

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CHARLES L. SWANSON and DYANN JO SWANSON,)	
)	
Plaintiffs,)	TC-MD 020850C
)	
v.)	
)	
UMATILLA COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed the tax liability for the 2001-2002 tax year on certain personal property, alleging that they were not the owners on the applicable assessment date. Defendant noted in its Answer that Plaintiffs “did not appeal from an order, letter or notice of other governmental action for prior years.” Pursuant to TCR-MD 6, Defendant moved during the October 2, 2002, case management conference for dismissal of the Complaint as untimely.

STATEMENT OF FACTS

Plaintiffs owned and operated a manufacturing company known as Swanee & Co., Inc. (Swanee I). Plaintiffs claim to have sold or given the business to Fullerton in November 2000. Fullerton then changed the name to Ironhorses. Plaintiffs kept some of the business assets and used those assets in a new business they started called Swanee & Co., LLC. (Swanee II). There is no official record of the sale of Swanee I to Fullerton, such as a recorded deed. The 2001-02 personal property return for Swanee I, due on or before March 1, 2001, was never filed. Defendant determined the value and tax and added a penalty for failure to file the return. The penalty was equal to 100 percent of the tax. The tax statement was mailed in October 2001 to Swanee & Co.,

Inc., 1550 S. Main, Milton-Freewater. The building at that location, which is where Fullerton operated Swanee I, was razed May 2001. Mr. Swanee visited the assessor's office in April 2002 after receiving "something" in the mail from the county. He then learned that the taxes were delinquent and that he was being held liable. Plaintiffs appealed that determination to this court on May 17, 2002.

Plaintiffs are willing to pay the tax, although they claim they did not own the property on the assessment date and did not operate the company at any time during the tax year. Plaintiffs, however, object to the penalty, which effectively doubles the tax.

COURT'S ANALYSIS

Plaintiffs are appealing both the liability for the tax and the imposition of a 100 percent penalty for failure to file a personal property return on or before August 1, 2001. The penalty is provided in ORS 308.296.¹

The appeal of the liability is to the Oregon Tax Court as provided in ORS 305.275. The appeal must be filed within 90 days of the date the taxpayer becomes aware of the disputed act but no more than one year from the date the action was taken. ORS 305.280(1). Plaintiffs did not receive the fall tax statement. Plaintiffs became aware they were being held liable for the taxes when they visited the assessor's office in April 2002. The appeal was filed the following month. Plaintiffs' appeal is timely because it was filed within 90 days of the date Plaintiffs became aware they were being held liable for the tax and less than one year from the date the tax statement was issued. The next question is whether Plaintiffs may legally be held liable for the tax.

ORS 311.455(1) provides that "[a]ll taxes levied on personal property shall be a

¹ All references to the Oregon Revised Statutes (ORS) are to 1999.

debt due and owing from the owner of the personal property.” Ownership is determined as of the assessment date. See ORS 308.210(1) and ORS 308.215(1)(a). The assessment date is January 1. ORS 308.007(1)(a). The assessment date for the 2001-02 tax year is January 1, 2001. See *generally* ORS 308.007. Plaintiffs contend they sold the property in November 2000. Defendant responds that there is no recorded instrument reflecting such a sale. Plaintiffs were given time to prove that claim but failed to submit any documentation confirming the sale. Plaintiffs have the burden of proof. ORS 305.427. The burden is a preponderance, which means “* * * the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). In this case something more than an unsupported claim is necessary. Nothing more has been provided. Accordingly, the court concludes Plaintiffs owned the property on the assessment date and that they are liable for the tax.

Plaintiffs appeal of the penalty is not within the jurisdiction of this court. The appeal was to the county board of property tax appeals (board). The statute provides in relevant part:

"(6) 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.

ORS 308.296. The deadline was December 31, 2001. ORS 309.100(2). Moreover, subsection (6) of the statute concludes with the following language: "There shall be no appeal from the determination of the board under this subsection." ORS 308.296.

Plaintiffs did not appeal to the board. Had they done so, the board’s determination would have been final. The Tax Court cannot hear the appeal. Accordingly, Plaintiffs’ Complaint

is dismissed as to the issue of the late filing penalty.

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CONCLUSION

Plaintiffs' appeal of the tax liability is denied because Plaintiffs failed to provide any written documentation to support the claim that the property was sold before the January 1, 2001, assessment date. The court does not have authority to hear Plaintiffs' appeal of the penalty. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's request for dismissal of the appeal as untimely is denied because the appeal is not untimely.

IT IS FURTHER DECIDED that Plaintiffs' appeal of the tax liability is denied because Plaintiffs failed to prove that they did not own the property on the assessment date.

IT IS FURTHER DECIDED that Plaintiffs' request for waiver of the personal property penalty is dismissed for lack of jurisdiction.

Dated this _____ day of March, 2003.

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 MARCH 10, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 10, 2003.