

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION

JOHN L. SABATA,) Case No. 96P-2
)
Appellant,)
)
vs.) FINDINGS AND ORDER
)
)
BUTLER COUNTY BOARD OF)
EQUALIZATION,)
)
Appellee.)

Filed January 21, 1997

Appearances:

For the Appellant: John L. Sabata
RR 2, Box 153A
David City, NE 68632

For the Appellee: C. Jo Petersen, #17973
Deputy Butler County Attorney
451 North 5th
David City, NE 68632

Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman:

SUMMARY OF DECISION

The Commission affirms the decision of the Butler County Board of Equalization. That Board declined to waive the penalty for a late filing of a personal property return, and instead reduced the statutory 50% penalty to a penalty of 10%.

NATURE OF THE CASE

John L. Sabata ("Taxpayer") filed this appeal challenging a decision of the Butler County Board of Equalization ("County"). The appeal arose from a decision of the Butler County Assessor to assess a penalty in the amount of fifty percent (50%) of the tax due on the personal property when Taxpayer filed his personal property return after the statutory deadline. Taxpayer filed a protest with County, challenging the decision of the Assessor, and requested that the penalty be waived. County declined to waive the penalty, however it did reduce the penalty from fifty percent (50%) to ten percent (10%). Taxpayer appeals from this decision.

DUTIES OF THE PARTIES

Taxpayer has a duty to file a personal property return with the office of the County Assessor. Neb. Rev. Stat. §77-1201 (1994 Cum. Supp.) That return must be filed on or before May 1. Neb. Rev. Stat. §77-1229 (1994 Cum. Supp.) The Butler County Assessor, pursuant to Neb. Rev. Stat. §77-1233.04(2) (1995 Supp.) is required to add a penalty of fifty percent of the tax due. Neb. Rev. Stat. §77-1233.04 (1995 Supp.) allows Taxpayer to appeal the decision of the county assessor regarding the penalty imposed to the county board of equalization. The county assessor may, with the approval of the county board of equalization, waive all or part of the penalty. Neb. Rev. Stat. §77-1233.04(4) (1995 Supp.) Finally, the decision of the county board of equalization may be appealed to the Commission. Neb. Rev. Stat. §77-1233.04(6), 1995 Supp.

EVIDENCE OFFERED

Taxpayer failed to appear at the hearing on the appeal. County appeared by and through counsel. County offered Exhibit 1, a certified copy of the minutes of the hearing on the protest held by County, and Exhibit 2, an Affidavit of the Butler County Assessor. These exhibits were received into the record without objection.

FINDINGS OF FACT

From the pleadings and the evidence the Commission finds and determines as follows:

- I. Taxpayer owns certain personal property in Butler County which is subject is taxation.
- II. Taxpayer failed to timely file a personal property return for 1996.
- III. The County Assessor of Butler County, as required by law, assessed a penalty in the amount of fifty percent (50%) of the assessed value of the personal property.
- IV. Taxpayer filed a protest with County, challenging the 50% penalty.
- V. At the hearing held by County regarding the protest, the Butler County Assessor recommended that the penalty be reduced from 50% to 20%.
- VI. County instead decided that all personal property penalties should be reduced from 50% to 10% (Exhibit 1, page 3).

JURISDICTION

The Tax Equalization and Review Commission has jurisdiction of this case pursuant to Neb. Rev. Stat. §77-1233.04(6) (1995 Supp.).

STANDARD OF REVIEW

The Commission must, as required by Neb. Rev. Stat. §77-1511 (1995 Supp.) "affirm the action taken by the board unless evidence is adduced establishing that the action of the board was unreasonable or arbitrary. . . ."

CONCLUSIONS OF LAW

Since Taxpayer failed to appear, the only evidence before the Commission is that which was submitted by County. That evidence shows that the Assessor recommended a 50% penalty. That penalty is mandated by Neb. Rev. Stat. §77-1233.04(2) (1995 Supp.). The statutes do however, provide that "The county assessor may with the approval of the county board of equalization waive all or part of the penalty assessed and any interest thereon . . ." Neb. Rev. Stat. §77-1233.04(4) (1995 Supp.). The county assessor recommended a reduction to 20%. However,

County did not follow that recommendation. It instead approved a reduction to 10%. The record shows that the penalty for any person filing a personal property schedule after the filing deadline had the mandated 50% penalty reduced to 10%. (Exhibit 1, Page 3.) Taxpayer adduced no evidence establishing that such treatment was either arbitrary or unreasonable.

The Commission must, therefore, and hereby does conclude as matter of law that the decision of the Butler County Board of Equalization which reduced the penalty from fifty percent (50%) to ten percent (10%) of the value of John L. Sabata's personal property was neither arbitrary nor unreasonable, and must be affirmed.

ORDER

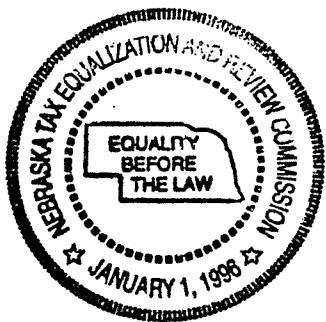
IT IS, THEREFORE, ORDERED as follows:

- I. That the decision of the Butler County Board of Equalization is affirmed.
- II. That this decision, if no appeal is filed, shall be certified within thirty days to the Appellant personally, the Appellee through counsel, and the Butler County Treasurer, and the Butler County Assessor.
- III. That each party is to bear its own costs in this matter

IT IS SO ORDERED.

January 21, 1997
Date

Mark P. Reynolds
Mark P. Reynolds, Chairman



Seal

Janet L. Edwards
Janet L. Edwards, Commissioner

Robert L. Hans
Robert L. Hans, Commissioner