sup> All references to the Oregon Revised Statutes are to 1999.