

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

COLUMBIA COUNTY ASSESSOR,)
)
 Plaintiff,) No. 010366C
)
 v.)
)
 ROBERT B. AND PENELOPE COSTLEY,)
)
 Defendants.) **DECISION OF DISMISSAL**

This matter came before the court on defendants' Motion to Dismiss, filed on April 5, 2001, requesting that the Complaint be dismissed because plaintiff failed to serve a copy of the Complaint on the taxpayer defendants by certified mail within 30 days of the mailing of the order of the County Board of Property Tax Appeals (board). A hearing on the motion was convened by telephone on May 11, 2001. Mr. Tom Linhares, the Columbia County Assessor, appeared for the plaintiff. Mr. Robert Costley appeared for defendants.

The appeal in this case was filed by the Columbia County Assessor from orders of the county board reducing the value of defendants' property. The board's orders were mailed February 26, 2001. The county appealed by sending a Complaint to the tax court and a copy to the defendants by regular mail, postmarked March 23, 2001. The county thereafter sent defendants another copy of the Complaint by certified mail on March 29, 2001. (Affidavit of Tom Linhares, filed April 9, 2001).

Defendants insist that ORS 305.560(3) requires service of the Complaint by certified mail within the 30-day appeal period provided in ORS 305.280(4). The court agrees.

ORS 305.275 provides generally for appeals to the magistrate division of the

Oregon tax court. ORS 305.275(4) provides that “[a] county assessor who is aggrieved by an order of the county board of property tax appeals may appeal from the order as provided in this section, ORS 305.280 and 305.560.” The period for filing an appeal from an order of the county board is “30 days after the date * * * of mailing of the [board’s] order, * * * to the taxpayer * * *.” ORS 305.280(4). ORS 305.560(3) provides:

“In any case in which the taxpayer is not the appealing party, a copy of the complaint shall be served upon the taxpayer by the appealing party by certified mail within the period for filing an appeal, and an affidavit showing such service shall be filed with the clerk of the tax court. A copy of the order of the department, if any, shall be attached to the complaint. The taxpayer shall have the right to appear and be heard.”

This provision is in contrast to subsection (1) of the statute, which governs the process where the taxpayer is the appealing party. In that case the taxpayer files a complaint with the court within the applicable statutory deadline and the court serves the defendant county assessor. ORS 305.560(1)(a) & (b).

In this case the taxpayer is not the appealing party, which means subsection (3) applies. Accordingly, the county was required to serve defendants within 30 days by certified mail. The original service met the 30-day deadline but was not by certified mail. Rather, it was sent by regular first class mail. The second service was by certified mail, but occurred after the 30-day deadline. This court has previously held that service of the complaint under subsection (3) of ORS 305.560 within the applicable statutory appeal period “is necessary to perfect the appeal.” *Multnomah County v. Dept. of Rev.*, 13 OTR 422, 424 (1995), *aff’d* 325 Or 230, 935 P2d 426 (1997) *See also, Tosterud v. Ellis*, 329 Or 439, 988 P2d 377 (1999).

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The 30-day appeal period ended March 28, 2001. Plaintiff served defendants by certified mail on March 29. Mr. Linhares asserts that in 13 years as county assessor he has never before appealed a board order and that the intent of the law was carried out in this case because a copy of the Complaint was sent to defendants before the 30-day deadline by regular mail, thereby putting defendants on notice that an appeal had been filed. The court recognizes that notice and an opportunity to be heard are fundamental aspects of procedural due process. *Multnomah County v. Dept. of Rev.*, 325 Or at 236. However, the court cannot overlook the plain and unambiguous language of the statute by reading out of the law the requirement that “a copy of the complaint shall be served upon the taxpayer by the appealing party by certified mail * * *.” ORS 305.560(3) (emphasis added). The language of the statute itself and prior judicial determinations make clear the legislative intent. That being the case, the court can proceed no further. *Multnomah County v. Dept. of Rev.*, 325 Or at 235, citing *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993).

IT IS THE DECISION OF THE COURT that the above-entitled matter be dismissed because plaintiff failed to serve a copy of the Complaint on the taxpayers within 30 days of the mailing of the board order as required by ORS 305.560(3).

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 15, 2001. THE COURT FILED THIS DOCUMENT ON MAY 15, 2001.