

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SCOTT R. WALKER DMD PC)	
fka WILTBANK WALKER PC,)	
)	
Plaintiff,)	TC-MD 060560D
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appealed the real market value of personal property for tax years 2001-02, 2002-03, 2003-04 and 2004-05. In addition, Plaintiff appeals Defendant’s assessment of penalty on its failure to report leased property on a personal property tax return for tax year 2003-04. Oral argument via telephone was held on Tuesday, November 14, 2006. Ivan Jones and Gary Ham (Ham) appeared on behalf of Plaintiff. Vickie Ellinwood (Ellinwood) and Melissa Williams appeared on behalf of Defendant.

Before the conference, the parties agreed that the real market value of Plaintiff’s property identified as Account P2133656 for all tax years under appeal is as follows:¹

Tax Years	Real Market Value
2001-02	\$66,505
2002-03	\$33,283
2003-04	\$248,270
2004-05	\$216,380

I. STATEMENT OF FACTS

Plaintiff has owned and operated a business in Washington County beginning in 2001. Plaintiff filed personal property tax returns for tax years 2001, 2004, and 2005. Even though

¹ The parties also agreed that the real market value of Plaintiff’s property for tax years 2005-06 is \$200,437, and for tax year 2006-07 is \$180,245. Because those tax years were not appealed, the court has no jurisdiction.

Plaintiff owned and leased property, which it used in its business, it failed to file personal property tax returns for tax years 2002 and 2003. In tax year 2002, the leasing company, Citi Capital, filed a personal property tax return for all property leased to Plaintiff. In early 2003, Citi Capital notified Defendant that it was no longer responsible for reporting the equipment leased to Plaintiff, and requested that its account with the county be identified as inactive.

Ham testified that Citi Capital did not notify Plaintiff that it no longer planned to report the leased property on behalf of Plaintiff. Ham alleges that when Citi Capital filed the personal property tax return in 2002, it elected under ORS 308.290(1)(a) to file the return and pay the tax for that year and all subsequent years. Ham alleges that Plaintiff should not be penalized for Citi Capital's failure to file because it was "out of Plaintiff's control" when Citi Capital "failed to communicate" with Plaintiff that it had requested a "status change" to "inactive." Ham stated that he was "not sure why the leasing company terminated its filing obligation" because it was not until July 2003, that Plaintiff secured financing to purchase the leased property. Ham concludes that the lack of notice by Citi Capital to Plaintiff is sufficient to meet the statutory requirement of good and sufficient cause for Plaintiff's failure to file.

Ellinwood stated that Plaintiff's first filing of a personal property tax return occurred in 2005. At that time, the county requested Plaintiff to file for prior years, beginning with 2001. Plaintiff filed for tax years 2001 and 2004, but not tax years 2002 and 2003. After reviewing the filed returns with Plaintiff, Defendant adjusted the taxable values for each of the tax years to the amounts set forth above. However, because Plaintiff failed to file a return for tax year 2003, Defendant assessed a penalty for failure to file a return. Ellinwood explained that if Plaintiff had filed a return reporting the property it owned, and if the reported values had been adjusted to add the value of the leased property, a penalty would not have been assessed.

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II. ANALYSIS

Plaintiff began operating a business in Washington County in 2001. Because Plaintiff failed to file personal property tax returns, Defendant added Plaintiff's personal property to the tax rolls through the omitted property process. *See* ORS 311.216² (notice of intention to add omitted property). A taxpayer is entitled to appeal a penalty assessed under the omitted property statutes to this court. *See* ORS 311.223(4) ("the imposition of the penalty may be appealed to the tax court.") In 2001, the legislature granted the Tax Court the authority to waive a taxpayer's liability for all or a portion of the penalties assessed upon a showing of "good and sufficient cause." ORS 305.422. Although the statute does not include a definition for the term "good and sufficient cause," this court previously reviewed the statutory use and legal precedent of the term and determined that the definition found in ORS 305.288 is a useful guide. *See Harold L. Center Pro Land Survey v. Jackson County Assessor*, TC-MD No 020069C, WL 1591918 (July 18, 2002); *Kintz v. Washington County Assessor*, TC-MD No 021123A (Dec 27, 2002) (citing *Dept. Of Rev. v. Oral and Maxillofacial Surgeons*, 15 OTR 284 (2001)). The term is defined in ORS 305.288(5)(b) 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.”

Plaintiff requests that the court waive the penalties assessed for its failure to file a personal property tax return reporting the real market value of the leased property. Plaintiff alleges that its

² All references to the Oregon Revised Statutes (ORS) are to year 2005.

agent and lessor, Citi Capital, failed to communicate to Plaintiff that it no longer assumed responsibility for reporting the value of property leased and used by Plaintiff in its business. To Plaintiff, the failure of its agent to communicate with it is sufficient to meet the definition of good and sufficient cause.

The court disagrees with Plaintiff's conclusion that the failure of its agent to file the personal property tax return created an "extraordinary circumstance" that meets the definition of good and sufficient cause, thereby allowing the penalty to be waived. In reciting the requirements of ORS 308.290(1)(a),³ Plaintiff overlooks the statutory requirement that an election by one party to file a personal property tax return reporting leased property on behalf of a lessee does not shield the lessee from penalties imposed when a return is not filed. ORS 308.290(1)(a) states in pertinent part: "Upon the failure of either party to file a personal property tax return on or before March 1 of any year, both parties shall be jointly and severally subject to the provisions of ORS 308.296." ORS 308.296 imposes a penalty for failure to file. In this case, a personal property return was not filed and the penalty was lawfully assessed. Regardless of the understanding between the parties, an election between the parties does not change the statutory responsibility of Plaintiff. Plaintiff, the lessee, is "subject to the provisions of ORS 308.296." ORS 308.290 (1)(a). Plaintiff's failure to ensure that its agent made the required filing does not meet the statutory requirement of good and sufficient cause because lack of knowledge is expressly excluded from the definition of an extraordinary circumstance.

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³ ORS 308.290(1)(a) provides: "Every person and the managing agent or officer of any firm, corporation or association owning, or having in possession or under control taxable personal property shall 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. As between a mortgagor and mortgagee or a lessor and lessee, however, the actual owner and the person in possession may agree between them as to who shall make the return and pay the tax, and the election shall be followed by the person in possession of the roll who has notice of the election."

III. CONCLUSION

The court concludes that Plaintiff had a statutory obligation to file a 2003 personal property tax return and failed to do so. The court is sympathetic to the circumstances that placed Plaintiff in this situation. However, Plaintiff's failure to file the required personal property tax return cannot be excused for good and sufficient cause because lack of knowledge is not an extraordinary circumstance. Now, therefore,

IT IS THE DECISION OF THIS COURT that the real market value of Plaintiff's property identified as Account P2133656 is as follows:

<u>Tax Year</u>	<u>Real Market Value</u>
2001-02	\$66,505
2002-03	\$33,283
2003-04	\$248,270
2004-05	\$216,380; and

IT IS FURTHER DECIDED that Plaintiff's request for waiver of the penalty assessed for failure to file a property tax return reporting leased property for tax year 2003-04 is denied.

Dated this _____ day of December 2006.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on December 11, 2006. The Court filed and entered this document on December 11, 2006.