

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

DREW PARK and SHAWNA PARK,)
)
 Plaintiffs,)
)
 v.)
)
MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.)
) **DECISION**

Plaintiffs have appealed to the court seeking a reduction in the real market value of their property for three tax years, 1999-2000, 2000-01, and 2001-02. Defendant challenged the appeal on various procedural grounds. A hearing was held on January 31, 2002. Ms. Shawna Park appeared for the Plaintiffs. Ms. Linda U'Ren appeared on behalf of the Defendant. For the reasons set forth below, Plaintiffs' Complaint is dismissed.

STATEMENT OF FACTS

Plaintiffs paid for two appraisals in an effort to eliminate their mortgage insurance premium. Both appraisers estimated the market value to be below the real market value on the assessment and tax rolls. Plaintiffs submitted excerpts from one appraisal with their appeal. The appraiser's estimate, as of September 17, 2001, was \$274,500. The real market values on the county tax rolls for the three tax years are \$302,600 (1999-2000), \$308,560 (2000-01) and \$330,260 (2001-02).

Ms. Park telephoned the office of the county assessor (or tax collector) after receiving the property tax statement in October 2001 to discuss the value and how to appeal. For reasons not clear to the court Plaintiffs appealed the current and two prior tax years all to this court. It is unclear whether Plaintiffs also submitted a petition to the

county board of property tax appeals (Board) for the current tax year (2001-02). Ms. Park testified that when she telephoned the county tax office she inquired as to how far back she could go in seeking a reduction and was told that the current and two prior years could be appealed. Ms. Park further testified that she had been advised of a December 31 deadline and assumed she had complied. Plaintiffs' Complaint was filed with the Magistrate Division of the Tax Court on November 28, 2001.

COURT'S ANALYSIS

Depending on the timing and the number of years for which relief is sought, a property owner may have several forums in which to proceed. Timely appeals for the "current" tax year¹ are filed with the county board of property tax appeals (Board) after the tax statements are mailed and before December 31. ORS 309.100(2).² Requests for reductions for "prior" tax years can only be filed with the Tax Court or, in some instances, with the State of Oregon, Department of Revenue (Department).³ In most instances, taxpayers cannot appeal to the Tax Court if they may appeal to the Board. ORS 305.275(3).⁴ The statute provides:

"Subject to ORS 305.403, if a taxpayer may appeal to the board of property tax appeals under ORS 309.100, then no appeal shall be allowed under this section. The appeal under this section is from an order of the board as a result of the appeal filed under ORS 309.100 or from an order of the board that certain corrections, additions to or changes in the roll be made." ORS 305.275(3).

¹ By statute, the "current tax year" means the tax year in which the need for the change or correction is brought to the attention of the [court]. See ORS 305.288(5)(a) and 306.115(5). The tax year is a twelve-month period beginning on July 1. ORS 308.007(1)(c). Tax statements are mailed several months into the tax year, generally in October. They must be mailed by October 25. ORS 311.250(1).

² All references to the Oregon Revised Statutes are to 1999.

³For example, under ORS 306.115, a taxpayer can seek relief from the department.

⁴The exception is a taxpayer election involving principal or secondary industrial property. See ORS 305.275 and 305.403.

Thus, in this case Plaintiffs were required by statute to petition the county board for the current tax year, which is 2001-02, before December 31, 2001. As indicated above, it is unclear whether Plaintiffs filed a petition with the Board. Ms. Park was somewhat confused on this point but was fairly certain she had filled out and mailed in only one form, which would be the Complaint filed with this court. Regardless of whether Plaintiffs simultaneously sought relief both from the Board and the Tax Court, the request to the court is premature and must therefore be dismissed. ORS 305.275(3). Assuming Plaintiffs could overcome the procedural defect (for example, by withdrawing the 2001-02 tax year and then amending the Complaint to add that year), the appeal would have to be considered under the provisions of ORS 305.288 and, for the reasons set forth below, the case would not go forward to trial.

