

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

CLIFFORD ASSOCIATES,)	
)	
Plaintiff,)	No. 000163B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
)	
Defendant.)	DECISION

Plaintiff appeals defendant Department of Revenue's (department) order denying plaintiff's request for hardship relief due to plaintiff's failure to timely file an application for proration of property taxes. The department found that plaintiff's circumstances did not give rise to good and sufficient cause to grant hardship relief. This matter is now before the court on the department's Motion for Summary Judgment.

STATEMENT OF FACTS

The subject property is an eighty-nine unit complex located in Portland, which housed retail and residential tenants until a fire occurred on April 19, 1998. Following the fire, it was necessary to relocate plaintiff's tenants, many of whom were low-income and mentally disabled. The damaged structure, which is set to be leveled, was cleaned up in order to meet safety standards. The assessor valued the property at \$1,128,150 on July 1, 1998.

On September 25, 1998, plaintiff applied to the Multnomah County Assessor for proration of property taxes under ORS 308.425.¹ The county denied the application for

¹All references to Oregon Revised Statutes are to 1997.
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untimeliness because the statute of limitations had run on June 30, 1998, the end of the tax year.²

Plaintiff then appealed to the department, which has the authority under ORS 307.475 to recommend relief from a county's assessed value for hardship due to failure to make a timely application. Plaintiff was represented by legal counsel and Martin Shore, plaintiff's general partner. Mr. Shore manages one hundred forty-three properties nationwide for plaintiff and is the one responsible for filing plaintiff's tax matters. Mr. Shore presented evidence to the department that he was unable to file the application within the statutory period due to the fact that he was handling three properties struck by fire during this time, he had a limited Oregon staff, that the Oregon property necessitated a great deal of maintenance energy, and/ or plaintiff was not informed of the applicable statute of limitations upon contacting the assessor.

The department gathered information from plaintiff and conducted a telephone hearing with both parties, concluding that plaintiff had failed to show circumstances amounting to good and sufficient cause for failing to file by the statutory deadline.

COURT'S ANALYSIS

Plaintiff claims that the department abused its discretion in refusing to consider its appeal on the merits and prays that the court set aside defendant's order for its own.³ Under ORS 307.475, the department has the discretion to assess whether good

²See ORS 308.425(2).

³Plaintiff asks the court to declare that the real market value of the subject property as of July 1, 1998, was \$715,700, rather than \$1,128,150, as assigned by the assessor and maintained by the department.

and sufficient cause⁴ exists for failure to timely file and whether hardship results from that failure. See *Pratum Co-Op Whse. v. Dept. of Rev.*, 6 OTR 130, 134 (1975).

It is well established that the court's scope of review of the department's discretionary judgment in hardship cases is limited to whether the department acted capriciously or arrived at a clearly wrong conclusion. See *Hewlett-Packard Co. v. Dept. of Rev.*, 13 OTR 247, 250 (1995); *Nat'l Metallurgical Corp. v. Dept. of Rev.*, 7 OTR 142, 145-46 (1977); *Rogue River Pack. v. Dept. of Rev.*, 6 OTR 293, 297-98 (1976); *Pratum*, 6 OTR at 134. "An abuse of discretion is found where [the department] does not act upon the facts presented to it or fails to obtain the factual data necessary for a proper result." *Rogue River*, 6 OTR at 301.

The court is likely to find clear wrong in cases of fraud, discrimination, or other wrongful acts. See *Pratum*, 6 OTR at 136. For example, where the assessor had affirmatively misled the plaintiff into believing qualification for an exemption continued and then did not correct the situation until after the time had expired for plaintiff to apply for hardship relief, the court remanded the case to the department. See *Southern Oregon Drydock, Inc. v. Dept. of Rev.*, 12 OTR 344, 347 (1992) (concluding that it would be inequitable to deny plaintiff an opportunity to seek hardship relief under this situation).

However, where it was asserted that plaintiff's plant manager had great demands on his time because of imminent completion of a construction project to the effect that the manager did not even have the ability to file his own personal taxes, the court found that the department did not abuse its discretion in denying relief for lack of good and sufficient cause. See generally *Nat'l Metallurgical Corp.*, 7 OTR at 145-46.

⁴See OAR 150-307.475(2).
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Plaintiff's failure to timely file was caused either because Mr. Shore was not aware of the statutory deadline or because he was buried in other work and did not attend to it as a matter of priority until almost three months after the deadline passed. (See Ptf's Complaint, Ptf's Response to Def's Motion for Summary Judgment.) To find that good and sufficient cause includes oversight, ignorance of the law, and/or inadvertence would be to allow practically all cases to overpower the deadline set by the legislature. *Pratum*, 6 OTR at 135.

The department's conclusion took into account the reasons plaintiff gave for missing the filing deadline and concluded that plaintiff's circumstances did not rise to the level of good and sufficient cause as required by ORS 307.475. Upon review of the record, the court concludes that the department's "exercise of discretion was soundly based and the court has no power to alter it". *Nat'l Metallurgical Corp.*, 7 OTR at 151.

CONCLUSION

IT IS THE DECISION OF THE COURT that defendant Department of Revenue's Motion for Summary Judgment is granted. Defendant's request for costs is denied.

Dated this _____ day of September, 2000.

JEFF MATTSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 JEFF MATTSON ON
DECISION**

SEPTEMBER 19, 2000. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 19, 2000.