

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

CAROLYN S. NEHEZ,)
)
 Plaintiff,) No. 010445C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff has requested a reduction in the assessed value of her condominium back to the 1997-98 tax year. Defendant, in its Answer, moved to dismiss tax years 1997-98 through 1999-00 because plaintiff did not first seek relief from the County Board of Property Tax Appeals (Board). The motion was addressed by the court during the July 5, 2001, telephone hearing. The court on its own motion also addressed the 2000-01 tax year to inquire as to whether the request for that year was justiciable. This decision fully resolves the appeal.

STATEMENT OF FACTS

The subject property is a condominium unit which plaintiff uses as her personal residence. Plaintiff purchased the home in early 1997 for \$102,000. Plaintiff has owned residential property in Oregon in the past, but never a condominium. After comparing tax statements with a neighbor in the fall of calendar year 2000 plaintiff filed a petition with the county board seeking a reduction in value. The board reduced the real market value from \$123,600 to \$105,000. The maximum assessed and assessed values were sustained at \$92,650.

Historically, the real market value of plaintiff's property for tax purposes has risen

slightly each year (less than 10 percent) except for tax year 1997-98 when the roll value (RMV) was increased nearly 40 percent, from \$82,800 to \$112,200. The increase was based on a determination by the assessor's office that the property had been "improved" in some fashion¹ before the sale. The maximum assessed value that year included exceptions value to reflect the improvements. It is plaintiff's position that the interior work was cosmetic in nature and that the work done added little to the value.

COURT'S ANALYSIS

The appeal involves multiple tax years. A different analysis applies to different years. Accordingly, the court will address the various tax years separately, except for 1998-99 and 1999-00, which are discussed together because the same principles apply.

Only the current tax year (2000-01) was appealed to this court timely from an order of the board. While the request for that year would ordinarily be amenable to a review on the merits, the court does not reach the valuation issue because the request is not justiciable, as explained below. The three previous tax years are reviewed under the provisions of ORS 305.288² because they were appealed directly to this court.

Absent the statutory authority provided in ORS 305.288 the court would not be able to consider an appeal requesting a reduction in value for "prior" tax years. That statute authorizes the court to reduce the value of property in two situations: first, where the taxpayer demonstrates an error in value of at least 20 percent; second, where the taxpayer can show she was prevented from properly pursuing the statutory right of appeal by reason

¹The seller apparently fixed up the interior of the home.

² Reference to the Oregon Revised Statutes is to 1999 for tax years 1999-00 and 2000-01. The earlier tax years are reviewed under the 1997 statutes.

of “good and sufficient cause.” ORS 305.288.³ In addition, the court can only consider the current and two immediately preceding tax years. The tax year is a 12-month period beginning on July 1. ORS 308.007(1)(c).

Looking first at the 1997-98 tax year, the court cannot consider that year because it is beyond the three-year window provided in subsections (1) and (2) of the 1997 statute.⁴ The Complaint was filed in April 2001 which was during the 2000- 01 tax year. The two previous tax years were 1999-00 and 1998-99. The 1997-98 tax year is removed one year too many.

As for tax years 1998-99 and 1999-00, they fall within the three year window, but encounter other obstacles. First, plaintiff does not contend that the value is in error by 20 percent or more. Plaintiff requested reductions in assessed value of 18.6 percent for 1998-99 and 18.4 percent for 1999-00. While the 1997 version of ORS 305.288 (which governs the 1998-99 tax year) authorized the court to reduce value upon a demonstrated error in assessed value of at least 20 percent, it is not clear that provision, which was changed in 1999 to refer to *real market* value, is valid. At the very least there is tension between the earlier version and ORS 308.146, which provides that assessed value “shall equal” the lesser of real market or maximum assessed value. ORS 308.146(2).⁵

³The 20 percent error rule is found in subsection (1) of the statute in both the 1997 and 1999 versions. The good and sufficient cause provision is found in subsection (2) of the 1997 version and subsection (3) of the 1999 version.

⁴The court can “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.” ORS 305.288(1) (emphasis added).

⁵By statute, “[t]he maximum assessed value of property shall equal 103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the prior year, whichever is greater.” ORS 308.146(1).

Assessed value is often, as in this case, based on maximum assessed value (because that number is less than real market value), and absent satisfactory proof of an error in either maximum assessed or real market value, assessed value is locked in. Plaintiff was given an opportunity by the court to amend the Complaint to allege an error in real market value, but declined, indicating she did not believe the value was off by 20 percent. The bottom line, however, is that the allegation of error falls short of the threshold.

