

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

ABBOTT & ELLIOTT, INC., dba Hello	)	
Gorgeous,	)	
	)	
Plaintiff,	)	No. 020994C
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff has appealed the penalty imposed by Defendant as part of an omitted property assessment for late filing of the personal property tax return for the 2001-02 tax year. The matter was scheduled for a telephone case management conference on October 8, 2002. That proceeding was converted to a trial at Plaintiff's request and with Defendant's agreement. Plaintiff was represented by Andrea Abbott, an owner of the business against which the penalty was imposed. Defendant appeared through Richard Teague, an appraiser with the county assessor's office.

**PRELIMINARY MATTERS**

I. *Applicable Law*

As explained more fully in the footnote, the 2001 edition of the Oregon Revised Statutes (ORS) applies unless noted otherwise.<sup>1</sup>

///

---

<sup>1</sup> The 1999 edition of the Oregon Revised Statutes (ORS) applies to the analysis of the penalty amount because the reduction in the maximum penalty from 100 percent to 50 percent brought about by Oregon Laws 2001, chapter 925, section 14, did not take effect until January 1, 2002, and the return was due in 2001. Or Laws 2001, ch 925, § 15. However, the 2001 edition of the statutes govern the filing of the Complaint and the waiver request. This is because the 2001 edition generally took effect January 1, 2002, and the Complaint was filed after that date and the legislation granting authority to the Tax Court to consider penalties imposed as part of an omitted property assessment, conferred by Oregon Laws 2001, chapter 303, section 5, took effect October 6, 2001, which is before the penalty was imposed. Or Laws 2001, ch 303, § 16.

II. *Small Claims Election*

Plaintiff elected the small claims procedure when it filed its Complaint on June 29, 2002, and paid the \$10 filing fee. The issue presented by the Complaint does not qualify for the small claims procedure. See ORS 305.514. The case must therefore be converted to a “standard” appeal. The filing fee for a standard appeal is \$25. ORS 305.490(1)(b). The court will waive the additional \$15 filing fee.

**STATEMENT OF FACTS**

Plaintiff filed its personal property return for the 2001-02 tax year on February 22, 2002, nearly one year after it was due. Plaintiff’s explanation for the untimely filing is that the owners were unaware a return had to be filed each year. Ms. Abbott and two other individuals purchased an existing business operating under the name of “Salon Nuance” on or about April 1, 2000. They later changed the name to “Hello Gorgeous.” At the time of the sale the seller filed a personal property return for the 2000-2001 tax year reporting that the business was no longer in operation as of April 1, 2000. The assessor’s office took that to mean that the personal property was no longer being used for business purposes and, as a result, “vacated” the account. Consequently, there was no personal property tax statement issued for the following year, which is the year at issue in this case. Meanwhile, Plaintiff’s accountant advised it someone should notify the Defendant that the name of the business had been changed. Accordingly, Kate Elliott, the company’s manager, telephoned the assessor’s office on February 12, 2002, reporting the earlier acquisition of the business in April 2000, the name change, etc. Defendant then mailed to Plaintiff a blank personal property tax form which Plaintiff completed and filed ten days later on February 22, 2002. Upon receiving the return, Defendant added the value to the tax rolls as omitted property and imposed a late filing penalty equal to 100 percent of the tax.

## COURT'S ANALYSIS

### I. *The Penalty*

Owners of taxable personal property are required to file a return each year on or before March 1. ORS 308.290. If the return is not filed on time, a graduated penalty is imposed that increases with the passage of time. See generally ORS 308.296 (1999). The return for the 2001-02 tax year was due on or before March 1, 2001. Therefore, the 1999 statutes apply and in instances where the return is not filed by August 1, the statute provides for a penalty equal to 100 percent of the tax. ORS 308.296(4) (1999)<sup>2</sup>. The statute reads: “[a]fter 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.” *Id.* The penalty is mandatory, as evidenced by the use of the word “shall” in the statute. Plaintiff seeks to have the penalty overturned by the court.

### II. *The Waiver Request*

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.”

---

<sup>2</sup> See footnote 1.

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 (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.”

The return in this case was due on or before March 1, 2001. Plaintiff filed the return nearly one year later, on February 22, 2002. As can be seen from the statutory language set forth above, in order to satisfy the good and sufficient cause standard, the circumstances must be both extraordinary and beyond the control of the taxpayer. The explanation provided by Plaintiff for the failure to timely file the personal property return was lack of knowledge. That explanation, while not uncommon, is specifically excluded from the statutory definition, which provides in part: “[g]ood and sufficient cause’ \* \* \* [d]oes not include inadvertence, oversight, lack of knowledge \* \* \*.” ORS 305.288(5)(b)(B).

### **CONCLUSION**

The imposition by Defendant of the 100 percent penalty provided in ORS 308.290, for Plaintiff’s failure to file its personal property return on or before August 1, 2001, comports with the statute and Plaintiff’s explanation for the failure to comply with the filing deadline does not constitute good and sufficient cause.

///

Accordingly, the court cannot grant Plaintiff’s request to waive the penalty. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s request for waiver of the  
DECISION CASE NO. 020994C

100 percent personal property penalty applied to the 2001-02 tax year is denied.

IT IS FURTHER DECIDED that the case is converted by the court from small claims to standard and that the additional filing fee is waived.

Dated this \_\_\_\_\_ day of November, 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 NOVEMBER 13, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 13, 2002.**