

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

DAVID HILL VINEYARDS, LLC,	)	
dba David Hill Winery and Vineyard,	)	
	)	
Plaintiff,	)	TC-MD 050036E
	)	
v.	)	
	)	
WASHINGTON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff challenges Defendant’s omitted property notice that added value for personal property for tax years 2001-02, 2002-03, and 2003-04. Plaintiff originally challenged both the values added and the penalties assessed. Subsequently, Plaintiff filed an Amended Complaint removing the value claim and challenging only the assessed penalties. Trial in the matter was held July 21, 2005.<sup>1</sup> Robert W. Palmer, Attorney, appeared on behalf of Plaintiff. Sheryl S. Hayashida, Senior Assistant County Counsel, appeared on behalf of Defendant. The parties submitted factual information to the court in the form of stipulated facts, exhibits, and affidavits.

I. STATEMENT OF FACTS

Plaintiff began its operations in 2001. For the eight years prior to 2001, Milan Stoyanov (Stoyanov), managing member of Plaintiff, had been involved in a vineyard farming operation. Stoyanov started the David Hill Winery when the winery that previously bought his product went out of business. With the farming operation, Stoyanov did not file personal property tax returns because farm property is exempt from taxation. When Stoyanov branched out into the winery

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<sup>1</sup> Prior to trial, Defendant filed a Motion to Dismiss. The reasons claimed for dismissal were identical to the issues to be tried during the trial set for July 21, 2005. At trial, the court clarified that the motion raised identical issues. As a result, the court advised that its ruling on the merits would render Defendant’s motion moot.

business, it never occurred to him that the personal property used in the winery business would be subject to taxation. As a result, Plaintiff did not file returns.

In December 2003, upon becoming aware of Plaintiff's operation, Defendant mailed Plaintiff return forms. Plaintiff submitted its first return May 29, 2004. Because Plaintiff had been in business since 2001, Defendant issued an omitted property notice adding value for the 2001-02, 2002-03, and 2003-04 tax years and assessing penalties for Plaintiff's failure to file returns each year. Plaintiff appeals, requesting the court order the penalties waived.

## II. ANALYSIS

ORS 308.290(1)(a)<sup>2</sup> requires every business owning taxable personal property to file a personal property tax return by March 1 of each year and provides that, if a taxpayer fails to file a return by the March 1 deadline, they "shall be \* \* \* subject to the provisions of ORS 308.296." ORS 308.296(1) states that any taxpayer 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." 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). The 2001 legislature reduced the penalty to 50 percent of the tax for tax years beginning 2002-03. *See* Or Laws 2001, ch 925, §§ 14, 15.

As noted above, Defendant added the property to the tax rolls through the omitted property process. 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.*

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003 unless otherwise noted.

*Jackson County Assessor*, TC-MD No 020069C at 4, WL 1591918 (July 18, 2002); *see also Kintz v. Washington Cty. Assessor*, 17 OTR-MD 200 (2002).

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

“(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 waive or reduce the penalty because Stoyanov was unaware a winery business was required to file personal property tax returns. Stoyanov had a history of running a vineyard and, in that business, he did not file personal property tax returns. He claims he had no reason to believe a winery business was any different than a vineyard. The statute defining good and sufficient cause, however, excludes “lack of knowledge” from constituting good and sufficient cause. Plaintiff falls within the “lack of knowledge” category. Furthermore, other 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*, TC-MD No 021214C at 4 (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.”).

Plaintiff urges the court to incorporate a “first-time offense” exception into its good and sufficient cause review. Plaintiff refers the court to ORS 308.030(4) for an example of the legislature’s use of the first-time offense rule. ORS 308.030 requires the Department of Revenue to impose a penalty of up to \$5,000 when a designated utility fails to file the annual statement

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required under ORS 308.520. ORS 308.030(4) allows the Director of the Department of Revenue to adopt rules that allow for waiver or reduction of the penalty. The statute requires the rules to allow a reduction in the following circumstances:

“(b) Rules adopted under this subsection shall be based on the department’s finding that:

“(A) Good and sufficient cause exists for the actions of the taxpayer that resulted in the imposition of the penalty;

“(B) The actions of the taxpayer that resulted in the imposition of a penalty constitute a first-time offense on the part of the taxpayer; *or*

“(C) The action of the department to waive or reduce the penalty enhances the long-term effectiveness or efficiency of the voluntary tax compliance system.”

ORS 308.030(4) (emphasis added).

The legislature allows the Director of the Department of Revenue to establish rules allowing a reduction of penalty for one of three reasons. The statute joins the three circumstances together with the word “or” thereby designating three independent and different reasons for reduction. As a result, a good and sufficient cause analysis is performed independent of a first-time offense analysis. The statute at issue in the subject appeal is ORS 305.422. That statute permits the court to waive or reduce a penalty only upon a showing of good and sufficient cause. The legislature does not incorporate a first-time offense exception in ORS 305.422 as it does in ORS 308.030(4). Plaintiff argues that the court should adopt the first-time offense rule as part of its good and sufficient cause analysis. However, the legislature in ORS 308.030(4) considered the first-time offense action independent of the good and sufficient cause analysis. That legislative action suggests that a first-time offense does not, in itself, constitute good and sufficient cause for failing to timely file the statement. Had the legislature wanted the court to reduce a penalty for a first-time offender under ORS 305.422, it would have provided for it as the legislature did under ORS 308.030(4).

### 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 2001-02 through 2003-04. The court further finds that a first-time offense excuse is not the equivalent of good and sufficient cause and, therefore, does not permit waiver of the penalty. As a result, the court is unable to order the penalty reduced. Now, therefore,

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

IT IS FURTHER DECIDED that Defendant's Motion for Leave to file Motion to Dismiss is denied as moot.

Dated this \_\_\_\_\_ day of August 2005.

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COYREEN R. WEIDNER  
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 Coyreen R. Weidner August 19, 2005. The Court filed and entered this document August 19, 2005.***