

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

WESTERN BENEFITS INC.,	)	
	)	
Plaintiff,	)	No. 021069A
	)	
v.	)	
	)	
CLACKAMAS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Western Benefits Inc. has appealed the penalties imposed for the late filing of personal property returns for the 2000 and 2001 tax years on personal property identified by Account No. P2240209. Ross Dwinell, its president, appeared and made his arguments. Clackamas County appeared through Kathy Brinkman, of its staff.

**STATEMENT OF FACTS**

Western Benefits Inc, because it did not know of its obligation, did not file the personal property returns required by ORS 308.290.<sup>1</sup> Clackamas County became aware of this lapse and made the assessment as omitted property through ORS 311.216. Western Benefits Inc. does not dispute the amount of additional tax due as a result of this process. However, Western Benefits Inc. very much objects to the imposition of the penalty imposed by ORS 308.296.

Western Benefits Inc. explained that it was not intending to evade the tax. Instead, it was not aware, until early in 2002, that it had an obligation, first to report, and next to pay tax upon, its business property. Western Benefits Inc. also observed that it would have met its responsibilities sooner had Clackamas County been more prompt in putting Western Benefits Inc. on notice. Mr. Dwinell also testified as to the difficulties he experienced in finding a competent bookkeeper.

---

<sup>1</sup>All referenced to the Oregon Revised Statutes (ORS) are to 2001.

## **COURT'S ANALYSIS**

The court understands that Western Benefits Inc. was unaware that ORS 308.290(1)(a) required it to annually file a personal property tax return. Presumably the legislature realized, when it wrote the penalty provisions of ORS 308.296, that there would be small businesses like Western Benefits Inc. who simply did not know that they needed to file. Despite this point, the legislature provided no exception for reducing, or eliminating, the penalty in such instances.

This court has consistently held that the penalty may only be waived in instances where the explanation for the failure to file lay in a reason beyond the taxpayer's control. Being unaware of the statutory requirements does not rise to this level of reasonable cause. This follows from comparing ORS 305.422, which permits relief upon a showing of "good and sufficient cause, " with ORS 305.288(5)(b), which defines the standard for "good and sufficient cause" in a similar statutory setting. Under ORS 305.288(5)(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."

Under these restrictions neither the lack of knowledge of Western Benefits Inc., the fact that Clackamas County did not sooner assess the omitted property, nor the difficulty in finding competent bookkeepers relieves Western Benefits Inc. of its obligations. With these statutory restrictions, the court cannot give Western Benefits Inc. the relief that it requests.

## **CONCLUSION**

Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that the appeal is denied.

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

---

SCOT A. SIDERAS  
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 SCOT A. SIDERAS ON OCTOBER 31, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 31, 2002.**