

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MOHAMMAD H. FOTOUHI dba Waterhouse)
Family Dental,)
)
Plaintiff,) TC-MD 030974C
)
v.)
)
WASHINGTON COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiff appeals Defendant's assessment of omitted personal property for tax year 2001-02. During the telephone conference held December 15, 2003, the parties agreed to submit the case to the court on the pleadings. Randy L. Wadsworth, Attorney, appeared on behalf of Plaintiff. Robert Steiner appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff started his own dental practice in July 2000. In 2002, Plaintiff became aware that businesses must file personal property tax returns each year. As a result, Plaintiff immediately contacted an accountant who assisted him in completing and filing a 2002-03 return. No return was filed for tax year 2001-02. Using the information from the 2002-03 return, Defendant added the omitted property to the 2001-02 tax roll.¹ Defendant notified Plaintiff of the correction on June 9, 2003. In addition to the assessed tax, Defendant imposed a 100 percent penalty for Plaintiff's failure to file the return.

Plaintiff appeals the assessed penalty requesting a waiver or reduction based on his honest lack of knowledge regarding the filing requirements. Plaintiff feels the penalty is excessive given his failure to file the return was due to his ignorance rather than a wilful

¹ The property is identified in Defendant's records as Account P2110803.
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attempt to evade the filing requirements.

II. ANALYSIS

ORS 308.290(1)(a)² 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 his return. For tax year 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).³

As noted above, Defendant added the property to the tax roll 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) (“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 (July 18, 2002); see also *Kintz v. Washington County Assessor*, 17 OTR-MD 200 (2002).

ORS 305.288(5)(b) defines the term good and sufficient cause as follows:

² Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2001.

³ The 2001 legislature reduced the penalty to 50 percent of the tax for returns due on or after January 1, 2002. See Or Laws 2001, ch 925, § 15.

“(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 that the court order the penalty waived or reduced based on the fact he was simply unaware businesses had to file personal property tax returns each year. Under the statute, a “lack of knowledge” does not constitute 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.”)

III. CONCLUSION

The court concludes that Plaintiff has not demonstrated good and sufficient cause for failing to file a personal property tax return for tax year 2001-02. As a result, the court is unable to order the penalty reduced. Now, therefore,

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

Dated this _____ day of January, 2004.

DANIEL K. ROBINSON
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 DAN ROBINSON ON JANUARY 27, 2004. THE COURT FILED THIS DOCUMENT ON JANUARY 27, 2004.