

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

NORSAM TECHNOLOGIES, INC.,)	
)	
Plaintiff,)	TC-MD 031057D
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant's assessment of penalties related to omitted personal property assessments for tax years 1999, 2000, and 2001.¹ A telephone trial was held Monday, February 9, 2004. John Bishop (Bishop), Co-President of Norsam Technologies, Inc., appeared on behalf of Plaintiff. Robert Steiner, Appraiser, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff, a business operating in New Mexico, opened an office in Oregon in 1999 and installed a newly-elected Chief Technology Officer and Vice President Jayant Neogi (Neogi).² (Ptf's Ex 1 at 17.) In March 2001, upon becoming aware of Plaintiff's office in Washington County, Defendant sent a letter to Plaintiff's Hillsboro address notifying Plaintiff of its responsibility to file a Business Personal Property Return and stating that penalties would result from failing to do so. (Ptf's Ex 1 at 3.) Although Defendant subsequently sent additional requests to file returns, Neogi neither filed the

¹ The original Complaint was orally amended to appeal tax years 1999, 2000, and 2001.

² On January 14, 2004, Jayant Neogi was promoted to Sr. Vice President and Chief Technology Officer. (*Id.* at 19.)

necessary tax returns nor notified his business partners of his failure to file the required returns. (Ptf's Ex 1 at 4-7.)

Bishop testified that Plaintiff's officers in New Mexico remained unaware that it owed personal property taxes in Oregon until September 25, 2002, when Defendant wrote to Bishop at the New Mexico address. At some point in time, Plaintiff was informed that past due personal property tax notices were discovered by police officers and those notices were introduced as evidence during criminal proceedings against the officer who had been in charge of the Oregon office. (See *a/so* Ptf's Ex 1 at 9.)

After receiving Defendant's notification, Bishop testified that Plaintiff promptly paid the personal property taxes as assessed for 2002. However, Plaintiff did not file its personal property tax returns for tax years 1999, 2000, or 2001.

Defendant testified that on February 14, 2003, it provided Plaintiff with written notification that it was adding the value of Plaintiff's personal property not assessed for years 1999, 2000, and 2001, with applicable penalties, to the tax roll as omitted property.

On November 1, 2003, Plaintiff filed a Complaint with this court asking the court to waive the penalties assessed due to extraordinary circumstances. Defendant responded that Plaintiff's evidence shows that it knew it had problems in its Oregon office, and Defendant concluded that it should have been on notice that tax filing problems might also exist.

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II. ANALYSIS

Defendant added Plaintiff's personal property to the tax rolls through the omitted property process. See ORS 311.216 (notice of intention to add omitted property).³ 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").⁴ In 2001, the legislature granted the Tax Court the authority to waive a taxpayer's liability for all or a portion of the penalties assessed upon a showing of "good and sufficient cause." ORS 305.422. Although that statute does not include a definition for the term "good and sufficient cause," this court previously reviewed the statutory use and legal precedent of the term and determined that the definition found in ORS 305.288 is a useful guide. See *Harold L. Center Pro Land Survey v. Jackson County Assessor*, TC-MD 020069C, WL 1591918 (July 18, 2002); *Kintz v. Washington County Assessor*, TC-MD 021123A (Dec 27, 2002) (citing *Dept. of Rev. v. Oral and Maxillofacial Surgeons*, 15 OTR 284 (2001)). The term is defined in ORS 305.288(5)(b) as follows:

"'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

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³ All references to the Oregon Revised Statutes (ORS) are to 2001.

⁴ 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.

“(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 waive the penalties assessed because of the “extraordinary circumstances” surrounding the nonpayment of Plaintiff’s personal property tax. Based on Bishop’s testimony, the extraordinary circumstances referred to are the alleged withholding of business information, theft of company property, and misappropriation of Plaintiff’s intellectual property by Neogi of its Oregon office.

Bishop presented evidence demonstrating that Neogi was an appointed officer of the company. As such, that officer was an agent or representative of Plaintiff. Because the officer was Plaintiff’s agent, the questions of what management in New Mexico knew, and when, is irrelevant. Rather, the question before the court is whether an extraordinary circumstance beyond the control of Plaintiff’s agent caused Plaintiff to fail to pay the business personal property taxes when they became due.

This court has heard similar cases, involving penalties assessed because of the failure of a taxpayer’s agent to fulfill its obligations. In *LB5, Inc. v. Multnomah County Assessor*, TC-MD 030047A (June 25, 2003), the taxpayer’s bookkeeper performed inadequately and, as a result, the taxpayer’s personal property taxes were paid late and penalties were assessed. *Id.* The taxpayer, as in the case at hand, had no intentions of avoiding the payment of tax and paid the full amount assessed as soon as it became aware of the requirement. However, in *LB5, Inc.*, the court found that “no extraordinary circumstances prevented the bookkeeper from performing” and further, that the

taxpayer had chosen whom to hire to keep its books and when to replace him. *Id.* Here, Plaintiff presented no evidence demonstrating that its agent was prevented from paying the taxes in a timely manner because an extraordinary circumstance existed nor that payment of the taxes was beyond Plaintiff's control. Further, Plaintiff chose whom to place in control of its Oregon office and retained the power to change that delegation.

Although Plaintiff's management in New Mexico did not actually become aware of the unpaid taxes in Oregon until it was too late to avoid the penalties, taxpayers are presumed to know the law and are not excused by ignorance. See *Performance Processing Group v. Lane County Assessor*, TC-MD 021214C (Jan 24, 2003) ("The court is not without some sympathy for taxpayers penalized for failing to pay a tax which they were unaware. However, every citizen is presumed to know the law.").

The court is sympathetic to the circumstances that placed Plaintiff in this regrettable situation and acknowledges Plaintiff's diligence in paying its taxes once its present management became aware of its responsibility. However, the court does not have the power to grant waiver of the penalties in this case. The legislature has not given the court broad discretion to set aside penalties as it sees fit. Rather, the court may set aside penalties only for "good and sufficient cause," which, by statutory definition and case law, imputes responsibility to agents and representatives as well as a taxpayer, and does not excuse "lack of knowledge." ORS 305.288(5)(b)(B).

III. CONCLUSION

The court concludes that Plaintiff has not demonstrated good and sufficient cause for failing to file personal property tax returns for tax years 1999, 2000, and 2001.

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Based on its finding, the court is unable to grant Plaintiff's requested relief. Now, therefore,

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

Dated this _____ day of March 2004.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON MARCH 29, 2004. THE COURT FILED THIS DOCUMENT ON MARCH 29, 2004.