

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ATLANTA PRECISION MOLDING, LLC)	
)	
Plaintiff,)	TC-MD 040050F
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the assessment of a late filing penalty imposed by Defendant for the 2003-04 tax year. The court heard arguments at the case management conference on April 21, 2004.

I. STATEMENT OF FACTS

Plaintiff moved manufacturing equipment and supplies to a facility located in Clackamas, Oregon, during November 2002. The presence of that property in Oregon required Plaintiff to file an Oregon personal property return for the first time in the 2003-04 tax year. On February 25, 2003, Plaintiff submitted a request to Defendant for an extension of time to file its return due to difficulties gathering the information necessary to prepare and file its return by the March 1, 2003, deadline. Defendant granted the extension the same day and notified Plaintiff in writing of the extended April 15, 2003, deadline.

Plaintiff was aware of the requirement to file a personal property return by April 15, 2003. However, Plaintiff was unable to provide its accounting firm with the financial data needed to prepare the 2003-04 return until May 2003. Plaintiff acknowledges that the 2003-04 return was not filed until June 4, 2003. On June 9, 2003, Defendant assessed a late filing penalty equal to 25 percent of the tax due.

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II. ANALYSIS

All taxpayers who own taxable personal property are required to file personal property tax returns. ORS 308.290(1)(a).¹ Returns must be filed by March 1 of each year, or by April 15 of a year in which the taxpayer has timely requested and received an extension. *See* ORS 308.290(3). Failure to file the return at or before the applicable deadline subjects a taxpayer to late filing penalties. ORS 308.290(1)(a); ORS 308.296(1). A taxpayer subject to late filing penalties who files a return "after June 1, but on or before August 1, is subject to a penalty equal to 25 percent of the tax attributable to the taxable personal property of the taxpayer." ORS 308.296(3).

The Tax Court has limited authority to set aside late filing penalties. The court may waive penalties imposed under ORS 308.296 only "upon a proper showing of good and sufficient cause." ORS 305.422. Because ORS 305.422 does not define the term "good and sufficient cause," the court may construe the term by "look[ing] to its definitive interpretation of that term in * * * related statutes." *Kintz v. Washington Cty. Assessor*, 17 OTR-MD 200, 202 (2003).

This court previously determined that the definition set forth in ORS 305.288 may be used as a guide. *E.g., MTS Systems Corp. v. Washington Cty. Assessor*, TC-MD 030129F (July 22, 2003). ORS 305.288 defines "good and sufficient cause" as:

"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[.]"

ORS 305.288(5)(b)(A). That statute specifically excludes "inadvertence, oversight, lack of knowledge, [and] hardship" from the definition of the term. ORS 305.288(5)(b)(B).

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¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

Taxpayers must overcome a high threshold to show that a "good and sufficient cause" prevented them from fulfilling their statutory obligations. This court previously held that there was no "good and sufficient cause" when a taxpayer did not timely file its return due to deficiencies in books and accounts kept by its bookkeeper. *LB5, Inc. v. Mult. Cty. Assessor*, TC-MD 030047A, WL 21674322 (June 25, 2003). The court reasoned that no extraordinary circumstance intervened to prevent the bookkeeper from properly maintaining the books and accounts, and that the events that caused the untimely filing were at all times within the taxpayer's control. *Id.*

Plaintiff argues that its difficulty in gathering the financial data needed to prepare the 2003-04 return constitutes "reasonable cause" for the untimely filing of the 2003-04 return. However, no case interpreting the term "good and sufficient cause" has construed it so broadly. Like the taxpayer in *LB5*, Plaintiff had ultimate control over its financial data. Plaintiff presented no evidence of any extraordinary event that precluded it from gathering that data in a timely fashion and filing the 2003-04 return by the April 15, 2003, due date. Mere hardship is not enough. Facts offered relating to Plaintiff's actions after the return was filed have no bearing on the cause of the untimely filing and are not relevant to determination of the issue at hand.

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III. CONCLUSION

Plaintiff has not demonstrated that its failure to file the 2003-04 personal property return by the April 15, 2003, deadline was caused by an extraordinary circumstance beyond its control.

In such cases, this court lacks authority to waive late filing penalties. Now, therefore,

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

Dated this _____ day of July 2004.

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 21, 2004. THE COURT FILED THIS DOCUMENT JULY 21, 2004.