

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

WALTER HUBER and ELMA ANN HUBER,	)	
	)	
Plaintiffs,	)	No. 020149B
	)	
v.	)	
	)	
CLACKAMAS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on Defendant’s motion to dismiss, made during a case management conference on April 23, 2002, requesting that the Complaint be dismissed because an appeal was not first presented to the Clackamas County Board of Property Tax Appeals.

This appeal concerns Plaintiffs' residence and its real market value for the 2001-02 tax year.

The property is identified in the Clackamas County tax records as Account No. 05002307. No petition was earlier submitted to the county board. The first Complaint was filed with the Magistrate Division on March 7, 2002.

Plaintiffs contend the real market value should be reduced as follows:

<u>Tax Year</u>	<u>Assessor</u>	<u>Plaintiff</u>	<u>Value Difference</u>
2001-02	\$230,433	\$200,000	13%

To appeal assessed values, taxpayers typically must appeal to their county board of property tax appeals by December 31 of the current tax year. ORS 309.100.<sup>1</sup> Here, Plaintiffs admit they did not timely appeal for this year.

The legislature has provided a limited opportunity to contest certain earlier year assessments. In residential cases, the court can grant taxpayers relief in two

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<sup>1</sup>All references to the Oregon Revised Statutes are to 2001.  
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circumstances. The first is when taxpayers establish good and sufficient cause as to why they did not timely appeal. The second is when the court determines that a gross error exists on the county roll.

### **GOOD AND SUFFICIENT CAUSE**

The court will consider Plaintiffs' appeal for 2001-02 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."

Here, Plaintiffs state they did not timely appeal because their daughter did not forward the tax statement and appeal procedure information to them during their time abroad. She paid the bills for them in the interim, but did not send the tax information to Plaintiffs until early 2002. While this was unfortunate, it is not beyond the control of the family's mail custodian.

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

### **GROSS ERROR**

The second circumstance under which the court can hear a taxpayer's case is if it concludes there is a gross error. ORS 305.288(1) sets forth when the court shall order a correction under this approach. The statute states:

"The tax court shall order a change or correction \* \* \* to the assessment and tax roll for the current tax year or for either of the two tax years immediately preceding the current tax year \* \* \* if all of the following conditions exist:

"(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling \* \* \* .

"(b) The 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.**" (Emphasis added.)

Here, the value range between the parties is less than twenty percent for the 2001-02 tax year. There is no showing of a gross error.

### CONCLUSION

After considering the record, the court concludes that the motion should be granted.

Now, therefore,

IT IS THE DECISION OF THE COURT that the appeal is dismissed.

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

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JEFF MATTSON  
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 97310. 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 JEFF MATTSON ON MAY 31, 2002. THE COURT FILED THIS DOCUMENT ON MAY 31, 2002.**