

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MANUFACTURERS TOOL SERVICE INC.)	
)	
Plaintiff,)	TC-MD 040182A
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s personal property assessment for the 2002-03 and 2003-04 tax years identified by Account P2208442. A case management conference was held June 8, 2004, during which Defendant moved to dismiss the Complaint. Defendant argues that Plaintiff did not demonstrate good and sufficient cause for not timely filing an appeal with the local board of property tax appeals (BOPTA).

I. STATEMENT OF FACTS

Plaintiff is engaged in industrial manufacturing. In September 2001, Plaintiff’s only lender terminated its borrowing arrangement. (Ptf’s Letter, June 18, 2004, at 1.) Plaintiff then decided to cease business and sell all assets to pay creditors. (*Id.*) Plaintiff continued to operate until March 2004, when it auctioned off its equipment and machinery in order to “minimize the loss of asset value.” (*Id.*)

For the 2002-03 tax year, the real market value (RMV) of Plaintiff’s personal property was assessed at \$1,155,728. For the 2003-04 tax year, the RMV was \$1,070,151. At auction, Plaintiff received a total of \$330,453 for all its personal property. Plaintiff did not file earlier appeals with BOPTA for either tax year, but instead filed directly with this court on March 18, 2004. Plaintiff requests a refund of “taxes paid in excess of auction value.” (Ptf’s Comp at 1.)

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II. ANALYSIS

A taxpayer who fails to timely appeal to BOPTA is permitted to file directly with the Oregon Tax Court under very limited circumstances. ORS 305.288.¹ ORS 305.288(3) states:

“The tax court may order a change or correction applicable to a separate assessment of property 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 assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.”

Good and sufficient cause

“[M]eans 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

“ 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)(A)(B).

Plaintiff does not qualify for the “good and sufficient cause” exception. Plaintiff has not shown that its response to financial difficulties was something beyond its immediate control. Plaintiff’s failure to file with BOPTA was discussed during the case management conference held June 8, 2004. The court granted Plaintiff an opportunity to further explain the failure to file with BOPTA in writing. Its response letter, dated June 18, 2004, did not provide sufficient probative reasons why its financial difficulties prevented it from filing an earlier appeal with BOPTA.

While Plaintiff was winding down its business and selling assets to pay creditors, it received its 2002-03 and 2003-04 personal property tax statements. Plaintiff believed the assessed values were significantly higher than any potential sale price. A prudent business

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
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person experiencing similar financial difficulties, and trying to maximize the assets available for creditors and reduce current costs, would have investigated an appeal with BOPTA. Plaintiff's failure to appeal to BOPTA was not the result of circumstances beyond its control. *See Shirazi v. Multnomah County Assessor*, TC-MD 030842B, WL 22846276 (Nov 4, 2003); *Harpco LLC v. Multnomah County Assessor*, TC-MD 020804C, WL 32104965 (Nov 13, 2002).

III. CONCLUSION

Plaintiff's failure to file timely appeals with the Clackamas County Board of Property Tax Appeals bars it from seeking relief from this court. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted;
and

IT IS FURTHER DECIDED that this matter is dismissed.

Dated this _____ day of September 2004.

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
SEPTEMBER 8, 2004. THE COURT FILED THIS DOCUMENT SEPTEMBER 8, 2004.**