

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

TILLAMOOK SPORTING GOODS, INC.,)	
)	
Plaintiff,)	TC-MD 060603B
)	
v.)	
)	
TILLAMOOK COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals certain penalties assessed for its failure to file personal property tax returns for the tax years 2003-2004 through 2005-06. Those penalties total \$451.65.

A case management conference was convened on November 20, 2006. David V. Harmsen, Licensed Tax Consultant, represented Plaintiff. Gil Smith represented Defendant. The record was left open for the parties to submit additional arguments. Defendant's comments were filed January 5, 2007; Plaintiff did not submit supplemental materials.

I. STATEMENT OF FACTS

Plaintiff has operated a retail business for several years. Certain items of commercial personal property are used in that business; they are properly assessable by Defendant.

During an audit examination, Defendant discovered that Plaintiff was operating within Tillamook County. Defendant then notified Plaintiff that it needed to file personal property tax returns. Upon receiving an asset list, Defendant added the personal property as omitted property to the tax rolls for tax years 2003-2004, 2004-05 and 2005-06 as Account P2764. (Def's ltr, June 9, 2006.) In addition, Defendant assessed penalties for Plaintiff's failure to file the earlier returns.

///

///

Plaintiff acknowledges it owes taxes for the years under appeal. Plaintiff requests that the court waive or reduce the penalties. The Plaintiff's owners contend the penalties were:

“* * * assessed due to the oversight on the part of the County of Tillamook. We believe the County of Tillamook did not do their part by not sending to us the required proper forms for the prior years.”

(Ptf's Compl at 4.)

II. ANALYSIS

It is clear that Plaintiff did not act in bad faith, with malice, or attempt to avoid its tax liability. This case is about the lack of pertinent information.

ORS 308.290(1)(a)¹ 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(4) provides that any taxpayer responsible for filing a personal property tax return who has not done so “shall be subject to a penalty * * * .”

In such cases involving an omitted property process, this 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).

///

///

///

¹ All references to the Oregon Revised Statutes (ORS) are to 2005.

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

“(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.)

The statute defining good and sufficient cause clearly excludes “lack of knowledge” from constituting good and sufficient cause. Similar cases in this court have held 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.”) The court has consistently held that a taxpayer’s lack of knowledge does not permit a waiver of the personal property tax penalty. *See, e.g., Yip v. Clackamas County Assessor*, TC-MD No 060641C (Oct 31, 2006) (finding the plaintiff’s “lack of knowledge of the filing requirement brings him outside the definition of good and sufficient cause, and precludes him from relief under ORS 305.422”); *Cup of Joe v. Coos County Assessor*, TC-MD No 060048E, WL 995269 (Apr 6, 2006) (denying request for waiver of a personal property penalty because the taxpayer was unaware business personal property is taxable); *Fotouhi v. Washington County Assessor*, TC-MD No 030974C, WL 226272 (Jan 27, 2004) (denying request for waiver of personal property penalty under ORS 305.422 based on lack of knowledge).

///

///

III. CONCLUSION

Plaintiff was unaware of the filing requirements and that returns were not filed; that does not excuse the failure to submit timely returns. The penalties were properly computed and imposed. Now, therefore,

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

Dated this _____ day of February 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on February 21, 2007. The Court filed and entered this document on February 21, 2007.