

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

MARGARET M. SWEET, )  
 )  
 Plaintiff, ) No. 000528F  
 )  
 v. )  
 )  
 LANE COUNTY ASSESSOR, )  
 )  
 Defendant, )  
 )  
 and )  
 )  
 DEPARTMENT OF REVENUE, )  
 STATE OF OREGON )  
 )  
 Intervenor. ) **DECISION**

This matter came before the court on a Motion for Intervention filed by the Department of Revenue. The court, after considering the motion, has determined that the Motion for Intervention should be granted.<sup>1</sup> This matter is also before the court on intervenor's Motion to Dismiss filed on June 12, 2000.

Plaintiff appeals intervenor's denial of her claim for a War Veteran's property tax exemption for tax year 1999-2000. A case management conference was held July 24, 2000. Margaret Sweet appeared on her own behalf. Michelle Teed represented intervenor. Defendant chose not to appear.

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**STATEMENT OF FACTS**

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<sup>1</sup> Because plaintiff appealed from an order of the Department of Revenue, it, not Lane County, should have been named as defendant.

Ms. Sweet's husband was a war veteran. As his widow, she received for a number of years a partial property tax exemption under the War Veteran's property tax exemption program. In previous years, defendant mailed the exemption form to plaintiff. For an unknown reason,<sup>2</sup> plaintiff did not receive the form for the 1999-00 tax year. She also did not receive her 1999-00 property tax statement. When she ultimately received her property tax statement, she noted that it did not include the partial exemption. She inquired of defendant and learned that the war veteran's exemption had been omitted. Plaintiff had not been aware of the requirement that she file an exemption claim each year. She filed an appeal with defendant on February 6, 2000. Defendant forwarded her appeal to intervenor. Intervenor denied plaintiff's appeal as untimely on March 21, 2000. Intervenor argues that neither intervenor or the court have discretion to grant plaintiff's appeal.

### **COURT'S ANALYSIS**

Oregon law provides a partial property tax exemption to the surviving spouse of a war veteran. See ORS 307.250(1)(c). There is no question plaintiff otherwise qualifies for an exemption under this program.

The statute setting forth the filing requirements for the exemption is ORS 307.260. It states, in pertinent part:

“(1)(a) Each veteran or surviving spouse qualifying for the exemption under ORS 307.250 **shall file** with the county assessor, on forms supplied by the assessor, a claim therefor in writing **on or before April 1 of the assessment year for which the exemption is claimed[.]**”

(Emphasis added.)

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<sup>2</sup> It is not known whether defendant did not mail the form or it was lost in the mail.

The statute requires a surviving spouse to file a claim for exemption in order to receive it. The filing requirement is made mandatory by use of the word "shall." The statute further requires the claim to be filed "on or before April 1 of the assessment year" for which the claim is made. An exception is made if an individual has received the partial exemption in the past. In those cases, the individual may file an application "to the county assessor not later than May 1 of the current year, accompanied by a late-filing fee of \$10." ORS 307.260(1)(b).

Plaintiff has one last possibility for obtaining relief. ORS 307.475(1)-(3) provides that:

"(1) Any Taxpayer may apply to the Director of the Department of Revenue for a recommendation that the value of certain property be stricken from the assessment roll and that any taxes assessed against such property be stricken from the tax roll on the grounds of hardship.

"(2) As used in this section, 'hardship' means a situation where property is subject to taxation but would have been exempt had there been a timely filing of a valid claim for exemption or cancellation of assessment, and where the failure to make timely application for the exemption or cancellation was by reason of good and sufficient cause.

"(3) An application to the director for a recommendation of tax relief on the grounds of hardship **must be made not later than December 15** of the year in which the failure to claim the exemption or cancellation of assessment occurred."

(Emphasis added).

The facts in this case are nearly identical to the facts in this court's decision in *McGuire v. Dept. of Rev.*, 15 OTR 46 (1999). In *McGuire*, plaintiff, for a variety of reasons, failed to file the form for the partial property tax exemption for tax year 1996-97

until May 1997. After a denial by the county, plaintiff appealed to the Department of Revenue (department). As in the present case, the department denied the appeal. The court held that “the department did not abuse its discretion” when it refused to grant the exemption. *Id.* at 49.

The court finds plaintiff’s claim must be denied because she failed to satisfy the requirements of the law. The court recognizes plaintiff was unaware of the filing requirements and thus unable to timely file the application. Unfortunately, the legislature and this court have been quite clear that, in order to receive the exemption, taxpayers must timely file their claims each year. The legislature made its intent even more explicit with the passage of ORS 307.280, which states:

“Allowance of the [War Veteran’s] exemption \* \* \* in any year **shall not** have the effect of canceling or permitting the cancellation of any tax levied in any **prior** year.”

(Emphasis added).

### **CONCLUSION**

To receive the War Veteran’s exemption, the law requires a surviving spouse of a war veteran to submit her claim each year by the filing deadline. While the court is sympathetic to plaintiff’s situation, it cannot ignore the clear language of the statutes. Plaintiff’s claim must be denied. Now, therefore;

IT IS THE DECISION OF THE COURT that intervenor’s Motion to Intervene is granted.

IT IS THE FURTHER DECISION OF THE COURT that intervenor’s Motion to Dismiss is granted.

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

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SALLY L. KIMSEY  
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 SALLY L. KIMSEY ON AUGUST 10, 2000. THE COURT FILED THIS DOCUMENT ON AUGUST 10, 2000.**