

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

ZAIYI CHEN,)
)
 Plaintiff,) No. 000445C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff has appealed the value of certain real property for the 1998-99 and 1999-00 tax years. Defendant moved to dismiss a portion of plaintiff's Complaint. A hearing was held June 13, 2000, to address defendant's motion. Sworn testimony was received. Plaintiff appeared *pro se*. Defendant appeared through Ms. Linda U'Ren, an appraiser with the county assessor's office.

STATEMENT OF FACTS

The property at issue is plaintiff's personal residence. It is identified in the Multnomah County Assessor's records as Account No. R115960. The home was built in 1998. Plaintiff acquired the property on June 12, 1998, for \$215,000. The real market value on the assessment and tax rolls for the 1998-99 tax year (July 1, 1998 through June 30, 1999) is \$238,400. The assessed value is \$179,430. Plaintiff disagreed with these values as reflected on her tax statement but did not file an appeal because she was unfamiliar with the appeal process. Also, plaintiff was out of town for one week in early November 1998.

The real market value for the following tax year (1999-00) was set by the

county assessor's office at \$250,300, an increase of \$11,900. The assessed value was \$184,810, which represented a three percent increase over the previous year's assessed value. By this time plaintiff had become familiar with the appeal process and timely filed a petition with the county board of property tax appeals (board). The board reduced the real market value to \$220,000, but sustained the assessed value.

The board's hearing was held on March 16, 2000. When plaintiff returned to the board's office that afternoon to pick up the board's decision, she spoke with county employees working with the board and discovered that she could file an appeal with the Magistrate Division of the Oregon Tax Court, and could include previous tax years. Plaintiff filed a Complaint with the tax court seeking reductions in value for both the 1998-99 and 1999-00 tax years. The relief requested for the 1999-00 tax year is for a reduction in assessed value only and is based on plaintiff's value reduction request for the previous tax year. As to that year (1998-99), plaintiff asks the court to reduce the real market value, the "exception" value, and the assessed value. Plaintiff then proposes a three percent increase in assessed value for the 1999-00 tax year.

COURT'S ANALYSIS

Plaintiff has appealed two tax years, but the relief for 1999-00 hinges on proposed reductions to the 1998-99 values. Defendant moved to dismiss the 1998-99 tax year and, for the reasons set out below, the court is granting that motion. This decision was announced during the June 13 hearing and plaintiff was particularly upset about the unfairness of Oregon's property tax system and the lack of uniformity in terms of taxes. The court will begin its analysis with an overview of Oregon's property tax system.

In May 1997, Oregon voters passed by a referendum measure which, as

modified and renumbered by the state legislature, became known as Measure 50. This measure substantially modified the property tax system in Oregon. Prior to Measure 50, a property was taxed (assessed) at its real market value. Values rose sharply because of a strong economy and taxes rose commensurate with those increases. In response, the voters chose to modify the definition of assessed value and limit annual growth of that value. Part of that change was the creation of a "maximum assessed value". For the 1997-98 tax year, which was the implementation year for Measure 50, the maximum assessed value was calculated as 90 percent of the property's 1995-96 real market value on the tax rolls. Or Const, Art XI, § 11(1)(a). Moreover, Measure 50 requires that a property be taxed at the lesser of its maximum assessed value or its real market value. Or Const, Art XI, § 11(1)(f); ORS 308.146(2). It further provides that, for each successive year, the maximum assessed value will increase no more than three percent a year. Or Const, Art XI, § 11(1)(b); see *also* ORS 308.146(1). Typically maximum assessed value becomes the assessed value because it is less than the actual market value.

The valuation process is complicated somewhat when new property is involved, as in this case. To receive the benefits of Measure 50 (the two year rollback with the 10 percent discount), new property is valued at market and then adjusted downward. The market value of new property is referred to by the local taxing authorities as "exception" value. The exception value, once determined, is multiplied by "the average maximum assessed value over the average real market value for the assessment year", which is referred to by the taxing authorities as the change property ratio. ORS 308.153(1)(b). The product of that calculation is then added to 103 percent of the maximum assessed value for the previous tax year. ORS 308.153(1).

In this case, the county arrived at the assessed value for tax year 1998-99 by determining the market value of plaintiff's newly completed home, which was nonexistent in 1997, multiplying that number (\$178,000) by the change property ratio of .7466, and adding that number (\$132,901) to 103 percent of the previous year's maximum assessed value, which was a land-only account. The total assessed value, as indicated previously, is \$179,430. The assessed value for the subsequent tax year (1990-00) was simply trended three percent (to \$184,810) in accordance with ORS 308.146(1).

