

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LOIS M. NELSON,)	
)	
Plaintiff,)	TC-MD 040095E
)	
v.)	
)	
LINCOLN 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 April 20, 2004. Lois M. Nelson appeared on her own behalf. Deane M. Perkins (Perkins), Registered Appraiser, appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as “taxpayer” and “the county.”

I. STATEMENT OF FACTS

Taxpayer purchased the subject land in October 2003.¹ The deed was recorded on October 14, 2003. Perkins advised the court that the assessor’s office typically receives notification of property transfers within three to four weeks of recording. The county mailed tax statements around October 23, 2003. Because the assessor’s office had not yet received notification of the transfer, it mailed the property tax statement to the prior owner. The prior owner failed to forward the statement to taxpayer.

In January 2004, for reasons not made clear to the court, taxpayer contacted the title company to inquire whether 2003-04 taxes should have been paid at the time of purchase. The title company referred her to the county’s office. Upon talking to a representative from the assessor’s office, taxpayer discovered that the assigned real market value was \$120,260. Taxpayer informed the county that she had recently purchased the property for \$99,000.

¹ The property is identified in the county’s records as Account R322953.

On February 25, 2004, taxpayer filed a Complaint with this court challenging the property's real market value. She did not file an appeal with the Lincoln County Board of Property Tax Appeals (BOPTA) because the appeal deadline of December 31, 2003, had already passed. The county inspected the property and determined a value reduction was warranted. As a result, the parties submitted a signed Stipulation with the court wherein they stipulated to a 2003-04 real market value of \$99,000. Although the parties agree a value reduction is warranted, the court must determine whether it has authority to grant the relief under ORS 305.288² because taxpayer failed to exhaust her administrative remedy. See *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998).

II. ANALYSIS

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 certain situations may exist that 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).³

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

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

³ The court may also review untimely appeals in residential cases where the taxpayer alleges a value error of at least 20 percent. ORS 305.288(1). The property at issue does not satisfy the requirements of ORS 305.288(1) because the property is a land only account and taxpayer does not allege a 20 percent error.

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) (emphasis added).

Taxpayer claims she had good and sufficient cause for not timely filing an appeal with the BOPTA because she did not receive a copy of her tax statement and, as a result, was unaware of the overvaluation. The Oregon Supreme Court has held, however, that every taxpayer is responsible for knowing their property is taxable. In *Hood River County v. Dabney*, 246 Or 14, 28, 423 P2d 954 (1967), the court stated:

“[E]very citizen ‘is presumed to have known that his land was taxable, that in due course it would be assessed, a tax levy extended against it, and it would be placed on the tax rolls, that it was his duty to timely pay his taxes, that if he failed to do so, his land would be offered for sale and resale at a time and place specified in the statutes * * * .”

(Citation omitted.)

Property owners are expected to know when they should receive their property tax statements. Failing to receive a property tax statement does not excuse a taxpayer’s late payment of property taxes. ORS 311.250(2).⁴ Similarly, it does not

⁴ ORS 311.250(2) provides that “the failure of a taxpayer to receive the statement described in this section shall not invalidate any assessment, levy, tax, or proceeding to collect tax.”

excuse a taxpayer from failing to timely appeal to the county board. See generally *GTB Assoc. v. Multnomah County*, TC-MD 000096C (April 24, 2000); *Mack v. Clackamas County*, TC-MD 990799E (Aug 31, 1999).

The timing of taxpayer's purchase of the property caused the tax statement to be sent to the prior owner. However, case law is clear that a taxpayer must, in any case, be aware that their property is taxable and inquire about a statement should they fail to receive one. Although taxpayer's failure to inquire until January 2004 is regrettable, the circumstance does not rise to the level of good and sufficient cause as defined by the statute.

III. CONCLUSION

The court finds taxpayer lacks good and sufficient cause for failing to timely pursue her remedy with the county BOPTA. As a consequence, the court finds it lacks authority to order relief under the provisions of ORS 305.288(3).⁵ Now, therefore,

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

Dated this _____ day of May 2004.

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 MAY 5, 2004. THE COURT FILED THIS DOCUMENT MAY 5, 2004.

⁵ As discussed at the case management conference, the parties may consider submitting their Stipulation to the Oregon Department of Revenue for its consideration.