

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

THOMAS A. STEWART,)
)
Plaintiff,) No. 010130C
)
v.)
)
MULTNOMAH COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

This matter is before the court on defendant's Motion to Dismiss, included in the Answer filed March 15, 2001. Defendant requests dismissal because plaintiff did not first present a petition for reduction to the Multnomah County Board of Property Tax Appeals (board). A hearing was held by telephone April 19, 2001. Plaintiff appeared on his own behalf. Defendant appeared through Mr. Mike Trojan.

As a preliminary matter, plaintiff's Complaint was amended orally at the April 19 hearing to reflect that only tax year 1999-00 was at issue and that the relief requested was a reduction in maximum assessed value (MAV) and exceptions real market value (RMV).¹

Because plaintiff did not first petition the board, the focus of the court's inquiry was on whether the provisions of ORS 305.288 are satisfied.²

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¹ In the Complaint plaintiff indicated he was appealing "99/00 to present" and requested that the court "please reduce and rebate property tax for '99/00' and subsequent years." Plaintiff clarified at the hearing that any relief granted on the 1999-00 tax year would automatically flow through to tax year 2000-01 and he was therefore only concerned with 1999-00.

²Reference to the Oregon Revised Statutes (ORS) is to 1999.
DECISION

STATEMENT OF FACTS

The subject property is a duplex. Plaintiff lives on the first floor and rents the upstairs to a tenant. Plaintiff paid \$144,000 for the property in early July 1999. The January 1, 1998, RMV on the assessment and tax rolls was \$99,200. The next year (tax year 1999-00) the RMV rose to \$143,400. This is the tax year under appeal. Plaintiff does not challenge the RMV of \$143,400, but objects instead to the large increase in assessed value (AV), which rose from \$34,200 in tax year 1998-99 to \$60,750 in 1999-00. The increase in value nearly doubled his taxes and is attributable to an adjustment to MAV based on an "exceptions value" determination under ORS 308.153 of \$35,300, which, when adjusted by the change property ratio (CPR) provided in subsection (2) of the statute, resulted in the \$26,550 increase in AV. According to the county, the condition of the property was improved by the previous owner, who "refurbished" the home in 1997. Plaintiff insists the changes were primarily cosmetic and added little to the value.

Plaintiff filed the appeal directly with the court without first petitioning the board. Plaintiff testified he was overwhelmed by the tax increase appearing on the 1999-00 tax statement which arrived in the fall of 1999 but that he was preoccupied with Y2K in the latter months of that year and consequently missed the December 31, 1999, filing deadline.

COURT'S ANALYSIS

Plaintiff seeks a reduction in the exceptions RMV of more than 20 percent. He does not challenge the total RMV or the RMV of the component parts (land and improvements). The issue presented is whether the provisions of ORS 305.288 apply.

When a taxpayer circumvents the board and appeals directly to the tax court, the

court's authority to grant relief is limited by certain additional hurdles imposed on the taxpayer by the legislature. The taxpayer must either allege a substantial error in the RMV (at least 20 percent) or provide a good reason (good and sufficient cause) for failing to petition the board before coming to the court.

Good and Sufficient Cause

The court can excuse the taxpayer's failure to pursue the statutory right of appeal if the taxpayer establishes good and sufficient cause for the omission. Good and sufficient cause is defined as "an extraordinary circumstance that is beyond the control of the taxpayer, * * * and that causes the taxpayer, * * * to fail to pursue the statutory right of appeal. ORS 305.288(5)(b)(A). It "[d]oes not include inadvertence, oversight, lack of knowledge * * *." ORS 305.288(5)(b)(B).

Plaintiff does not meet the good and sufficient cause provision because the reason he failed to petition the board in 1999 was not due to extraordinary circumstances beyond his control. Certainly the Y2K situation was extraordinary and beyond the control of plaintiff, but it did not preclude plaintiff from filling out a board petition and sending it in before December 31. While there was considerable anxiety experienced by many people as calendar year 2000 approached, most people continued to go to work and shop for Christmas. The mail in this country was delivered and the trash collected. Plaintiff's paralysis was self inflicted. The evidence does not show plaintiff was prevented from filing a board petition. Rather he chose to focus on the Y2K problem rather than his property taxes.

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20 Percent Error

Plaintiff asks the court to reduce the MAV by removing most if not all the exceptions RMV added by defendant because of the refurbishing. The margin of alleged error exceeds 20 percent. The statute provides:

“(1) The tax court shall order a change or correction applicable to a separate assessment of property to the assessment and tax roll for the current tax year or for either of the two tax years immediately preceding the current tax year, or for any or all of those tax years, if all of the following conditions exist:

“[the property must be classified as ‘residential’].

“(b) The change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.

“(2) If the tax court finds that the conditions needed to order a change or correction under subsection (1) of this section exist, the court may order a change or correction in the maximum assessed value of the property in addition to the change or correction in the real market value of the property.”
ORS 305.288.

The upshot of the above statute is that the court can reduce the value if the taxpayer can show an error in the RMV of the property of at least 20 percent. Moreover, once the 20 percent error in RMV is established under subsection (1), the court may proceed under subsection (2) of the statute to order a change in MAV. Here plaintiff does not challenge the RMV of the property, as it reflected the purchase price that year. Plaintiff contests only the MAV, which was increased pursuant to ORS 308.153 because of improvements made to the property by the previous owner. Because plaintiff does not challenge the RMV, but only the MAV, the court cannot grant relief under ORS 305.288.

CONCLUSION

Plaintiff has not established good and sufficient cause for not pursuing the statutory right of appeal. ORS 305.288(3). The 20 percent error rule found in subsection (1) of ORS 305.288 does not authorize the court to order a reduction in the MAV of the property, regardless of the amount of the error alleged, unless the taxpayer establishes an error in the RMV of at least 20 percent. Once the 20 percent threshold is met the court may proceed to adjust MAV. Because the plaintiff in this case does not contest the RMV the court cannot adjust the MAV under ORS 305.288(2).

IT IS THE DECISION OF THE COURT that the relief requested by plaintiff in his Complaint must be denied.

Dated this _____ day of May, 2001.

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 97301-2563. 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 MAY 8, 2001. THE COURT FILED THIS DOCUMENT ON MAY 8, 2001.