Turning to the two prior tax years (1999-2000 and 2000-01), the court cannot order a reduction in the real market value unless Plaintiffs allege and subsequently demonstrate to the satisfaction of the court that there is a 20 percent error in the value of the property or that they were prevented from pursuing their statutory right of appeal by reason of "good and sufficient cause." ORS 305.288(1) and (3). The magnitude of the alleged error is irrelevant upon a proper showing of good and sufficient cause.

20 Percent Error Rule

Considering first the 20 percent error rule, the statute requires that the property be used as a dwelling and that:

"[t]he change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent." ORS 305.288(1)(b).

The property at issue is a dwelling. Plaintiffs have requested a reduction in value to
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\$274,500. The real market value on the assessment and tax rolls for 1999-2000 is \$302,600 and for 2000-01, \$308,560. The alleged error is nine percent for 1999-2000⁵ and 11 percent⁶ for 2000-01. Because the alleged error falls short of the 20 percent threshold, the case cannot go forward on the merits unless Plaintiffs can establish good and sufficient cause for failing to petition the Board in 1999 or 2000. The request for the 2001-02 tax year sets forth an alleged error of roughly 17 percent⁷ and likewise falls short of the 20 percent benchmark, were that year properly before the court.

Good and Sufficient Cause

The term of good and sufficient cause is defined by statute as:

“(A) * * * an extraordinary circumstance that is beyond the control of the taxpayer * * * and that causes the taxpayer * * * 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).

Plaintiffs did not petition the Board in 1999 or 2000 because they did not have their appraisal until the fall of 2001. It is the appraisal that revealed the possibility of an error on the rolls. If Plaintiffs had had the appraisal in 1999 they would presumably have appealed back then, provided the appraiser’s value estimate had been below the roll value. The same is true for 2000. Thus, Plaintiffs lacked the information on which to file an appeal until after the deadline for petitioning the Board for the two prior tax years had passed. Because it was within Plaintiffs’ ability to obtain such information at an earlier date, the court finds that the untimely acquisition of the information does not

⁵ [(\$302,600 - \$274,500) = \$28,100] ÷ \$302,600 = .092862 = 9 percent.

⁶ [(\$308,560 - \$274,500) = \$34,060] ÷ \$308,560 = .110384 = 11 percent.

⁷ [(\$330,260 - \$274,500) = \$55,760] ÷ \$330,260 = .168837 = 16.9 percent.

constitute good and sufficient cause. The circumstance is neither extraordinary nor beyond the Plaintiffs' control.

It is not clear why Plaintiffs did not petition the Board for the current tax year. It appears from the testimony of Ms. Park that Plaintiffs did not petition the Board because of confusion as to how the system works. Plaintiffs were aware of the December 31, 2001, deadline and it appears Plaintiffs mistakenly assumed that they could attend to the matter entirely at the state level by including all three years in their Complaint to the court. That assumption, if correct, cost Plaintiffs the right to challenge the value for 2001-02.

CONCLUSION

The court concludes that it cannot grant Plaintiffs' request for a reduction in the real market value of the property identified as Multnomah County Assessor's Account No. R122693 for any of the tax years at issue. Plaintiffs' request as to tax year 2001-02 was filed before the deadline for petitioning the Board and as such is premature. In addition, the alleged error is less than 20 percent and Plaintiffs have not established good and sufficient cause for not timely pursuing the matter with the Board. The request as to tax years 1999-2000 and 2000-01 is dismissed because the alleged error is less than 20 percent and the good and sufficient cause provision is not satisfied.

IT IS THE DECISION OF THE COURT that Plaintiffs' complaint is dismissed as to tax years 1999-2000, 2000-01 and 2001-02.

Dated this _____ day of February, 2002.

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 FEBRUARY 27, 2002. THE COURT FILED THIS DOCUMENT ON FEBRUARY 27, 2002.