

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SUSHI TOWN, INC.,)
)
 Plaintiff,) No. 020936F
)
 v.)
)
 WASHINGTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

This appeal concerns the imposition of a 100 percent penalty for failure to timely file a personal property return for tax year 2000-2001. A case management conference was held on August 28, 2002. Herbert S. Kim, C.P.A., appeared for Plaintiff. Kathleen Southwick appeared for Defendant. With the agreement of the court, the parties submitted additional materials after the case management conference. Because there is no dispute as to the facts, the case is ready for decision.

STATEMENT OF FACTS

Sushi Town, Inc., (Sushi Town) opened its doors on September 1999. They obtained a business license, the required permits, and inspections. They also timely filed payroll and income tax returns. They were unaware of the necessity of filing a personal property return so did not file a return.

Defendant, in reviewing business licenses, discovered that Plaintiff had not filed any personal property returns. Defendant mailed a personal property return form to Plaintiff upon its discovery. Plaintiff promptly filed a personal property return for tax year 2001-02. Upon Defendant's request, Sushi Town also filed a return for tax year 2000-2001. Because of the lateness of Plaintiff's 2000-2001 return, Defendant imposed a 100 percent penalty. Plaintiff asks for a waiver or reduction of the penalty.

COURT'S ANALYSIS

As this court stated in *Brokaw v. Washington County Assessor*, OTC-MD No. 020116B (May 31, 2002),

"ORS 308.290(1)(a)¹ requires businesses to file a property tax return by March 1. Plaintiff failed to meet that deadline.

"A party who files after March 1 'shall be * * * subject to the provisions of ORS 308.296.' ORS 308.290(1)(a). In turn, ORS 308.296(1) mandates that any person or company responsible for filing a personal property return that has not done so 'shall be subject to a penalty as provided in this section.' The penalty is graduated based on when the taxpayer files its return. In this case, ORS 308.296(4) states that anyone who files 'after August 1 * * * **shall** be subject to a penalty equal to 100 percent of the tax.' (emphasis added).

"The court finds that Defendant properly calculated and imposed the statutory penalty. Nonetheless, Plaintiff asks the court to utilize its discretion and order the penalty waived based on his circumstances.

"The notice of intent to add the omitted personal property assessment and penalty was made on January 9, 2002. The appeal to this court was made pursuant to ORS 311.223(4). That statute allows this court direct review of that penalty and Plaintiff's reasons for the lack of filing. After considering those arguments, the record does not reveal any showing of cause beyond Plaintiff's control; being unaware of the statutory requirements does not rise to the level of reasonable cause."

The situation is no different in the present case. As in *Brokaw*, a lack of knowledge is not a sufficient reason to waive or reduce the penalty. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of October, 2002.

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

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 OCTOBER 15, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 15, 2002.