

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

STAFF JENNINGS, INC.,)	
)	
Plaintiff,)	TC-MD 030659D
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s motion to dismiss submitted as part of its Answer, filed May 29, 2003, requesting that the Complaint be dismissed. On Monday, November 15, 2004, the court heard oral argument and the testimony of Jeffrey (Jeff) S. Jennings, President of Staff Jennings Boating Centers. Roderick A. Boutin, Attorney at Law, appeared on behalf of Plaintiff. John S. Thomas, Assistant County Attorney, appeared on behalf of Defendant.

I. STATEMENT OF FACTS¹

Plaintiff is a corporation in the business of selling boats. It owns real property in Multnomah County where it operates its family business. The founder of business died in 1968 and passed the title of President and General Manager to his son, Robert Jennings. In January 2002, Robert Jennings’ health began to decline. By October 2002, he suffered from multiple serious health problems, including diabetes, and died in December 2002.

Until his death, Robert Jennings continued to play an active role in the business. His primary duties included, among other things, managing the line of credit for the business with the banks, securing adequate liability insurance coverage for the business, and interacting with accountants and attorneys. In the mid-1980s, Robert Jennings’ son, Jeff Jennings, assumed the

¹ The statement of facts is based primarily on the testimony of Jeff Jennings.

role of managing the business day-to-day. Jeff Jennings was responsible for hiring, firing and compensating the employees; coordinating all boat shows; responding to customers; inventory control; advertising; and sales projections. In addition to the Jennings, the administrative duties for the business were handled by various employees, including a bookkeeper, and another family member who was involved in maintaining the inventory records. Jeff Jennings testified that during the last six weeks of Robert Jennings' life, he and his father met weekly to discuss business matters. One of the important matters they discussed was the annual boat show, which was scheduled for the first week of January.

In his capacity as President and General Manager, Robert Jennings received all business correspondence and handled the financial management of the business for over 34 years. In October 2002, when Defendant mailed the property tax statement to Plaintiff, Robert Jennings received the statement and took it from the business location to his home. Unfortunately, the statement remained at his home and the property taxes were not paid. Jeff Jennings testified that he had no knowledge that any important business papers were in his father's home. In January or February, 2003, Jeff Jennings began the difficult process of handling the disposition of his father's estate. As part of cleaning his father's home, Jeff Jennings found the unpaid 2003-04 property tax statement. He testified that he knew the deadline had passed, so he called the county assessor's office to find out what he should do. The county assessor advised him that he needed to file an appeal in the Magistrate Division of the Oregon Tax Court. Plaintiff's appeal was received by the court on April 21, 2003. When asked why he waited until April 2003, to file his appeal, Jeff Jennings said he could not remember.

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II. ANALYSIS

Plaintiff would like to appeal the value of its property. However, having failed to file an appeal with the board of property tax appeals (BOPTA), Plaintiff's only possible avenue of appeal is to meet the statutory requirements of ORS 305.288(3)², which grants the court authority to review untimely appeals when the taxpayer establishes "good and sufficient cause" for not timely pursuing an appeal with BOPTA. ORS 305.288(3) provides that:

"The tax court may order a change or correction * * * 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 * * * taxpayer has no statutory right of appeal remaining and the tax court determines that **good and sufficient cause** exists for the failure by the * * * taxpayer to pursue the statutory right of appeal."

(Emphasis added.) The statute defines "good and sufficient cause" as follows:

"'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(5)(b).

Plaintiff claims that it had good and sufficient cause for not timely filing an appeal with BOPTA. The court was informed that there are two authorized agents for Plaintiff: Robert Jennings and Jeff Jennings. There is no evidence that Robert Jennings, Plaintiff's President and General Manager at the time the property tax statement was received, disputed the county's assessment and planned to appeal to BOPTA. Even though his deteriorating health was beyond his control, there is no evidence to support a claim that Robert Jennings met the statutory requirement of good and sufficient cause for failing to file a timely appeal with BOPTA. Jeff

² All references to the Oregon Revised Statutes (ORS) are to year 2003.

Jennings, Plaintiff's day-to-day operations manager, claimed that he would have appealed to BOPTA on behalf of Plaintiff; however, by the time he found the property tax statement the appeal period had lapsed.

The Oregon Supreme Court has held that every taxpayer is responsible for knowing their property is taxable and that they should receive their property tax statements. *See Hood River County v. Dabney*, 246 Or 14, 28, 423 P2d 954 (1967) and ORS 311.250(2). Failure to receive a property tax statement does not excuse a taxpayer from failing to timely appeal to BOPTA. *Nelson v. Lincoln County Assessor*, TC-MD 040095E (May 5, 2004) (Decision of Dismissal). Plaintiff is solely responsible for its allocation of management responsibilities, including the audit of its property tax assessment. While the unfortunate illness and subsequent death of Plaintiff's President and General Manager were extraordinary events, there is no evidence linking it to Jeff Jennings' failure to file an appeal with BOPTA. Based on the evidence, there was no intent by Jeff Jennings to appeal prior to discovering the unpaid property tax statement in January or February, 2003. Jeff Jennings testified that he had no knowledge of the value of Plaintiff's property and therefore was in no position to dispute the value prior to the deadline for filing an appeal with BOPTA. Lack of knowledge on the part of Jeff Jennings, who was an authorized agent for Plaintiff, does not rise to the level of good and sufficient cause as defined by the statute.

III. CONCLUSION

The court finds Plaintiff, through its authorized agents, lacks good and sufficient cause for failing to timely pursue its remedy with BOPTA. Having failed to meet the statutory requirements of ORS 305.288(3), the court concludes that it lacks authority to order the requested relief.

Now, therefore,

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IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted.

Dated this _____ day of December 2004.

JILL A. TANNER
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 JILL A. TANNER
DECEMBER 20, 2004. THE COURT FILED THIS DOCUMENT DECEMBER 20, 2004.**