

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

CHAD WONG, DMD, and DIEM NGUYEN,)	
DMD, dba Sunnybrook Family Dental,)	
)	
Plaintiffs,)	TC-MD 021125C
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION AND JUDGMENT

Plaintiffs have appealed the personal property tax penalty imposed by Defendant as part of an omitted property assessment for tax years 2000-2001 and 2001-02.

Plaintiffs were represented by Ken Sakai, a certified public accountant. Joe Honl of the Clackamas County Assessor's office represented Defendant.

STATEMENT OF FACTS

Plaintiffs began operating a dental business in August 1999. Plaintiffs are first-time business owners and were unaware of the personal property tax filing requirement until their accountant assisted them in preparing the 2002 confidential personal property tax return, which was timely filed. With the information contained in the 2002 return, Defendant determined that the property, which is identified in the Clackamas County Assessor's records as Account P2240271, became subject to tax beginning with the 2000-2001 tax year and that personal property tax returns should have been filed in 2000 and 2001. On June 17, 2002, Defendant notified Plaintiffs of its intent to add the value of the property to the rolls as omitted property for the years at issue. The values were added after the statutory 20-day show cause period. A

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100 percent penalty was added for each tax year. The total penalty was more than \$3,600.

COURT'S ANALYSIS

Plaintiffs acknowledge that the property should be taxed for the two years at issue and that the statute provides for a 100 percent penalty because returns were not filed.

Plaintiffs have asked the court to abate the penalty.

The issue presented is whether the definition of “good and sufficient cause” provided in ORS 305.288(5)(b)¹ may be relied upon by the court when reviewing a penalty waiver request under ORS 305.422, which 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.”

An additional issue is whether there is good and sufficient cause to waive the penalty under any definition.

The term “good and sufficient cause” is not defined in the statute. This court has previously ruled that “the definition in ORS 305.288 [is] a useful guide * * *.” *Harold L Center Pro Land Survey v. Jackson County Assessor*, OTC-MD No 020069C, WL 1591918 at *2 (July 18, 2002); see also *Perry v. Josephine County Assessor*, OTC-MD No 011077B, WL 975938 (Mar 20, 2002). ORS 305.288(5)(b) provides the following definition of 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

¹ References to the Oregon Revised Statutes (ORS) are to 1999 for the penalty and 2001 for the court’s review of the request for abatement.

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.”

Mr. Sakai argues that the definition in ORS 305.288 “applies specifically to residential (real) property and is not applicable to the filing and valuation of personal property.” (Ptf’s Dec 3, 2002, Memo at 2.) Sakai’s argument continues:

“The reporting process of [sic] real property values and personal property values are [sic] entirely different. Unlike real property values, personal property is self reported and no initial or subsequent notifications are provided to taxpayers for personal property tax purposes until an initial return is submitted and a taxpayer has been entered on the Personal Property Tax roles [sic] and assigned an account number.”

Id.

The court agrees that ORS 305.288 is not applicable to the **filing** of personal property returns. The court further agrees that the methods of valuing real and personal property for tax purposes differ in that the assessor’s determination of real property values is an independent exercise whereas owners of taxable personal property are required to file a return which includes an estimate of the value of the property that the assessor uses as a starting point in valuing the property. However, the definition of “good and sufficient cause” in ORS 305.288 does not apply only to residential real property. Subsection (1) of that statute applies primarily to “residential” real property, although personal property manufactured homes also fall within that provision.² But, subsection (3) applies to both real and personal property and provides that the Tax Court may, upon an adequate

² The statute’s 20 percent error rule applies to property (up to four units) used primarily as a dwelling. ORS 305.288 (1)(a).

demonstration of good and sufficient cause, order a change to the value of “a separate assessment of property” despite a taxpayer’s failure to pursue the statutory right of appeal. Moreover, the fact that real and personal property are valued under somewhat different methods is irrelevant to the question of whether the statutory definition of “good and sufficient cause” provided in ORS 305.288 is applicable to that same term used in ORS 305.422.

The court’s task in interpreting a statute is to discern legislative intent. ORS 174.020; *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). The court may look not only to the text of the provision itself for insight into legislative intent, but may also consider the context of that provision, “which includes other provisions of the same statute and other related statutes.” *Id.*, 317 Or at 611. The related statutes are to be “on the same subject.” *Southern Pacific Trans. Co. v. Dept. of Rev.*, 316 Or 495, 498, 852 P2d 197; citing *State v. Trenary*, 316 Or 172, 175, 850 P2d 356 (1993). Moreover, the court may look to its definitive interpretation of a term in related statutes. *Williamson v. Hunt*, 183 Or App 339, 345, 51 P3d 694 (2002).

ORS 305.288 and ORS 305.422 are related statutes; they both appear in the same chapter of the Oregon Revised Statutes and both pertain to property assessment and taxation. In each statute the term is used to define the test the court applies in deciding whether to excuse a taxpayer’s failure to do something and a finding of good and sufficient cause will or may result in a reduced tax liability.

This court recently noted that the term “good and sufficient cause” is used regularly by the legislature in the property tax statutes. *Kintz v. Washington County Assessor*, OTC-MD No 021123A (Dec 27, 2002). *Kintz* is very similar to the present case. *Kintz*

involved a taxpayer operating a new business seeking waiver of the personal property penalty imposed for failure to file returns the taxpayer was unaware were required. In denying relief, the court observed:

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“Never, in the court’s review of any of these laws, has ‘good and sufficient cause’ been interpreted to include instances where a taxpayer was unaware of the need to meet his, her, or its obligations. Instead, the contrary is true. The great weight of precedent bears against the conclusion that lack of knowledge may be construed as good and sufficient cause. *Dept. of Rev. v. Oral and Maxillofacial Surgeons*, 15 OTR 284 (2001).”

Kintz, OTC-MD No 021123A at 2.

Plaintiffs have not offered their own definition of good and sufficient cause and their concern for the lack of notification is misplaced. It is true that a new business owner may not receive a reminder that a return is due but the statute provides that failure to receive such a reminder does not relieve the taxpayer of the obligation to file the return. ORS 308.290(2)(c). The statute provides in relevant part:

“(c) * * * All returns shall be in such form as the assessor, with the approval of the Department of Revenue, may prescribe. Prior to December 31 preceding the assessment year, the department or assessor shall cause blank forms for the returns to be prepared and distributed by mail, but failure to receive or secure the form shall not relieve the person, managing agent or officer from the obligation of making any return required by this section.”

ORS 308.290(2)(c).

CONCLUSION

The court rejects Plaintiffs’ contention that the definition of “good and sufficient cause” found in ORS 305.288 cannot be used to define that term as it appears in ORS 305.422. Case law supports the court’s reliance on the definition in the related statute and its previous definitive interpretations of the term in related statutes. This court has on numerous occasions ruled that the definition in ORS 305.288 provides a useful

guide for defining that same term found in ORS 305.422. Lack of knowledge is specifically excluded from the statutory definition of good and sufficient cause. Plaintiffs' failure to file the returns was due to lack of knowledge. Accordingly, good and sufficient cause is lacking. Now, therefore,

IT IS ADJUDGED AND DECREED that Plaintiffs' request for abatement of the penalty imposed by Defendant as part of an omitted property assessment for tax years 2000-2001 and 2001-02 is denied.

Dated this _____ day of February, 2003.

DAN ROBINSON
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON
FEBRUARY 28, 2003. THE COURT FILED THIS DOCUMENT ON FEBRUARY 28,
2003.**