

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

BETHANY DENTAL CARE, PC,	)	
	)	
Plaintiff,	)	TC-MD 030852A
	)	
v.	)	
	)	
WASHINGTON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appealed Defendant's assessment of penalties, imposed for failure to file a personal property tax return when due in the context of an omitted property assessment, for the 2000-2001 tax year. Larry Kibbee, Certified Public Accountant, represented Plaintiff. Robert Steiner, of Defendant's staff, appeared on its behalf.

**I. STATEMENT OF FACTS**

This business began in October 1999. As is often the case with a new business, it was a time of confusion as limited resources, financial and otherwise, competed for priority. Plaintiff's record-keeping needs were not completely addressed until it hired an accountant in March 2001.

In May 2001, Defendant sent Plaintiff a 2001-02 personal property tax return, which Plaintiff completed and filed. From the information provided in that return, Defendant concluded that Plaintiff had a personal property tax liability for the 2000-2001 tax year. Defendant took steps to assess this property, which had been previously omitted from the roll.

Plaintiff does not dispute the conclusion that it had taxable personal property as to which it ought to have filed a personal property return and pay tax for the 2000-2001 tax year. Furthermore, Plaintiff has no disagreement with the value of the property as added to

the roll, or the calculation of the consequent tax. The only issue before this court is the penalty, of \$1,589.47, demanded of Plaintiff for its failure to timely file a personal property tax return and pay tax for the 2000-01 tax year. That dispute does not run to the manner in which the penalty was calculated. The contention is whether the nature of Plaintiff's lapse in failing to file the return when due is such as to permit the court to apply its discretion to reduce or eliminate the penalty.

## II. ANALYSIS

Oregon law requires every individual and business with taxable personal property to file a property tax return with their county assessor no later than March 1 of each tax year. ORS 308.290(1)(a).<sup>1</sup> The failure to timely file a property tax return subjects the taxpayer to the penalty provisions of ORS 308.296. Under the 1999 version of ORS 308.296, which controls the tax year in question, a taxpayer who fails to file its tax return until after August 1 "shall be subject to a penalty equal to 100 percent of the tax attributable to the taxable personal property of the taxpayer." ORS 308.296(4) (1999). Plaintiff failed to file its 2000-2001 property tax return until after August 1, 2000. It therefore became subject to a penalty of \$1,589.47, an amount equal to the 2000-2001 property tax it ought to have timely paid.

As this is a penalty imposed on Plaintiff in the context of an addition of property previously omitted from the rolls through the action of ORS 311.216 to 311.232, this court may hear the appeal. ORS 311.223(4). The Tax Court has the authority to waive all or a portion of the penalty imposed by ORS 308.296 "upon a proper showing of good and sufficient cause." ORS 305.422. It follows that in order for Plaintiff to receive any relief from the penalty at issue it must demonstrate that it had a "good and sufficient cause" for

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<sup>1</sup> Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2001.  
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its failure to file the personal property tax return when due.

Although ORS 305.422 does not itself provide a definition for the phrase "good and sufficient cause," this court "has consistently looked to other statutes where good and sufficient cause is defined" for its meaning. *GMB, Inc. v. Multnomah Co.*, OTC-MD No 021320D (March 25, 2003). Such a definition is provided in ORS 305.288(5)(b)(A), which states "good and sufficient cause" is "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." However, the statute goes on to specifically exclude "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" as circumstances that might constitute "good and sufficient cause."

Plaintiff requests that the court waive the penalty imposed by ORS 308.296 because the confusion surrounding the startup of the business prevented it from obtaining the necessary information and the "fact that the assessor's representative did not request or indicate a need for a 2000-01 form." (Ptf's Compl at 4.) However, despite Plaintiff's belief that these circumstances show a reasonable cause for the failure to timely file its personal property tax return, it does not negate the fact that Plaintiff, to use its own word, "overlooked" the fact that a 2000-2001 personal property tax return needed to be filed.

The statute defining "good and sufficient cause" requires Plaintiff to have experienced an "extraordinary circumstance that is beyond the control of the taxpayer." ORS 305.288(5)(b)(A). The statute clearly excludes "inadvertence, oversight, lack of knowledge, [and] hardship." ORS 305.288(5)(b)(B). That Plaintiff "overlooked" the personal property tax return or could not prepare it due to its choice as to the manner in

which it kept its records does not meet the standard of "good and sufficient cause." This court has upheld penalties imposed by ORS 308.296 even in cases in which taxpayers have made honest mistakes, for "when the legislature enacted ORS 308.296, it 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 fact that Defendant did not request Plaintiff file a 2000-2001 tax return also fails to meet the standard of good and sufficient cause. ORS 305.288(5)(b)(B) only finds "good and sufficient cause" under these circumstances when "an authorized tax official" provides the "relevant misleading information." However, in this instance Defendant did not provide misleading information. Defendant's lapse, if Defendant's actions might colorably, for purposes of discussion, be characterized as a lapse, was in first failing to discover that a new business, with taxable personal property, had been formed in 1999, and next not contacting that business and persuading it of the need to file a return on or before March 1, 2000. That description, which runs to what Defendant might have done, falls far short of the statute's requirement that the tax official provide "relevant misleading information."

### **III. CONCLUSION**

The court understands how Plaintiff came to not file its 2000-2001 tax return when due. However, the legislature has made its position clear. To waive a penalty through ORS 305.422, the court must find that a taxpayer has a "good and sufficient cause" for not timely filing its return. The court's conclusion is that Plaintiff's explanation fails this test.

Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's request for a waiver of the 100 percent penalty for the 2000-2001 tax year is denied.

Dated this \_\_\_\_\_ day of November, 2003.

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SCOT A. SIDERAS  
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 SCOT A. SIDERAS ON NOVEMBER 10, 2003. THE COURT FILED THIS DOCUMENT ON NOVEMBER 10, 2003.**