

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

ALFRED P. LUTZ, Trustee, )  
 )  
 Plaintiff, ) No. 020085C  
 )  
 v. )  
 )  
 MULTNOMAH COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

This appeal involves the value of a residential structure. Relief is requested “as far back as 1995.” (Ptf’s ltr dated March 1, 2002.) Defendant, in its Answer, moved to dismiss the Complaint because Plaintiff did not first appeal to the local county board of property tax appeals (the board).

A case management conference was held on April 10, 2002. Defendant’s dismissal request was considered at that proceeding. The Alfred P. Lutz Trust appeared through Alfred Lutz and Elsie Lutz. Defendant appeared through Ms. Linda U’Ren, an appraiser with the Multnomah County Assessor. For ease of reference the Plaintiff trust will be referred to as Taxpayers.

**STATEMENT OF FACTS**

Taxpayers believe the value of their home is excessive when compared to other homes in the neighborhood. Taxpayers submitted information on six homes in the area. It appears that some neighbors with more or less similar homes are paying significantly less in property taxes and that another considerably larger home at 8330 S.W. Woods Creek Ct. has only a slightly higher tax bill. This tax inequity greatly troubles taxpayers.

The real market value of the subject property for tax purposes is \$320,790 for 2001-02 tax year. Taxpayers estimate their home is worth no more than \$262,900

based on the sale of the home at 8217 S.W. Woods Creek Ct. in January 2001 for that price.

Taxpayers were unaware that they could appeal their “taxes” until their daughter informed them that appeals were possible. Taxpayers understood that a voter approved tax base in 1995 automatically resolved property tax problems without the necessity of an appeal. The court explained to Taxpayers during the April 10 hearing that its authority to consider their appeal was limited because they did not first petition the board.

### **COURT'S ANALYSIS**

Ordinarily taxpayers unhappy with the value of their home must submit a petition to the board. ORS 305.275(3)<sup>1</sup> and ORS 309.100. If they are unhappy with the board's decision, taxpayers may appeal to the Oregon Tax Court, Magistrate Division. ORS 309.110(7). A petition can be filed with the board in any year in which the taxpayers believe the value on their property tax statement is incorrect. The appeal to the board is filed after the tax statement arrives and on or before December 31. ORS 309.100(2). The taxpayers then have 30 days from the date of mailing of the board order to appeal the board's decision to the court, if deemed necessary and worthwhile. ORS 305.280(4).

Taxpayers in this case did not petition the board but instead came directly to the court. In this situation the court can order a reduction in value if Taxpayers either allege and prove an error in value of at least 20 percent or present a statutorily acceptable explanation for their failure to petition the board. Additionally, the court's authority is limited to the current and two prior tax years. See ORS 305.288(1) & (3).

The “current tax year” is determined based on the tax year in which the

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<sup>1</sup> All references to the Oregon Revised Statutes are to 2001.  
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complaint is filed. See ORS 305.288(5)(a) and ORS 306.115(5). The tax year is a twelve-month period beginning on July 1. ORS 308.007(1)(c). The Complaint in this case was filed on February 19, 2002, which was during the 2001-02 tax year.

Therefore, the current tax year is 2001-02 and the two prior tax years are 2000-01 and 1999-2000. The court cannot consider earlier tax years. Accordingly, tax years 1995-96 through 1998-99 must be dismissed.

Turning to the years properly before the court in terms of the three-year window discussed above, Taxpayers have not requested a change in value “equal to or greater than 20 percent.” ORS 305.288(1)(b). Taxpayers did not provide an estimate of the value of their home in their Complaint or other materials but advised the court during the hearing that they did not believe their home would sell for more than \$262,900.<sup>2</sup>

The real market value on the tax rolls for the 2001-02 tax year is \$320,790. The alleged error in value is only 18 percent.<sup>3</sup> The roll value for prior tax years is \$302,630 (2000-01) and \$296,700 (1999-2000). The corresponding error percentages are 13 and 11 percent. For all years under consideration, the error alleged is less than 20 percent. Accordingly, if Taxpayers’ appeal is to go forward to trial on the underlying valuation issue, the court must find that they have established good and sufficient cause for not first petitioning the board in 1999, 2000, or 2001.

The term “good and sufficient cause” is defined in ORS 305.288(5)(b)(A) as “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[.]” ORS

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<sup>2</sup>Actually, Taxpayers indicated their home was worth no more than their neighbors paid, but Elsie Lutz understood the neighbors paid \$269,000 instead of \$262,900. The purchase price seemed to form Taxpayers’ value opinion so the court concluded Taxpayers were requesting a reduction to \$262,900.

<sup>3</sup>  $\$320,790 - \$262,900 = \$57,890$ ;  $\$57,890 \div \$320,790 = 0.180461 = 18$  percent.

305.288(5)(b)(B) further provides that good and sufficient cause “[d]oes not include inadvertence, oversight, [or] lack of knowledge \* \* \*.” Taxpayers testified that they did not know about the board appeal process or the general right to appeal one’s property taxes until they were so informed by their daughter. Taxpayers testified they became aware of the board appeal process in January 2002, which is after the deadline for the most recent of the three years open to consideration. Thus, the reason for Taxpayers failure to petition the board in 1999, 2000, or 2001 is lack of knowledge. Lack of knowledge is not good and sufficient cause under the statute.

Taxpayers testified that they believed some unspecified voter approval in 1995 automatically “fixed” property taxes without the necessity of filing an appeal. Taxpayers were not able to elaborate on this vague understanding. The court assumes Taxpayers are referring to Measure 50, which amended the state’s constitution in 1997 to reduce assessed values and limit future growth in those values. *See generally*, Or Const, Art XI, § 11. A certain measure of property tax relief was produced by Measure 50 and it was automatic in its application. However, the measure did not resolve all property tax disputes and one of the objections often raised is that uniformity between similar properties is no longer possible in all situations. In that regard Measure 50 specifically exempts itself from Oregon’s uniformity requirements. Or Const, Art XI, § 11(18). The court in *Ellis v. Lorati*, 14 OTR 525, 535 (1999), noted that nonuniformity is likely to result under Measure 50. Taxpayers did receive property tax relief under Measure 50 because their taxes would be substantially higher if the tax rate were applied to the real market value of \$320,790, as was the case prior to Measure 50.

### **CONCLUSION**

After considering the information before it, the court concludes that Defendant’s request to dismiss the Complaint for failure to first petition the board, must be granted.

For tax years 1999-2000, 2000-01 and 2001-02, Taxpayers have neither alleged an error in value of at least 20 percent nor established good and sufficient cause for not pursuing their right of appeal to the board. The 1995-96 through 1998-99 tax years are dismissed because they are no longer within the court's jurisdiction. Now, therefore,

IT IS THE DECISION OF THIS COURT that Taxpayers' Complaint is dismissed.

Dated this \_\_\_\_\_ day of May, 2002.

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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 MAY 23, 2002. THE COURT FILED THIS DOCUMENT ON MAY 23, 2002.**