

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

HOLLYWOOD TAN & HAIR, INC.	)	
and MARDIE J. CRUCCHIOLA,	)	
	)	
Plaintiffs,	)	TC-MD 040062F
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant's omitted property assessment for tax years 1998-99 through 2003-04. In particular, Plaintiffs appeal the penalties assessed for Plaintiffs' failure to timely file personal property tax returns for the years at issue. The subject property is identified in the Multnomah County Assessor's records as Account P542144.

A case management conference was held April 5, 2004. Mardie Crucchiola (Crucchiola) appeared for Plaintiffs. Patrice Kilmartin, Personal Property Appraiser, appeared for Defendant.

I. STATEMENT OF FACTS

Crucchiola purchased Hollywood Tan & Hair, Inc. (Hollywood Tan) in 1995. Crucchiola had not previously operated a business prior to her purchase of Hollywood Tan. Accordingly, she hired a certified public accountant to assist her and, among other things, make sure that tax returns were appropriately filed. Crucchiola timely paid other taxes and licenses. Her certified public accountant never informed her of the need to file personal property returns. Defendant was not aware that the business continued in operation after Crucchiola's purchase and thus did not mail her a personal property return for any of the years at issue.

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Crucchiola sold Hollywood Tan in December 2003. As part of their purchase, the buyers had a tax attorney look at the transaction. The tax attorney noted that personal property returns had never been filed. Upon his advice, the buyers required that the personal property taxes be paid for any years potentially at issue. Defendant calculated personal property taxes and associated penalties owing for tax years 1998-99 through 2003-04. Crucchiola paid the taxes and penalties prior to the buyers' completion of their purchase of the business.

## II. ANALYSIS

ORS 308.290(1)(a)<sup>1</sup> 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)<sup>2</sup> states that any taxpayer responsible for filing a personal property tax return who fails to do so "shall be subject to a penalty as provided in this section." The penalty is graduated based on when a taxpayer files the return. For tax years 2001-02 and earlier, a penalty of 100 percent is imposed if a return is not filed by August 1 of the tax year.

ORS 308.296(4) (1997) and (1999); 2001 Or Laws, ch 925 § 15. For tax years 2002-03 and later, a penalty of 50 percent is imposed if a return is not filed by August 1 of the tax year. ORS 308.296(4) (2003); 2001 Or Laws, ch 925 § 15.

As noted above, Defendant added the property to the tax rolls through the omitted property process. A taxpayer is entitled to appeal a penalty assessed under the omitted property statutes to this court. ORS 311.223(4) (2003). The court has authority

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<sup>1</sup> Unless otherwise noted, all references to ORS 308.290 are to 1997, 1999, and 2001. Any quoted language is identical in each of the editions.

<sup>2</sup> Unless otherwise noted, all references to ORS 308.296 are to 1997, 1999, and 2001. Any quoted language is identical in each of the editions.

to “waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause.” ORS 305.422 (2003). Crucchiola points to Defendant's failure to mail a personal property tax return as required by ORS 308.290(2)(c). However, ORS 308.290(2)(c) also 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.” (Emphasis added.) Under the statute, failing to receive the return is not a sufficient reason for not timely filing the return. To find "good and sufficient cause" within the meaning of ORS 305.422 (2001) in the present circumstances would render nugatory the provision of ORS 308.290(2)(c) quoted above. The court declines to do that.

### III. CONCLUSION

To waive a penalty assessed under ORS 308.296, the court must find that a taxpayer has good and sufficient cause for not timely filing a return. ORS 305.422 (2001). The court finds that neither generally being unaware a return is due nor failing to receive a return form from the county constitutes good and sufficient cause. Now, therefore,

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

Dated this \_\_\_\_\_ day of April 2004.

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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 APRIL 13, 2004. THE COURT FILED THIS DOCUMENT ON APRIL 13, 2004.**