

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CAMROCK EXCAVATION, INC.,)	
)	
Plaintiff,)	TC-MD 070464D
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the penalty assessed for its failure to file personal property tax returns for the 2003-04, 2004-05, and 2005-06 tax years. A telephone conference was held on Wednesday, June 6, 2007. Jennifer Pellecer, Vice President, Camrock Excavation, Inc., and Scott Pellecer, President, Camrock Excavation, Inc., appeared on behalf of Plaintiff. Richard Teague appeared on behalf of Defendant. At the conclusion of the telephone conference, Plaintiffs requested that the court issue a decision.

I. STATEMENT OF FACTS

Scott Pellecer (Pellecer) stated that he is the president of Camrock Excavation, Inc., which has operated at the same location in Multnomah County for five years. Jennifer Pellecer explained that “[o]ver the course of our start up and our current operations of 6 years we have worked with a few different tax professionals and this personal property tax filing issue had never arisen. We didn’t know that it was a tax that had to be filed, and our accountants did not ask us if we needed them to file the return[.]” (Ptf’s Ltr, Apr 12, 2007.) Plaintiff became aware that personal property tax returns must be filed when a representative of the county came to Plaintiff’s business location. On December 22, 2006, Defendant added the personal property identified as Account P583728 to the tax roll as omitted property for tax years 2003-04, 2004-05,

and 2005-06. In addition, Defendant assessed penalties for Plaintiff's failure to file the required returns.

Plaintiff does not dispute the real market value of the personal property nor the requirement to pay the tax. Plaintiff requests that the court waive or reduce the penalty because Plaintiff relied on tax professionals who failed to advise it of the filing requirement, and Plaintiff was unaware that it was required to file personal property tax returns. Pellecer emphasized that like the county assessor he has a small staff; he diligently files and pays other taxes; he was not "hiding" from the county; and, he relied on professionals to "tell him" what was required. In addition, Pellecer stated that "more should be done to inform small businesses" of the reporting requirements.

II. ANALYSIS

Every person or business that owns "taxable personal property" is required to file a personal property tax return by "March 1" of each year. ORS 308.290(1)(a).¹ If a required return is not filed, any taxpayer responsible for making the filing who 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." ORS 308.296(4).

In the case before the court, Plaintiff was notified that its property was added to the tax roll. 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 (emphasis added). A "showing of

///

///

///

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

good and sufficient cause” requires that an extraordinary circumstance occurred that was “beyond the control of the taxpayer.” ORS 305.288(5)(b).²

“Good and sufficient cause” specifically excludes “lack of knowledge.” 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 that plaintiff’s “[L]ack 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.”); *see also Cup of Joe v. Coos County Assessor*, TC-MD No 060048E (Apr 6, 2006) (holding that the request for waiver of a personal property tax penalty was denied because the taxpayer was unaware that business personal property is taxable). Further, lack of knowledge of a taxpayer’s agent does permit the court to waive penalties when a taxpayer relies on a professional who, in turn, does not know the law, or who knew the law, but failed to notify a taxpayer of the filing requirement.

III. CONCLUSION

After reviewing the testimony, the court concludes that Plaintiff’s lack of knowledge, and the lack of knowledge of its professional advisors do not constitute good and sufficient cause for

///

² The term “good and sufficient cause” is not defined in ORS 305.422. The court in prior Decisions concluded that the definition of good and sufficient cause set forth in ORS 305.288(5)(b) is a useful guide. ORS 305.288(5)(b) provides that:

“(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, or hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.”

failing to file the required personal property tax returns. Plaintiff's request to waive or reduce the amount of the assessed penalties is denied. Now, therefore,

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

Dated this _____ day of June 2007.

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 June 18, 2007. The Court filed and entered this document on June 18, 2007.