

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CLACKAMAS COMPANY,)
)
 Plaintiff,) TC-MD 030868E
)
 v.)
)
 CLACKAMAS COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on its own motion to dismiss the above-entitled appeal. The court discussed its motion with the parties during the case management conference held August 26, 2003. M.R. Bolstad (Bolstad), President of Plaintiff, appeared on behalf of Plaintiff. Suzanne Warman appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff appeals the 1993-94 through 2003-04 real market value of the property identified as Account 01038362. During each of the contested years, the subject property was specially assessed as farmland. Plaintiff did not file appeals with the board of property tax appeals (BOPTA) for any of the contested years. Plaintiff filed its appeal with this court after receiving a Comparative Market Analysis it recently had prepared that indicated Defendant's real market value determinations were too high.

II. ANALYSIS

During the case management conference, the court explained that it must dismiss Plaintiff's appeal for two reasons. First, Plaintiff is not "aggrieved" by Defendant's real market value determinations because reducing the real market values to the alleged values would not reduce the assessed values of the property due to its status as a specially assessed property. Second, Plaintiff failed to timely appeal each year.

A. *Lack of Aggrievement*

ORS 305.275(1)(a)(B), (C)¹ requires that a person appealing to the Magistrate Division be “aggrieved by and affected by an act, omission, order or determination of” the county board or county assessor. During the case management conference, Bolstad acknowledged that reducing the real market value of the property for each year to the value alleged would not reduce the tax liability on the property because of the special assessment. Bolstad argues, however, that Plaintiff is “aggrieved” because the real market value may be used in the future to calculate the property’s recaptured tax liability should the property ever be removed from the special assessment program.

As explained during the conference, ORS 305.275 requires a plaintiff be “aggrieved” before filing an appeal with this court. The court has interpreted that provision to mean presently aggrieved. In *Kaady v. Dept. of Rev.*, 15 OTR 124, 125 (2000), the Regular Division of the Tax Court noted:

“In requiring that taxpayers be ‘aggrieved’ under ORS 305.275, the legislature intended that the taxpayer have an immediate claim of wrong. It did not intend that taxpayers could require the expenditure of public resources to litigate issues that might never arise.”

This court further addressed the issue of whether a plaintiff has standing to challenge the real market value of a specially assessed property. In *Hansen v. Clackamas County*, OTC-MD No 000646E (Aug 8, 2000) (Small Claims), the court held that where the reduced real market value has no impact on the underlying assessment, the plaintiff has no standing to appeal. The court stated:

“In this case, the market value *may* have an impact on a future liability of taxpayers. However, whether the property becomes disqualified in the future is an uncertain event. The court cannot litigate all cases presenting potential harm. To do so would be a waste of judicial resources. Instead,

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

the court only adjudicates matters that may result in immediate relief. Should the property be disqualified in the future, taxpayers may then challenge the values used to calculate the tax liability upon recapture. It is at that point taxpayers' aggrievement comes to fruition."

Id. (emphasis in original).

Because reducing the real market values would not produce any tax savings to Plaintiff, the court finds Plaintiff is not "aggrieved" and may not maintain an action in this court.

B. *Timely Appeal*

Even if Plaintiff is aggrieved by some action of Defendant, Plaintiff failed to timely file appeals for each year. The Oregon Legislature has developed an appeals system for taxpayers to follow when challenging the assessed and real market values assigned to their properties. The first step in the appeal process is to a county BOPTA. Taxpayers are required to file appeals with the appropriate county board by December 31 of the current tax year. ORS 309.100(2).

The legislature recognized that situations may exist which prevent a taxpayer from timely appealing to the county board. As a result, the legislature granted the court authority to review untimely appeals when the taxpayer establishes "good and sufficient cause" for not timely pursuing an appeal with the county board. ORS 305.288(3).²

ORS 305.288(3) states:

"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.**"

² An additional exception is provided for residential property, which is not at issue in this appeal. See ORS 305.288(1).

(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) (emphasis added).

The court initially observes that its authority under ORS 305.288(3) is limited to “the current tax year” and to “either of the two tax years immediately preceding the current tax year.” ORS 305.288(3). As a result, the court’s authority, at the most, only extends back to the 2000-2001 tax year. The court has no statutory authority to consider years before the 2000-2001 tax year. Further, the court only has authority to consider tax years 2000-2001, 2001-02, and 2002-03 if taxpayer can establish “good and sufficient cause” for not timely appealing each of those years. Bolstad mentioned at the conference that prior appeals had not occurred because there was no evidence of an overvaluation until Plaintiff received the Comparative Market Analysis in June 2003. Plaintiff offers no compelling reason justifying its failure to follow the statutory appeal procedures. As a result, the court finds it lacks authority to review the appeal under the provisions of ORS 305.288(3).

III. CONCLUSION

The court concludes that Plaintiff lacks standing to file an appeal with this court because it is not “aggrieved” by Defendant’s real market value determinations. Further, Plaintiff failed to file timely appeals for each of the contested years. Now, therefore,

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

Dated this _____ day of September, 2003.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON SEPTEMBER 4, 2003. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 4, 2003.