

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

CLOVERDALE ENTERPRISES, INC, dba )  
DK Wilds, )  
 )  
Plaintiff, ) TC-MD 021114B  
 )  
v. )  
 )  
WASHINGTON COUNTY ASSESSOR, )  
 )  
Defendant. ) **DECISION**

A case management conference was held on November 15, 2002. DK Coverdale and Brett Peterson participated for Plaintiff. Kathleen Southwick represented Defendant.

The parties agreed this Decision would be based on written submissions. The record closed on January 7, 2003.

The issue concerns personal property penalties levied for the five tax years 1996-97 through 2000-2001, inclusive. The property is identified as Account P2081417. The total penalties imposed are \$3,043.04. Plaintiff's Complaint seeks a 50 percent reduction.

**STATEMENT OF FACTS**

Plaintiff owns taxable personal property in Washington County. Plaintiff did not file personal property tax returns with Defendant for those five years.

Beginning in 1995, Defendant mailed blank personal property forms to Plaintiff; they were not completed by Plaintiff. Reminder notices were then sent; no response was received.

///

///

Because the returns were not submitted before August 1 of each given tax year,

Defendant assessed a penalty of 100 percent. Plaintiff was given notice of those fees by way of an omitted property notice dated June 12, 2002.

Plaintiff seeks a 50 percent reduction in the penalties imposed by Defendant. The chief reason was offered by the firm's accountant. He states he was advised that returns not be submitted. That was partly based on a misunderstanding of the penalties and appeals procedure. Also mentioned by the firm's owner was a divorce proceeding and employee health problems.

### **ANALYSIS**

ORS 308.290(1)(a)<sup>1</sup> 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 308.290(1)(a). 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 50 percent of the tax attributable to the taxable personal property of the taxpayer."

Plaintiff admittedly did not file its return before August 1 of each year. Pursuant to the statute, it is responsible for a 50 percent penalty. Plaintiff claims, however, it should be excused from the penalty because of circumstances beyond its immediate control.

///

ORS 308.296(6) allows waiver of a late-filing penalty when there is good and sufficient cause to waive the penalty. In such cases involving past years and omitted

---

<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 1999.

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, the primary cause of the nonfiling was advice given by a third party, unrelated to Defendant’s offices. Also, there appears to be conscious business decisions to not attend to the filing requirements until after the large penalties were imposed. Although these were Plaintiff’s earlier choices under some difficult competing demands, they do not constitute valid reasons to compromise the mandatory statutory penalty. That is especially true because the annual elections to not file were repetitive and ongoing, covering five tax years. The circumstances were not extraordinary.

///

///

///

///

///

///

///

**CONCLUSION**

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

Dated this \_\_\_\_\_ day of May, 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 MAY 8, 2003. THE COURT FILED THIS DOCUMENT ON MAY 8, 2003.**