

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ROBERT GEISTER DPM,)	
dba Sandy Podiatry Center,)	
)	
Plaintiff,)	TC-MD 050648E
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s Omitted Property Notice, dated April 19, 2005, which notified Plaintiff that Defendant was adding value for personal property to the 2003-04 and 2004-05 tax rolls. The notice further advised that tax and penalty would be assessed for each year. Plaintiff does not challenge the additional tax liability but claims the penalty for each year should be canceled. Trial in the matter was held August 18, 2005. Robert Geister appeared on his own behalf. Jim Rubbelke appeared on behalf of Defendant.

I. STATEMENT OF FACTS

In August 2002, Plaintiff opened a podiatry clinic in Clackamas County. It was the second clinic opened by Plaintiff. His primary clinic is located in Washington County and has been in operation for approximately 30 years. Plaintiff failed to file personal property tax returns for the Clackamas County office for tax years 2003-04 and 2004-05. County staff contacted Plaintiff in early 2005 and asked him when the clinic in Clackamas County opened. Based on his response, Defendant determined that Plaintiff was responsible for personal property taxes for tax years 2003-04 and 2004-05. As a result, it issued the Omitted Property Notice and assessed taxes and penalties for each year. Plaintiff appeals, claiming he did not realize he needed to file a

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return with Clackamas County because he never received a return form in the mail. Plaintiff requests that the court order the penalties waived.

II. ANALYSIS

ORS 308.290(1)(a)¹ requires every person or 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 has not done so, “shall be subject to a penalty as provided in this section.” For tax years 2003-04 and 2004-05, if a taxpayer has not filed a return by August 1 of the tax year, a penalty of 50 percent of the tax is required. *See* ORS 308.296(4).

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. Jackson County Assessor*, TC-MD No 020069C at 4, WL 1591918 at * 2 (July 18, 2002); *see also Kintz v. Washington Cty. Assessor*, 17 OTR-MD 200, 202 (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

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¹ All references to the Oregon Revised Statutes (ORS) are to 2003.
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“(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 he was unaware he owed personal property taxes to Defendant. The statute defining good and sufficient cause, however, excludes “lack of knowledge” from constituting good and sufficient cause. Further, previous 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, WL 215371 at * 2 (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 attempts to transfer responsibility to Defendant because Defendant did not mail him return forms each year. Pursuant to statute, Defendant has a process for mailing return forms to personal property taxpayers each year. However, ORS 308.290(2)(c) 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.” Failing to receive the return form, therefore, is no excuse for failing to timely file the return.

The court observes that Plaintiff has operated a clinic in Washington County for 30 years and has filed returns with that county. The court asked Plaintiff if he wondered whether he should be filing similar returns with Clackamas County. Plaintiff responded that he simply did not think about it. The court has heard appeals from new business owners who, for whatever reason, were not aware they needed to file personal property returns. The court found in those cases that the taxpayer’s lack of knowledge did not constitute good and sufficient cause for

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failing to file the return and, therefore, the court upheld the penalties assessed against them. *See, e.g., Hufschmid v. Multnomah County Assessor*, TC-MD No 050075E at 3, WL 142477 at * 2 (May 17, 2005). In this case, Plaintiff is a seasoned business owner in the State of Oregon with a history of filing returns in another county. His failure to file returns for the subject clinic is made less excusable by his experience.

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 2003-04 and 2004-05. As a result, the court is unable to order the penalties reduced. Now, therefore,

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

Dated this _____ day of October 2005.

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 October 4, 2005. The Court filed and entered this document October 4, 2005.