Because the magnitude of the error is less than 20 percent the court cannot consider tax years 1998-99 and 1999-00 unless plaintiff establishes “good and sufficient cause” for not seeking relief from the board in 1998 and 1999. ORS 305.288(3). Plaintiff asserted that she has not previously owned a condominium and therefore had no yardstick by which to measure the taxes to determine if they were out of line. It was not until plaintiff spoke with her neighbor in the latter part of calendar year 2000 that she discovered her property taxes were considerably higher than those of her neighbor. Armed with that information, plaintiff pursued an appeal. Of course, the court does not hear tax complaints per se, but rather challenges to value.

As the court explained during the hearing, “good and sufficient cause” is defined as an extraordinary circumstance that is beyond the control of the taxpayer and that prevents the taxpayer from pursuing the statutory right of appeal. ORS 305.288(5)(b)(A).⁶ The statutory definition specifically excludes “inadvertence, oversight, [and] lack of knowledge.” ORS 305.288(5)(b)(B). Plaintiff herself testified that she was “not aware” of the problem with the value until she spoke with her neighbor and undertook further investigation. It is the addition of exceptions value in 1997 with which plaintiff is particularly concerned and in fact

⁶The identical definition is found in subsection (4)(b)(A) of the 1997 law.
DECISION

the reduction or removal of that value in 1997 would reduce both maximum assessed and assessed values for that year and years subsequent thereto, including 1998-99 and 1999-00. This, in turn, would reduce plaintiff's property taxes, which is the ultimate goal of the appeal. Plaintiff insists the county erred in adding exceptions value in 1997 and that this "code" error is an extraordinary circumstance that was beyond her control. She therefore believes the good and sufficient cause provision is satisfied. The court disagrees. Even if plaintiff were able to demonstrate the absence of property improvements sufficient to justify adding exceptions value, that error in 1997 did not prevent plaintiff from filing a petition with the board in 1998 or 1999. Rather, it was plaintiff's lack of awareness of the disparity in values that caused her to not challenge the values until the tax statement for the 2000-01 tax year arrived. Plaintiff forthrightly admitted that things did not seem out of line until she spoke with her neighbor in the winter of calendar year 2000. This situation is not uncommon and is indeed understandable. However, the court has previously held that taxpayers have the responsibility to inform themselves of the information in the assessor's records used to establish the value of their property if for no other reason that human error is unavoidable, including that of government employees. *See, e.g., Seifert v. Dept. of Rev.*, 14 OTR 401, 404-405 (1998); *Taft Church v. Dept. of Rev.*, 14 OTR 119, 122 (1997); *Running v. Dept. of Rev.*, 10 OTR 42, 43 (1985). Failure to undertake such inquiries can come at a cost.

Because there is neither an allegation of a 20 percent error nor good and sufficient cause for plaintiff's failure to properly pursue the right of appeal the court cannot consider the requested relief for tax years 1998-99 and 1999-00.

Finally, as for the 2000-01 tax year, plaintiff does not contest the board reduced

value (RMV) of \$105,000. Rather, plaintiff seeks a reduction in assessed value to put her assessed value on par with those of her neighbors' who own similar condominium units. As explained above, assessed value is a creature of statute and is essentially a mathematical computation unassailable on direct attack. Either real market or maximum assessed value must be shown to be in error.⁷ Neither value is here challenged. Accordingly, the court cannot reduce assessed value for tax year 2000-01.

CONCLUSION

The court cannot consider plaintiff's request to reduce the value for the 1997-98 tax year because that year is beyond the reach of the court under ORS 305.288. The court is granting defendant's motion to dismiss tax years 1998-99 and 1999-00 because plaintiff did not timely appeal to the court from an order of the board and does not allege a 20 percent error in value. Nor has she established that she was prevented from pursuing that course of action by reason of extraordinary circumstances beyond her control. ORS 305.288(1)(b) and (3) (1999). Finally, the 2000-01 tax year is dismissed because plaintiff has not requested a form of relief that is within the authority of the court to grant. The court cannot reduce assessed value under the facts of this case.

Plaintiff has not challenged the real market or maximum assessed values for that tax year.

IT IS THE DECISION OF THE COURT that plaintiff's complaint is dismissed as to all tax years for the reasons set forth above.

Dated this _____ day of July, 2001.

⁷The county first determines maximum assessed value under ORS 308.146(1), which is the greater of "103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the prior year[.]" It then determines real market value and sets the assessed value as the lesser of the real market or maximum assessed values. ORS 308.146(2).

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 JULY 31, 2001. THE COURT FILED THIS DOCUMENT ON JULY 31, 2001.