

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

TERRANCE A. HILL, MD, PC,	)	
	)	
Plaintiff,	)	TC-MD 050671C
	)	
v.	)	
	)	
BENTON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff has appealed the penalties imposed by the Benton County Tax Collector as part of omitted property assessments for tax years 2001-02, 2002-03, 2003-04, and 2004-05. The matter was presented to the court during the November 3, 2005, case management conference. Plaintiff was represented by Judith L. Hill (Hill), an employee of the taxpayer regularly employed in tax matters. Defendant appeared through Tami Woodward, Chief Deputy, and Debbie Bauer, Appraisal Support Technician.

I. STATEMENT OF FACTS

The facts in this case are undisputed. Plaintiff did not file personal property tax returns in 2001, 2002, 2003, or 2004, because Plaintiff was unaware of the requirement to do so. Plaintiff became aware of the return requirement in March 2005, when the company's accountant asked about Plaintiff's returns. Plaintiff immediately contacted the assessor's office and filed returns for the years at issue, plus tax year 2005-06. Defendant was previously unaware of the existence of the property. After the returns were filed, Defendant issued omitted property assessments for the years at issue. That assessment included annual late filing penalties totaling more than \$1,500. Plaintiff timely appealed. In a letter to the court attached to the Complaint, Plaintiff

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explained that the “noncompliance was completely inadvertent, [and] I feel it is unfair to assess any penalties except interest on the unpaid amounts.” Plaintiff has requested that the court waive the penalties.

During the November 3, 2005, proceeding, Hill reiterated that she was unaware of the filing requirement and that she “never gave it a thought” until the matter was brought up by the accountant. Hill further explained that when she found out the returns were required, she “turned [her]self in.” Hill commented that the penalty seems “rather unfair,” and that the court should be able to do something to mitigate the penalty. Hill opines that other taxpayers likely keep quiet once they find out they have neglected to file personal property tax returns, whereas she promptly came forward to rectify the matter. The implication was that she should not be punished for her honesty. The county expressed some regret at the rigid requirement that it impose the penalty without regard to the underlying circumstances in a particular case, but, in response to a comment by Hill, stated that the county does run newspaper advertisements several times each year informing would-be taxpayers of the filing requirement.

## II. ANALYSIS

ORS 308.290(1)(a)<sup>1</sup> requires a business owning taxable personal property to file a property tax return with the county assessor by March 1 of each year. That requirement has been part of Oregon law for many years. 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 tax return who or which has not done so “shall be subject to a penalty as provided in this

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

section.” The penalty is graduated based on when the taxpayer files the return. For returns filed after August 1, the penalty is equal to 50 percent of the tax owed. ORS 308.296(4). The county imposed a 50 percent penalty. Plaintiff would like that penalty canceled, or at least reduced.

Typically, an appeal of a penalty is heard by the county board of property tax appeals (board), pursuant to ORS 308.296(6), ORS 309.026, and ORS 309.100, and is not appealable. However, ORS 311.223(4) provides that when a penalty is imposed under ORS 308.296 as part of an omitted property correction, “the imposition of the penalty may be appealed to the tax court.” The penalty in this case was imposed as part of an omitted property assessment, because the county was initially unaware of the property due to Plaintiff’s failure to file returns in 2001, 2002, 2003 or 2004.

Under ORS 305.422, the tax 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 was enacted by the legislature in 2001. The statute does not define the term “good and sufficient cause.” However, the court’s earlier decisions, issued in 2002, look to the definition of that term found in ORS 305.288. *See Perry v. Josephine County Assessor*, TC-MD No 011077B, WL 975938 (Mar 20, 2002) (utilizing the definition “[i]n a similar statutory setting,” namely ORS 305.288); *Harold L. Center Pro Land Survey v. Jackson County Assessor*, TC-MD No 020069C, WL 1591918 (July 18, 2002) (finding the definition in ORS 305.288 a “useful guide”); *McConnell v. Jackson County Assessor*, TC-MD No 020105A, WL 32102592 (Sept 24, 2002) (utilizing the definition in ORS 305.288). The court has continued to use the definition of “good and sufficient cause” set forth in ORS 305.288(5). *See Atlanta Precision Molding LLC v. Clackamas County Assessor*, TC-MD No 040050F, WL 1968677 (July 21, 2004); *Norsam Technologies, Inc. v. Washington County Assessor*, TC-MD No 031057D, WL 614537 (Mar 29, 2004).

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ORS 305.288(5) 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.”

There is no evidence of any extraordinary circumstance that prevented Plaintiff from filing the required returns in 2001, 2002, 2003, or 2004. On the contrary, Plaintiff was simply unaware of its statutory obligations. As indicated above, “ \* \* \* lack of knowledge” does not constitute good and sufficient cause. ORS 305.288(5)(b)(B).

The court appreciates Plaintiff’s willingness to promptly come forward and file the necessary returns once the requirement was made known and to state honestly when the business commenced operation. The court also understands that it can seem somewhat unfair to be punished for one’s honesty by being assessed penalties equivalent to half of the amount of the tax due for the years at issue. However, the legislature imposed the penalty to deter taxpayers from neglecting to file personal property tax returns and limited the court’s ability to alter the penalty to instances where good and sufficient cause exists. In *Kintz v. Washington County Assessor*, 17 OTR-MD 200, 202 (2002), this court stated that “[n]ever, in the court's review of any of [the enumerated] laws [containing a good and sufficient cause standard], has ‘good and sufficient cause’ been interpreted to include instances where a taxpayer was unaware of the need to meet his, her, or its obligations.”

### III. CONCLUSION

The court will not waive the penalty imposed by Defendant pursuant to ORS 308.296 as a result of Plaintiff’s failure to file personal property tax returns in 2001, 2002, 2003, or 2004,  
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because Plaintiff has not established that it was prevented from filing those returns by reason of good and sufficient cause, which is the statutory requirement for waiver of the penalty by the court under ORS 305.422. Now, therefore,

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

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

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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 December 5, 2005. The Court filed and entered this document December 5, 2005.***