

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

FOX LOCK & SAFE, INC.,)	
)	
Plaintiff,)	TC-MD 050829C
)	
v.)	
)	
MARION COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff seeks a reduction in the value of its taxable personal property, identified in the assessor's records as Account P120341. The Complaint indicates that tax years 2003-04 and 2004-05 are at issue; however Plaintiff's primary, if not sole, concern is the value of the property for the 2004-05 tax year.

Plaintiff was represented by Stanley Compton (Compton), a minority interest owner in the company and a certified public accountant (CPA). Scott Norris, Assistant County Counsel, represented Defendant.

I. STATEMENT OF FACTS

Compton and his daughter purchased the company in April 2003. Compton's daughter owns 96 percent of the company. The personal property tax return for the 2003-04 tax year was already filed by the seller, reporting taxable personal property valued at approximately \$42,000. Compton's daughter worked with an independent bookkeeper to prepare the return the following year (2004-05). The two based the market value of the personal property for property tax purposes on the values reported on the federal income tax return. They reported a value of approximately \$75,000. Compton apparently did not review that return, but became concerned when he saw the property tax statement that arrived in October 2004, because he felt the values

“were way too high.” Compton advised his daughter to talk to the bookkeeper to determine the reason the value (and taxes) were so high, and to withhold payment of the taxes until the problem could be sorted out. Compton, a CPA, became busy with the preparation of his clients’ 2005 income tax returns and a divorce from his spouse. It is unclear what, if anything, Compton’s daughter did about the property tax problem. However, Compton testified that the taxes were never paid and the concern over the excessive value of the property was not addressed. Compton prepared the return for the 2005-06 tax year and, after speaking with employees who had been with the company for many years, determined that the correct market value was in the \$40,000 range. A value to that effect was reported by Plaintiff and accepted by Defendant.

Plaintiff received a delinquent tax notice from the county for the 2004-05 taxes, dated May 25, 2005, and Compton redirected his attention to the matter. After speaking with someone in the assessor’s office about the possibility of filing an amended personal property tax return, Compton was informed that he could file an appeal with the Magistrate Division of the Tax Court. This appeal followed.

II. ANALYSIS

A taxpayer dissatisfied with the real market or assessed value assigned to its property can appeal to the county board of property tax appeals (board) as provided in ORS 309.100.¹ The petition to the board must be filed after the tax statement is mailed in the fall and before December 31 of the current tax year. ORS 309.100(2).

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

The legislature recognized that situations may exist which prevent a taxpayer from timely appealing to the board. As a result, the legislature granted the court authority to review untimely appeals when the taxpayer establishes “good and sufficient cause” for not timely pursuing its statutory right of appeal. ORS 305.288(3).²

ORS 305.288(3) states:

“The tax court may order a change or correction * * * to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the * * * taxpayer has no statutory right of appeal remaining and the tax court determines that *good and sufficient cause exists for the failure by the * * * taxpayer to pursue the statutory right of appeal.*”

(Emphasis added.)

The statute defines good and sufficient cause as follows:

“‘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.”

ORS 305.288(5)(b) (emphasis added).

Plaintiff’s situation clearly falls outside of the definition of “good and sufficient cause” set forth above. Compton became busy with the normal affairs of life and, for reasons unclear to the court, his daughter, the majority owner of the business, failed to follow through. A simple telephone call to the assessor’s office would have revealed that the value on the tax statement matched the value reported by Plaintiff on the return. Had the person making the call (either

² The court may also review untimely appeals in residential cases where the taxpayer alleges a value error of at least 20 percent. ORS 305.288(1). The property at issue is not residential and, therefore, the 20 percent error provision does not apply.

Compton or his daughter) expressed concern over the value or inquired about submitting an amended return, they would no doubt have been informed that an appeal could be filed with the board before the December 31, 2004, deadline. Compton was informed of the appeal process by one of Defendant's employees when he called in 2005 to ask about the possibility of filing an amended return. At that point, however, it was too late to petition the board; Plaintiff's only option was to appeal to the Tax Court. As explained above, the court does have the authority to consider the appeal, but it cannot reach the value issue unless Plaintiff first demonstrates good and sufficient cause for failing to petition the board. Because good and sufficient cause is lacking, the appeal cannot go forward.

By its Complaint, Plaintiff is also appealing tax year 2003-04. There was little testimony concerning the 2003-04 tax year. Compton testified that his daughter received the tax statement and simply paid the bill. However, Compton also testified that he really has no problem with the values reported by the seller for that year. Additionally, Compton began the hearing by stating that he was unfamiliar with the appeal process and asked the court to provide an overview. The court obliged. Thus, assuming Plaintiff is appealing the value for the 2003-04 tax year, there are no facts demonstrating good and sufficient cause, and the testimony presented suggests no appeal was filed that year because of a basic lack of knowledge of the appeal process. Lack of knowledge is specifically excluded from the definition of good and sufficient cause.³

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³ Plaintiff has the option of pursuing this matter with the Oregon Department of Revenue (department) by filing a petition and otherwise proceeding in accordance with the provisions of ORS 306.115 and the administrative rules promulgated thereunder. There are no costs associated with petitioning the department and the necessary form is available on the department's web site. The Court offers no opinion as to the likely outcome of such a petition.

III. CONCLUSION

Plaintiff's appeal was reviewed under the provisions of ORS 305.288(3) and (5) to determine if there was good and sufficient cause for Plaintiff's failure to petition the board in 2003 or 2004 before the applicable December 31 deadlines. For the reasons set forth above, the court concludes that good and sufficient cause is lacking. Now, therefore,

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

Dated this _____ day of January 2006.

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 January 18, 2006. The Court filed and entered this document January 18, 2006.