

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

HARVEY W. BECKER)	
and ARLYN H. BECKER,)	
)	
Plaintiffs,)	TC-MD 040108C
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs seek a reduction in the value of their home for tax years 2001-02 and 2002-03. A hearing was held April 26, 2004. Harvey Becker (Harvey) appeared for Plaintiffs. Theresa Maul appeared for Defendant.

I. STATEMENT OF FACTS

Plaintiffs discovered an error in Defendant's records concerning the square footage of their home. They contacted Defendant and, after filing a petition, Defendant reduced the real market and assessed values of their property for the 2003-04 tax year, which resulted in a reduction in taxes. The correction was made under the provisions of ORS 311.234. The real market value was reduced by \$28,010, from \$286,450 to \$258,440, a decrease of 13.36 percent. All of that reduction was made to the improvement (the home); the land value was not reduced. The home was built in 2000 and was first added to the tax rolls for the 2001-02 tax year. Because the square footage error goes back to that year, Plaintiffs seek relief for 2001-02 and 2002-03.

The error in square footage was discovered by Arlyn Becker (Arlyn), who checked Defendant's internet website after taking certain courses at the bank where she works concerning lender financing and property tax records. Defendant apparently makes detailed property valuation information available to the public for all property in

the county. That information includes the square footage of each building. The tax statement mailed to property owners in the fall does not contain that specific information.

II. ANALYSIS

Defendant is only authorized under ORS 311.234(1)¹ to make corrections to value based on errors in square footage for the current tax year. The current year at the time Defendant made its correction was 2003-04. Plaintiffs seek relief for the two prior tax years because the error goes back that many years. As the court explained during the hearing, ORS 311.234(1) does not allow relief for prior years.²

Any relief available to Plaintiffs must come pursuant to ORS 305.288. That statute authorizes the court to reduce value if there is either: (1) an error in value of at least 20 percent, or (2) a good reason for the failure of the taxpayer to timely appeal to the county board of property tax appeals (board) and the Tax Court for the years in question.

Plaintiffs feel a value reduction is in order similar to the amount made by Defendant for tax year 2003-04. That reduction was \$28,010. Assuming a similar reduction to the home for the two prior tax years, which had improvement real market values of \$199,605 and \$201,600, respectively, for tax years 2001-02 and 2002-03, the indicated error in value is approximately 14 percent for both years. Because that amount is less than 20 percent, Plaintiffs must establish good and sufficient cause for their failure to appeal in 2001 or 2002.

¹ Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2003.

² ORS 311.234(1) provides:

“Notwithstanding ORS 311.205 (1)(b), the current owner of property or other person obligated to pay taxes imposed on property may petition the county assessor for a correction in the maximum assessed value of the property for the **current** tax year.”
(Emphasis added.)

ORS 305.288(3) provides:

“The tax court may order a change or correction applicable to a separate assessment of property * * * 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.”

That statute goes on to define “good and sufficient cause” as “an extraordinary circumstance that is beyond the control of the taxpayer * * * and that causes the taxpayer * * * to fail to pursue the statutory right of appeal.” ORS 305.288(5)(b)(A). Additionally, good and sufficient cause “does not include inadvertence, oversight [or] lack of knowledge.” ORS 305.288(5)(b)(B).

When the court explored that area with Harvey, he stated that he had no reason to think the values were wrong when he reviewed the property tax statements in 2001 or 2002 because Plaintiffs owned the land for several years and felt that the increase in taxes resulting from the addition of the home seemed appropriate. Harvey testified that the taxes had gone up by a factor of 5.5 and that number seemed reasonable. Additionally, Plaintiffs are new to the area and not familiar with values in Oregon. Plaintiffs’ tax factor concept is new to the court and, for a variety of reasons, the court does not endorse such a method for evaluating a property tax statement. More importantly, although the court recognizes that the natural inclination of most taxpayers is to focus on the amount of tax assessed, tax is a derivative of value and it is value, not tax, that can be appealed. See *e.g.*, ORS 309.026 (authorizing the board to hear petitions for the reduction of value); ORS 309.110 (authorizing an appeal to the magistrate division of the Tax Court from an order of the board);

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Plaintiffs argue that if the tax statement had provided the kind of detailed information that is available on the website (number of rooms, square footage, etc.), or if taxpayers were instructed on the tax statement to refer to the website for detailed information, then their failure to investigate would make them at fault and the inability to appeal would seem fair. However, because that information is lacking, Plaintiffs feel they have a valid reason for not pursuing the square footage error sooner. As indicated above, the question is whether the reason for Plaintiffs' failure to appeal constitutes good and sufficient cause.

A case directly on point is *Seifert v. Dept of Rev.*, 14 OTR 401 (1998). The taxpayers in *Seifert* moved into a newly constructed home in 1989. When they reviewed their first property tax statement, they felt that the value was reasonable and assumed that the assessor's measurements were correct. A significant increase in value some eight years later prompted the taxpayers to visit the assessor's office, where they discovered the error in square footage. The taxpayers sought relief from the Tax Court under ORS 305.288. The court reviewed the matter under the good and sufficient cause standard and found that the taxpayers' failure to appeal was not due to extraordinary circumstances beyond their control, which is a requirement under the statutory definition of good and sufficient cause. Rather, "the reason the taxpayers did not appeal was because they were unaware of the error in the assessor's records." *Seifert*, 14 OTR at 404. Quoting from an earlier case, the court in *Seifert* went on to explain:

"This situation highlights the need for property owners to audit the government's property tax records. Most taxpayers are familiar with our income tax systems under which *taxpayers* keep the records and assess the tax, and the government audits for accuracy and correctness. In contrast, the property tax system requires the *government* to keep the records and assess the tax, and the taxpayer audits for accuracy and correctness. Both systems impose time limits on the right to audit. A failure to audit and challenge the assessment within the time limit will

result in a loss by the party responsible for the audit.' *Taft Church v. Dept. of Rev.*, 14 OTR 119, 122 (1997). (Emphasis in original.)"

Id. at 404-405.

The instant appeal is factually very similar to *Seifert*, and the court arrives at the same conclusion; namely, that Plaintiffs do not have good and sufficient cause for failing to appeal to the board in 2001 or 2002.

III. CONCLUSION

Plaintiffs' appeal for a reduction in value for tax years 2001-02 and 2002-03 is denied because they did not properly pursue the statutory right of appeal, and the reason for their failure to follow the appeal process was due to a lack of knowledge about an error in square footage. Lack of knowledge is specifically excluded from the statutory definition of good and sufficient cause and, because Plaintiffs have not alleged an error in value of at least 20 percent, they are not entitled to relief under ORS 305.288. Finally, there is no other statutory authority by which the court can consider Plaintiffs' request for a value reduction under the facts of this case. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

Dated this _____ day of May 2004.

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 MAY 11, 2004. THE COURT FILED THIS DOCUMENT MAY 11, 2004.