

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Property Tax

MICHAEL P. BURKE,)
)
 Plaintiff,) No. 001028C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION AND JUDGMENT**

Plaintiff has appealed to the court for a proration of property taxes for the 1999-00 property tax year as a result of a fire that destroyed his home. The county denied plaintiff's request because the application required by ORS 308.425 was not timely filed. Plaintiff has asked the court to invoke any equitable powers it has to grant the requested relief in the interests of fairness and justice.

STATEMENT OF FACTS

Plaintiff's home was completely destroyed by fire on May 23, 1999. The cause of the fire was arson. As a result of the fire, plaintiff was without a place to live and had to find temporary housing while his home was rebuilt. Construction on the new replacement home was completed on December 31, 1999, and plaintiff moved in on or about January 2, 2000.

Plaintiff was unaware of any law that would reduce his taxes to reflect a loss in value due to fire. While going over some paperwork plaintiff realized that his property taxes were based on the total value of his property, including the home that had burned down in May and was "gone" for half the 1999-00 tax year. Plaintiff pursued the issue and eventually discovered that the law provided for a proration of taxes when property is

destroyed by fire. Plaintiff submitted an application seeking that relief on June 8, 2000.

The county denied the application by letter dated August 29, 2000, because it was beyond the deadline provided in the law.

COURT'S ANALYSIS

There are several forms of relief available to a taxpayer whose property is destroyed or damaged by fire (or act of God) under facts similar to those here at issue.¹ The particular form of relief available depends on the date of the fire. All available relief in the circumstances involved in this case, however, requires a timely application and, for that reason, the court cannot grant any relief because plaintiff missed the deadlines.

Proration of Taxes

ORS 308.425 provides for a proration of property taxes when property is damaged or destroyed by fire. The statute reads in part as follows:

“(1) If, during any tax year, any real or personal property is destroyed or damaged by fire or act of God, the owner or purchaser under a recorded instrument of sale in the case of real property, * * * may apply to the tax collector for proration of the taxes imposed on the property for the tax year.”
ORS 308.425.

As can be seen from the quoted language above, a taxpayer can have his taxes prorated for an event (fire or act of God) that occurs at any time during the tax year.² The tax year is a 12-month period beginning July 1. ORS 308.007(1)(c). The fire in this case took place on May 23, 1999, which was during the 1998-99 tax year (which ran from July 1,

¹ This caveat is added because property still suffering the effects of fire on the assessment date, currently January 1 each year, is to be revalued (in terms of real market value) in the ordinary course under ORS 308.210, and under ORS 308.146(5), the maximum assessed value is to be reduced to reflect the damage or destruction. In this case plaintiff's home was not burned down until after the January 1, 1999, assessment date (for the 1999-00 tax year) and it was rebuilt before the January 1, 2000, assessment date for the 2000-01 tax year.

² The statute begins: “If, during any tax year * * *.”

1998, to June 30, 1999). A proration of taxes would have covered the 1998-99 tax year and provided for one month of tax relief (June 1999). However, plaintiff is not entitled to a proration of taxes for a portion of the 1998-99 tax year because the application he filed in June 2000 was filed beyond the statutory deadline. The statute provides that the application must be filed “not later than the end of the tax year or 30 days after the date the property was destroyed or damaged, whichever is later.” ORS 308.425(2).³ An application is necessary as evidenced by the legislature’s use of the word “shall”. Plaintiff had until June 30, 1999, to file the application with the tax collector. That application would have covered the 1998-99 tax year and provided for one month of relief. Plaintiff missed the deadline by more than one year.

A proration of taxes was not available for the 1999-00 tax year because the fire did not take place during that tax year.

Value Redetermination

Another form of relief, which is available when, as in this case, the fire occurs during the first six months of the *assessment year*⁴ (but prior to the beginning of the tax year), is to have the value of the property redetermined as of July 1. The statute reads in part:

“(1) If, during the period beginning on January 1 and ending on July 1 of an assessment year, any real or personal property is destroyed or damaged by fire or act of God, the owner * * * may apply to the county assessor to have the real market and assessed value of the property determined as of July 1 of the current assessment year.” ORS 308.428.

