

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

NOFFSINGER WEST MFG. INC.,)
)
 Plaintiff,) No. 021227A
)
 v.)
)
 UMATILLA COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

At issue is the assessment of a penalty for failing to file a personal property tax return when due for the 2001-02 tax year. The property is identified by Account No. 149565. Mr. Moore, as controller, appeared and presented Plaintiff's case. The assessor, Paul Chalmers, represented himself.

STATEMENT OF FACTS

Plaintiff is a small company that has lost money over the last two years. In an effort to cut back its expenses it reduced its staff in its Hermiston office. This decision had two consequences. The first is that the tax return reporting personal property for the 2001-02 tax year was not returned to the assessor. The second is that no appeal from the imposition of the consequent penalty was filed until November of 2002.

COURT'S ANALYSIS

Plaintiff is a small business struggling, in difficult economic times, to maintain a presence in Umatilla County. There was no intent to evade the tax. Under these circumstances should Umatilla County be required to impose a penalty for the failure to file a personal property return when due?

While this question describes the broad issues of the appeal, the particular problem is that the court does not see how it can reach that point. The legislature has given the

board of property tax appeals, and not the Tax Court, extensive powers to waive all or a portion of the penalty. ORS 308.296(4). With the exception of penalties imposed in the context of an omitted property action under ORS 311.223, of which this is not an example, the power to grant the relief Plaintiff requests rests with the board, and not the court.

The legislature considered that there might be some instances where a taxpayer ought to be excused for the lapse in not first going to the board of property tax appeals before coming to the court. This power is set out in ORS 305.288. However, the limits of that statute preclude its use in this case. The fact that the property at issue is not residential property precludes the application of ORS 305.288(1). Next, ORS 305.288(3) is defined so as to exclude instances of oversight, inadvertence, lack of knowledge, or hardship from the events that might excuse a failure to first appeal to the board. These excluded explanations are the reasons that Plaintiff advances as the cause of its failure to appeal to the board of property tax appeals.

This reasoning does not reach the heart of Plaintiff's argument, which is that it is a small business, doing the best it can under difficult circumstances to comply with the demands of local government. Is it fair, not only that the penalty should be imposed, but that the Tax Court should be barred from considering Plaintiff's arguments? That is a question on which there may be many different convictions, but in the end, the only opinion that matters is the legislature's. The lawmakers realized, when they wrote the penalty provisions of ORS 308.296, that there would be small businesses like Plaintiff's who would simply overlook their responsibility to file personal property returns. This was one of the reasons the legislature, in revising ORS 308.296 for tax years after the one at issue here, chose to lower the penalty from 100 percent to 50 percent. However, the legislature did not choose to make that decision applicable to the tax years for which Plaintiff is liable, or

to give the court the power to hear these appeals. Whether or not that was a fair limitation is debatable. However, it was nonetheless a legitimate legislative choice, and one which the court has no grounds to disturb. The appeal must be denied, for the court simply lacks the discretionary ability to modify a penalty imposed because of a good faith error by the taxpayer.

CONCLUSION

IT IS THE DECISION OF THIS COURT that the appeal is denied.

Dated this _____ day of February, 2003.

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 FEBRUARY 10, 2003. THE COURT FILED THIS DOCUMENT ON FEBRUARY 10, 2003.