

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MTS SYSTEMS CORPORATION,)
)
 Plaintiff,) TC-MD 030129F
)
 v.)
)
 WASHINGTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals the assessment of a late filing penalty imposed by Defendant for the 2001-02 tax year. The court heard arguments on May 12, 2003.

STATEMENT OF FACTS

Plaintiff purchased property in Washington County in December 2000. Plaintiff failed to file a personal property return for the 2001-02 tax year by the March 1, 2001, deadline. Plaintiff timely filed a personal property return for the 2002-03 tax year by March 1, 2002. Based on the timely filed return, Defendant added the value of the omitted property to the tax roll for the 2001-02 tax year. Defendant also assessed a late filing penalty. Plaintiff does not dispute the added value. Instead it seeks abatement of the penalty portion of the assessment.

Plaintiff was aware of the requirement to file a personal property return by March 1, 2001. However, based on conversations with the prior owner, Plaintiff believed the prior owner had filed the 2001-02 personal property return. Plaintiff planned to file a personal property return for tax year 2002-03. A tax accountant employed by Plaintiff contacted an employee of the prior owner; that employee indicated that an accountant in Portland was preparing the return for the 2001-02 tax year. Plaintiff's employee attempted to follow up with the employee of the prior owner

at a later time, but did not receive a reply. Plaintiff took no further action to verify whether the property tax return for tax year 2001-02 had been filed.

ANALYSIS

Any taxpayer owning taxable personal property is required to file a personal property return. ORS 308.290(1)(a).¹ The return must be filed with the assessor no later than March 1.² ORS 308.290(3). Late filed returns are subject to increasing penalties based on when the return was filed. See ORS 308.296. At the time this return was due, a return filed after August 1 was subject to a mandatory 100 percent penalty.³

The court's ability to address the late filing penalty is set forth in ORS 305.422 which states as follows:

“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.”

ORS 305.422 (2001).⁴

As noted earlier, Plaintiff acknowledges that it did not file a personal property return for the 2001-02 tax year, and has agreed to the value. Plaintiff objects only to the penalty.

Because ORS 305.422 does not define the term good and sufficient cause, “the court uses the definition in ORS 305.288 as a guide.” *Performance Processing Group,*

¹ Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 1999.

² With a prior written request, and upon a showing of good cause, the assessor may grant an extension for filing the return to April 15. ORS 308.290(3).

³ The legislature subsequently amended ORS 308.296 such that the maximum penalty is 50 percent. Or Laws 2001, ch 925, § 14.

⁴ ORS 305.422 applies to penalties imposed after October 6, 2001. *Note following* ORS 305.422. The penalty in the present case was imposed on January 22, 2003.

Inc. v. Lane Co., OTC-MD No 021214C, WL 215371, at *2 (Jan 24, 2003). Good and sufficient cause is defined in ORS 305.288 as:

“(A) * * * 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.”

ORS 305.288(5).

That statute specifically excludes lack of knowledge or reliance on misleading information from any person other than a tax official from being “good and sufficient cause.” These exceptions reflect case law in Oregon that place an obligation on property owners to monitor the tax records relating to their property. The Oregon Supreme Court has held that “[i]n construing tax statutes, it must be borne in mind that the law of taxation places upon property owners the duty to keep themselves informed about the recurrent liability of their property for taxes.” *Knapp v. Josephine County et al.*, 192 Or 327, 353, 235 P2d 564 (1951). The law imposes an obligation on the taxpayer to verify, question, test, and object to the assessor’s records if there is a question about their correctness. *Running v. Dept. of Rev.*, 10 OTR 42, 43 (1985).

It is undisputed that Plaintiff was the owner of the property on January 1, 2001, the assessment date for tax year 2001-02. As the owner of the property on the assessment date, Plaintiff had the duty and obligation to monitor the assessor’s records. The facts indicate that Plaintiff made no effort to verify or monitor the records of the tax assessor in 2001. Plaintiff relied solely on information provided by the prior property owner that the personal property return for tax year 2001-02 had been filed. This court has previously held that there was no good and sufficient cause when a

taxpayer did not timely appeal her valuation because of incorrect information received from co-workers as to the applicable filing date. The court held that the incorrect information was not “good and sufficient cause” and that the taxpayer should have contacted the county for the correct appeal information. *Cooper v. Multnomah County*, OTC-MD No 020032E, WL 975888, at *2 (Mar 21, 2002). Plaintiff similarly had the obligation and ability to contact and verify with the assessor that the personal property return for tax year 2001-02 was timely filed instead of relying on information provided by someone other than an authorized tax representative. The circumstances were not beyond the control of Plaintiff and thus do not constitute “good and sufficient cause” within the meaning of ORS 305.422.

CONCLUSION

Plaintiff relied on incorrect information from the prior owner that the personal property return had been filed without attempting to verify that information with Defendant. The circumstances were within Plaintiff's control. Plaintiff's appeal must be denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of July, 2003.

SALLY L. KIMSEY
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 SALLY L. KIMSEY ON JULY 22, 2003. THE COURT FILED THIS DOCUMENT ON JULY 22, 2003.