

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

THERMA-GLASS, INC.,)	
)	
Plaintiff,)	No. 021119C
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appealed the penalty imposed by Defendant as part of an omitted property assessment for the 2001-02 tax year. Trial was held by telephone January 15, 2003. Plaintiff was represented by Jeffrey A. Bither, a CPA with Sleasman & Bither, PC. Defendant was represented by Joan Althaus, an appraiser with the Multnomah County Assessor's Office.

STATEMENT OF FACTS

Plaintiff is involved in the sale of heat resistant glass. The company is a family run business employing four family members and 15 other employees. Plaintiff moved from Multnomah County, where it had been operating since 1981, to Clackamas County, in September 2000. Plaintiff had a history of timely filing returns in Multnomah County. Plaintiff did not file a personal property tax return for the 2001-02 tax year after moving to Clackamas County. Plaintiff did file a return in 2002 (for the 2002-03 tax year). Based on information in that return, Defendant sent Plaintiff a notice in June 2002, stating that the value of its personal property was being added to the rolls for the 2001-02 tax year as omitted property. The notice reflected a tax of \$824.19 and a penalty of \$824.19.

According to the testimony, while the move officially occurred in September 2000,

the transition took several months. During that move Plaintiff disposed of a good deal of its personal property. The change in the property is described as “significant” and considerable effort was required to inventory Plaintiff’s assets after the move.

Plaintiff does not object to the retroactive assessment of tax pursuant to the omitted property assessment but, according to its representative, feels “the penalty exceeds the offense.” Plaintiff therefore asks the court to abate the penalty in whole or in part. Defendant added little to the case either factually or with respect to applicable law, but did confirm that the facts comport with its understanding of the situation. Defendant was not able to give the precise date of the roll correction but indicated that its June 6, 2002, notice¹ referenced June 27, 2002, as the date by which Plaintiff could appear and show cause why the omitted value was not correct. (Ptf’s Compl at 2.) Althaus assumes the roll was corrected on June 27, 2002. Plaintiff’s appeal was timely filed on September 6, 2002. See ORS 311.223(4).²

COURT'S ANALYSIS

The return for tax year 2001-02 was due on or before March 1, 2001. ORS 308.290(3). A party who does not file, or who files after March 1, "shall be * * * subject to the provisions of ORS 308.296." ORS 308.290(1)(a). That statute, in turn, mandates that any person or company responsible for filing a personal property return which has not done so "shall be subject to a penalty as provided in this section." ORS 308.296(1). The penalty is graduated based on when the taxpayer files its return.

¹ The notice announces the assessor’s intent to add the value listed and gives Plaintiff the statutory minimum 20-day show cause period provided in ORS 311.219. The roll cannot be corrected until after that date and the appeal is tied to the date of the roll correction. ORS 311.223(1) and (4).

² References to the Oregon Revised Statutes (ORS) are to 1999 with respect to the personal property return filing requirements and penalties are to 2001 with respect to the court’s review of the waiver request.

Anyone who files after August 1 “shall be subject to a penalty equal to 100 percent of the tax” on the return. ORS 308.296(4). Plaintiff did not file a return and the 100 percent penalty is therefore applicable.

Because the penalty was imposed as part of an omitted property assessment, the court reviews the matter under the provisions of ORS 305.422, pursuant to which the court can waive “all or a portion of the penalty upon a proper showing of good and sufficient cause.”³ The court has previously determined that the definition of the term “good and sufficient cause” found in ORS 305.288 is a useful guide. *Harold L. Center Pro Land Survey v. Jackson County*, OTC-MD No. 020069C, WL 1591918 (July 18, 2002).

ORS 305.288(5)(b)(A) defines “good and sufficient cause” as “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.” The statute specifically excludes “inadvertence, oversight, lack of knowledge, hardship” from the definition of the term. ORS 305.288(5)(b)(B). Thus, to prevail, the circumstances must be both extraordinary and beyond the taxpayer's control.

Plaintiff believes the circumstances are extraordinary and said so in a letter to Defendant shortly after the omitted property assessment notice was issued. (Ptf's June 12, 2002, Ltr to Althaus.) Plaintiff explains that the move, the changes in personal property inventory, and the fact that it is a family run business “made it virtually impossible * * * to timely file its 2001 Clackamas County Personal Property Tax Return.” (*Id.*) The court

³ The full text of the statute provides:

“If a penalty under ORS 308.295 or 308.296 for the failure to timely file a real, combined or personal property return as required by ORS 308.290 is the subject of an appeal to the tax court, the court may waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause.”

is not certain these circumstances are extraordinary, but assuming they are, they must also have been beyond the taxpayer's control. That requirement is fatal to Plaintiff's claim. Plaintiff made the decision to move and to change its inventory in the process. Plaintiff knew the return was due and had filed on time in the past. If Plaintiff was merely busy with the move and efforts to continue making money, the return would have been late. In fact, the return was never filed. Its failure to file the 2001-02 return was apparently due to inadvertence or oversight. Whatever the reason, it was not beyond Plaintiff's control. The court understands Plaintiff's objection to the amount of the penalty because it doubles the liability. However, the penalty amount was set by the legislature, as were the criteria for waiving or reducing the penalty. Good and sufficient cause is required and the court finds that lacking.

CONCLUSION

Plaintiff's request for waiver or reduction of the personal property penalty imposed as part of an omitted property assessment for the 2001-02 tax year is denied because the reason for its failure to file a return that year does not amount to good and sufficient cause. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's penalty waiver request is denied.

Dated this _____ day of April, 2003.

DAN ROBINSON
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 DAN ROBINSON ON
APRIL 8, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 8, 2003.**