

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

TENNIS LESSONS, INC., and MARION O.	)	
BLACKBURN,	)	
	)	No. 000827C
Plaintiffs,	)	
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal the value of their property for the 1997-98, 1998-99 and 1999-00 tax years. The property is identified in the Multnomah County Assessor's records as Acct. No. R305077. A case management conference was held August 28, 2000. Mr. Blackburn appeared for plaintiffs. Defendant appeared through Mr. Richard Sanderman, a commercial appraiser with the county assessor's office.

**STATEMENT OF FACTS**

The subject property is a tennis facility in the Portland area. Income has declined over the last several years and Mr. Blackburn believes the value of the property has dropped as well. The city of Portland opened up a new tennis facility near the subject property in March 1999. That facility reportedly offers similar services for less money. Plaintiffs' revenues declined significantly after the city's facility opened. As a taxpayer, Mr. Blackburn is upset that his tax dollars are funding a business that is in direct competition with his facility.

Mr. Blackburn testified that he considered filing an appeal for a reduction in value several years ago but did not telephone the county assessor's office until after the deadline. Mr. Blackburn was unable to recall the exact year he pursued the matter.

However, in March 2000, after meeting with city officials in an unsuccessful attempt to reduce the competition from the city's new facility, Mr. Blackburn telephoned the assessor's office to inquire about an appeal. The county mailed the necessary appeal forms and Mr. Blackburn submitted his Complaint to the tax court in July. Mr. Blackburn further testified that he was busy running his business and pursuing other possible options to save his business after receiving the tax statement in the fall of 1999 (including a lawsuit against the city for unfair competition) and therefore did not petition the County Board of Property Tax Appeals (board) before the December 31, 1999, deadline. Mr. Sanderman noted the lack of a prior board appeal and commented that plaintiffs must establish good and sufficient cause for failing to pursue that remedy before the case could go forward on the merits (valuation) at this level.

### **COURT'S ANALYSIS**

Plaintiffs believe the value of their property should be reduced due to a decline in income. They seek relief for three tax years. Plaintiffs did not exhaust their administrative remedies by first petitioning the board. ORS 309.026 and 309.100. The court may hear the case, but only if the requirements of ORS 305.288 are satisfied. See *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998). Because the appeal involves non-residential property, the applicable provision is ORS 305.288(3), which reads:

“The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current 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.” (Emphasis added).

///

Mr. Blackburn testified that he contemplated filing an appeal some years ago but was told the deadline had passed when he phoned the assessor's office. According to Mr. Blackburn, after the competing government-owned business began operating in 1999, plaintiffs noticed a more substantial drop in earnings and entered into a dialogue with the city to try and work out a compromise that would minimize the impact of the city's operation. Plaintiffs also considered filing suit for unfair trade practices but were advised against such action by their attorneys. These considerations took time. Meanwhile, the clock continued to tick and plaintiffs again missed the deadline for petitioning the board. An appeal was ultimately filed in July 2000, some seven months after the December 31, 1999, deadline for the current tax year (1999-00).

Good and sufficient cause is defined in the statute as "an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer's agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal." ORS 305.288(5)(b)(A). Moreover, it does "not include inadvertence, oversight, lack of knowledge, [or] hardship." ORS 305.288(5)(b)(B). The right of appeal was first to the board and then timely to the court. ORS 309.100 and 305.280(4).

However one might characterize plaintiffs' reasons for not petitioning the board in 1997, 1998 or 1999, the explanation given by Mr. Blackburn does not amount to circumstances either extraordinary or beyond his control.

///

///

///

## CONCLUSION

Based on the foregoing, the court is unable to grant relief for any of the years at issue because plaintiffs have not established good and sufficient cause for not petitioning the board and timely appealing the board's decision to the court.

ORS 305.288.

IT IS THE DECISION OF THE COURT that plaintiffs' Complaint is dismissed.

Dated this \_\_\_\_\_ day of September, 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 SEPTEMBER 7, 2000. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 7, 2000.**