

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

SAMUEL PEIA AND DANIELA ONUFREI- )  
PEIA, )  
 ) No. 000731F  
Plaintiffs, )  
 )  
v. )  
 )  
MULTNOMAH COUNTY ASSESSOR, )  
 )  
Defendant. ) **DECISION**

This matter is before the court upon the oral stipulation of the parties made at the trial held on September 13, 2000. Samuel Peia appeared for the plaintiffs. Steve Blixt appeared for the defendant. The court allowed the parties until September 29, 2000, to submit written arguments relating to the legal issue discussed below.

The property is identified in the Multnomah County tax records as Account Number R227798. No petitions were earlier submitted to the county board of equalization or board of property tax appeals (BOPTA) for tax years 1996-97, 1997-98 and 1998-99. Plaintiffs filed an appeal for tax year 1999-00 to BOPTA. The BOPTA order was mailed on March 21, 2000. Plaintiffs filed their Complaint with the Magistrate Division on May 10, 2000.

**STATEMENT OF FACTS**

By its Order dated July 26, 2000, the court dismissed plaintiffs' appeal for tax year 1996-97. Because plaintiffs alleged a gross error for the 1999-00, 1998-99 and 1997-98 tax years, the court found it had the supervisory authority to proceed with

taxpayers' appeal.<sup>1</sup> Prior to plaintiffs' appeal to BOPTA, defendant valued the subject property at \$308,000 for tax year 1999-00. BOPTA reduced the value to \$250,000. The parties agree that the values should be as follows:

<u>Tax Year</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
1999-00	\$58,800	\$169,200	\$228,000
1998-99	\$56,500	\$162,700	\$219,200
1997-98	\$54,900	\$157,900	\$212,800

### COURT'S ANALYSIS

#### Tax Year 1999-00

The legislature has given the court limited authority to consider untimely appeals. ORS 305.288(1) states:

“The tax court shall order a change or correction \* \* \* 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 \* \* \* if all of the following conditions exist:

“(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling \* \* \* .

“(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.**”

(Emphasis added.)

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<sup>1</sup> The language of ORS 305.288 does not limit its application only to situations where the parties did not appeal to BOPTA. As this court stated in a case applying the predecessor to ORS 305.288, “[n]owhere does the statute [ORS 306.115 and OAR 150-306.115] limit appeals for gross error to those cases where the taxpayer failed to appeal to the board of equalization.” *J. R. Simplot Co. v. Dept. of Rev.*, 11 OTR 245, 248 (1989).

The question before the court is what value does ORS 305.288 require the court to use when determining whether the parties have agreed to a value that comes within the gross error requirements of the statute? The real market value defendant placed on the tax roll for tax year 1999-00 was \$308,000. A reduction from \$308,000 to the agreed upon value of \$228,000 would result in a reduction of 26.0%, meeting the gross error requirement of 20%. BOPTA reduced the value to \$250,000. A reduction from \$250,000 to the agreed upon value of \$228,000 would result in a reduction of only 8.8%.

By its language, ORS 305.288 requires that the difference be calculated using the value on the assessment and tax roll. Defendant originally placed a value of \$308,000 on the assessment and tax roll. Plaintiffs appealed to BOPTA. BOPTA ordered the value reduced to \$250,000. The order "orders the officer in charge of the roll to sustain or reduce the tax roll of Multnomah County for the tax year 99-00 in conformance with this order." (Ptf's' Complaint at 2.)

ORS 305.280(4) requires that "an appeal \* \* \* from an order of a county board of property tax appeals shall be filed within 30 days after the \* \* \* date of mailing of the order[.]" After the 30 day appeal period expired, defendant should have changed the tax roll to reflect BOPTA's order. The \$250,000 became the new value on the tax roll. Because \$250,000 is the value on the tax roll, it must be used to calculate whether the agreed upon value met the gross error requirement of ORS 305.288. As noted above, a reduction from \$250,000 to the agreed upon value of \$228,000 would result in a reduction of only 8.8%. Because the agreed upon value does not meet the gross error requirement of 20%, the court finds that it can not accept the parties' agreement for tax year 1999-00.

#### Tax Years 1998-99 and 1997-98

The parties agree that the values should be reduced as follows:

<u>Tax Year</u>	<u>Real Mkt Value</u>	<u>Agreed Value</u>	<u>Value Difference</u>
1998-99	\$296,200	\$219,200	26.0%
1997-98	\$287,600	\$212,800	26.0%

These reductions meet the gross error requirement of ORS 305.288.

**CONCLUSION**

IT IS THE DECISION OF THE COURT that plaintiffs' Complaint as to tax year 1996-97 is dismissed.

IT IS FURTHER DECIDED THAT:

- 1) Plaintiffs' Complaint as to tax year 1999-00 is denied;
- 2) The real market value of property described as Multnomah County

Assessor's Account No. R227798 was, as stipulated for the 1998-99 and 1997-98 tax years, as follows:

<u>Tax Year</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
1998-99	\$56,500	\$162,700	\$219,200
1997-98	\$54,900	\$157,900	\$212,800

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3) Defendant shall correct the assessment and tax rolls to reflect the above values. Any refund due following this correction shall be promptly paid with statutory interest pursuant to ORS 311.806 and 311.812.

Dated this \_\_\_\_\_ day of November, 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 NOVEMBER 14, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 14, 2000.**