

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JERRY PEKRUL,)
)
 Plaintiff,) No. 020939B
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on Defendant's motion to dismiss, filed on June 20, 2002. The court discussed the motion with the parties during the case management conference held September 9, 2002. Jerry Pekarul appeared on his own behalf. Dennis Wardwell represented Defendant.

STATEMENT OF FACTS

Plaintiff owns taxable personal property in Multnomah County. Plaintiff did not file a personal property tax return with Defendant by March 1, 2001.

Because the return was submitted after August 1, the county assessed a penalty of 100 percent. The penalty was reflected on the property tax statement mailed in October 2001. Plaintiff appealed that penalty to the Multnomah County Board of Property Tax Appeals (BOPTA). On March 29, 2002, BOPTA upheld the penalty.

Plaintiff's appeal to this court followed on May 28, 2002. Defendant's Answer, filed June 20, 2002, requested the appeal be dismissed.

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COURT'S ANALYSIS

ORS 308.290(1)(a)¹ requires a business to file a personal property tax return by March 1. The statute goes on to state that, if a party fails to file a return by the March 1 deadline, they “shall be * * * subject to the provisions of ORS 308.296.” ORS 308.290(1)(a). ORS 308.296(1) states that any person or company responsible for filing a personal property return who or which 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. ORS 308.296(4), the provision applicable here, states:

“After August 1, a taxpayer who files a return to which this section applies or who fails to file a return shall be subject to a penalty equal to 100 percent of the tax attributable to the taxable personal property of the taxpayer.”

Plaintiff admittedly did not file his return until after August 1, 2001. Pursuant to the statute, he is responsible for a 100 percent penalty. Plaintiff claims, however, he should be excused from the penalty because its application is onerous.

ORS 308.296(6) allows waiver of a late-filing penalty when there is good and sufficient cause to waive the penalty. The statute, however, provides that BOPTA has the power to waive the penalty. It states:

“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. There shall be no appeal from the determination of the board under this subsection.”

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The legislature vested the county board with the authority to waive a penalty assessed under ORS 308.296 upon a showing of good and sufficient cause. Plaintiff

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

cannot appeal from that BOPTA determination. That determination is complete and final.

CONCLUSION

The court lacks authority to waive a penalty assessed under ORS 308.296.

Now, therefore,

IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

Dated this _____ day of November, 2002.

JEFF MATTSON
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 97310. 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 JEFF MATTSON ON NOVEMBER 27, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 27, 2002.