

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

GMB, INC.,)
)
Plaintiff,) TC-MD 021320D
)
v.)
)
MULTNOMAH COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiff appeals Defendant's assessment of penalties related to omitted property assessments for tax years 1999-2000, 2000-2001, and 2001-2002. This matter is before the court on Plaintiff's representative's written request stating that it waived "any right to a telephone conference and request that the case be resolved based on this letter [dated February 18, 2003] as my testimony."

STATEMENT OF FACTS

Plaintiff informed the court that while it was busy expanding its business Plaintiff relied on "a former consultant to file the required property tax." (Ptf's Letter dated February 18, 2003.) The consultant did not file personal property tax returns for tax years 1999-2000, 2000-2001, and 2001-2002. Because Defendant was unaware taxpayer operated a business in its county, it did not mail Plaintiff personal property tax returns for the tax years at issue.¹ In January 2002 Plaintiff hired a certified public accountant who filed personal property tax returns for all places Plaintiff was doing business. In addition, prior year returns were filed by the certified public accountant. Plaintiff wrote that the "full amount of taxes" for all prior years was paid voluntarily. (*Id.*) After receiving Plaintiff's returns and payment, Defendant issued its notice to add the real market value of Plaintiff's personal

¹ ORS 308.290(2)(c) requires counties to mail return forms to businesses by December 31 of the preceding assessment year. Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 1999.

property to the tax rolls for tax years 1999-2000, 2000-2001, and 2001-2002. Plaintiff wrote that Defendant assessed a 100 percent penalty for all tax years at issue. Plaintiff filed a Complaint with the court, requesting that the court “waive, to the degree it feels fair, some or” all penalties. (*Id.*)

Plaintiff wrote that “the IRS will, when voluntary filing and payment of taxes owed is made, waive penalties.” (*Id.*) Plaintiff wrote that there are “no outstanding property tax bills” and it has “never failed to pay property taxes in the past.” (*Id.*) Plaintiff assumed that his consultant had filed the personal property tax returns.

COURT'S ANALYSIS

ORS 308.290(1)(a) requires a business owning taxable personal property to file a personal property tax return by March 1 of each year. If a business fails to file a personal property tax return by the March 1 deadline, then the business is subject to ORS 308.296(1) which provides that any person or company responsible for filing a personal property tax return “who or which has not filed a return within the” statutory time “shall be subject to a penalty as provided in this section.” The amount of the penalty is based on the date the taxpayer files its return. ORS 308.296(2)-(4). In this case, Plaintiff filed its returns after August 1. ORS 308.296(4) provides that a penalty of 100 percent shall be applied when a return is not filed by August 1 of the tax year. This statute is applicable to Plaintiff’s returns filed for tax years 1999-2000, 2000-2001, and 2001-2002.

Defendant added Plaintiff’s personal property to the tax rolls through the omitted property process. A taxpayer is entitled to appeal a penalty assessed under the omitted property statutes to this court. See ORS 311.223(4) (2001) (“the imposition of the penalty may be appealed to the tax court.”)² Plaintiff requests that the court exercise its authority to

² ORS for the year 2001 applies to the appeal procedure because ORS 311.223(4), which allows a taxpayer to appeal a penalty assessed under the omitted property statutes to this court, went into effect October 6, 2001. See Or Laws 2001, ch 303, §16. The law change occurred prior to the assessment at issue.

waive “the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause.” ORS 305.422 (2001). The term “good and sufficient cause” is not defined in the statute. However, the court has consistently looked to other statutes where good and sufficient cause is defined. For example, ORS 305.288(5)(b) (2001) defines the term good and sufficient cause as follows:

“(b) ‘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.”

(Emphasis added.)

Plaintiff requests the court to waive or reduce the penalty because it was unaware it owed personal property taxes to the county. Further, Plaintiff’s consultant failed to file the required returns. In addition, Defendant did not mail forms to Plaintiff because Defendant was unaware that Plaintiff had opened a business. The statute defining good and sufficient cause clearly excludes “lack of knowledge” from good and sufficient cause. This court has previously held that even when a taxpayer makes an honest mistake the legislature in enacting the penalty provisions “did not provide a yardstick by which courts may reduce the penalty based upon the intentions and attitudes of taxpayers.” *Ron Staley Enterprises, Inc. v. Dept of Rev*, 15 OTR 63, 67 (1999). The legislature has not given the court any other statutory authority to waive penalties.

Plaintiff asks the court to consider the fact that its consultant failed to fulfil its

obligation to file personal property tax returns. A lack of knowledge or oversight on the part of Plaintiff's consultant is not an extraordinary circumstance even though it is very unfortunate for Plaintiff.

Plaintiff indirectly reminded the court that Defendant failed to mail it personal property returns. ORS 308.290(2)(c) provides that a "failure to receive or secure the form [from Defendant] shall not relieve the person, managing agent or officer from the obligation of making any return required by this section." The statute does not excuse an individual's or entity's failure to file a timely return because Defendant fails to mail the forms.

CONCLUSION

To waive a penalty assessed under ORS 308.296, the court must find that a taxpayer has good and sufficient cause for not timely filing a return. The court concludes that neither generally being unaware that a return was not filed by an authorized representative nor failing to receive a form from Defendant constitutes good and sufficient cause. The legislature has not given the court any other statutory authority to waive penalties. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's request for waiver of the 100 percent penalty for tax years 1999-2000, 2000-2001, and 2001-2002 is denied.

Dated this _____ day of March, 2003.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON MARCH 25, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 25, 2003.

DECISION TC-MD 021320D