

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Small Claims

Property Tax

B. B. & S. DEVELOPMENT CO.,)	
)	
Plaintiff,)	No. 000960C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION AND JUDGMENT OF DISMISSAL

This matter is before the court on defendant's Motion to Dismiss, made to the court during the October 4, 2000, case management conference. Plaintiff was represented by Mr. James Riopelle, the property manager. Defendant appeared through Messrs. Kaminski and Banahene, appraisers with the assessor's office.

Plaintiff's appeal seeks a reduction in property value for tax years 1990-91 through 1999-00. Defendant moved to dismiss certain years because plaintiff did not petition the County Board of Property Tax Appeals (board) and other more remote tax years as beyond the reach of the court. For the reasons set forth below, the court grants the dismissal request.

The proper procedure in a value dispute is to petition the board for a reduction each year and then to appeal the board's order to the tax court if the taxpayer is not completely satisfied with the outcome. ORS 309.100 and 305.275(3). 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. There are, however, limits to the reach of the court under that statute.

The law allows the court to consider only the “current tax year and * * * either of the two tax years immediately preceding the current tax year * * *.” ORS 305.288(3).

The term “current tax year” is defined in ORS 306.115 as “the tax year in which the need for the change or correction is brought to the attention of the [court].” Plaintiff filed the appeal in July 2000, which was in the 2000-01 tax year. ORS 308.007. Thus, that becomes the current tax year, and the two previous years are 1999-00 and 1998-99. The other years specified in the Complaint are outside the scope of the statute and therefore beyond the reach of the court.

As to tax years 1999-00 and 1998-99, plaintiff must satisfy the provisions of ORS 305.288 in order for the court to consider the underlying value issue. *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998). With regard to undeveloped land, the statute authorizes the court to reduce the valuation of the property if the owner or its representative can establish good and sufficient cause for not petitioning the board. The term “good and sufficient cause” is defined 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). 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, Mr. Riopelle testified that no board appeal was filed in 1999 or 1998 because of an oversight. This is clearly not an extraordinary circumstance. In fact, oversight is a common reason for not pursuing a value appeal. Nor is it a circumstance beyond the control of plaintiff or its representative. Accordingly, there is no good and sufficient cause and the case may not go forward.

Now, therefore;

IT IS HEREBY ADJUDGED AND DECREED that this matter be dismissed.

Tax years 1990-91 through 1997-98 are remote and beyond the reach of the court. ORS 305.288. Tax years 1998-99 and 1999-00 are dismissed because there is no statutory basis under ORS 305.288 that allows the court to excuse the failure of the taxpayer to pursue the statutory right of appeal by petitioning the board in 1998 or 1999.

Dated this ____ day of October, 2000.

DAN ROBINSON
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON OCTOBER 23, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 23, 2000.