

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

EUGENE F. JANSSEN and BERYL R. JANSSEN,)	
)	
Plaintiffs,)	No. 020190F
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This matter is before the court on Defendant's motion to dismiss Plaintiffs' appeal. The issue before the court is Defendant's denial of disabled veterans exemptions for tax years prior to tax year 2002-03. The court heard arguments on April 29, 2002, and again on June 4, 2002.

STATEMENT OF FACTS

Mr. Janssen was inducted into the United States Army from St. Paul, Minnesota, in September 1943. In September 1944, he left for the European-African-Middle Eastern Theater (EAME). As a platoon sergeant in the 406th Infantry Regiment, he fought in the Rhineland Campaign. He was wounded twice in battle, the first time on November 12, 1944, and again on February 25, 1945. Among the citations he received were the Victory Medal, the American Theater Medal, EAME Theater Service Medal, Expert Infantry Badge, Combat Infantry Badge, and a Purple Heart Medal. He returned to the United States in April 1945. He received a Certificate of Disability for Discharge in January 1946. He was honorably discharged from the Army while at William Beaumont General Hospital in El Paso, Texas, on November 9, 1945. (Ptf's Enlisted Record and Report of Separation.) His level of service-connected disability is 40 percent. (Ptf's Ltr dated Jan 11, 2002.)

Plaintiffs moved to Oregon and purchased their home in Bend in August 1995. They became aware of a partial property tax exemption for disabled veterans in November 2001. They applied for the exemption on January 16, 2002. Defendant granted the exemption for tax year 2002-03. It denied the exemption for any prior years.

COURT'S ANALYSIS

Oregon law provides a partial property tax exemption to a war veteran with a service-connected disability of at least 40 percent. See ORS 307.250(2).¹ The statute setting forth the filing requirements for the exemption is ORS 307.260. It states that "[e]ach veteran or surviving spouse qualifying for the exemption under ORS 307.250 shall file with the county assessor, on forms supplied by the assessor, a claim therefor in writing **on or before April 1 of the assessment year for which the exemption is claimed[.]**" ORS 307.260(1)(a) (emphasis added). Attached to the claim shall be "the certificate last issued by United States Department of Veterans Affairs or the branch of the Armed Forces of the United States, as the case may be, but dated within three years prior to the date of the claim for exemption, certifying the rate of disability of the claimant." ORS 307.260(2). In other words, the certificate of disability must be received before the disabled veteran is able to file for an exemption.

The statute requires the veteran to file a claim for exemption in order to receive it. The filing requirement is made mandatory by use of the word "shall." The statute further requires the claim to be filed "on or before April 1 of the assessment year" for which the claim is made. Plaintiffs did not file for the exemption when they first moved to Oregon because they were unaware of the exemption.

¹All references to the Oregon Revised Statutes are to 2001.

Typically, the claim for the war veterans exemption is prospective only.

However, the 2001 Legislature created an exception when it passed House Bill 2282.

Or Laws 2001, ch 199 (codified at ORS 307.262). The relevant portion of ORS 307.262 provides that:

"Notwithstanding ORS 307.260, if a war veteran receives notice of certification from the United States Department of Veterans Affairs or any branch of the Armed Forces of the United States that the war veteran has disabilities of 40 percent or more as of a date set forth in the certification, the war veteran may obtain the exemption set forth in ORS 307.250 **for each tax year following the date of certified disability.**"
ORS 307.262(1) (emphasis added).

Further, the claim for exemption must be filed "within six months of the date the federal government agency notifies the war veteran of the certified disability." ORS 307.262(2).

This retroactive relief is limited to "three tax years prior to the tax year in which a claim is filed under this section." ORS 307.262(3). It is clear from a close reading of ORS 307.262 that the statute was enacted so that disabled war veterans would not be penalized when there was a delay in receiving the certificate of disability.

Plaintiffs complain that it would be difficult for a disabled war veteran moving from out of state to ever qualify for the veterans exemption. This is simply not so. Plaintiffs could have applied for the exemption in 1995 when they first moved to Oregon. They are in the same position as any other disabled war veteran who buys a home in Oregon. Unfortunately, Plaintiffs were unaware of the program and so did not apply for the exemption.

CONCLUSION

The court is not without sympathy for Plaintiffs. However, the court may not change a legislatively imposed deadline. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

Dated this _____ day of September, 2002.

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 SEPTEMBER 6, 2002. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 6, 2002.