

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RORE LLC,)	
)	
Plaintiff,)	TC-MD 050051E
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s request that the above-entitled matter be dismissed. The court discussed the motion with the parties during the case management conference held March 31, 2005. Maxine Ribera-Card (Ribera), Broker, appeared on behalf of Plaintiff. Todd Pade appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff appeals the 2003-04 and 2004-05 real market values of the land identified in Accounts 205821 and 205824. Ribera explained that she started managing the subject property in 2001. Between tax years 2002-03 and 2003-04, Defendant increased the value assigned to the subject land. Ribera’s property tax manager failed to apprise her of the increased assessment for tax year 2003-04. Subsequently, that manager left and, as a result, Ribera personally reviewed all of the 2004-05 tax statements for the properties she manages. When doing so, she discovered the increased assessment for the subject property. Ribera investigated the matter and concluded Defendant had overvalued the property. As a result, she filed a petition with the Deschutes County Board of Property Tax Appeals (BOPTA) to challenge the 2004-05 value.

Upon receiving Plaintiff’s petition, the BOPTA clerk determined the petition was deficient because it failed to note the real market value appearing on the tax statement, and the petition failed to note the value requested by Plaintiff. The clerk also concluded that Plaintiff

needed to file a separate petition for each account. The clerk notified Plaintiff of the deficiencies in a Defective Petition Notice dated January 5, 2005. That notice advised Plaintiff that it had until January 26, 2005, to amend its petition. The notice stated: “If you do not submit a corrected petition by the amended filing date, the board will dismiss your appeal.” (Defective Petition Notice at 1.)

Upon receiving the notice, Ribera noted the deadline in her day timer. Unfortunately, she incorrectly noted the deadline as January 27, 2005. When that date arrived, she realized she was a day late for submitting the amended petition. She contacted a county representative¹ and was advised she could submit an appeal to this court. Plaintiff filed its appeal challenging both the 2003-04 and 2004-05 tax years. Defendant claims the court should dismiss both years because Plaintiff failed to pursue its remedy with the BOPTA. Plaintiff claims a simple oversight caused it to miss the deadline and that Plaintiff should not be punished for such an innocent mistake.

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).²

The legislature recognized that situations may exist which prevent a taxpayer from timely appealing to the county board. As a result, the legislature granted the court authority to review

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¹ It was not clear whether she spoke with an individual at Defendant’s office or other county office.

² All references to the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2003.

untimely appeals when the taxpayer establishes “good and sufficient cause” for not timely pursuing its statutory right of appeal. 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 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).

For tax year 2003-04, Ribera did not file an appeal on behalf of Plaintiff because her former property tax manager failed to inform her of the increased assessment. Such a circumstance was not so extraordinary as to prevent an appeal from being made for that year. As a result, the court finds good and sufficient cause is lacking for Plaintiff’s failure to timely pursue an appeal for the 2003-04 tax year.

For tax year 2004-05, Plaintiff did file an appeal on time with the BOPTA.

Unfortunately, the petition was inadequate in a number of respects. The Oregon Administrative Rules require a taxpayer to include in a BOPTA petition the “value of the property as requested

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 is not residential and, therefore, the 20 percent error provision does not apply.

by petitioner” and the “value on the current tax roll that is being appealed.” OAR 150-309.100(3)-(A)(1)(c), (d). The purpose of the petition is to inform the BOPTA of the nature of the claim. When the alleged dispute centers around value, it follows that value information is a necessary component of any petition. The rules allow the BOPTA clerk to review petitions and determine if they are deficient. OAR 150-309.100(3)-(B)(2) states, in pertinent part:

“(2) If the petition is deficient, the clerk will notify the petitioner by mail:

“(a) Of the nature of the deficiency,

“(b) Of the time allowed by paragraph (4) of this rule to correct the deficiency, and

“(c) That the failure to correct the deficiency within the time allowed will result in dismissal of the appeal without further notice.”

“* * * * *

“(4) The petitioner has 20 days from the mailing of the notice of deficiency * * * to correct the deficiency.”

Upon receiving Plaintiff’s petition, the BOPTA clerk noted the deficiencies and advised Plaintiff of the deficiencies pursuant to the rule. Unfortunately, Ribera failed to note the correct deadline to file an amended petition in her day timer. The question is whether that oversight constitutes “good and sufficient cause” for Plaintiff’s failure to timely pursue its statutory remedy. The court concludes that it does not. The statute defining good and sufficient cause states that the event must be beyond the control of the taxpayer’s agent and that it must not be a simple oversight or the result of inadvertence. Although innocent, Ribera’s mistake does not meet the statutory definition of good and sufficient cause. As a result, the court finds Plaintiff lacks good and sufficient cause for failing to timely pursue its remedy with the BOPTA. Therefore, the court is without authority to consider Plaintiff’s appeal.

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III. CONCLUSION

The court concludes that Plaintiff does not have good and sufficient cause for failing to pursue its remedy with the BOPTA. The court finds, therefore, that Plaintiff's appeal should be dismissed. Now, therefore,

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

Dated this _____ day of April 2005.

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 April 14, 2005.
The Court Filed this Document April 14, 2005.***