

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

COASTAL IMPRESSIONS,	)	
	)	
Plaintiffs,	)	TC-MD 050857C
	)	
v.	)	
	)	
LANE COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff requests abatement of the late filing penalty imposed by Defendant pursuant to an omitted property assessment affecting tax years 2003-04 and 2004-05. Hearing on the matter was heard November 22, 2005. Plaintiff was represented by Karla D. Holloway, CPA. Defendant was represented by Tammy Iliff.

I. STATEMENT OF FACTS

Operation of the subject business commenced in 2002. Plaintiff has taxable personal property but did not file personal property tax returns until 2005. The owners are young and new to business and were unaware of the filing requirement until informed by their accountant in 2005. Plaintiff promptly filed returns for 2003, 2004, and 2005.

After receiving the returns, Defendant issued omitted property tax assessments for tax years 2003-04 and 2004-05, because that property was not previously taxed.<sup>1</sup> The assessments include a penalty equal to 50 percent of the tax each year.

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<sup>1</sup> The tax year 2005-06 return was apparently timely filed and the tax assessed in due course pursuant the statute. Accordingly, there was no omitted property assessment for that year.

## II. ANALYSIS

ORS 308.290(1)(a)<sup>2</sup> requires a business owning taxable personal property to file a property tax return with the county assessor by March 1 of each year. 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.” *Id.*

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 owed. *See* ORS 308.296(4). The county imposed a 50 percent penalty. Plaintiff would like that penalty canceled, or at least reduced.

ORS 311.223(4) provides that when a penalty is imposed under ORS 308.296 as part of an omitted property assessment, “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 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, this court has typically relied on the definition found in ORS 305.288. *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,

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

WL 614537 (Mar 29, 2004); *McConnell v. Jackson County Assessor*, TC-MD No 020105A, WL 32102592 (Sept 24, 2002); *Harold L. Center Pro Land Survey v. Jackson County Assessor*, TC-MD No 020069C, WL 1591918 (July 18, 2002).

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 2003 or 2004. On the contrary, Plaintiff was simply unaware of its statutory obligation. That is the common explanation given in these appeals. However, as indicated above, “ \* \* \* lack of knowledge” does not constitute good and sufficient cause. ORS 305.288(5)(b)(B). Moreover, in an earlier case on the same issue, this court noted that the phrase “good and sufficient cause” appears in a number of statutory provisions and “[n]ever, in the court’s review of any of these laws, 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. \* \* \* The great weight of precedent bears against the conclusion that lack of knowledge may be construed as good and sufficient cause. ” *Kintz v. Washington County Assessor*, 17 OTR 200, 202 (2002), citing *Dept. of Rev. v. Oral and Maxillofacial Surgeons*, 15 OTR 284 (2001). Further, previous cases have noted that taxpayers are presumed

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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 (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.”).

### III. CONCLUSION

Defendant imposed a 50 percent penalty against Plaintiff because Plaintiff did not file personal property tax returns in 2003 or 2004, as required by ORS 308.290(1)(a). Those returns were not timely filed because Plaintiff was unaware of its obligation to file a return each year. Lack of knowledge does not amount to good and sufficient cause, which is the statutory standard for the court can waive the penalty. *See* ORS 305.422. Now, therefore,

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

Dated this \_\_\_\_\_ day of December 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 12, 2005. The Court filed and entered this document December 12, 2005.***