

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CHEN SOO LEE and MEE SOON LEE,)	
)	
Plaintiffs,)	TC-MD 030740E
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant's Omitted Property Notice dated April 4, 2003. A telephone trial in the matter was held July 22, 2003.¹ Chen Soo Lee appeared on behalf of Plaintiffs. Joan Althaus appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiffs originated a business in Clackamas County on August 2, 1999. Plaintiffs were unaware that their business personal property was taxable. As a result, they did not file personal property returns for tax years 2000-2001, 2001-02, or 2002-03. Defendant subsequently became aware of Plaintiffs' operations and mailed them a 2003-04 personal property tax return form.² After receiving the form, Plaintiffs became aware of their obligation to file personal property tax returns. They promptly filled out the 2003-04 form and returned it to Defendant. Discovering Plaintiffs' business had been in operation since late 1999, Defendant added the personal

¹ The court converted the proceeding from a case management conference into a trial after both parties indicated they were prepared to present their positions to the court.

² 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 2001.

property's value to the roll for tax years 2000-2001, 2001-02, and 2002-03.³ The value was based on the cost information provided by Plaintiffs in the 2003-04 return.

Plaintiffs appeal Defendant's Omitted Property Notice claiming the values are too high, based on an error in their 2003-04 return, and further claiming the penalty should be reduced based on their lack of knowledge regarding the filing requirements. After filing their appeal, Defendant issued a Revised Omitted Property Notice reducing the values added. Plaintiffs agree with the new values. The only issue remaining is the waiver of the penalty.

II. 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. The statute goes on to state that, if a party fails to file a return by the March 1 deadline, they "shall be * * * subject to the provisions of ORS 308.296." ORS 308.290(1)(a). ORS 308.296(1) states that any person or company responsible for filing a personal property tax return who or which has not done so "shall be subject to a penalty as provided in this section." The penalty is graduated based on when the taxpayer files its return. For tax years 2000-2001 and 2001-02, the law provides that, if a taxpayer has not filed a return by August 1 of the tax year, a penalty of 100 percent of the tax is required. See ORS 308.296(4) (1999). The 2001 legislature reduced the penalty to 50 percent of the tax for tax years beginning 2002-03. See Or Laws 2001, ch 925, § 15.

As noted above, the county added the property to the tax rolls through the omitted property process. A taxpayer is entitled to appeal a penalty assessed under the omitted

³ The property is identified in Defendant's records as Account P2240692.
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property statutes to this court. See ORS 311.223(4) (“the imposition of the penalty may be appealed to the tax court”). The Tax Court has authority to waive “the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause.” ORS 305.422. 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 *Kintz v. Washington County Assessor*, ___ OTR-MD ___ (Dec 27, 2002).

ORS 305.288(5)(b) 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.)

Plaintiffs request that the court waive or reduce the penalty because they were unaware they owed personal property taxes to Defendant. The statute defining good and sufficient cause, however, excludes “lack of knowledge” from constituting good and sufficient cause. Further, previous cases have noted that taxpayers are presumed to know the law and that ignorance of the law does not excuse their failure to act. See

Performance Processing Group v. Lane County Assessor, OTC-MD No 021214C

(Jan 24, 2003) (“The court is not without some sympathy for taxpayers penalized for failing

to pay a tax of which they were unaware. However, every citizen is presumed to know the law.”)

Plaintiffs attempt to transfer responsibility to Defendant because Defendant failed to mail them returns for the earlier years. ORS 308.290(2)(c), however, provides that a “failure to receive or secure the form [from the county] shall not relieve the person, managing agent or officer from the obligation of making any return required by this section.” Therefore, under the statute, failing to receive the return is no excuse for not timely filing the return.

III. CONCLUSION

The court concludes that Plaintiffs have not demonstrated good and sufficient cause for failing to file personal property tax returns for tax years 2000-2001, 2001-02, and 2002-03. As a result, the court is unable to order the penalty reduced.

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

Dated this _____ day of July, 2003.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON JULY 31, 2003. THE COURT FILED THIS DOCUMENT ON JULY 31, 2003.