

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MIKA MIYAMOTO-SHEMALI)	
dba PEARL DISTRICT DENTAL,)	
)	
Plaintiff,)	TC-MD 050976C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff has appealed from an omitted property assessment for the 2003-04 and 2004-05 tax years, seeking a reduction in the value placed on the tax rolls by Defendant for both tax years and a reduction in the late filing penalty for the 2003-04 tax year. The subject property is identified in the assessor’s records as Account P543365.

A hearing was held July 13, 2006, to address Plaintiff’s penalty waiver request. Eli Shemali appeared for Plaintiff. Defendant was represented by Richard Teague. The parties have resolved the value dispute by mutual agreement, as set forth below.

I. STATEMENT OF FACTS

Plaintiff began operating her dental business in the Pearl District of Portland in February 2003. Plaintiff leases the space but owns the equipment associated with her practice. Plaintiff previously operated at another location in Multnomah County, where she leased both the premises and the equipment. Plaintiff did not file a personal property return in 2003 for tax year 2003-04, but did file a return for tax year 2004-05. The 2004 return was filed March 16, 2004, roughly two weeks after the March 1 statutory deadline. *See* ORS 308.290(3).¹ Defendant issued

¹ References to the Oregon Revised Statutes (ORS) are to 2001 with respect to the imposition of the penalty and to 2003 with respect to the court’s determination of whether to waive or reduce the penalty. All other ORS references are to 2003.

an omitted property assessment September 8, 2005, adding the value of the property for 2003 (for all property believed to be present on the January 1, 2003, assessment date) and increasing the value for 2004 to capture property not reported by Plaintiff. The omitted property assessment included a penalty of 50 percent of the tax for the 2003-04 tax year and a 5 percent penalty for tax year 2004-05. Plaintiff challenges the 50 percent penalty for the 2003-04 tax year, requesting a reduction to 5 percent.

On the value issue, the parties agreed to a reduction for tax year 2003-04 from \$342,490 to \$122,966, and for tax year 2004-05 from \$360,910 to \$248,196.

II. ANALYSIS

ORS 308.290(1) requires persons owning taxable personal property to “make a return of the property for ad valorem tax purposes to the assessor of the county in which such property has its situs for taxation [.]” The return is due on or before March 1. *See* ORS 308.290(3).

ORS 308.296 provides for a graduated penalty for taxpayers who fail to timely file their annual personal property tax return. For the years at issue, the penalty began at five percent for returns not filed by March 1 (or April 15 if the taxpayer received an extension). *See* ORS 308.296(2). Taxpayers who filed their return after August 1, including those who failed to file their return, were subject to a statutory penalty of 50 percent. *See* ORS 308.296(4). Because Plaintiff did not file a return in 2003, Defendant imposed a 50 percent penalty.

Ordinarily, the request to waive or reduce the penalty would be heard by the county board of property tax appeals (board). *See* ORS 308.296(6) and ORS 309.026(4). However, where the penalty is imposed as part of an omitted property assessment, the Tax Court has jurisdiction to consider the request. *See* ORS 311.223(4). 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.

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, WL 1591918, at *2 (July 18, 2002); *see also David Hill Vineyards, LLC v. Washington County Assessor*, TC-MD No 050036E (Aug 19, 2005). 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.”

(Emphasis added.)

Plaintiff requests that the penalty be reduced to five percent because she did not know that she needed to file a return for the new location because it was not yet open for business. In fact, Plaintiff was storing some of the equipment at her home in Washington County until the business opened in February 2003. Nonetheless, there was taxable personal property at the situs on the assessment date of January 1, 2003. *See* ORS 308.210(1). As can be seen from the emphasized portion of the statute set out above, lack of knowledge is specifically excluded from the definition of good and sufficient cause.

III. CONCLUSION

The court concludes that Plaintiff has failed to demonstrate good and sufficient cause for failing to file a personal property return in 2003. The court is therefore unable to order a

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reduction in the penalty. The court further concludes that the real market value shall be reduced to reflect the parties' agreement. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's request for a reduction in the 50 percent penalty imposed by Defendant for the 2003-04 tax year as part of an omitted property assessment is denied; and

IT IS FURTHER DECIDED that the real market value of the subject property was \$122,966 as of January 1, 2003, and \$248,196 as of January 1, 2004.

Dated this ____ day of August 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 on August 31, 2006. The Court filed and entered this document on August 31, 2006.