

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LARRY W. THOMPSON AGENCY, INC.)	
)	
Plaintiff,)	TC-MD 050058C
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the penalty imposed by Defendant for tax years 2002-03 and 2003-04 as part of an omitted property assessment for Account P2122651. The parties agreed to convert the initial case management conference, held March 21, 2005, to a hearing. Larry Thompson (Thompson) appeared for Plaintiff. Vicki Ellinwood appeared for Defendant.

I. STATEMENT OF FACTS

Thompson owns a small insurance agency that he began operating as an independent contractor in May 2001. Thompson has two employees. During the years in question, one of those employees was involved in insurance sales, and the other attended to administrative tasks in the office related primarily to assisting existing customers (for example, answering questions about a bill or requests to transfer auto insurance from an old car to a new one). Plaintiff had used the services of an accountant for assistance with accounting and tax matters. Thompson described himself as a young businessman, lacking in knowledge about some aspects of running a business. Thompson was unaware of the requirement to file personal property tax returns and the accountant he was using at the time did not advise him of the need to file such returns. Consequently, Thompson did not file the required returns in 2002 or 2003. Plaintiff subsequently engaged the services of another accountant.

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Thompson is in the Oregon National Guard. On February 6, 2003, he received a notice he was being deployed to Iraq. Thompson was deployed the following day, February 7, 2003. Thompson's wife, who has her own full-time job, agreed to step in and take over certain administrative functions at her husband's insurance office. She continued to hold down her job while helping out at the insurance office in her husband's absence. Thompson returned home from Iraq in March 2004. In his absence, the personal property tax return for the 2004-05 tax year was filed on January 13, 2004. The 2005-06 return was filed in January 2005.

On January 18, 2005, Defendant notified Plaintiff that it was adding the value of the personal property to the assessment and tax rolls for the 2002-03 and 2003-04 tax years. (Ptf's Compl at 2.) Plaintiff was previously notified of the assessor's intent to add the property as omitted property. That notice indicated that the assessor planned to add property back to the 1999-2000 tax year. Plaintiff promptly responded to that notice and Defendant subsequently dropped the three earliest tax years (1999-2000, 2000-2001, and 2001-02) because Plaintiff was not responsible for the tax until 2002. The January 18, 2005 notice of correction included a penalty of \$153.08 for tax year 2002 and \$140.04 for tax year 2003. *Id.* Plaintiff timely appealed.

II. ANALYSIS

Personal property used in connection with a business is subject to a property tax in Oregon. The owner of such property is required to file a personal property tax return each year no later than March 1. ORS 308.290(1) and (3).¹ A taxpayer who fails to file a return each year

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¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

by August 1 is “subject to a penalty equal to 50 percent of the tax attributable to the taxable personal property of the taxpayer.” ORS 308.296(4). Plaintiff did not file the required returns in 2002 or 2003, and Defendant added the value of the property to the rolls, along with the tax and penalty. Plaintiffs’ appeal was timely filed as provided in ORS 311.223(4).

Plaintiff seeks a waiver of the failure-to-file penalty. Under ORS 305.422, “the court may waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause.” ORS 305.422 does not define the term good and sufficient cause. That term appears in a number of revenue and tax statutes. One of those is ORS 305.288, which includes a definition this court has routinely applied to penalty waiver appeals filed under ORS 311.223(4) and ORS 305.422. See *Bethany Dental Care v. Washington County Assessor*, TC-MD No 030852A, WL 22846402 *2 (Nov 10, 2003), *GMB, Inc. v. Multnomah County Assessor*, TC-MD No 21320D, WL 21278019 *1 (Mar 25, 2003), *Lee v. Clackamas County Assessor*, TC-MD No 030740E, WL 21947196 (July 31, 2003), *Harold L. Center Pro Land Survey v. Jackson County Assessor*, TC-MD No 020069C, WL 1591918, at *2 (July 18, 2002).

ORS 305.288(5)(b)(A) states that “good and sufficient cause” is “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.” However, the statute goes on to specifically exclude “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” from the definition of “good and sufficient cause.” ORS 305.288(5)(b)(B).

Does Thompson’s sudden military deployment to Iraq constitute good and sufficient cause for not filing personal property tax returns in 2002 or 2003? The deployment itself certainly was an “extraordinary circumstance.” However, Thompson was deployed on

February 7, 2003. Thompson had not filed a return in 2002 before the March 1 deadline, and the deadline for 2003 was fast approaching when Thompson was deployed. A return was filed for the business in January 2004, while Thompson was still in Iraq. That return was for the 2004-05 tax year. Thompson testified that he was new in business and was dealing with a steep learning curve – he did not know that he was required to file personal property tax returns. It appears to the court that the primary, if not sole, reason the returns were not filed was because Thompson was unaware of the requirement to do so. As indicated above, lack of knowledge is not good and sufficient cause.

Thompson further testified that his former accountant failed to file the returns or advise him of the requirement. While it is regrettable that Thompson’s accountant did not attend to the matter in some fashion, the failure of a taxpayer’s agent to fulfill its obligations (assuming it was the accountant’s obligation) does not amount to good and sufficient cause. *See Norsam Technologies, Inc. v. Washington County Assessor*, TC-MD No 031057D, WL 614537 *2 (Mar 29, 2004); *LB5 v. Multnomah County Assessor*, TC-MD No 030047A, WL 21674322 *1 (June 25, 2003).

III. CONCLUSION

The court concludes that Thompson’s failure to file personal property tax returns in 2002 or 2003 was due to a lack of knowledge about the law and not because of an extraordinary circumstance beyond his control. Accordingly, Plaintiff has failed to establish good and

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sufficient cause for the failure to file those returns and the penalty imposed by Defendant cannot be waived under ORS 305.422. Now, therefore,

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

Dated this _____ day of April 2005.

DAN ROBINSON
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 Dan Robinson April 7, 2005. The court filed and entered this document April 7, 2005.