

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

8<sup>TH</sup> & OLIVE LLC, )  
 )  
 Plaintiff, )  
 ) No. 010517D  
 v. )  
 )  
 LANE COUNTY ASSESSOR )  
 )  
 Defendant. ) **DECISION OF DISMISSAL**

Plaintiff appeals Defendant’s letter, dated February 1, 2001, stating that the value of Plaintiff’s property identified as Lane County Assessor’s Account No. 260479 would be added to the assessment and tax rolls as omitted property.

There is no dispute of fact and the matter is before the court on Defendant’s Motion to Dismiss (Motion).<sup>1</sup> On January 29, 2002, Defendant filed its Motion, requesting the court to dismiss this case without prejudice. Defendant’s Motion stated that Defendant’s Letter was incorrectly sent to Plaintiff by “first class mail rather than by certified mail” as required by ORS 311.223(2).<sup>2</sup> (Defendant’s Motion at 1.) Defendant’s Motion represented that Defendant had corrected Plaintiff’s account and requested that “[t]his case \* \* \* be dismissed as moot; however, the dismissal should be **without prejudice**.” (*Id.*) (Emphasis added.)

On January 24, 2002, Plaintiff filed its Memorandum in Opposition to Defendant’s Motion (Memorandum). Plaintiff requested that the court “determine whether the assessor’s use of the omitted property statute, as of the time of the filing by taxpayer, was in compliance with Oregon law in this case or not.” (Ptf’s Memorandum

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<sup>1</sup>Neither party requested oral argument.

<sup>2</sup>All references to the Oregon Revised Statutes are to 1999.

at 5.) In addition, Plaintiff requested that if the court granted Defendant's Motion, "the dismissal should be **with prejudice.**" (*Id.*)

### COURT'S ANALYSIS

The right of an individual to bring an appeal in the Oregon Tax Court is found in ORS 305.275(1), which provides in relevant part:

"Any person may appeal under this subsection to the magistrate division of the Oregon Tax Court as provided in ORS 305.280 and 305.560, if all of the following criteria are met:

"(a) The person must be aggrieved by and affected by an act, omission, order or determination of:

"\* \* \* \* \*

"(C) A county assessor or other county official  
\* \* \* .

"\* \* \* \* \*

"(b) The act, omission, order or determination must affect the property of the person making the appeal or property for which the person making the appeal holds an interest that obligates the person to pay taxes imposed on the property \* \* \* .

"(c) There is no other statutory right of appeal for the grievance."

In analyzing this statute, the Tax Court has clearly stated that "[i]n requiring that taxpayers be 'aggrieved' under ORS 305.275, the legislature intended that the taxpayer have an immediate claim of wrong. It did not intend that taxpayers could require the expenditure of public resources to litigate issues that might never arise." *Kaady v. Dept. of Rev.*, 15 OTR 124, 125 (2000).

In this case, at the time Plaintiff filed its appeal Plaintiff was aggrieved by Defendant's determination that the value of Plaintiff's property would be added to the

assessment and tax rolls as omitted property. Subsequently, Defendant withdrew its determination. Plaintiff is no longer aggrieved.

Plaintiff requests the court to consider the following issue: “[W]hether the assessor’s use of the omitted property statute, as of the time of the [Complaint] filing by taxpayer, was in compliance with Oregon law in this case or not.” (Ptf’s Memorandum at 5.) (Emphasis added.) If the court were to grant Plaintiff’s request, it would be issuing an advisory ruling because at this point in time there is no justiciable issue before the court. Defendant has withdrawn its determination. This court has been directed not to authorize the expenditure of public resources to litigate issues that might never arise or, in this case, arose but were withdrawn. *See Kaady*, 15 OTR at 125. The court declines to consider the issue.

The court has concluded that Plaintiff is not aggrieved. Plaintiff does not have “an immediate claim of wrong.” *Id.* For this reason, Plaintiff does not have standing to bring this appeal. Because Plaintiff lacks standing, the court is “without jurisdiction to consider the merits” of the case. *NW Alliance for Market Equality v. Dept. of Rev.*, 318 Or 129, 136 (1993). Under these circumstances, the court must grant Defendant’s Motion to Dismiss for lack of standing.

Plaintiff requests that if the court grants Defendant’s Motion the dismissal “should be with prejudice.” (Ptf’s Memorandum at 5.) In making its request, Plaintiff concludes that granting a motion to dismiss with prejudice would preclude Defendant from issuing a notice of intention to add omitted property to the tax rolls. *See* ORS 311.216. If the court’s Decision were to grant the dismissal with prejudice “the effect \* \* \* would be to terminate and to bar another suit for the same cause [of action].” *Strawn v. Commission*, 1 OTR 98, 104 (1963). The court has concluded in this case that there

is no "cause of action." Defendant has withdrawn its notice of intention to add Plaintiff's omitted property to the tax rolls. Because the court concludes that there is no justiciable issue before the court, a judgment of dismissal with prejudice would have no judicial effect to terminate or bar another suit when there is no cause of action.

### **CONCLUSION**

Now, therefore,

IT IS THE DECISION OF THE COURT that Defendant's Motion to Dismiss is granted.

Dated this \_\_\_\_\_ day of February, 2002.

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JILL A. TANNER  
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 JILL A. TANNER ON FEBRUARY 27, 2002. THE COURT FILED THIS DOCUMENT ON FEBRUARY 27, 2002.**