

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SKYLINE STEEL, INC. and ELIZABETH)
STEPHENS,)
)
Plaintiffs,) No. 020959C
)
v.)
)
CLACKAMAS COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiff has requested that the court waive the penalty imposed by Defendant as part of an omitted property assessment for the 2000-2001 and 2001-02 tax years for failure to file personal property returns. The request was discussed at a hearing held by telephone on November 19, 2002. Elizabeth Stephens, Co-owner and President of Skyline Steel, Inc., appeared for Plaintiff. Dennis Borkgren, Senior Appraiser, Commercial/Industrial Department, Clackamas County Assessor's office, appeared for Defendant.

STATEMENT OF FACTS

Plaintiff did not file a personal property tax return in 2000 or 2001. A return was filed in 2002. Defendant then determined that taxable personal property had not been reported for the earlier years and added the values to the rolls for the years at issue under ORS 311.216¹ through ORS 311.229. Defendant added a 100 percent penalty for failure to file a return. The penalty has been paid and the account is current.

¹ Reference to the Oregon Revised Statutes (ORS) is to 2001 with regard to the request for waiver of the penalty and to 1999 with regard to the amount of the penalty. The 2001 law applies with regard to the request for the penalty waiver because the omitted property assessment was made in calendar year 2002 and the statute authorizing the court to consider the waiver request was effective October 6, 2001. Or Laws 2001, ch. 303, § 6. However, the returns were due in calendar years 2000 and 2001 and the penalty provisions in effect at that time control the amount of the penalty to be imposed.

Plaintiff does not challenge the value placed on the roll and does not dispute the liability for the tax. However, Plaintiff would like the penalty reduced or waived entirely.

Stephens acknowledged she was in error in failing to file a return. Stephens testified her accountant never said anything about the need to file a return and she did not know she was to report personal property values. Stephens further testified that if she was aware she “was doing something wrong [she] would have made it right.” Stephens explained that she took care of the situation as soon as she discovered the problem. On cross-examination, Stephens acknowledged she had been involved in a business in Multnomah county in the past and had filed personal property returns for that business.

COURT'S ANALYSIS

All real and tangible personal property in Oregon is subject to tax unless specifically granted exemption. ORS 307.030. Personal property held for personal use and enjoyment is exempt from taxation. ORS 307.190. Personal property used for business purposes is generally taxable, and ORS 308.290(1)(a) requires businesses owning taxable personal property to file a personal property tax return each year by March 1. The statute further provides that a party who fails to file a return by the March 1 deadline “shall be * * * subject to the provisions of ORS 308.296.” ORS 308.290(1)(a). ORS 308.296 provides for penalties for failure to timely file the return. A 5 percent penalty is imposed for returns not filed by June 1. ORS 308.296(2). The penalty moves to 25 percent for returns not filed by August 1 and increases to

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100 percent when a return is filed after August 1 or not at all. ORS 308.296(3) and (4).² Plaintiff did not file returns in 2000 or 2001 and Defendant imposed a penalty as part of an omitted property assessment in 2002.

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 305.422, which provides:

“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). The definition of good and sufficient cause in ORS 305.288(5)(b)(A) is “an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer’s agent or representative * * *.” The statute further provides that good and sufficient cause “[d]oes not include inadvertence, oversight, [or] lack of knowledge * * *.” ORS 305.288(5)(b)(B).

² The 2001 Oregon Legislature reduced the maximum penalty imposed under ORS 308.296 from 100 percent to 50 percent. See Or Laws 2001, ch 925, § 14. In enacting the new law, however, the legislature provided that the reduced penalty only applies “to penalties imposed for the failure to file a return reporting taxable personal property *that is due on or after the effective date of this 2001 Act.*” *Id.* at § 15 (emphasis added). The law went into effect January 1, 2002. As a result, the reduced penalty only applies to returns that are due on or after January 1, 2002. The returns at issue here were due prior to that date. As a consequence, the 100 percent penalty applies to the assessment.

The explanation proffered by Stephens is lack of knowledge of the requirement to report personal property values. The court finds that testimony is not credible because Stephens acknowledged on cross-examination that she had previously filed personal property returns in another county. However, it is unnecessary to determine whether the failure to file was due to inadvertence or willful neglect. It is sufficient to note that the reason for the failure to file the return was not because of extraordinary circumstances beyond Plaintiff's control. Accordingly, good and sufficient cause is lacking and the request for waiver of the penalty is denied.

CONCLUSION

The court has considered Plaintiff's request for waiver of the penalty imposed by Defendant for the failure to timely file the personal property return required by ORS 308.290 and concludes the request must be denied because Plaintiff has failed to establish good and sufficient cause for the failure to file the return by August 1, 2001. Now, therefore,

IT IS THE DECISION OF THIS COURT that the relief requested by Plaintiff for tax years 2000-2001 and 2001-02 is denied and the 100 percent penalty imposed by Defendant as part of an omitted property assessment stands.

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 23, 2002. THE COURT FILED THIS DOCUMENT ON DECEMBER 23, 2002.