

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Property Tax

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|----------------------------|---|---|
| EMANUELA MIU, |) | |
| |) | |
| Plaintiff, |) | No. 010683E |
| |) | |
| v. |) | |
| |) | |
| MULTNOMAH COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION AND JUDGMENT OF DISMISSAL |

This matter is before the court on defendant's Motion to Dismiss, which was filed as part of its Answer on May 7, 2001. The court discussed the motion with the parties during the case management conference held June 13, 2001. Emanuela Miu appeared on her own behalf. Beth Fast, Appraiser, appeared on behalf of defendant (the county).

Ms. Miu appeals the 2000-01 real market value assigned to the land identified in Account Nos. R239764 and R239763. She appealed the values to the Multnomah County Board of Property Tax Appeals (BOPTA). In its Order, the BOPTA sustained the county's value determinations. The BOPTA Order is dated March 12, 2001, with a "Mailed" date of March 14, 2001. Ms. Miu mailed her appeal to the court on April 27, 2001.

In its Answer, the county moved that the court dismiss the case claiming Ms. Miu failed to timely file her appeal within 30 days of the BOPTA Order as required by law. The county refers the court to the "Mailed" date of March 14, 2001, in the BOPTA Order and the April 27, 2001, mailing date of Ms. Miu's Complaint to argue the appeal was not timely filed. During the conference, Ms. Miu explained that, although the BOPTA Order states it was mailed March 14, 2001, in fact the envelope containing the BOPTA Order is date stamped March 26, 2001. She subsequently supplied the court with a copy of an envelope

from the Multnomah County Division of Assessment and Taxation containing a date stamp of March 26, 2001. Ms. Miu further explained she did not receive the BOPTA Order until March 28, 2001. Counting 30 days from when she *received* the Order, Ms. Miu argues her Complaint was timely filed.

ORS 305.280(4) provides that a taxpayer must file an appeal from a BOPTA order within 30 days of when the order was mailed to the taxpayer. The statute states, in pertinent part:

" * * * [A]n appeal to the tax court * * * from an order of a county board of property tax appeals shall be filed within 30 days after the date of the * * * mailing of the order, date of publication of notice of the order or date of mailing of the notice of the order to the taxpayer, whichever is applicable."

Accepting Ms. Miu's claim that the subject Order was not mailed until March 26, 2001, her appeal still was not timely filed with the court. The statute requires that the appeal be mailed within 30 days of *mailing* of the order. In this case, assuming the Order was mailed March 26, 2001, Ms. Miu should have mailed her Complaint by April 25, 2001. Instead, she did not mail her Complaint until April 27, 2001, two days beyond the deadline. Unfortunately, this is what happens when taxpayers wait until the last minute to file their appeal. It leaves no room for error.

When an appeal is not timely filed with the court, the court may still accept jurisdiction under ORS 305.288 if the taxpayer either (1) alleges an error of 20 percent or more or (2) demonstrates "good and sufficient cause" for failing to timely file the appeal. Ms. Miu does not allege an error of 20 percent so the only way the court may consider her untimely appeal is if she can demonstrate "good and sufficient cause" for not timely filing her appeal.

ORS 305.288(3), which is the statute granting the court this authority, 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 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:

“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).

Ms. Miu did not timely file her appeal with this court because she misunderstood the date from which she should begin counting the 30 days: mail date versus receipt date. Appeal instructions are typically provided on the back of BOPTA orders and advise taxpayers to file their appeals within 30 days of the mailing date of the orders. Ms. Miu has not claimed she was advised otherwise. Her mistake does not rise to the level of “good and sufficient cause” as defined and anticipated by the statute. The court finds, therefore, that it lacks authority under ORS 305.288 to consider Ms. Miu’s late appeal. Now, therefore;

IT IS HEREBY ADJUDGED AND DECREED that this matter be dismissed.

Dated this ____ day of June, 2001.

COYREEN R. WEIDNER
MAGISTRATE

JUNE 29, 2001. THE COURT FILED THIS DOCUMENT ON JULY 2, 2001.