

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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|---------------------------------|---|------------------------------|
| WOO YOUNG KIM and YOO JUNG KIM, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 040865F |
| |) | |
| v. |) | |
| |) | |
| MULTNOMAH COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION OF DISMISSAL |

This matter is before the court on Defendant’s Motion to Dismiss, filed July 15, 2004, requesting that the Complaint be dismissed. The court discussed the motion with the parties at a case management conference held August 30, 2004. Richard Chi (Chi) realtor, appeared for Plaintiffs; Leslie Cech appeared for Defendant.

This appeal concerns Plaintiffs’ residence and its real market value for tax years 1996-97 through 2003-04. The property is identified in the Multnomah County tax records as Account R138843. No petitions were earlier submitted to the county board of property tax appeals (the board) for the years at issue. The first, and only, Complaint was filed with the Magistrate Division on June 30, 2004. The Complaint did not allege a value.

Plaintiffs successfully appealed tax year 1995-96 to the board, reducing the real market value from \$195,800 to \$172,100. What was not corrected at that time was an error in the square footage. That error was corrected for the 2004-05 tax year. Defendant contends the property is correctly valued.

To contest assessed values, taxpayers typically must appeal to their county board of property tax appeals by December 31 of each tax year. ORS 309.100(2).¹ Plaintiffs admit they did not timely appeal in any of the years at issue.

¹ All references to the Oregon Revised Statutes are to 2003.

The legislature has given the court limited authority to consider appeals going back two tax years. ORS 305.288(1) 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.)

Plaintiffs are challenging years beyond the reach of the statute. The court finds tax years 1996-97 through 2000-2001 are dismissed because they are beyond the reach of the court’s power. Additionally, Plaintiffs’ appeal as to tax years 2001-02 through 2003-04 cannot be heard under the provisions of ORS 305.288(1). Chi admitted that he could not prove an error of 20 percent.

Plaintiffs have a second opportunity for the court to hear the appeal for tax years 2001-02 through 2003-04. 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 * * * if, * * * 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 is “an extraordinary circumstance that is beyond the control of the taxpayer.” ORS 305.288(5)(b)(A). Further, good and sufficient cause “[d]oes 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)(B).

Chi offered no real reason for Plaintiffs’ failure to timely appeal the real market values of tax years 2001-02 through 2003-04. Consequently, the court cannot reach tax years 2001-02, 2002-03, and 2003-04 under the good and sufficient cause provision. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of October 2004.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON OCTOBER 5, 2004. THE COURT FILED THIS DOCUMENT ON OCTOBER 5, 2004.