

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JERRY BERTAGNOLLI and SHIRLEY)
BERTAGNOLLI,)
) No. 020042C
Plaintiffs,)
)
v.)
)
JOSEPHINE COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

This matter is before the court on Plaintiffs request for property tax relief for the 2001-02 tax year because of a fire that completely destroyed Plaintiffs' home in April 2001. The case management conference scheduled for March 19, 2002, was converted to a trial. Mrs. Shirley Bertagnolli appeared for the Plaintiffs. Mr. Michael Schneyder appeared for the Defendant.

STATEMENT OF FACTS

Plaintiffs live on a 22 acre farm in Grants Pass. There were two homes on the property, a stick built farmhouse and a manufactured home. Plaintiffs' daughter and granddaughter lived in the main farmhouse and Plaintiffs lived in the manufactured home. On April 4, 2001, a fire completely destroyed the farmhouse. Plaintiffs' daughter and granddaughter died in the fire. When Plaintiffs received their property tax statement in October 2001 they noticed that they were being taxed on the farmhouse that no longer existed. Plaintiffs visited the assessor's office to discuss their tax bill and were directed to the Tax Court because the deadlines for obtaining relief had passed. Plaintiffs spoke with employees at the assessor's office on several occasions. While the exact date is not known, it appears Plaintiffs first approached the assessor's office in late October or early November 2001. The substance of those conversations is not

known. No application was ever filed with the county requesting proration of taxes or any other type of tax relief because of the fire.

In their Complaint to this court, filed January 23, 2002, Plaintiffs request proration of taxes. The tax year they identify is 2001-02. During the trial Mrs. Bertagnolli stated that she was seeking any relief that may be available in terms of property tax relief stemming from the fire. Defendant in its Answer requested that the court allow proration of taxes under ORS 308.425 and reassessment under ORS 308.146.

COURT'S ANALYSIS

The event that prompted the appeal was the discovery by Plaintiffs that they were being taxed for the 2001-02 tax year on the house that burned down. Although Plaintiffs indicated in their Complaint that they were seeking proration of taxes, it appears to the court that the actual relief sought is a determination of value as of July 1, 2001, as provided in ORS 305.428.¹ This would affect the 2001-02 tax year. The timing of the fire also entitled Plaintiffs to a proration of taxes for the 2000-01 tax year under ORS 308.425. In either case an application was required, as explained below. None was filed.

Proration of property taxes under ORS 308.425 requires an application “not later than the end of the tax year or 30 days after the date the property was destroyed or damaged, whichever is later.” ORS 308.425(2). The fire in this case occurred in April 2001 and Plaintiffs could have had their taxes partially canceled for the then-current tax year, through June 30, 2001 (2000-01 tax year). Plaintiffs had until the end of the tax year to file an application. The tax year is a twelve-month period beginning

¹ All references to the Oregon Revised Statutes are to 1999.
DECISION CASE NO. 020042C

on July 1. ORS 308.007(1)(c). April 2001 was ten months into the 2000-01 tax year. Plaintiffs could have applied for tax proration but they were required to file an application on or before June 30, 2001. Plaintiffs never did file an application. The reason no application was filed is that Plaintiffs were unaware they could apply for a proration of taxes until they talked with staff at the assessor's office. By the time the tax statement arrived in the fall and Plaintiffs realized they were being taxed on a building that no longer existed it was too late to file an application. This is not uncommon. Unfortunately the filing requirement cannot be excused. ORS 305.288(3) is not available because Plaintiff did not fail to pursue a statutory right of appeal. Rather, they failed to file an application.

Under ORS 308.428, Plaintiffs could have applied for a determination of value as of July 1, 2001, which would have resulted in a value for the 2001-02 tax year without the farmhouse that burned down rather than the value appearing on the tax statement, which included the farmhouse. The farmhouse was included in the tax statement because the assessment date for the 2001-02 tax year was January 1, 2001, and the fire had not yet occurred. See ORS 308.007 and 308.210(1). However, the benefit available under ORS 308.428 requires an application "on or before August 1 of the current year." ORS 308.428(2). No such application was filed.

The court does not have the authority to excuse the failure to file either of the applications discussed above.

Plaintiffs may have been able to proceed under the hardship statute by applying "to the Director of the Department of Revenue for a recommendation that the value of [the] property be stricken from the assessment roll." ORS 307.475(1). However, an application is required for that process as well and the deadline in this case was December 15, 2001. ORS 307.475(3). Relief may be available under ORS 306.115 by

DECISION CASE NO. 020042C

petitioning the Department of Revenue, but that is a decision for the department upon application by the Plaintiffs.

The court has considered other statutory provisions, especially ORS 305.288(3), but finds that it is without authority to prorate Plaintiffs' taxes or strike the improvement value from the rolls.²

CONCLUSION

The court has thoughtfully reviewed this matter and concludes that it is unable to grant the relief requested. Plaintiffs missed the deadline for filing applications for both a proration of taxes under ORS 308.425 and a value redetermination under ORS 308.428. The court has no equitable powers to waive or excuse the application requirement.

IT IS THE DECISION OF THE COURT that Plaintiffs' appeal must be denied.

Dated this _____ day of April, 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 APRIL 19, 2002. THE COURT FILED THIS DOCUMENT ON APRIL 19, 2002.

² In fact, it is questionable whether Plaintiffs have any right of appeal because a taxpayer must be aggrieved by an act or omission of a county assessor or tax collector in order to appeal to the Magistrate Division and it does not appear there is either an act or omission in this case. Ordinarily, a taxpayer would apply for a proration of taxes and the county's denial of the application is the act by which the taxpayer is aggrieved and from which the taxpayer appeals. In this case there was no application and thus no official denial.