

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

ROAD & DRIVEWAY CO., INC.,	)	
	)	
Plaintiff,	)	No. 000326D (Control)
	)	
v.	)	
	)	
LINCOLN COUNTY ASSESSOR,	)	
	)	
Defendant.	)	
	)	
<hr/>	)	
WIENERT EQUIPMENT RENTAL INC.,	)	
	)	
Plaintiff,	)	No. 000327C
	)	
v.	)	
	)	
LINCOLN COUNTY ASSESSOR,	)	
	)	
Defendant.	)	
	)	
<hr/>	)	
CEDAR CREEK QUARRIES INC.,	)	
	)	
Plaintiff,	)	No. 000328B
	)	
v.	)	
	)	
LINCOLN COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs have appealed the valuation of certain personal property for the 1999-00 tax year, including licensed motor vehicles. The issue raised in the Complaint is whether the personal property is exempt from taxation under ORS 803.585(1).<sup>1</sup> Defendant views the matter as a question of overall valuation and moved for dismissal because

---

<sup>1</sup> References to the Oregon Revised Statutes (ORS) are to the 1999 version of the laws.  
DECISION

plaintiffs did not file a petition for reduction with a county board of property tax appeals (board). The motion was addressed by the court during a hearing held June 7, 2000. Plaintiffs were represented by Mr. Ronald R. Ulrich, a licensed appraiser. Defendant appeared through Mr. Robert R. Deming, an appraiser with the Lincoln County Assessor's office.

### **STATEMENT OF FACTS**

Plaintiffs reported the value of the personal property used for business purposes on forms provided by the assessor's office. Plaintiffs apparently included certain licensed motor vehicles on the returns for the three entities. Plaintiffs were unaware that these items are exempt from property taxation in Oregon. Plaintiffs did not petition the board for a reduction in value. The error was discovered by their representative, who filed the appeals.

Defendant reviewed the returns and concluded that the total value was fairly reflective of market value, but believes that certain property was not reported and other property undervalued. Thus, simply striking the vehicles would result in an under-valuation of the accounts.

### **COURT'S ANALYSIS**

ORS 307.190 establishes a general rule that items of tangible personal property held by the owner for the production of income are subject to taxation (unlike personal property held by the owner for his personal use). ORS 803.585(1) provides that "vehicles" shall be subject to registration and license fees, imposed by the State of Oregon "in lieu of all other taxes and licenses."<sup>2</sup> The parties agree that certain of the assets

---

<sup>2</sup>ORS 803.585 provides:

reported by plaintiffs and taxed by the county qualify for exemption. However, under ORS 308.242, the assessor loses control of the roll each year in September and corrections thereafter are generally limited to judicial decree.<sup>3</sup> Moreover, in reviewing this case, the court must first determine whether it has authority to consider the appeal before addressing the underlying valuation issue. *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998).

Plaintiffs' appeals seek a reduction in property value. The proper procedure was to petition the board for a reduction and then appeal that order to the tax court if the outcome were unfavorable. ORS 309.100 and 305.275(3). A property owner who misses the board appeal process may, in certain circumstances, obtain relief from the tax court in spite of the procedural irregularity. With regard to personal property, ORS 305.288 authorizes the court to reduce the valuation of a separate assessment of property if the property owner can establish good and sufficient cause for not petitioning the board. The term "good and sufficient cause" is defined as " \* \* \* an extraordinary circumstance that is beyond the control of the taxpayer \* \* \* and that causes the taxpayer \* \* \* to fail to pursue the statutory right of appeal []" ORS 305.288(5)(b)(A). Inadvertence, oversight, and lack of knowledge are specifically excluded from the definition of "good and sufficient cause".

---

"(1) Except as otherwise provided in this section, ORS 801.041, 801.042 or 820.500, the registration fees under the vehicle code are in lieu of all other taxes and licenses, except municipal license fees under regulatory ordinances, to which such vehicles or the owners thereof may be subject. Fixed load vehicles are not exempt from ad valorem taxation by this section."

Some of the equipment involved may fall into the category of "fixed load vehicles" which are subject to property taxes as opposed to licensing and registration fees. ORS 801.285.

<sup>3</sup> There are instances in which the assessor can correct the roll after the September 25 deadline. If a taxpayer requests a value change before December 31 and, if no board petition was filed, a reduction may be granted. ORS 308.242(2). Certain clerical errors may be corrected under ORS 311.205 for up to five prior tax years. Finally, the Department of Revenue may order a reduction in value under ORS 306.115 for the current and two prior tax years if it determines a correction is warranted "to conform the roll to applicable law." ORS 306.115(3). This latter option may prove beneficial to plaintiffs in this case.

ORS 305.288(5)(b)(B).

Mr. Ulrich indicated that plaintiffs were simply unaware of the problem and overlooked it focusing instead on their business endeavor. This is clearly not a situation that falls within the statutory exception.

To the extent that these appeals involve an exemption issue, plaintiffs had 90 days from the date they became aware of the act they were appealing to file a direct appeal to the tax court. ORS 305.280(1). The “act” was the taxation of allegedly exempt property. The tax statement served as the notice. Plaintiffs received that document in October 1999. The appeal was not filed until March 22, 2000, two months after the deadline. Having missed the deadline, the court reviews the matter under the good and sufficient cause provision found in ORS 305.288, with a result as set forth above. Lack of knowledge is not a ground to overlook the untimely appeal.

### **CONCLUSION**

Plaintiffs seek to have a portion of their property assessments stricken from the tax rolls. The court is unable to grant plaintiffs’ request because of the procedural irregularities discussed above and plaintiffs’ failure, ultimately, to establish good and sufficient cause for not petitioning the board or timely appealing to the court from the tax statement.

///

///

///

IT IS THE DECISION OF THE COURT that defendant’s motion is granted.

Plaintiffs’ Complaints are dismissed. Plaintiffs are encouraged to pursue relief as described in footnote 3.

DECISION

Dated this \_\_\_\_\_ day of August, 2000.

---

DAN ROBINSON  
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 DAN ROBINSON ON AUGUST 10, 2000. THE COURT FILED THIS DOCUMENT ON AUGUST 10, 2000.**