

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

OREGON CARDIOLOGY)	
DIAGNOSTICS CENTER, LLC,)	
)	
Plaintiff,)	TC-MD 050773C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff has requested waiver of all or a portion of the penalty imposed by Defendant for failure to file a return reporting its taxable personal property to the county for tax years 2003-04 and 2004-05. The value was added to the assessment and tax rolls as omitted property pursuant to ORS 311.216¹ through ORS 311.229, and the penalties were imposed pursuant to ORS 308.296.

I. STATEMENT OF FACTS

The property at issue, identified in Defendant's records as Account 5595584, is used in connection with Plaintiff's business, which commenced operation in or about November 2002. Plaintiff did not file personal property tax returns with the assessor's office in either 2003 or 2004. Plaintiff hired a new finance manager in early 2005, and that individual promptly reported the values to the county on February 28, 2005. Plaintiff does not know why the previous finance manager failed to file the required returns.

///

///

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

II. ANALYSIS

Generally, all real and tangible personal property in Oregon is subject to assessment and taxation. ORS 307.030. A common exception, not applicable here, is personal property held for personal use and enjoyment. ORS 307.190. ORS 308.290(1)(a) requires a business owning taxable personal property to file a personal 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 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. ORS 308.296(4). Defendant imposed a 50 percent penalty. Plaintiff would like that penalty canceled, or at least reduced.

Typically, an appeal of the penalty is heard by the county board of property tax appeals pursuant to ORS 308.296(6), ORS 309.026, and ORS 309.100. 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 Defendant was initially unaware of the property due to Plaintiff’s failure to file personal property returns in 2003 or 2004.

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. Although that statute does not define

///

///

“good and sufficient cause,” this court has previously ruled that the definition found in ORS 305.288 provides a “useful guide.” *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) 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 2003 or 2004. Rather, it appears that the employee responsible for such matters at the time in question simply overlooked his or her responsibility in that regard. As indicated above, “inadvertence, oversight, [or] lack of knowledge” do not constitute good and sufficient cause.

III. CONCLUSION

Plaintiff’s request for a complete or partial waiver of the penalty imposed by Defendant for failure to timely file personal property returns in 2003 or 2004 is denied because Plaintiff has not established that the reason for its failure to do so meets the statutory definition of good and sufficient cause, the standard by which the court must weigh Plaintiff’s request. Now, therefore,

///

///

///

///

///

IT IS THE DECISION OF THIS COURT that Plaintiff's request for waiver of the personal property penalty is denied.

Dated this _____ day of November 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 November 28, 2005. The Court filed and entered this document November 28, 2005.