

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

GRUMA CORPORATION,)
)
 Plaintiff,) No. 041156B
)
 v.)
)
 YAMHILL COUNTY ASSESSOR and)
 DEPARTMENT OF REVENUE,)
 State of Oregon,)
)
 Defendants.) **DECISION**

The property subject to this appeal is industrial in character and located in Yamhill County. It is identified in the Assessor's records as Account R4415 03000.

Plaintiff filed its Complaint with the Magistrate Division raising three issues: (1) real market value (RMV) for the 2003-04 tax year, (2) RMV for 2004-05 tax year, and (3) a penalty waiver request for the 2004-05 tax year.

An initial case management conference was held March 7, 2005. Subsequently, written arguments were received. The record closed June 27, 2005. The Defendants will be referred to as "the county" and "the department."

I. 2003-04 TAX YEAR RMV

Plaintiff acquired the subject property in February 2004. It paid \$3.1 million. No appeal was timely perfected by the seller for the 2003-04 tax year.

In an Order filed March 16, 2005, the court set forth its reasons why the appeal must be dismissed for that year. Those findings shall not be repeated herein.

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II. 2004-05 TAX YEAR RMV

Based on its inspection of the property and examination of the property's acquisition transaction, the department admits an overvaluation for the 2004-05 tax year. In a Stipulation filed May 25, 2005, the parties agree to a reduction in total RMV to \$3,100,000, with \$501,207 allocated to land and \$2,598,793 to improvements. After a full review, the court concurs.

III. PENALTY WAIVER FOR 2004-05

Plaintiff did not file a full and complete Industrial Property Return¹ (IPR) by the April 15, 2004, deadline.² As a result, a penalty of \$5,000 was imposed. ORS 308.295. According to Plaintiff initially, a wrong account number was entered on the form. (Ptf's Compl at 3.) Later, Plaintiff reported that an account number was actually omitted. (Ptf's Ex 9 at 1.) That discrepancy was never resolved.

The department claims that two separate IPRs were required for tax year 2004-05, because the buildings and structures were in a different ownership than the machinery and equipment. Aff of Don Brutke at 2. Plaintiff admits only one form was submitted.

Plaintiff did not timely appeal that penalty to the Yamhill County board of property tax appeals (BOPTA). Instead, a waiver of assessed penalty request was included in the Complaint, with the other issues enumerated above.

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¹ Defined in OAR 150-308.290(4)(b)(1). All references to the Oregon Administrative Rules (OAR) are to 2003.

² Oregon Revised Statute (ORS) 308.290(3) sets a deadline of March 1, allowing for an extension. As extension was granted Plaintiff until April 15. (Ptf's Ex 9 at 3.) All references to the ORS are to 2003.

ORS 308.290(4)(a) requires submission of annual IPRs. ORS 308.295(3) sets forth the penalties for failing to file a timely return. The amount was properly calculated in this instance. ORS 308.295(5) allows waiver of that amount when there is a valid reason to waive the penalty. The statute, however, provides that only BOPTA has the power to consider a waiver request. It states:

“ * * * the county board of property tax appeals may, upon application of the taxpayer, waive the liability for all or a portion of the penalty upon a proper showing of good and sufficient cause. However, an application made under this subsection shall not be considered by the board unless filed timely and in the same manner as an appeal under ORS 309.100. *There shall be no appeal from the determination of the board under this subsection.*” (Emphasis added.)

The legislature vested the county board with the authority to waive a penalty assessed as to an IPR upon a showing of good and sufficient cause. Plaintiff did not file an appeal with BOPTA but, instead, seeks relief from this court at a much later time. The statute, however, is explicit that the county board is the sole entity with authority to waive any assessed penalty. Further, the statute specifically states that there is no appeal from the board’s determination, thus precluding this later, subsequent appeal to the Tax Court.

The court finds the statute clear that, to seek waiver of an assessed penalty, a taxpayer must submit its request to the county board. The appeal is denied as to this issue.

IV. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the 2003-04 tax year appeal is dismissed;

IT IS FURTHER THE DECISION OF THIS COURT that the 2004-05 real market value shall be reduced to \$3,100,000 total with the allocation as set forth above; and

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IT IS FURTHER THE DECISION OF THIS COURT that the appeal of the 2004-05 tax year penalty is denied.

Dated this _____ day of November 2005.

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 November 16, 2005. The Court filed and entered this document November 16, 2005.