

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

OLIVE L. LOVEJOY,)
)
 Plaintiff,) No. 020914C
)
 v.)
)
 COOS COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals Defendant's denial for the 2002-03 tax year of her request for property tax exemption under ORS 307.250 as the surviving spouse of a war veteran. The October 15, 2002, case management conference was converted to a trial. Plaintiff appeared on her own behalf. Defendant appeared through Crystal Cox, Veterans Clerk for Coos County Assessor.

STATEMENT OF FACTS

Plaintiff is 83 years old. Plaintiff and her husband, who died in 1991, were married for forty-six years. They lived in the same home, which Plaintiff continues to live in, since 1951. Plaintiff's husband was in the United States Navy for 29 years, including time served in World War II as a navy chief. Plaintiff's husband had a service-connected disability that entitled him to a partial property tax exemption under Oregon law. Plaintiff continued to receive a partial exemption as the unmarried surviving spouse.

According to the testimony of Ms. Cox, Defendant mailed Plaintiff a letter in January 2002 reminding Plaintiff to file her annual exemption application. Plaintiff testified she never received that letter, and Defendant did not submit it into evidence. Defendant mailed Plaintiff a reminder notice dated April 8, 2002. That letter, which was submitted to the court, advised Plaintiff that her exemption application had not been

received and included the following additional information:

“You may secure such exemption, if still qualified, by filing your application with the County Assessor’s office not later than May 1, 2002 accompanied by a late filing fee of \$10.00 * * *.

“An application for this purpose was mailed to you the first week of January, 2002; however, if it has been lost or mislaid, please notify this office immediately and we will mail you another form.”

Defendant’s Answer at 3.

Defendant did not receive an application from Plaintiff or a response to the letter.

On May 7, 2002, Defendant mailed Plaintiff an exemption denial letter explaining that Plaintiff would not receive the exemption because she failed to file the application.

(Defendant’s Answer at 4.) Plaintiff testified that she did receive the April reminder letter and that she “signed for it and sent it right back.” Plaintiff stressed the importance to her of the exemption, which Ms. Cox testified amounted to a tax savings of roughly \$200. Plaintiff lives on a fixed income of less than \$600 per month. Plaintiff’s expenses are kept to a minimum in part because her home is paid for and she drives a car (infrequently) that is more than 30 years old.

COURT'S ANALYSIS

ORS 307.250¹ exempts from taxation a portion of the assessed value of the homestead of qualifying war veterans and their surviving spouses, including veterans with an officially certified service-connected disability of at least 40 percent. If the veteran dies and leaves behind a surviving spouse who remains unmarried, that individual is entitled to the partial exemption, provided the veteran either died as result of a service-connected injury or illness or received the full exemption under paragraph (a) of subsection (2) for at least one year prior to death. ORS 307.250(2)(b).

There is no dispute in this case that Plaintiff was entitled to the exemption under

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

subsection (2)(b). However, the exemption is conditioned upon the timely filing each year of an exemption application. See ORS 307.250(1). The application must be filed “on or before April 1 of the assessment year for which the exemption is claimed.” ORS 307.260(1)(a). The statute further provides for an extended deadline of May 1 provided the applicant pays a late filing fee of \$10. ORS 307.260(1)(b). The assessor is required to mail a reminder notice on or before April 10 each year to every veteran or surviving spouse who secured the exemption for the prior year. *Id.* As stated above, the reminder notice was sent and apparently received by Plaintiff.

Plaintiff insists that she submitted the necessary paperwork after receiving Defendant’s April 8 reminder notice. Specifically, Plaintiff testified that she received the April 8 letter, signed for it and sent it back. Defendant has no record of receiving an application from Plaintiff on or before the extended May 1 deadline. In response to Plaintiff’s contention that she signed for Defendant’s letter, Ms. Cox testified that none of Defendant’s correspondence was sent by registered or certified mail, so there was nothing to sign for.

Weighing the evidence as a whole, the court is not persuaded that Plaintiff filed the necessary application. It was not necessary for Plaintiff to sign for the April 8 reminder notice and Defendant never received an application. Additionally, Defendant’s April 8 reminder letter states that Plaintiff should contact the assessor’s office if she did not have the application Defendant mailed earlier in January. Plaintiff testified she did not receive the January letter and there is no evidence that she had an application on hand to complete and mail to the assessor. Plaintiff does not claim that she requested an application from Defendant. Nor did Plaintiff testify that she actually filled out the exemption application; rather, she signed for a letter and then sent something right back.

Ms. Cox is amenable to Plaintiff receiving the exemption if the filing requirement can be overlooked or excused. However, the filing requirement applicable to veterans exemptions is mandatory, as evidenced by the use of the word shall in the statute, which provides: "[e]ach veteran or surviving spouse qualifying for the exemption under ORS 307.250 shall file with the county assessor * * * a claim therefor in writing on or before April 1." ORS 307.260(1)(a). ORS 307.260(1)(b) sets forth the consequences of a taxpayer's failure to file an application within the statutory time frame as follows: "If the claim for any year is not filed within the time specified, *the exemption shall not be allowed* on the assessment roll of that year." ORS 307.260(1)(b) (emphasis added). Having found that Plaintiff did not file an application on or before May 1, 2002, Defendant was required to deny the request and, for the same reasons, the court on appeal must also deny Plaintiff's request for the exemption.

The court's authority in these matters is limited to a determination of whether Plaintiff did or did not timely file the necessary application. Mitigating circumstances are beyond the scope of the court's inquiry under its limited statutory authority. The Oregon Department of Revenue has the authority to recommend relief to the assessor on the grounds of hardship pursuant to ORS 307.475. That option was briefly discussed during the October 15, 2002, trial in this court.²

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CONCLUSION

The court has carefully weighed the evidence in light of the applicable law and concludes that Plaintiff did not timely file her exemption application as required by

² Plaintiff may send a written request to the Department of Revenue seeking relief on the basis of good and sufficient cause for the untimely filing. Such a request must be submitted before December 15, 2002.

ORS 307.260. Because the timely filing of an application each year is a requirement of receiving the exemption, Plaintiff is not entitled to the partial property tax exemption provided in ORS 307.250. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's request for partial property tax exemption as the unmarried surviving spouse of a war veteran with a service-connected disability is denied because Plaintiff did not file the statutorily required application before the applicable deadline.

Dated this _____ day of October, 2002.

DAN ROBINSON
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 DAN ROBINSON ON OCTOBER 30, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 30, 2002.