

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

CUP OF JOE,	)	
	)	
Plaintiff,	)	TC-MD 060048E
	)	
v.	)	
	)	
COOS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s omitted property assessment for tax years 2001-02 through 2005-06.<sup>1</sup> A telephone trial was held March 28, 2006. Rebecca Parry-Barton (Parry) appeared on behalf of Plaintiff. Sherril Capps (Capps) and Bob Main appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff has owned the subject personal property since 2000.<sup>2</sup> In the fall of 2005, Defendant mailed Plaintiff a personal property tax return form for the 2005-06 tax year. Parry contacted Defendant and discovered that business personal property is taxable and requires an annual return. Plaintiff had not previously filed a personal property tax return with Defendant. Parry testified she was simply unaware that personal property is taxable and that business owners are required to file annual returns. She promptly filed the 2005 return Defendant sent her.

On December 5, 2005, Defendant mailed Plaintiff notice that Defendant was adding the personal property to the 2001-02 through 2005-06 tax rolls. The notice advised Plaintiff that, along with the additional tax, Defendant was assessing a penalty for Plaintiff’s failure to file

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<sup>1</sup> Plaintiff’s Complaint states that Plaintiff is appealing tax years “2001, 2002, 2003, 2004.” (Ptf’s Compl at 1.) Plaintiff’s appeal relates to the failure to file penalties assessed in the omitted property notice. That notice assessed penalties for tax years 2001-02 through 2005-06. Therefore, the court considers tax year 2005-06 as being included in this appeal.

<sup>2</sup> The personal property is identified in Defendant’s records as Account .3311.

returns each year. On February 1, 2006, Parry visited Defendant's offices to discuss the matter. Capps advised Parry that Defendant could not waive the penalty. Plaintiff filed an appeal with this court, seeking a waiver of the assessed penalty.

## II. ANALYSIS

ORS 308.290(1)(a)<sup>3</sup> requires every person or business owning taxable personal property to file a personal property tax return by March 1 of each year and provides 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 308.296(1) states that any taxpayer 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 law provides that, if a taxpayer has not filed a return by August 1 of the tax year, a penalty of 50 percent of the tax is required. *See* ORS 308.296(4).

As noted above, Defendant added the personal property to the tax rolls through the omitted property process. The Tax Court has authority to 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 at 4, WL 1591918 (July 18, 2002); *see also Kintz v. Washington Cty. Assessor*, 17 OTR-MD 200 (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

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<sup>3</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

“(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.)

Parry requests that the court waive the penalty because she was unaware business personal property is taxable. The statute defining good and sufficient cause, however, excludes “lack of knowledge” from constituting good and sufficient cause. Further, previous cases have noted that taxpayers are presumed to know the law and that ignorance of the law does not excuse their failure to act. *See Performance Processing Group Inc. v. Lane County Assessor*, TC-MD No 021214C at 4 (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.”)

Parry requests leniency for her good faith error. She notes that, had she known of the requirement, she would have promptly filed the required returns. Parry argues that she has strong credit and has never been late on a bill. The court does not question Parry’s integrity in this matter. The fact remains, however, that the court may waive the penalty only when the taxpayer demonstrates good and sufficient cause for not filing the return. Plaintiff’s ignorance of the law, no matter how well-intentioned, is not good and sufficient cause.<sup>4</sup>

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<sup>4</sup> Plaintiff observes that, had Defendant requested Plaintiff file returns earlier, Plaintiff would have timely met its obligation. ORS 308.290(2)(c), however, provides that a “failure to receive or secure the form [from the county] shall not relieve the person, managing agent or officer from the obligation of making any return required by this section.” Therefore, under the statute, failing to receive the return is no excuse for not timely filing the return.

### III. CONCLUSION

The court concludes that Plaintiff has not demonstrated good and sufficient cause for failing to file personal property tax returns for tax years 2001-02 through 2005-06. As a result, the court is unable to order the penalty reduced. Now, therefore,

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

Dated this \_\_\_\_\_ day of April 2006.

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COYREEN R. WEIDNER  
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 Coyreen R. Weidner April 6, 2006. The Court filed and entered this document April 6, 2006.***