

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

X-RAY INDUSTRIES, INC.,	)	
	)	
Plaintiff,	)	TC-MD 060656E
	)	
v.	)	
	)	
CLACKAMAS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals the penalty assessed for its failure to file personal property tax returns for the 2002-03, 2003-04, 2004-05, and 2005-06 tax years. A telephone conference in the matter was held November 1, 2006. Kurt J. Andrews (Andrews), Chief Financial Officer, appeared on behalf of Plaintiff. Joe Honl appeared on behalf of Defendant. At the conclusion of the conference, the parties submitted the case to the court for decision.

I. STATEMENT OF FACTS

Plaintiff operates businesses in 14 locations in 11 states. It began its operations in Clackamas County in 2001. During the relevant years, Plaintiff engaged a third party to manage its tax matters. Apparently, neither Plaintiff nor its tax advisor were aware of the need to file personal property tax returns in the State of Oregon. In December 2005, Defendant became aware of the business and notified Plaintiff that it needed to file a personal property tax return. Plaintiff filed a return for the 2005-06 tax year. The return noted that the business had been operating since 2001. As a result, Defendant added the personal property as omitted property to the 2002-03, 2003-04, 2004-05, and 2005-06 tax rolls.<sup>1</sup> In addition, Defendant assessed penalties for Plaintiff's failure to file the returns.

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<sup>1</sup> The property is identified in Defendant's records as Account P2247474.

Plaintiff acknowledges it owes tax for the contested years. Plaintiff requests, however, that the court waive or reduce the penalty based on Plaintiff's failure to be aware of the filing requirements.

## II. ANALYSIS

ORS 308.290(1)(a)<sup>2</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(4) provides that any taxpayer responsible for filing a personal property tax return who or which has not done so "shall be subject to a penalty equal to 50 percent of the tax attributable to the taxable personal property of the taxpayer."

As noted above, Defendant added the 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>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2005.

“(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 court waive or reduce the penalty because both it and its tax preparer were unaware businesses must file personal property tax returns in Oregon. Andrews explained that Plaintiff is growing incredibly fast and that the filings simply slipped through the cracks. He testified that Plaintiff has made internal changes to ensure the timely filing of future personal property tax returns.

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.”) 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 requirements 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 2006) (denying request for waiver of a personal property penalty because the taxpayer was unaware business personal property is taxable); and *Fotouhi v. Washington County Assessor*, TC-MD No 030974C, WL 226272 (Jan 2004) (denying request for waiver of personal property penalty under ORS 305.422 based on lack of knowledge).

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### III. CONCLUSION

The court concludes that Plaintiff's lack of knowledge regarding the filing requirements does not constitute good and sufficient cause for failing to file the returns. As a result, the court finds Plaintiff's penalty waiver request must be denied. Now, therefore,

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

Dated this \_\_\_\_\_ day of November 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 on November 29, 2006. The Court filed and entered this document on November 29, 2006.***