

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CECIL ZERBA and MARILYN ZERBA,)
)
 Plaintiffs,) No. 020812E
)
 v.)
)
 UMATILLA COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on its own motion to dismiss the above-entitled appeal finding Plaintiffs failed to timely appeal to this court.

PROCEDURAL BACKGROUND

During the case management conference held August 20, 2002, the court discussed the subject case and its companion case, *Zerba v. Umatilla County Assessor*, Tax Court Magistrate Division Case No 020811E. The court advised the parties it was dismissing case number 020811E because Plaintiffs failed to file an application for farm use special assessment for the 2001-02 tax year. The subject appeal pertains to Plaintiffs' personal property and their claim the property is entitled to exemption as farm machinery and equipment for the 2001-02 tax year. After discussing the case, the court agreed to set the case for trial, but advised the parties it would evaluate whether it had authority to move forward with the appeal. After considering the matter, the court finds the case must be dismissed.

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COURT'S ANALYSIS

Plaintiffs appealed the subject account¹ to the board of property tax appeals (BOPTA) claiming the property was exempt from taxation.² Plaintiffs filed their appeal with BOPTA after receiving their 2001-02 tax statement. On April 4, 2002, BOPTA entered an order denying Plaintiffs' appeal. Plaintiffs appealed the BOPTA order to this court.

As noted, Plaintiffs are claiming the subject property is *exempt* from taxation. Claims pertaining to exemptions must be filed directly with this court. See ORS 305.275(1)(a)(C).³ BOPTA only has authority to consider claims regarding a reduction value, ORS 309.026(2), or claims regarding waiver of the penalty imposed for failing to timely file a personal property return, ORS 309.026(4). As a result, Plaintiffs should have filed their appeal directly with this court, rather than filing an appeal with BOPTA. The time for appealing to this court under ORS 305.275(1) is found in ORS 305.280(1), which states:

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“(1) Except as otherwise provided in this section, an appeal under ORS 305.275(1) or (2) shall be filed within 90 days after the act, omission, order or determination becomes actually known to the person, but in no

¹ The subject property is identified in Defendant's records as Account No.155857.

² Although not confirmed, the court assumes Plaintiffs claimed their property was exempt based on their allegations before this court.

³ ORS 305.275 states:

“(1) Any person may appeal under this subsection to the magistrate division of the Oregon Tax Court * * * if all of the following criteria are met:

“(a) The person must be aggrieved by and affected by an act, omission, order or determination of:

“* * * *”

“(C) A county assessor or other county official, including but not limited to the denial of a claim for exemption * * *.”

All references to the Oregon Revised Statutes (ORS) are to 2001.

event later than one year after the act or omission has occurred, or the order or determination has been made.”

The statute requires, at a minimum, that an appeal be filed within 90 days of knowledge of the contested act. In this case, Plaintiffs became aware the personal property was not exempt when they received their property tax statement in the fall of 2001. Plaintiffs mailed their appeal to this court on April 30, 2002. Consequently, Plaintiffs failed to file their appeal within 90 days of actual knowledge that their personal property was not exempt. Having failed to timely appeal, the court finds this case should be dismissed. The trial set for November 6, 2002, is canceled. Now, therefore,

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

Dated this _____ day of October, 2002.

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 OCTOBER 11, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 11, 2002.