³ The application requirement is spelled out in subsection (2) of the statute and reads as follows:

“(2) Application for proration of taxes under subsection (1) of this section shall be made not later than the end of the tax year or 30 days after the date the property was destroyed or damaged, whichever is later.” ORS 308.425.

⁴ Under ORS 308.007(1)(b), the assessment year “means calendar year.”
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By statute, the assessment date is January 1. See ORS 308.007 and 308.210.

This is the date on which the assessor generally determines the (market) value of the property for the upcoming tax year, which begins on July 1. ORS 308.007(2)(a).⁵ When property is destroyed by fire after the January 1 assessment date but before the beginning of the tax year (July 1), the taxpayer can have the value (real market and assessed value) determined as of July 1 of the current assessment year.”

ORS 308.428(1). In that case the tax statement mailed later in the year (generally mid-October) will reflect the reduced value occasioned by the fire.

Since in this case the fire occurred between those dates (January 1 and July 1, 1999), plaintiff was entitled to a redetermination of real market and assessed value for the 1999-2000 tax year. However, as with tax proration, an application is required in order to have the value determined as of July 1. The statute provides:

“(2) The person described in subsection (1) of this section shall file an application for assessment under this section with the county assessor on or before August 1 of the current year.” ORS 308.428 (emphasis added).

Since, under ORS 308.007(2)(b), the term “year” means assessment year, which is statutorily equated with calendar year (ORS 308.007 (1) (b)), plaintiff had until August 1, 1999, to file an application with the assessor requesting that the property be valued as of July 1, 1999. Plaintiff missed that deadline by a full year. As with the tax proration provision, the filing of an application here is necessary.

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As a final matter, the provision providing for a redetermination of real market and

⁵ The statute reads:

“The assessment year beginning January 1 corresponds to the tax year beginning July 1 of the same calendar year.” ORS 308.007(2)(a).

assessed value found in ORS 308.428 is mirrored in ORS 308.146, and appears as subsection (6). The only noted distinction is that ORS 308.146(6) excludes the reference to “fire or act of God”.⁶ However, as with ORS 308.428, discussed above, an application is required on or before August 1.⁷ Again, plaintiff missed the August 1, 1999, deadline by one year.

This is not the first time the court has been faced with the situation of having to deny relief otherwise available because a deadline was missed. As with exemptions for churches and veteran’s widows, the facts are typically compelling and the outcome unfortunate. It is undisputed that, had plaintiff timely filed the application to have his taxes prorated for 1998-99, and his value redetermined for 1999-00, he would have received a refund corresponding to the amount of taxes assessed against his home for the month of June, 1998, and the assessment for the subsequent tax year (1999-00) would have excluded the value of the home, which would have resulted in a significantly smaller tax bill. Unfortunately, since plaintiff missed the deadlines for both forms of relief, the court is powerless to give plaintiff that which he desires and perhaps “deserves”. The legislature has long been aware of the application deadlines applicable in this area and has elected

⁶ ORS 308.146(6) provides, in relevant part:

“(a) If, during the period beginning on January 1 and ending on July 1 of an assessment year, any real or personal property is destroyed or damaged, the owner or purchaser under a recorded instrument of sale in the case of real property, or the person assessed, person in possession or owner in the case of personal property, may apply to the county assessor to have the real market and assessed value of the property determined as of July 1 of the current assessment year.

⁷ ORS 308.146(6) provides in part:

“(b) The person described in paragraph (a) of this subsection shall file an application for assessment under this section with the county assessor on or before August 1 of the current year.” ORS 308.146(6).

to keep those deadlines in place.

CONCLUSION

Because plaintiff missed the filing deadlines applicable to both the proration of taxes available under ORS 308.425 (for the 1998-99 tax year) and the redetermination of value as of July 1 available under ORS 308.428 and 308.146(6) (for the 1999-00 tax year), the court cannot grant either form of relief. Now, therefore;

IT IS HEREBY ADJUDGED AND DECREED that plaintiff's appeal is denied for failure to meet the statutorily required filing deadlines as set forth above.

Dated this _____ day of November, 2000.

DAN ROBINSON
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON NOVEMBER 16, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 16, 2000.