

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

THE ASSESSOR OF MULTNOMAH COUNTY,)	
)	
Plaintiff,)	No. 010760E
)	
v.)	
)	
RANDY SEXSMITH,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on its own motion to dismiss the above-entitled appeal. The court discussed the issue of the court’s jurisdiction with the parties during the case management conference of a related case, *Sexsmith v. Multnomah County*, OTC-MD No. 010097E, on May 23, 2001.¹ Plaintiff (the county) requested that the two cases be consolidated. The court, however, advised that it needed to first rule on whether it has authority to consider the subject appeal because the county failed to appeal from the board’s Order within 30 days.

STATEMENT OF FACTS

On March 26, 2001, the Board of Property Tax Appeals (BOPTA) mailed its Order to the parties wherein it ordered the real market value of the subject property² reduced for the 2000-01 tax year from \$33,870 to \$3,500. On May 2, 2001, the county mailed its Complaint to this court. The county admittedly mailed its appeal outside the 30-day appeal

¹ Case No. 010097E pertains to the 1999-2000 tax year. The subject appeal pertains to the 2000-01 tax year.

² The subject property is identified in the Multnomah County Assessor's records as Account No. P491501.

period required by ORS 305.280(4).³ Because the county has not submitted a timely appeal to this court, the court, on its own motion, must determine whether it has authority under ORS 305.288 to consider the county's appeal. *See generally Seifert v. Dept. of Rev.*, 14 OTR 401 (1998).

COURT'S ANALYSIS

As set forth above, ORS 305.280(4) requires a party aggrieved by a BOPTA order to appeal to this court within 30 days of mailing of the BOPTA order. When a party fails to appeal within the 30 days, their appeal rights are generally lost. The legislature, however, recognized situations may exist that prevent a party from timely appealing to this court. As a result, it granted the court authority under ORS 305.288(3) to consider untimely appeals when a party can demonstrate "good and sufficient cause" for failing to timely pursue its statutory remedy. ORS 305.288(3) 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 assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that **good and sufficient cause exists for the failure by the assessor or 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

³ ORS 305.280(4) provides:

" * * * [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."

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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).

ORS 305.288(3) grants the court authority to consider an untimely appeal by either a county assessor or a taxpayer when there is good and sufficient cause for the failure of either the assessor or taxpayer to timely pursue their appeal rights. ORS 305.288(5)(b)(A) defines "good and sufficient cause" as being an extraordinary circumstance beyond the control of the *taxpayer* that causes the *taxpayer* to timely pursue its remedy. The question is whether the court looks to this same definition when the appealing party is the county assessor. The court concludes that it should use this same definition. The legislature clearly provided a county assessor with the right to invoke the "good and sufficient cause" provisions when the county assessor fails to timely pursue his statutory remedy. It is only logical to apply a similar definition of "good and sufficient cause" to both county assessors and taxpayers who are plaintiffs. To do otherwise would create inequity and imbalance in the appeal process.

The question remains, however, whether the county in this appeal has "good and sufficient cause" for failing to timely pursue its statutory remedy with the court. Mr. Howard, the county's representative, explained during the conference that he assumed the current tax year would be wrapped in and included in the 1999-2000 appeal filed by Mr. Sexsmith (Case No. 010097E). He also believed the 1999-2000 tax year would be settled and, as a result, tax year 2000-01 could be settled informally with it. He further mentioned that he had notified the court during a telephone conference on April 4, 2001, for Case No.

010097E, that the county would likely be appealing the board's Order. Finally, he explained that the county rarely files appeals from board orders and he, therefore, was inexperienced with the appeal process.

After considering the above reasons provided by Mr. Howard, the court concludes the county lacks good and sufficient cause for failing to timely file its appeal with this court. Good and sufficient cause is defined as an "extraordinary circumstance" and does not include "inadvertence, oversight, [and] lack of knowledge." ORS 305.288(5)(b)(A), (B). The county has reasons for not timely appealing but none are so extraordinary as to constitute good and sufficient cause. The court recognizes the county is typically the defendant in property tax appeals and may, therefore, lack expertise with regard to initiating appeals. However, individual taxpayers are likewise not experts in the appeal process yet they are expected to follow the board's instructions and timely file their appeals within 30 days. The court must apply the same standard to the county.

In regards to Mr. Howard's comments that he notified the court on April 4, 2001, that he may be filing an appeal, the court does not view his comment as permitting the county to then overlook the statutory 30-day appeal requirement. The court at no time told Mr. Howard the county did not need to file its appeal within 30 days and Mr. Howard makes no claim that the court misled him. As a result, the court finds the county does not have good and sufficient cause for failing to timely file its appeal. As a consequence, the court finds the case should be dismissed. Now, therefore;

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IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

Dated this _____ day of May, 2001.

COYREEN R. WEIDNER
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 THIS DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON MAY 31, 2001. THE COURT FILED THIS DOCUMENT ON MAY 31, 2001.