

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MIKE ROBBINS and BRIGITTE ROBBINS,)
)
 Plaintiffs,) TC-MD 021045D
)
 v.)
)
 JOSEPHINE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiffs appeal Defendant's assessment of penalties related to omitted property assessments for tax years 1999-2000, 2000-2001, and 2001-2002. A telephone trial was held on Tuesday, February 11, 2003. Mrs. Brigitte Robbins appeared on behalf of Plaintiffs. Mr. Michael L. Schneyder, Josephine County Assessor, and Mr. Bill Glover appeared on behalf of Defendant.

STATEMENT OF FACTS

Plaintiffs opened their automobile repair business in 1998. Because Defendant was unaware taxpayer started a business in its county, it did not mail Plaintiffs personal property tax returns for the tax years at issue.¹ In January 2002 Plaintiffs received a personal property tax return for tax year 2002-2003. Plaintiffs completed the return by January 15, 2002, and submitted it to Defendant.

After receiving Plaintiffs' return for tax year 2002-2003, Defendant discovered that Plaintiffs had been operating a business in Josephine County since 1998. On June 21, 2002, Defendant issued its notice to add the real market value of Plaintiffs' personal property to the tax rolls for tax years 1999-2000, 2000-2001, and 2001-2002. Defendant

¹ ORS 308.290(2)(c) requires counties to mail return forms to businesses by December 31 of the preceding assessment year. Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 1999.

assessed a 100 percent penalty for all tax years at issue. Plaintiffs filed a Complaint with the court, requesting that the court waive all penalties.

Plaintiff (Mrs. Robbins) testified that they are not trying to avoid paying their personal property taxes. She stated that this is not an issue of non-compliance. Mrs. Robbins testified that they were unaware of the requirement to file personal property tax returns and their accountant did not tell them of this requirement. She stated that they did not have any “formal schooling” in how to run a business. They applied for a business license and obtained federal and state identification numbers. They pay payroll taxes and real property taxes. Mrs. Robbins emphasized that they did not know they needed to file personal property tax returns and are seeking “leniency” with respect to the penalties.

Mr. Schneyder testified that the county is following the statutory requirements for adding property omitted from the tax rolls. The penalties were assessed because Defendant concluded that there was “no good and sufficient cause not to assess the penalties.” Mr. Schneyder discussed prior cases decided by the court, specifically *The Paper Zone, LLC v. Washington County Assessor*, OTC-MD No 021035E (November 18, 2002) and *Perry v. Josephine County Assessor*, OTC-MD No 011077B (March 20, 2002).

Mr. Glover testified that the Oregon Secretary of State provides free of charge an Oregon Business Guide (Guide). (Def’s Ex A.) The Guide includes a new business checklist itemizing the requirements for operating a business in Oregon. The personal property tax report for businesses is one of the items on the checklist. (Def’s Ex A at 3-4.) Mr. Glover testified that another resource for new businesses is the Small Business Development Center (Center) located in Grants Pass. The Center’s website lists personal property tax as one of the items of information. (Def’s Ex C at 3.)

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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. If a business fails to file a personal property tax return by the March 1 deadline, then the business is subject to ORS 308.296(1) which provides that any person or company responsible for filing a personal property tax return “who or which has not filed a return within the” statutory time “shall be subject to a penalty as provided in this section.” The amount of the penalty is based on the date the taxpayer files its return. ORS 308.296(2) - (4). In this case, Plaintiffs filed their return after August 1. ORS 308.296(4) provides that a penalty of 100 percent shall be applied when a return is not filed by August 1 of the tax year. This statute is applicable to Plaintiffs’ returns filed for tax years 1999-2000, 2000-2001, and 2001-2002. A subsequent revision of the statute lowered the penalty to 50 percent of the amount of tax for returns due on or after January of 2002. Or Laws 2001, ch 925, § 15.

Defendant added Plaintiffs’ personal property to the tax rolls through the 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.”)² Plaintiffs request that the court exercise its 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

² ORS for the year 2001 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.

defined in the statute. However, the court has consistently looked to other statutes where good and sufficient cause is defined. For example, ORS 305.288(5) (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.)

Plaintiffs request the court to waive or reduce the penalty because they were unaware they owed personal property taxes to the county. Further, their certified public accountant did not advise them of this obligation. In addition, Defendant did not mail them forms because Defendant was unaware that Plaintiffs had opened a business. The statute defining good and sufficient cause clearly excludes “lack of knowledge” from good and sufficient cause. This court has previously held that even when a taxpayer makes an honest mistake the legislature in enacting the penalty provisions “did not provide a yardstick by which courts may reduce the penalty based upon the intentions and attitudes of taxpayers.” *Ron Staley Enterprises, Inc. v. Dept of Rev.*, 15 OTR 63, 67 (1999).

Plaintiffs ask the court to consider the fact that their accountant failed to tell them of their obligation to file personal property tax returns. A lack of knowledge or oversight on the part of Plaintiffs’ certified public accountant is not an extraordinary circumstance even though it is very unfortunate for Plaintiffs.

Plaintiffs also reminded the court that Defendant failed to mail them personal property returns. ORS 308.290(2)(c) provides that a “failure to receive or secure the form

[from Defendant] shall not relieve the person, managing agent or officer from the obligation of making any return required by this section.” The statute does not excuse an individual’s or entity’s failure to file a timely return because Defendant fails to mail the forms.

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 concludes that neither generally being unaware a return is due nor failing to receive a form from Defendant constitutes good and sufficient cause. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs request for waiver of the 100 percent penalty for tax years 1999-2000, 2000-2001, and 2001-2002 is denied.

Dated this _____ day of March, 2003.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON MARCH 27, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 27, 2003.