

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

JOHN E. KOSIN and PATRICIA A. KOSIN,)	
)	
Plaintiffs,)	TC-MD 030284F
)	
v.)	
)	
LINN COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION AND JUDGMENT

This matter is before the court on Defendant's motion to dismiss, filed with its Answer, requesting that the Complaint be dismissed because appeals were not timely filed. The court held a case management conference on May 5, 2003. John and Patricia Kosin appeared for themselves. Janna Sanders appeared for Defendant. This appeal concerns a single family residence and its real market value for tax years 1993-94 through 2003-04.

STATEMENT OF FACTS

Plaintiffs purchased the three bedroom home in February 1993 for \$137,300. At that time, it contained 2,054 square feet. In 1994, Plaintiffs added a 121 square foot sunporch for a total of 2,175 square feet. When listing the home for sale Plaintiffs discovered that Defendant's records indicated the home was 2,586 square feet with four bedrooms. When Plaintiffs brought the error to Defendant's attention Defendant corrected its records for the upcoming tax year, 2003-04. Plaintiffs sold the home in April 2003 for \$185,000. For tax year 1993-94, the real market value was \$135,680; the real market value for tax year 2002-03 was \$199,060.

The property is identified in the Linn County tax records as Account 0434296. No

petitions were earlier submitted to the county board of equalization or board of property tax appeals. Plaintiffs filed their Complaint with the court during tax year 2002-03.

ANALYSIS

To contest assessed values, taxpayers typically must appeal to their county board of property tax appeals by December 31 of each tax year. ORS 309.100.¹ Plaintiffs admit they did not timely appeal in any of the years at issue.

The legislature has given the court limited authority to consider appeals going back two tax years. ORS 305.288 states:

“(1) The tax court shall order a change or correction * * * to the assessment and tax roll **for the current tax year or for either of the two tax years immediately preceding the current tax year** * * * if all of the following conditions exist:

“(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling * * * .

“(b) The change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.

" * * * * *

"(3) The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the assessor or taxpayer has no statutory right of appeal remaining and the **tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.**

" * * * * *

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

"(5) For purposes of this section:

" * * * * *

"(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."

(Emphasis added.)

Here, taxpayers are challenging years beyond the reach of ORS 305.288. The court finds tax years 1993-94 through 1999-2000 are dismissed because they are beyond the reach of the court's power. Tax year 2003-04 is also dismissed because it is not yet ripe for review.

Plaintiffs' concerns are that their taxes were too high because of the errors in square footage and number of bedrooms. They did not allege specific values in their Complaint. However, it is clear to the court that even if there is an error in value, it does not meet the gross error standard of 20 percent set forth in ORS 305.288(1)(b). Nor did Plaintiffs demonstrate good and sufficient cause for their failure to timely appeal. They were simply unaware of the errors in Defendant's records. Tax years 2000-2001 through 2002-03 must also be dismissed.

CONCLUSION

As this court has previously stated,

"This situation highlights the need for property owners to audit the government's property tax records. Most taxpayers are familiar with our

income tax systems under which **taxpayers** keep the records and assess the tax, and the government audits for accuracy and correctness. In contrast, the property tax system requires the **government** to keep the records and assess the tax, and the taxpayer audits for accuracy and correctness. Both systems impose time limits on the right to audit. A failure to audit and challenge the assessment within the time limit will result in a loss by the party responsible for the audit."

Taft Church v. Dept. of Rev., 14 OTR 119, 122 (1997) (emphasis added). Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that Defendant's motion to dismiss is granted.

Dated this _____ day of May, 2003.

SALLY L. KIMSEY
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON
MAY 19, 2003. THE COURT FILED THIS DOCUMENT ON MAY 19, 2003.**