

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

VETERINARY DIAGNOSTIC IMAGING & CYTOPATHOLOGY PC,)	
)	
Plaintiff,)	No. 021009B
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff seeks a waiver of the late filing penalty imposed by Defendant on its personal property account for the 2001-02 tax year as part of an omitted property assessment. Trial was held December 6, 2002, by telephone. Susanne Bailey, Office Manager, appeared for Plaintiff. Joe Honl, Appraisal Manager, Clackamas County Assessor's Office, and Joan Althaus, AT 2 Clerk, appeared for Defendant.

STATEMENT OF FACTS

Plaintiff began business operations in Multnomah County in April 1997. (Ptf's Ex 1.) It filed personal property returns with the Multnomah County Assessor each year as required by ORS 308.290.¹ The return for the 2000-2001 tax year, which ran from July 1, 2000 to June 30, 2001, was timely filed on or about February 25, 2000. (*Id.*) Shortly thereafter, in April of 2000, Plaintiff moved from Multnomah County to Clackamas County. Plaintiff did not notify Defendant that it had moved into the county.

After the move, in December 2000, Plaintiff's owner received a blank 2001-02 personal property return from Multnomah County. That return was mailed to the owner's

¹ All references to the Oregon Revised Statutes (ORS) are to 1999 with respect to the filing requirements for the personal property return and penalties for untimely filing and to 2001 with respect to the omitted property assessment and the penalty waiver request.

home, which was the mailing address Plaintiff had given the Multnomah County Assessor. The owner gave the return to an employee to fill out and file. The employee promptly completed the return and mailed it to the Multnomah County Assessor. That return, which was due on or before March 1, 2001, is dated December 29, 2000. (Ptf's Ex 2.) The form Multnomah County sent Plaintiff reflected Plaintiff's Gresham mailing address. Below that address are the following instructions: "[m]ake any name or mailing address corrections above. Date changed _____" (*Id.*) In filling out the form, the employee crossed out the incorrect address information for Multnomah County (the Gresham address) and wrote in the new business address on 82nd Drive in the town of Clackamas, which is in Clackamas County. Next to "Date changed", the employee wrote in April 1, 2000.

When researching new leases, Defendant discovered that Plaintiff was doing business in Clackamas County and, on December 31, 2001, Defendant mailed Plaintiff a personal property return for 2002-03. Plaintiff filed that return on February 2, 2002. Based on the information in the 2002-03 return, Defendant assessed Plaintiff for omitted property for the 2001-02 tax year and imposed a 100 percent late filing penalty as required by ORS 308.296. Notice of the assessment was given to Plaintiff on June 3, 2002, and the value was subsequently added to the rolls on or about June 24, 2002. Plaintiff timely appealed, asking the court to reverse the penalty.

COURT'S ANALYSIS

The omitted property assessment affected [was for] tax year 2001-02. By statute, the return was due on or before March 1, 2001. ORS 308.290(3). The return was to be filed with the assessor of the county where the property is located. The statute provides in relevant part:

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“Every person and the managing agent or officer of any firm, corporation or association owning, or having in possession or under control taxable personal property shall make a return of the property for ad valorem tax purposes to the assessor of the county in which such property has its situs for taxation.”

ORS 308.290(1)(a).

Plaintiff filed a timely return but the return was filed in the wrong county. According to the testimony, Plaintiff “was under the impression the information would be forwarded to Clackamas County.” It was not.

No return was filed in Clackamas County and Defendant added the value as omitted property pursuant to ORS 311.216 through ORS 311.232. The assessment included the 100 percent penalty, as provided by ORS 308.296(4). Because the penalty was imposed as part of an omit assessment, the appeal is to the court and not the county board of property tax appeals. See ORS 311.223(4);² see also

ORS 308.296(6).

The court reviews the matter under 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**

² The statute provides in relevant part:

“(4) Any person aggrieved by an assessment made under ORS 311.216 to 311.232 may appeal to the tax court within 90 days after the correction of the roll by giving notice to the assessor or the Department of Revenue, whichever is applicable, and otherwise proceeding in the manner provided for appeals from the board of property tax appeals. If a penalty under ORS 308.295 or 308.296 is imposed for failing to timely file a real, combined or personal property return with respect to the assessment under ORS 311.216 to 311.232, the imposition of the penalty may be appealed to the tax court. The appeal of the penalty must be brought within the same period of time as an assessment under ORS 311.216 to 311.232 may be appealed to the tax court.”

sufficient cause.”

(Emphasis added.)

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). ORS 305.288(5)(b) provides the following definition of good and sufficient cause:

“Good and sufficient cause”:

“(A) Means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer’s agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal; and

“(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.”

If it were not for the rather restrictive definition of “good and sufficient cause” found in the statute set forth above, it might seem appropriate in this case to at least grant partial relief under ORS 305.422. After all, Plaintiff did file a timely return, albeit in the wrong county. However, it is difficult to conclude that the facts in this case demonstrate circumstances that are both extraordinary and beyond Plaintiff’s control. Plaintiff had filed returns in Multnomah County for several years and should have realized that a return would no longer be filed in that county after moving to Clackamas County. At least the move should have raised a question as to the appropriate venue in which to file the return, and a call to the Clackamas County Assessor’s Office would have been a reasonable precaution.

CONCLUSION

The court has considered the facts at length and concludes that Plaintiff's request for waiver of the penalty cannot be granted because the facts do not establish

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good and sufficient cause for Plaintiff's failure to file the return in the correct county.

Accordingly, the 100 percent penalty imposed against Plaintiff must stand. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's request for reversal of the personal property late filing penalty for the 2001-02 tax year is denied.

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 26, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 26, 2003.