

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SAFECO INSURANCE COMPANY,)
)
 Plaintiff,) TC-MD 021038B
)
 v.)
)
 CLACKAMAS COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

A case management conference was held on September 23, 2002. Susan Tracey, Steve Collier and Kim Morris participated for Plaintiff. Joe Honl represented Defendant.

The parties agreed this Decision would be based on the written submissions. That record closed on November 22, 2002.

The issue concerns a personal property penalty imposed for the 2001-02 tax year in the amount of \$2,140.53. Plaintiff seeks a waiver of that penalty in its entirety.

STATEMENT OF FACTS

Plaintiff owns taxable personal property located within Clackamas County. Plaintiff has filed personal property tax returns with the county in the past and was aware of the need to file a return by March 1 of each year. For 2001-02, a return was not submitted.

Because the return was not submitted before August 1, the county assessed a penalty of 100 percent. Plaintiff was given notice of that fee by way of an omitted property notice dated June 6, 2002.

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In its written protest to the assessor, and attached to the Complaint, Plaintiff's

tax manager wrote:

“We have a comprehensive system to track the due dates of our returns and payments. Unfortunately, this address was not added to the due date system right away because it was undoubtedly (sic) confused with our other location in Lake Oswego - where we have routinely filed personal property returns for years.”

During the case management conference, the parties discussed the need to provide additional details and supporting information. Nothing further was received from either party.

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 308.296(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 its return before August 1, 2001. Pursuant to the statute, it is responsible for a 100 percent penalty. Plaintiff claims, however, it should be excused from the penalty because of circumstances beyond its immediate control.

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ORS 311.223(4) allows waiver of a late-filing penalty when there is good and

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

sufficient cause to waive the penalty. In such cases involving past years and omitted property assessments, this court has the power to waive or reduce that penalty. The Plaintiff must provide a proper showing of good and sufficient cause.

ORS 305.288(5)(b) defines what constitutes 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."

Here, Plaintiff did not provide any additional evidence or arguments after the case management conference call. The sole reason that was offered for the failure to file was more aligned with inadvertence or oversight. This does not constitute a valid reason to compromise the mandatory statutory penalty.

CONCLUSION

IT IS THE DECISION OF THE COURT that the above-entitled matter is denied.

Dated this _____ day of March, 2003.

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 MARCH 12, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 12, 2003.