

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

TY ROSE and ASHLEY ROSE, )  
 )  
 Plaintiffs, )  
 ) No. 010825D  
 v. )  
 )  
 LANE COUNTY ASSESSOR )  
 )  
 Defendant. ) **DECISION OF DISMISSAL**

Plaintiffs appeal Defendant’s letter, dated February 1, 2001, stating that the value of Plaintiffs’ property identified as Lane County Assessor’s Account No. 1574662 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 11, 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 Plaintiffs 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 Plaintiffs’ 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, Plaintiffs filed their Memorandum in Opposition to Defendant’s Motion (Memorandum). Plaintiffs 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

---

<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, Plaintiffs 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 Plaintiffs filed their appeal they were aggrieved by Defendant's determination that the value of Plaintiffs' property would be added to the

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

Plaintiffs request 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 Plaintiffs’ 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 Plaintiffs are not aggrieved. Plaintiffs do not have “an immediate claim of wrong.” *Id.* For this reason, Plaintiffs do not have standing to bring this appeal. Because Plaintiffs lack 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.

Plaintiffs request that if the court grants Defendant’s Motion the dismissal “should be with prejudice.” (Ptf’s Memorandum at 5.) In making their request, Plaintiffs conclude 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 Plaintiffs’ 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.

---

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.**