

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LUKE-DORF, INC.,)	
)	
Plaintiff,)	TC-MD 011239F
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant's motion to dismiss, filed January 2, 2003, requesting that the Complaint be dismissed. In a letter dated February 14, 2003, Defendant agreed to allow Plaintiff an additional 30 days to respond to Defendant's motion.

This case was originally filed as a small claims case. Such matters as the exemption of property from taxation are not appropriate for small claims. Given the procedural history of this case, described below, the court waives the additional filing fee.

This case has had a difficult procedural history. Plaintiff first filed an application for exemption from real and personal property taxes with the Washington County Assessor (county) on November 8, 2001. Plaintiff did not include the late filing fee. The county denied the request as untimely. On November 19, 2001, Plaintiff filed a petition with Defendant asking for the exemption, arguing that it had good and sufficient cause for failing to timely appeal. Defendant forwarded the petition to the court on December 5, 2001. Plaintiff filed its appeal with the court on December 19, 2001, naming the Department of Revenue as Defendant. The court initially recorded the county as Defendant. The court held the case open while Plaintiff again appealed to

Defendant. In its Conference Decision, Defendant did not address the merits of Plaintiff's good and sufficient cause claim. In preparing its Decision, the court noted that the county was not named as Defendant.

November 8, 2002, was the first appearance by Defendant on this case. On December 31, 2002, the court issued an Order remanding the case to Defendant for a hearing on Plaintiff's good and sufficient cause claim. On February 11, 2003, Defendant issued a Conference Decision finding that Plaintiff did not have good and sufficient cause for failing to timely file for property tax exemption.

As this court has previously stated,

"It is well established that the court's scope of review of the department's discretionary judgment in hardship cases is limited to whether the department acted capriciously or arrived at a clearly wrong conclusion. See *Hewlett-Packard Co. v. Dept. of Rev.*, 13 OTR 247, 250 (1995); *Nat'l Metallurgical Corp. v. Dept. of Rev.*, 7 OTR 142, 145-46 (1977); *Rogue River Pack. v. Dept. of Rev.*, 6 OTR 293, 297-98 (1976); *Pratum [Co-op Whse. v. Dept. of Rev.]*, 6 OTR 130, 134 (1975)]. 'An abuse of discretion is found where [the department] does not act upon the facts presented to it or fails to obtain the factual data necessary for a proper result.' *Rogue River*, 6 OTR at 301."

Clifford Associates v. Dept. of Rev., OTC-MD No 000163B, WL 33245157, at *3 (Sept 19, 2000). The court denied *Clifford's* appeal holding that,

"The department's conclusion took into account the reasons plaintiff gave for missing the filing deadline and concluded that plaintiff's circumstances did not rise to the level of good and sufficient cause as required by ORS 307.475. Upon review of the record, the court concludes that the department's 'exercise of discretion was soundly based and the court has no power to alter it'. *Nat'l Metallurgical Corp.*, 7 OTR at 151."

Clifford Associates, OTC-MD No 000163B, at *4.

The same reasoning applies here. Defendant did not abuse its discretion. Now, therefore,

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IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of July, 2003.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON JULY 21, 2003. THE COURT FILED THIS DOCUMENT ON JULY 21, 2003.