With this overview in mind, the court will turn to an analysis of plaintiff's Complaint.

1998-99 Tax Year

Plaintiff alleges that the real market value should be reduced from \$238,400 to \$212,000 and that the "exception" value should be reduced from \$178,000 to \$154,236.

However, plaintiff did not petition the board in 1998 as provided in ORS 309.100.¹ 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. However, certain additional requirements are imposed. The relevant statutory authority for such an appeal is ORS 305.288, which provides in part:

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"(1) The tax court shall order a change or correction applicable to a separate assessment of property to the assessment and tax roll for the current tax year or for either of the two tax years immediately preceding the current tax year, or for any or all of those tax years, if all of the following conditions exist:

¹ Reference to the Oregon Revised Statutes (ORS) is to the 1999 version of the laws.

“(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling (or is vacant) and was and is a single-family dwelling, a multifamily dwelling of not more than four units, a condominium unit, a manufactured structure or a floating home.

“(b) The change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.” ORS 305.288. (Emphasis added).

Plaintiff has not alleged an error in value of at least 20 percent for either the real market value or exception value. Thus, the case cannot proceed to the merits under subsection (1) of the statute.

Subsection (3) of the statute allows the court to order a change or correction to the assessment of property for a prior tax year “if, for the year to which the change or correction is applicable the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.” ORS 305.288(3) (emphasis added). The term “good and sufficient cause” is defined elsewhere in the statute 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. ORS 305.288(5)(b)(B).

In this case, the reason taxpayer did not file a petition with the county board before the December 31, 1998, deadline is that she was a first-time homeowner and was unfamiliar with the process. Such circumstances are common and understandable. They

are not, however, extraordinary or beyond a homeowner's control. In fact, as Ms. U'Ren pointed out, the tax statement includes a written explanation of appeal rights and a phone number to call if one has questions about their tax statement.

Since plaintiff has neither alleged a 20 percent error in value nor established that she has good and sufficient cause for not petitioning the board, the court cannot consider her appeal as to the 1998-99 tax year.

1999-00 Tax Year

Plaintiff has also asked the court to reduce the assessed value of her property for the 1999-00 tax year based on two alternative theories. The first is based on a straight comparison of values between plaintiff's property and that of her neighbor's. The second is based on the reduction to real market value ordered by the board for the 1999-00 tax year, with plaintiff seeking a proportionate reduction to assessed value. The court must deny the request under both grounds.

As explained above, assessed value is the lesser of a property's real market value or maximum assessed value. ORS 308.146(2). Assessed value cannot be reduced because of a reduction in real market value, unless real market value drops below maximum assessed value, which is not the case here. This is because assessed value bears no relationship to real market value. And, since the reductions requested for 1998-99 were denied (above) there is no relief to carry forward. Finally, plaintiff's assessed value cannot be adjusted because the neighbor's real market and assessed value is lower. That is simply not sufficient grounds to lower plaintiff's values. Any reductions would have to come from reductions in market value. Under the facts of this case, assessed value is essentially carved in stone.

Plaintiff spoke at length about the difference between her tax bill and that of a neighboring property with more land and a bigger house, yet which is taxed less than her property. The lack of fairness or uniformity is troubling to plaintiff. However, as the court noted in a recent decision:

"* * *in one sense MAV² is somewhat artificial or arbitrary. That is inherent in the overall scheme of section 11 [of the Oregon Constitution]. The concept may, over time, result in various degrees of nonuniformity in the property tax system. Section 11(18) contemplates this and excuses itself from complying with other constitutional provisions requiring uniformity, specifically Article IX, section 1, and Article I, section 32." *Ellis v. Lorati*, 14 OTR 525, 535 (1999).

CONCLUSION

The court concludes that it lacks authority to proceed to the merits for the 1998-99 tax year because plaintiff has neither established good and sufficient cause for failing to properly pursue her statutory appeal rights nor alleged an error in value of at least 20 percent. ORS 305.288. As for the 1999-00 tax year, plaintiff seeks a reduction in assessed value and that number cannot be changed under the facts of this case.³

IT IS THE DECISION OF THE COURT that the relief requested by plaintiff is denied.

Dated this _____ day of June, 2000.

² MAV stands for "maximum assessed value".

³ If plaintiff had proved a lesser real market value for the prior tax year (1998-99), the correction would have flowed through to the 1999-00 assessed value. Assessed value cannot be reduced under plaintiff's theory because the appeal for 1998-99 failed and a reduction by the board for 1999-00 does not automatically reduce assessed value for the reasons set forth in the body of this Decision.

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 JUNE 26, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 26, 2000.