

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Property Tax

STEPHEN SCHWARZ and JOANNA )  
SCHWARZ, )  
 )  
Plaintiffs, ) No. 020101B  
 )  
v. )  
 )  
KLAMATH COUNTY ASSESSOR, )  
 )  
Defendant. ) **DECISION AND JUDGMENT**

This matter is before the court on Defendant's motion to dismiss, made during a case management conference on April 8, 2002, requesting that the Complaint be dismissed because appeals were not first presented to the Klamath County Board of Property Tax Appeals.

This case concerns commercial property owned by Plaintiffs and its assessed value for tax years 1998-99 through 2001-02.

The property is identified in the Klamath County tax records as Account No. R541952. No petitions were earlier submitted to the county appeals board. The first, and only, Complaint for those earlier years was filed with the Magistrate Division on February 21, 2002.

To appeal assessed values, taxpayers typically must appeal to their county appeals body by December 31 of the current tax year. ORS 309.100.<sup>1</sup> Here, Plaintiffs admit they did not timely appeal in these earlier years.

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<sup>1</sup> All references to the Oregon Revised Statutes are to 1999.

The court may not reach years beyond the current tax year and the two immediately preceding. ORS 305.288. Therefore, the 1998-99 year must clearly be dismissed.

As to the remaining years in this appeal, the legislature has provided a limited opportunity to contest certain earlier year assessments. In commercial property cases, the court can grant taxpayers relief in but one narrow circumstance. That is when the court determines there exists “good and sufficient cause” that prevented a timely appeal.

### **GOOD AND SUFFICIENT CAUSE**

The court will consider Plaintiffs' appeal if there is substantive evidence of good and sufficient cause for failing to earlier timely appeal. ORS 305.288(3) provides:

“The tax court may order a change or correction \* \* \* to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the \* \* \* taxpayer has no statutory right of appeal remaining and the tax court determines that **good and sufficient cause exists for the failure by the \* \* \* taxpayer to pursue the statutory right of appeal.**” (Emphasis added.)

ORS 305.288(5)(b) defines what constitutes good and sufficient cause: “Good and sufficient cause’:

“(A) Means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer’s agent or representative, and that causes the taxpayer, agent or representative 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.”

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Here, Plaintiffs state they did not timely appeal because they were seeking to

have a third party pay to clean-up alleged ground contamination. They could have appealed the Defendant's assessments without having first paid the tax billing. Their choice was to not contest the assessor's values; that choice has consequences. This decision was not beyond Plaintiffs' control; a simultaneous tax appeal could have progressed in addition to the original action against the seller.

Under these particular facts, the court finds that Plaintiffs do not have good and sufficient cause for failing to timely appeal.

### **CONCLUSION**

After considering the facts, the court concludes that the motion should be granted for all years under appeal. Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that Defendant's motion to dismiss is granted.

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

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JEFF MATTSON  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JEFF MATTSON ON  
JULY 29, 2002. THE COURT FILED THIS DOCUMENT ON JULY 29, 2002.**