

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

QUALITY ROLLFORMER, dba Pacific)
Rollformer and RICHARD SCHMUNK,)
)
Plaintiffs,) TC-MD 021261A
)
v.)
)
LANE COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiffs have appealed penalties imposed for the late filing of personal property tax returns for the 1999-2000, 2000-2001, and 2001-02 tax years. Richard Schmunk appeared and made his case. Lane County was represented by Bill Mahn.

STATEMENT OF FACTS

Schmunk's brother, the operator of this business, came to Schmunk for the money to save the enterprise. Schmunk provided the funds. The debts of the business became more and more apparent to Schmunk as he gave more and more money. Finally Schmunk took over operation of the business. When he did, the matter of outstanding property taxes for the 1999-2000, 2000-2001, and 2001-02 tax years became apparent.

This is not a matter of personal property omitted from taxation for the years at issue. Instead, it is a case where reports were not filed when required and taxes were not paid when due. Schmunk came to the court asking for some relief from the penalties, observing that he was not personally responsible for the failure to file the returns and pay the taxes, and that he is doing the best he can to save the business and the jobs it represents.

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ANALYSIS

The court, obviously, has the requirement of being impartial. Nonetheless, the court, like Lane County, is sympathetic with Schmunk, who was not responsible for the earlier failure to file the returns and pay the tax, and who is now doing the best he can to save the business. The court, as always, has diligently looked into the law to see what it might do to bring law, and equity, to this situation.

However, in this instance, the court has no option. ORS 308.296(6) precludes the court from granting Plaintiffs the relief requested. This statute establishes that only the board of property tax appeals may consider requests for relief from these penalties. Moreover, the board may only consider a request for a penalty waiver in the year it was imposed. The appeal must be denied.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that it is without the ability to grant Plaintiffs' request.

Dated this _____ day of May, 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 MAY 14, 2003. THE COURT FILED THIS DOCUMENT ON MAY 14, 2003.