

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

MARIA GASCON,	)	
	)	
Plaintiff,	)	TC-MD 040041B
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

A case management conference was held March 16, 2004. Maria Gascon appeared on her own behalf. Leslie Cech represented Defendant.

This matter is before the court on Defendant's motion to dismiss, made in its Answer, requesting that the Complaint be dismissed because complete appeals were not first presented to the Multnomah County Board of Property Tax Appeals (BOPTA).

This appeal concerns Plaintiff's residence and its assessed value for four separate tax years. The property is identified in the Multnomah County tax records as Account R187703 (formerly designated as Account R420402650). It is located at 3125 NE 23<sup>rd</sup> Avenue in Portland. Plaintiff stated she has lived in this home for over 50 years and believes that the annual taxes due have increased at an excessive level. She had no opinion as to the property's real market or assessed values. She had no value evidence to submit, such as a written appraisal or realtor's opinion. Under those facts, the court cannot focus on the taxes billed, but must look to the assessed valuations that generate those tax computations.

As to the 2004-05 tax year, Plaintiff's appeal to this court is premature. During the case management conference, the parties discussed the normal and usual appeal process of starting with the county BOPTA review body in the late fall of each year.

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No petitions were earlier submitted to BOPTA for 2001-02 or 2003-04. An appeal for 2002-03 was dismissed by BOPTA as being incomplete. That dismissal was not timely followed by an appeal to this court. The first and only Complaint was filed with the Magistrate Division January 30, 2004.

Typically, to appeal assessed values, a taxpayer must appeal to a county board of property tax appeals by December 31 of the current tax year. ORS 309.100.<sup>1</sup> Here, Plaintiff admits she did not timely or completely appeal in those earlier years.

The legislature has provided a limited opportunity to contest certain earlier year assessments. In residential cases, the court can grant a taxpayer relief in two very limited circumstances. The first is when a taxpayer establishes good and sufficient cause as to why he or she did not timely appeal. The second is when the court determines that a gross error exists on the county tax roll.

#### I. GOOD AND SUFFICIENT CAUSE

The court will consider Plaintiff's appeal for 2001-02, 2002-03, and 2003-04 if there is substantive evidence of good and sufficient cause for failing to earlier timely appeal. ORS 305.288(3) provides:

"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.)

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.  
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ORS 305.288(4)(b) defines what constitutes good and sufficient cause:

"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."

Here, Plaintiff states she did not timely appeal because she was not aware of the proper appeal procedure until a later date. That is not beyond Plaintiff's control; an earlier investigation could have been made.

Under those particular facts, the court finds that Plaintiff does not have good and sufficient cause for failing to timely appeal.

## II. GROSS ERROR

The second circumstance under which the court can hear a taxpayer's case is if it concludes there is a gross error. ORS 305.288(1) sets forth when the court shall order a correction under that approach. The statute states:

"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.**" (Emphasis added.)

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Here, Plaintiff does not allege any error in the values determined by Defendant. No evidence suggests the values are excessive, let alone a difference greater than 20 percent for each year. There is no showing of a gross error.

### III.. CONCLUSION

For future years, Plaintiff is encouraged to examine the valuations determined by Defendant and consult with others as to their expertise and opinions; such as realtors, appraisers, or neighbors.

As to the earlier years, and after considering Defendant's request, the court concludes that the motion should be granted. Now, therefore,

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

Dated this \_\_\_\_\_ day of June 2004.

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JEFF MATTSON  
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 JEFF MATTSON JUNE 30, 2004. THE COURT FILED THIS DOCUMENT JUNE 30, 2004.**