

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

EVERGREEN AVIATION GROUND )  
LOGISTICS ENTERPRISES, INC. (EAGLE), )  
 )  
Plaintiff, ) No. 001242E  
 )  
v. )  
 )  
YAMHILL COUNTY ASSESSOR, )  
 )  
Defendant. ) **DECISION OF DISMISSAL**

This matter is before the court on its own motion to dismiss the above-entitled matter. The court discussed its motion with the parties during the case management conference held March 1, 2001. Sharon L. Thompson appeared on behalf of plaintiff. Susan DeBolt appeared on behalf of defendant (the county).

**STATEMENT OF FACTS**

Plaintiff appeals the 1999-2000 real market value of the business personal property identified as Account No. 472802. The 1999-2000 real market value on the tax roll was \$586,545; plaintiff claims the real market value should be reduced to \$193,076.

Plaintiff timely filed a personal property tax return for the 1999-2000 tax year reporting its taxable personal property. The return was prepared with a new software program that had been installed to make the computer system Y2K compliant. The return originally filed reported value of \$586,545. Plaintiff received a tax statement showing this value and subsequently paid the taxes due.

When preparing the 2000-01 tax return, plaintiff realized there were errors with the new software program that caused double reporting of assets and various other problems. Plaintiff engaged in a physical inventory of its personal property and prepared its 2000

return based on this inventory. It then filed an amended return for the 1999-2000 tax year reporting a total value for the personal property of \$193,076. The county declined to make the correction and advised plaintiff to appeal to this court.

At the case management conference, the county agreed that the 1999-2000 real market value was overstated and should be reduced to the \$193,076 requested by plaintiff. Notwithstanding the agreement, the court must make an affirmative finding it has jurisdiction to consider this appeal because plaintiff has not timely pursued its statutory remedies. *See Seifert v. Dept. of Rev.*, 14 OTR 401 (1998).

### **COURT'S ANALYSIS**

The Oregon Legislature has developed a system for taxpayers to challenge the assessed and real market values assigned to their properties. The first step in the appeals process is to a county board of property tax appeals. Taxpayers are required to file appeals with the appropriate county board by December 31 of the current tax year. ORS 309.100(2).<sup>1</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 may accept jurisdiction of an untimely appeal if the taxpayer can establish "good and sufficient cause" for not timely pursuing its 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

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<sup>1</sup> All references to the Oregon Revised Statutes are to 1999.

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) (emphasis added).

In this case, plaintiff did not timely appeal the 1999-2000 value because it was not aware the value was in error. It was only when preparing the 2000 return did plaintiff realize the errors resulting from the new software program. Although unfortunate, the court finds the circumstance is not “extraordinary” and “beyond the control of plaintiff.” When filing the 1999-2000 return, a simple comparison to the prior year’s return would have suggested irregularities.<sup>2</sup> Further, the statute excludes lack of knowledge from constituting good and sufficient cause. As a result, the court finds it lacks jurisdiction to order relief in this case.

As mentioned, the county agrees plaintiff is entitled to relief. Pursuant to *Seifert*, even when parties are in agreement, the court must determine whether it has authority to order relief. In this case, the court lacks that authority. The parties may consider submitting a joint stipulation to the Oregon Department of Revenue for consideration under its supervisory power. Now, therefore;

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<sup>2</sup> The real market value for the 1998-99 tax year was \$292,341.

IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

Dated this \_\_\_\_\_ day of March, 2001.

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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 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THIS DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON MARCH 6, 2001. THE COURT FILED THIS DOCUMENT ON MARCH 6, 2001.**