

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

THOMAS CREEK LUMBER & LOG CO.,)	
)	
Plaintiff,)	TC-MD 031089C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals the Department of Revenue’s (department) refusal to exercise supervisory authority to consider the merits of an appeal of the real market value of Plaintiff’s property. This matter is before the court on cross motions for summary judgment.

I. STATEMENT OF FACTS

The subject property is a whole log chipping facility located in Linn County and identified as Account 5393. As industrial property, it is appraised by the department for the county assessor pursuant to ORS 306.126.¹

Plaintiff did not appeal its property tax statement for tax years 2000-2001 and 2001-02 to the county board of property tax appeals (BOPTA) because it anticipated a favorable court ruling on the property’s value for previous years. Having missed the statutory deadline for appealing to BOPTA, Plaintiff petitioned the department and requested review of those tax years under ORS 306.115. In response to that petition, Victoria Palmer (Palmer), an appraiser for the

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

department, mailed a written stipulation for the 2001-02 tax year to Plaintiff. Plaintiff signed the stipulation and forwarded it to the Linn County assessor's office (county) for review and approval. However, neither the county nor the department's Valuation Section Manager signed the stipulation.

Thereafter, the department held a supervisory conference on September 25, 2003, and denied Plaintiff's petition. The department's Conference Officer concluded that "the department does not find agreement to any facts that indicate an assessment error is likely. Further, there is no evidence that any of the other supervisory standards identified in OAR 150-306.115 have been satisfied." (Ptf's Compl at 6.) Plaintiff appealed that decision to this court.

II. ANALYSIS

A taxpayer who contests the valuation set forth in their property tax statement would ordinarily first appeal to BOPTA. *See* ORS 309.026; ORS 309.100. If a taxpayer does not appeal to BOPTA within the statutorily required deadlines, the taxpayer may appeal to the department under ORS 306.115 and request that the department "consider the substantive issue in a petition * * * when it otherwise would not have authority to do so." OAR 150-306.115(2).²

ORS 306.115 provides an extraordinary remedy for taxpayers, allowing the department to order a change to the tax roll when it determines that there is a reason to "correct the roll which, in its discretion, it deems necessary to conform the roll to applicable law without regard to any failure to exercise a right of appeal." OAR 150-306.115(2); ORS 306.115. The substantive issue in an appeal may be considered by the department if the taxpayer demonstrates to the department's satisfaction that there is "good and sufficient cause for the late filing" or if "[t]he

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² All references to the Oregon Administrative Rules (OAR) are to 2001.

parties to the petition agree to facts which indicate it is likely that an error exists on the roll.”
OAR 150-306.115(3)(a)(B); OAR 150-306.115(3)(b)(A)(ii).

In its review of the department’s discretionary determination under ORS 306.115, the court must confine itself to considering “whether or not the officer exercised his discretion judiciously rather than capriciously and did not arrive at a conclusion which was clearly wrong.” *Jim Fisher Motors, Inc. v. Dept. of Rev.*, 7 OTR 90, 94 (1977); *See also Eyler v. Dept. of Rev.*, 14 OTR 160, 162 (1997). When making that determination, the court should not “substitute its judgment for that of the department and it must, therefore, limit its review to the evidence presented to the department at the administrative proceeding.” *Litton Systems, Inc. v. Josephine Cty. Assessor*, 17 OTR 178, 183-84 (2002) (citations omitted).

A review of the record made during the department’s supervisory conference shows that the department did not “arrive at a conclusion which was clearly wrong” when it determined that Plaintiff did not show that there was “good and sufficient cause for the late filing.” OAR 150-306.115 directs that “good and sufficient cause” be interpreted under ORS 307.475 and OAR 150-307.475. Under OAR 150-307.475(2), “good and sufficient cause” is defined as “an extraordinary circumstance beyond the control of the taxpayer.” That rule states that “an extraordinary circumstance” does not include “taxpayer’s inadvertence, oversight, or lack of knowledge regarding the filing requirements.” OAR 150-307.475 (2)(b)(A). Plaintiff did not timely appeal the value of the subject property for tax years 2000-2001 and 2001-02 because it expected a favorable outcome in the litigation pending in this court for the 1999-2000 tax year. (Department Conference Transcript at 2, Sept 25, 2003.) Plaintiff knew of the filing requirements, having timely filed for tax year 1999-2000, but chose to not appeal the later tax years even though it had no assurance that the pending litigation would result in a lowering of the

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value of the property. Plaintiff presented no evidence to the department that showed the existence of an “extraordinary circumstance.”

The court also finds no compelling facts that show that the department abused its discretion when it determined that Plaintiff failed to show that there was an agreement to facts “which indicate it is likely that an error exists on the roll.” Plaintiff argues that the stipulation proves that the parties agreed to facts that indicate “an adjustment to the valuation was clearly in order.”³ (Ptf’s Memo in Support of Mot for Summ J at 1.) The department and county, however, argue that Palmer prepared the stipulation while under the mistaken belief that the chipping facility was not operational at any time during 2001. (Def. Mot for Summ J at 8.) The department claims that it chose not to sign the stipulation once it discovered that the facility did operate during 2001. Because the stipulation was based on incorrect operating information originally provided by taxpayer, the court finds that on that point there was no agreement to facts.

Plaintiff also believes that the department acted unfairly by orally agreeing on a settlement but not signing the written settlement offer. In *State ex rel D.R. Johnson Lumber Co. v. Dept. of Rev.*, this court stated: “Of necessity, new or additional information may cause the department to change its position.” 14 OTR 186, 193 (1997) (determining whether the department was prohibited from assisting the county to overturn the department’s earlier order). As a practical matter, the court does not find that the department acted unfairly when it changed its position because the proposed stipulation was based on inaccurate information.

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³ It appears that although Plaintiff’s Complaint states that it is appealing both 2000-2001 and 2001-02 tax years, Plaintiff’s subsequent pleadings focus only on the 2001-02 tax year.

III. CONCLUSION

The department did not abuse its discretion when it determined it did not have jurisdiction under ORS 306.115 to review the substantive issues of Plaintiff's appeal for the 2000-2001 and 2001-02 tax years. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion for summary judgment is granted, and

IT IS FURTHER DECIDED that Plaintiff's Motion for Summary Judgment is denied.

Dated this ____ day of March, 2005.

DAN ROBINSON
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 Dan Robinson March 17, 2005. The court filed and entered this document March 17, 2005.