

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ADAM FRANCOIS,)
)
 Plaintiff,) No. 020683C
)
 v.)
)
 WASHINGTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals the imposition by Defendant of penalties on his personal property tax account for tax years 1997-98, 1998-99, and 1999-2000. The November 12, 2002, case management conference was converted to trial. Plaintiff appeared on his own behalf. Defendant Washington County Assessor appeared through Kathleen Southwick, an appraiser with the county assessor's office. Prior to the commencement of trial, the court verbally granted Defendant Department of Revenue's request to be dismissed as a party Defendant.

STATEMENT OF FACTS

Plaintiff filed a personal property tax return for the 2000-2001 tax year. Defendant thereafter determined that Plaintiff had been in business as far back as 1997 and that its personal property used in connection with the business had not been reported or subjected to tax for tax years 1997-98, 1998-99, and 1999-2000. Accordingly, in March 2002 Defendant added the value of Plaintiff's taxable personal property to the assessment and tax rolls for the three years at issue and imposed penalties of \$250 for 1997-98 and roughly another \$8,300 for the two subsequent tax years (combined). Plaintiff feels the penalties are harsh and would like them reduced.

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COURT'S ANALYSIS

Personal property used in connection with a business is subject to tax in Oregon. See ORS 307.030¹ (providing that real and tangible personal property is subject to assessment and taxation unless otherwise provided by law); cf ORS 307.190 (providing that personal property held for personal use is exempt from taxation). The owner of taxable personal property is required to file the return each year reporting the value of the property. See generally ORS 308.290. The 1995 law, which controls the 1997-98 tax year, imposed an August 1 deadline for the return. ORS 308.290(3). In the event the return was untimely (or not filed at all), the statutory penalty for 1997-98 was “* * * \$1 for each \$1,000 (or fraction thereof) of assessed value” with a minimum penalty of \$10 and a maximum of \$250. ORS 308.295(2) (1995). The 1997 law, which governs tax years 1998-99 and 1999-2000, imposed the March 1 filing deadline under ORS 308.290(1)(a), and a graduated penalty for untimely filed returns under ORS 308.296(2), (3) and (4), beginning at 5 percent of the tax due and increasing to 100 percent for returns filed after August 1.

Plaintiff did not file returns in 1997, 1998, or 1999, and Defendant ultimately added the value of the property to the rolls under the omitted property provisions in ORS chapter 311. Because the penalty was imposed as part of an omitted property assessment, the Tax Court, and not the county board of property tax appeals, is authorized to consider the waiver request. The statute provides in relevant part that “[a]ny person aggrieved by an [omitted property assessment] may appeal to the tax court within 90 days after the correction of the roll.” ORS 311.223(4). The Tax Court considers the request under the provisions of ORS 305.422², which provides:

¹ References to the Oregon Revised Statutes (ORS) are to 1995 and 1997 with regard to the amount of the penalty imposed and to 2001 with regard to the court’s authority to waive the penalty.

² Based on 2001 law. See footnote 1.

“If a penalty under ORS 308.295 or 308.296 for the failure to timely file a real, combined or personal property return as required by ORS 308.290 is the subject of an appeal to the tax court, the court may waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause.”

The term “good and sufficient cause” is not defined in the statute. This court has previously ruled that “the definition in ORS 305.288 [is] a useful guide * * *.” *Harold L. Center Pro Land Survey v. Jackson County Assessor*, OTC-MD No. 020069C, WL 1591918 at 2 (July 18, 2002); see also *Perry v. Josephine County Assessor*, OTC-MD No. 011077B, WL 975938 (Mar 20, 2002). ORS 305.288(5)(b) provides the following definition of good and sufficient cause:

“‘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.”

Plaintiff testified that he was “fresh out of dental school” and trying to comply with all laws related to the operation of the business. In a written letter to the court prior to trial Plaintiff explained further that he had consulted an accountant and understood that all taxes were paid. (Ptf’s Complaint at 3.) Plaintiff further explained that his accountant “never said anything about an equipment value tax, and I assumed the property tax I paid through rent was the only Washington County tax I owed.” *Id.* Plaintiff insists he was unaware of the need to report the value of personal property and pay taxes thereon until he received a blank personal property return from the assessor’s office in calendar year 2000, which he proceeded to complete and submit to the assessor.

The court concludes that those circumstances do not amount to good and sufficient cause as that term is defined in the statute set forth above. The court does not believe there was an intent to evade the tax. Plaintiff was unaware of the law and while he apparently took reasonable steps to commence business operations, reasonableness is not the standard when reviewing a request to waive the personal property penalty. Nor is intent an element. The court has determined that the definition in ORS 305.288 applies and under that definition, an honest mistake borne out of ignorance of the law is not enough. There must be something extraordinary at work that was beyond the taxpayer's control and which prevented the timely filing of the return.

The legislature has placed the responsibility on the property owner to report the value each year and, in an effort to combat noncompliance, has provided for penalties where the return is untimely. The penalty has been adjusted in recent years to balance the government's interest in timely receiving the return and the taxpayer's concern for "fairness" in terms of the amount of the penalty. After increasing the maximum penalty in 1997 to 100 percent of the tax due, the legislature in 2001 reduced it to 50 percent for returns reporting only taxable personal property.³ Or Laws 2001, ch 925, § 14. The penalty may be reduced or waived upon a demonstration that the reason the return was not timely filed was by reason of good and sufficient cause. Plaintiff's situation is one of lack of knowledge rather than an extraordinary circumstance beyond his control. Accordingly, good and sufficient cause is lacking.

CONCLUSION

After reviewing the matter, the court concludes that the reason Plaintiff failed to

³ Interestingly, the maximum penalty under ORS 308.290 for a combined return reporting both real and personal property that is either principal or secondary industrial property is only \$250. ORS 308.295(2).

file personal property tax returns in 1997, 1998, and 1999, was because of a lack of knowledge of the filing requirement. The statutory standard for waiver of the penalty is good and sufficient cause and lack of knowledge does not fall within that definition. Accordingly, the penalties imposed by Defendant cannot be reduced. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's request for a reduction in the penalties imposed by Defendant as part of an omitted property assessment for tax years 1997-98, 1998-99, and 1999-2000, is denied.

Dated this _____ day of December, 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 DECEMBER 24, 2002. THE COURT FILED THIS DOCUMENT ON DECEMBER 24, 2002.