

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

THE PAPER ZONE, LLC, )  
                            )  
Plaintiff,               )                  No. 021035E  
                            )  
v.                        )  
                            )  
WASHINGTON COUNTY ASSESSOR, )  
                            )  
Defendant.               )                  **DECISION**

Plaintiff appeals Defendant's omitted property assessment for tax year 1999-2000.<sup>1</sup> In particular, Plaintiff appeals the 100 percent penalty assessed for Plaintiff's failure to timely file a personal property tax return for the subject year. A telephone trial in the matter was held on October 29, 2002.<sup>2</sup> Chris George appeared on behalf of Plaintiff. Kathleen Southwick appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as "taxpayer" and "the county."

**STATEMENT OF FACTS**

Taxpayer started its business operations in Washington County in March 1998. Because the county was unaware taxpayer had started a business, it did not mail taxpayer a 1999-2000 return form in December 1998.<sup>3</sup> Taxpayer, unaware it owed a personal property tax, did not file a 1999-2000 return that year. Sometime in the fall of 1999, the county became aware of taxpayer's operations. Therefore, in December

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<sup>1</sup> Plaintiff elected the small claims procedure when it filed its Complaint and paid the \$10 filing fee. The issue presented by the Complaint does not qualify for the small claims procedure. See ORS 305.514 (2001). The case must therefore be converted to a "standard" appeal. The filing fee for a standard appeal is \$25. ORS 305.490(1)(b) (2001). The court will waive the additional \$15 filing fee.

<sup>2</sup> The court converted the proceeding from a case management conference into a trial after both parties indicated they had provided the court with all the relevant information.

<sup>3</sup> ORS 308.290(2)(c) requires counties to mail return forms to businesses by December 31 of the preceding assessment year. All references to the Oregon Revised Statutes (ORS) are to 1999, unless otherwise noted.

1999, the county mailed taxpayer a return form for the 2000-2001 tax year. When taxpayer received the form, it realized it needed to file a return for the 1999-2000 tax year as well. As a result, it obtained a 1999-2000 return and filed both the 1999-2000 and 2000-2001 returns by March 1, 2000. The county, however, misplaced the returns. Consequently, taxes for the two years were not addressed until the county added the property through the omitted property process on May 20, 2002. Realizing it had misplaced the returns, the county did not impose a penalty for the 2000-2001 tax year because it was timely filed. It did, however, impose a 100 percent penalty for the 1999-2000 tax year because the return was not filed by the March 1, 1999, deadline.

Taxpayer appeals this penalty.

### **COURT'S ANALYSIS**

ORS 308.290(1)(a) requires a business owning taxable personal property to file a personal property tax return by March 1 of each year. 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 tax 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, provides that a penalty of 100 percent shall be applied when a return is not filed by August 1 of the tax year.<sup>4</sup>

As noted above, the county added the property to the tax rolls through the

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<sup>4</sup> ORS 308.296(4) 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.”

omitted property process. A taxpayer is entitled to appeal a penalty assessed under the omitted property statutes to this court. See ORS 311.223(4) (2001) (“the imposition of the penalty may be appealed to the tax court”).<sup>5</sup> The Tax Court has authority to waive “the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause.” ORS 305.422 (2001). 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). ORS 305.288(5)(b) (2001) defines the term good and sufficient cause as follows:

“(b) ‘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.”

(Emphasis added.)

Taxpayer requests that the court waive or reduce the penalty because it was unaware it owed personal property taxes to the county and, further, because it did not receive a form in the mail prior to the due date. The statute defining good and sufficient cause, however, clearly excludes “lack of knowledge” from constituting good and sufficient cause. Further, taxpayer has businesses in Marion County and Multnomah County and has been filing returns in Marion County for approximately ten years.

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<sup>5</sup> The 2001 edition of the ORS applies to the appeal procedure because ORS 311.223(4), which allows a taxpayer to appeal a penalty assessed under the omitted property statutes to this court, went into effect October 6, 2001. See Or Laws 2001, ch 303, § 16. The law change occurred prior to the assessment at issue.

Taxpayer, therefore, had a general awareness that Oregon has a personal property tax.

Taxpayer further points to the county's failure to mail it a personal property tax return. ORS 308.290(2)(c), however, provides that a "failure to receive or secure the form [from the county] shall not relieve the person, managing agent or officer from the obligation of making any return required by this section." Therefore, under the statute, failing to receive the return is no excuse for not timely filing the return.

## **CONCLUSION**

To waive a penalty assessed under ORS 308.296, the court must find that a taxpayer has good and sufficient cause for not timely filing a return. The court finds that neither generally being unaware a return is due nor failing to receive a return form from the county constitutes good and sufficient cause. Now, therefore,

**IT IS THE DECISION OF THIS COURT** that Plaintiff's request for a waiver of the 100 percent penalty is denied.

Dated this \_\_\_\_\_ day of November, 2002.

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COYREEN R. WEIDNER  
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 COYREEN R. WEIDNER ON NOVEMBER 18, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 18, 2002.**