

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SHARON KORTER ENTERPRISES, INC. dba)	
SYLVIE, AN IMAGE PERFECTED FOR YOU,)	
)	
Plaintiff,)	TC-MD 040994B
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

A case management conference was held on January 6, 2005. James Sumner, Certified Public Accountant, represented Plaintiff. James T. Nagae appeared for Defendant.

The parties agreed this Decision would be based on the written record. Subsequently arguments and legal citations were submitted. The record closed on February 12, 2005.

The issue concerns personal property penalties imposed for the five tax years 1999-2000 through 2003-04. Those penalties total \$3,136.54. Plaintiff seeks a waiver of those charges.

I. STATEMENT OF FACTS

Plaintiff owns taxable personal property in Multnomah County. Plaintiff has been in business for over 20 years and has filed numerous personal property tax returns with Multnomah County. In past years, Defendant had a process to mail blank property returns to businesses in the county. According to information submitted, Plaintiff stopped receiving those blank forms in about 1998.

Because annual returns were not timely submitted for the five years in question, Defendant assessed penalties of 100 percent (1999-2000 through 2001-02) and 50 percent (2002-03 and 2003-04). Plaintiff was given notice of those fees by way of an omitted property letter dated June 25, 2004. Plaintiff does not contest the calculated dollar amount of the charges.

In its Complaint to the court, Plaintiff's representative wrote:

“At that time (1998), the tax payer stopped receiving the report forms from the county and did not receive a property tax bill in November for any year thereafter. The *taxpayer assumed that there was no filing necessary* because of reliance on the tax assessor's office to inform the taxpayer if there was any action necessary.” (Emphasis added.)

During the case management conference, similar arguments were advanced. Later writings contend that the “Assessor is directly responsible” for the failure to file because the lack of mailed forms “led Sylvie to believe that they had become exempt from personal property tax.” (Ptf's ltr at 1, Jan 26, 2005.) Plaintiff emphasized that its primary reliance was upon receiving those blank forms.

There is no direct evidence of any telephone calls or written correspondence by Plaintiff to corroborate its underlying assumption of “becoming exempt.” No specificity was provided to demonstrate that any direct communication occurred between the parties during the years in question.

II. ANALYSIS

ORS 308.290(1)(a)¹ requires a business to file a personal property tax return by March 1. 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 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 its return.

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¹ All references to the Oregon Revised Statutes (ORS) are to 2003, unless otherwise specified.

Plaintiff admittedly did not file returns for any of the five years at issue. Pursuant to the statutes, it is responsible for a 100 percent penalty for the years 1999-2000 through 2001-02.² For later years, the penalty was reduced to 50 percent. Plaintiff claims, however, it should be excused from all penalties because of circumstances beyond its immediate control.

ORS 308.296(6) allows waiver of a late-filing penalty when there is good and sufficient cause to waive the penalty. In such cases involving past years and omitted property assessments, this court has the power to waive or reduce that penalty. ORS 311.223(4). Plaintiff must provide a “proper showing of good and sufficient cause.” ORS 308.296(6)(a)(A).

ORS 305.288(5)(b) defines what constitutes good and sufficient cause:

“‘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.”

Here, there was no relevant misleading information provided by Defendant. There were no identifiable conversations, letters or notices. The sole factor that led to Plaintiff’s assumptions was the cessation of receiving blank annual forms. The failure to receive a personal property form does not relieve the obligation of making a required return. ORS 308.290(2)(c). Nor can that nonreceipt of the form serve to cancel the statutory penalties. Prior cases in this court have firmly established that this does not constitute “good and sufficient cause” for the evaluation of a penalty waiver. *Pacific Gundrill & Machine v. Jackson County Assessor*, TC-MD 020137F (Nov 19, 2002).

² ORS 2001 edition.

In view of the above discussion, it is clear that the circumstances for those years do not constitute valid cause to compromise the mandatory statutory penalties.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THE COURT that the above-entitled matter be denied.

Dated this _____ day of May 2005.

JEFF MATTSON
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 Jeff Mattson May 19, 2005. The Court filed and entered this document May 19, 2005.