

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

DOROTHY BARTON, )  
 )  
 Plaintiff, ) No. 020956F  
 )  
 v. )  
 )  
 COOS COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

This matter is before the court on its own motion to dismiss. The court discussed its motion with the parties at the case management conference held on October 8, 2002. Dorothy Barton appeared for herself; Crystal Cox appeared for Defendant.

**STATEMENT OF FACTS**

Plaintiff is the surviving spouse of a World War II veteran. As such, she has received a partial property tax exemption for more than 20 years. As in previous years, Defendant mailed the exemption form to Plaintiff. This year Plaintiff was not at home to receive and act upon the form. She was temporarily staying in Jefferson, Oregon to be closer to the Veterans' Administration Hospital where her son was receiving treatment for throat cancer. When she did receive the form, she promptly acted upon it. Defendant received the form on April 15, 2002. In a letter dated May 7, 2002, Defendant denied Plaintiff's claim because she did not include a \$10 late filing fee with her form. (Ptf's Attachment to Compl at 1.) The letter also stated that Plaintiff "may appeal this decision to Oregon Tax Court, Magistrate Division within 90 days from the date of this letter." (*Id.*) Plaintiff filed her Complaint on June 15, 2002.

///

## COURT'S ANALYSIS

Oregon law provides a partial property tax exemption to the surviving spouse of a war veteran. See ORS 307.250(1)(c).<sup>1</sup> There is no question Plaintiff otherwise qualifies for an exemption under this program.

The statute setting forth the filing requirements for the exemption is ORS 307.260. It states, in pertinent part:

“(1)(a) Each 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).

The statute requires a surviving spouse 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. *Id.* An exception is made if an individual has received the partial exemption in the past. In those cases, the individual may file an application “to the county assessor not later than May 1 of the current year, accompanied by a late-filing fee of \$10.” ORS 307.260(1)(b). As noted above, Plaintiff filed the form before May 1. However, she neglected to include the late filing fee.

Plaintiff has one last possibility for obtaining relief. ORS 307.475 provides that:

“(1) Any taxpayer may apply to the Director of the Department of Revenue for a recommendation that the value of certain property be stricken from the assessment roll and that any taxes assessed against such property be stricken from the tax roll on the grounds of hardship.

“(2) As used in this section, 'hardship' means a situation where property is subject to taxation but would have been exempt had there been a timely filing of a valid claim for exemption or cancellation of

---

<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

assessment, and where the failure to make timely application for the exemption or cancellation was by reason of good and sufficient cause.

"(3) An application to the director for a recommendation of tax relief on the grounds of hardship *must be made not later than December 15* of the year in which the failure to claim the exemption or cancellation of assessment occurred."

(Emphasis added).

The court finds Plaintiff's claim must be denied because she failed to satisfy the requirements of the law. The court recognizes Plaintiff did not timely file the application because of her personal hardship. The legislature and this court have been quite clear that, in order to receive the exemption, taxpayers must timely file their claims each year except in cases of hardship. It is unfortunate that Defendant directed Plaintiff to the court rather than to the Department of Revenue. The legislature vested the Department of Revenue with the authority to make a determination of hardship.

### **CONCLUSION**

To receive the War Veteran's exemption, the law requires a surviving spouse of a war veteran to submit her claim each year by the filing deadline. While the court is sympathetic to Plaintiff's situation, it cannot ignore the clear language of the statutes. The court must deny Plaintiff's claim. She should file her request with the Department of Revenue,<sup>2</sup> no later than December 15, under the hardship provision of ORS 307.475. Now, therefore,

///

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is dismissed.

---

<sup>2</sup> Plaintiff should mail her request to:

Elizabeth Harchenko, Director  
Oregon Department of Revenue  
955 Center Street NE  
Salem, OR 97301-2555

Dated this \_\_\_\_\_ day of October, 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 OCTOBER 8, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 8, 2002.**