

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

GROUND ZERO LLC, )  
 )  
 Plaintiff, ) No. 020255E  
 )  
 v. )  
 )  
 WASHINGTON COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION OF DISMISSAL**

This matter is before the court on Defendant’s request that the court determine whether Plaintiff is properly before this court because Plaintiff did not file an appeal with the county board of property tax appeals (BOPTA). The court discussed the matter with the parties during the case management conference held June 19, 2002. Kirby Broderick appeared on behalf of Plaintiff. Vickie Allinwood appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as “taxpayer” and “the county.”

**STATEMENT OF FACTS**

Taxpayer owned taxable personal property in Washington County on January 1, 2001, and filed a personal property tax return on March 14, 2001.<sup>1</sup> In late September 2001, taxpayer closed its operations and sold its personal property to another business. Taxpayer did not notify the county that it had ceased its operations and, as a result, failed to provide the county with a forwarding address. In October 2001, the county mailed taxpayer a property tax statement to the old business address at 310 NE Lincoln Street, Hillsboro, Oregon 97124. This was the address listed on taxpayer’s personal property tax return. Mr. Broderick testified he never received the tax statement so he failed to timely make a property tax payment. The county has no record of receiving the

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<sup>1</sup> The property is identified in the county’s records as Account No. P2100537.

statement back in the mail.

In the latter part of December, the county mailed taxpayer a 2002 personal property tax return form because, again, the county had not received notice that taxpayer had ceased its operations. This return was similarly sent to the Lincoln Street address. This time, however, the postal service returned the form to the county. On December 31, 2001, the county forwarded the return to 4278 Northeast Azalea, Hillsboro, Oregon, 97124, which is the address for Mr. Broderick's parents. On January 9, 2002, the county mailed Mr. Broderick a tax warrant for the unpaid tax due in November for the 2001-02 tax year. It was at this time Mr. Broderick became aware taxpayer had an outstanding tax liability.

After reviewing the matter, Mr. Broderick determined the real market value assigned to the property was too high and that the true value of the property was below the \$10,000 minimum threshold for taxation. As a result, he talked to the county about contesting the value. Because taxpayer had missed the appeal deadline to the BOPTA, the county suggested taxpayer appeal to this court. Before this court can consider taxpayer's valuation claim, it must determine whether it has authority over the matter because taxpayer failed to exhaust its administrative remedy with the BOPTA. *See Seifert v. Dept. of Rev.*, 14 OTR 401 (1998).

### **COURT'S ANALYSIS**

The Oregon Legislature has developed a system for taxpayers to challenge the assessed and real market values assigned to their properties. The first step in the

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appeal process is to a county BOPTA. Taxpayers are required to file appeals with the

appropriate county board by December 31 of the current tax year. ORS 309.100(2).<sup>2</sup>

The legislature recognized situations may exist that prevent a taxpayer from timely appealing. As a result, the legislature provided certain exceptions to the general appeal requirement. In commercial cases, the court can accept jurisdiction of an untimely appeal if the taxpayer can establish “good and sufficient cause” for not timely pursuing its statutory remedy. ORS 305.288(3). The statute defines good and sufficient cause as follows:

“(5)(b) ‘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.” ORS 305.288 (emphases added).

Mr. Broderick argues taxpayer had good and sufficient cause for not timely appealing to BOPTA because it never received a tax statement from the county. The Oregon Supreme Court has held, however, that every taxpayer is responsible for knowing their property is taxable. In *Hood River County v. Dabney*, 246 Or 14, 423 P2d 954 (1967), the court stated:

“[E]very citizen ‘is presumed to have known that his land was taxable, that in due course it would be assessed, a tax levy extended against it, and it would be placed on the tax rolls, that it was his duty to timely pay his taxes, that if he failed to do so, his land would be offered for sale and resale at a time and place specified in the statutes \* \* \* .’” *Hood River County v. Dabney*, 246 Or 14 at 28 (citation omitted).

Property owners are expected to know when they should receive their property

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<sup>2</sup> All references to the Oregon Revised Statutes are to 2001.

tax statements. Failing to receive a property tax statement does not excuse a taxpayer's late payment of property taxes. ORS 311.250(2).<sup>3</sup> Similarly, it does not excuse a taxpayer from failing to timely appeal to the county board. See generally *GTB Assoc. v. Multnomah County*, OTC-MD No. 000096C (April 24, 2000); *Mack v. Clackamas County*, OTC-MD No. 990799E (August 31, 1999).

Property owners are statutorily required by ORS 311.555 to keep the tax collector informed of their “true and correct address.” Therefore, it was taxpayer’s obligation to notify the county that it had ceased operations and that it had a different mailing address. Having not received a tax statement, taxpayer should have known there was a problem with the county’s records. See generally *Gordon v. Dept. of Rev.*, 12 OTR 288, 290 (1992) (noting that it is not the county’s obligation to institute a search for a taxpayer’s correct address but it is the taxpayer’s responsibility to keep the county informed of the taxpayer’s correct address).

Mr. Broderick requests leniency from the court because he did not realize personal property is taxable and, therefore, did not realize he should be receiving a tax statement for the property. When he completed the personal property tax return in 2001, he believed it was for insurance purposes. Mr. Broderick’s lack of knowledge as to the taxability of the personal property, however, is an insufficient excuse for failing to timely appeal because the statute defining “good and sufficient cause” specifically states lack of knowledge does not qualify. Further, as mentioned above, every taxpayer is presumed to know their property is taxable. After reviewing the facts, it is the court’s conclusion taxpayer did not have good and sufficient cause for failing to timely appeal to the BOPTA. As a result, this court is without authority to consider

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<sup>3</sup> ORS 311.250(2) provides that “[t]he failure of a taxpayer to receive the statement described in this section shall not invalidate any assessment, levy, tax, or proceeding to collect tax.”

taxpayer's valuation claim.

### CONCLUSION

ORS 311.555 required taxpayer to keep the tax collector informed of its correct address so that the tax collector would know where to send the property tax statement in the fall. Taxpayer failed to comply with this statutory requirement. Taxpayer's unawareness that the personal property was taxable is an insufficient excuse for notifying the county of the correct address because taxpayer is presumed to know its property is taxable. Finally, failing to receive a tax statement does not excuse a timely filing to the BOPTA. Because taxpayer does not have good and sufficient cause for failing to timely appeal to BOPTA, the court finds this appeal should be dismissed. Now, therefore,

IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

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

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COYREEN R. WEIDNER  
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 THIS DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON JULY 12, 2002. THE COURT FILED THIS DOCUMENT ON JULY 12, 2002.**