

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

HAROLD PLISKA AND JAMES PLISKA,	)	
	)	
Plaintiffs,	)	No. 000912E
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on defendant's Motion to Dismiss, which was filed as part of its Answer on July 25, 2000. Defendant claims the court lacks authority to hear plaintiffs' appeal because plaintiffs failed to first appeal to the Multnomah County Board of Property Tax Appeals (BOPTA). Hearing on the motion was held by telephone on October 31, 2000, and November 1, 2000. Raymond Rask, Attorney, appeared on behalf of plaintiffs. Testifying for plaintiffs was James Pliska. Frank V. Kaminski and Marla Rosenberger, Appraisers, appeared and testified on behalf of defendant. For ease of reference herein, the parties are referred to as "taxpayers" and "the county."

**STATEMENT OF FACTS**

Taxpayers purchased the subject property, identified as Account No. R144457, in February 1996. The property is located at 2019 Southeast First in Gresham, Oregon. The recorded deed provides that the tax statements should be sent to 901 Southwest Highland Drive in Gresham. Pursuant to the instruction on the deed, the county mailed the tax statements for 1996-97 through 1999-2000 to the Highland Drive address. Mr. Pliska testified that the Highland Drive address is the address for his office. There is no mail receptacle at the address, however, because the business uses a post office

box. As a result, taxpayers never received the tax statements for the various years and the statements were returned to the collector's office as undeliverable.

In the spring of 2000, taxpayers looked into selling the subject property along with two parcels they own adjacent to the subject property. A preliminary title report showed outstanding property taxes owed on the subject parcel. Mr. Pliska testified that in June 2000, he called the assessor's office and asked about the liability and was informed the statements had been sent to the property's situs address.<sup>1</sup> He advised the county that there was no building at the subject parcel's site and that the tax statements should have been sent to his post office box. Based on this phone call, the county has changed the mailing address for the property tax statements from the Highland Drive address to the post office box.

The phone conversation with the county in June 2000 was the first time taxpayers became aware that they had not received the statements on the subject parcel. Mr. Pliska testified that his wife handles payment of the property taxes and she likely believed that the statements for the two adjoining parcels included the subject parcel as well. As a result, the time for taxpayers to appeal the 1999-2000 tax year to BOPTA had passed. Taxpayers instead appeal to this court. The county moves the court to dismiss the appeal claiming the court lacks authority to hear the matter because taxpayers do not have good and sufficient cause for failing to timely appeal to BOPTA.

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### **COURT'S ANALYSIS**

The Oregon Legislature has developed a system for taxpayers to challenge the

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<sup>1</sup> It is unclear why the representative at the assessor's office would say the statements were sent to the situs address when, instead, they were sent to the Highland Drive address. It may be the person believed the property was located on Highland Drive. In any case, the alleged misrepresentation is not material to the outcome of this appeal.

assessed and real market values assigned to their properties. The first step in the appeal process is to a county BOPTA. Taxpayers are required to file appeals with the appropriate county board by December 31 of the current tax year. ORS 309.100(2).<sup>2</sup>

The legislature recognized situations may exist that prevent a taxpayer from timely appealing. As a result, the legislature made an exception to the general appeal requirements. In commercial cases, the court can accept jurisdiction of an untimely appeal if the taxpayer can establish “good and sufficient cause” for not timely pursuing his statutory remedy. ORS 305.288(3).

ORS 305.288(3) states:

“The tax court may order a change or correction \* \* \* 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 \* \* \* taxpayer has no statutory right of appeal remaining and the tax court determines that **good and sufficient cause exists for the failure by the \* \* \* taxpayer to pursue the statutory right of appeal.**” (Emphasis added.)

The statute defines good and sufficient cause as follows:

“(5)(b) ‘Good and sufficient cause’:

“(A) Means 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; and

“(B) **Does not include inadvertence, oversight, lack of knowledge,** hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.”  
ORS 305.288(5)(b) (emphases added.)

Taxpayers argue they had good and sufficient cause for not timely appealing to BOPTA because they never received tax statements for the property. The Oregon Supreme

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<sup>2</sup> All references to the Oregon Revised Statutes are to the 1999 provisions.

Court has held, however, that every taxpayer is responsible for knowing their property is taxable. In *Hood River County v. Dabney*, the court stated:

“[E]very citizen ‘is presumed to have known that his land was taxable, that in due course it would be assessed, a tax levy extended against it, and it would be placed on the tax rolls, that it was his duty to timely pay his taxes, that if he failed to do so, his land would be offered for sale and resale at a time and place specified in the statutes \* \* \* .” *Hood River County v. Dabney*, 246 Or 14, 28, 423 P2d 954 (1967) (citation omitted).

Property owners are expected to know when they should receive their property tax statements. Failing to receive a property tax statement does not excuse a taxpayer's late payment of property taxes. ORS 311.250(2).<sup>3</sup> Similarly, it does not excuse a taxpayer from failing to timely appeal to the county board. See generally *GTB Assoc. v. Multnomah County*, 2000 WL 502651 (April 24, 2000); *Mack and Crabbe v. Clackamas County*, 1999 WL 1567176 (August 31, 1999).

Property owners are statutorily required by ORS 311.555 to keep the tax collector informed of their “true and correct address.” Having not received a tax statement the first year after they purchased the subject property, taxpayers should have known there was a problem with the county’s records and taken it upon themselves to ensure the county had their “true and correct address.” See generally *Gordon v. Dept. of Rev.*, 12 OTR 288, 290 (1992) (noting that it is not the county’s obligation to institute a search for a taxpayer’s correct address but it is the taxpayer’s responsibility to keep the county informed of the taxpayer’s correct address.)

Taxpayers argue that they assumed the liability for the subject property was included in the statements for the two surrounding parcels. This assumption is not so extraordinary as to

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<sup>3</sup> ORS 311.250(2) provides that “[t]he failure of a taxpayer to receive the statement described in this section shall not invalidate any assessment, levy, tax, or proceeding to collect tax.”

constitute good and sufficient cause. Further, the statutory definition of good and sufficient cause specifically excludes “inadvertence, oversight, [or] lack of knowledge” from being good and sufficient cause. ORS 305.288(5)(b).

### **CONCLUSION**

The county mailed the tax statements to the address that was provided on the recorded deed. Taxpayers never received these statements because the address provided on the deed does not have a mail receptacle. Taxpayers never contacted the county to inquire about the missing tax statements because they assumed the tax liability for the subject parcel was contained in the statements for the two adjacent parcels. Given these facts, the court concludes taxpayers do not have good and sufficient cause for failing to timely appeal to the county board. Taxpayers are presumed to know their property is taxable and to inquire as to their liability when no statement is received. Having failed to do so, taxpayers have lost their appeal rights. Now, therefore;

IT IS THE DECISION OF THIS COURT that defendant’s Motion to Dismiss is granted.

The above-entitled matter is dismissed.

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

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COYREEN R. WEIDNER  
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 COYREEN R. WEIDNER ON NOVEMBER 9, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 9, 2000.**