

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MICHAEL NYLAND and TEREZIA NYLAND,)	
)	
Plaintiffs,)	TC-MD 050077C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This appeal involves a request by Plaintiffs for a reduction in property taxes for the 2004-05 tax year.¹ The property at issue is Plaintiffs' home, and is identified in the assessor's records as Account R117000.

On March 22, 2005, Defendant filed a Motion to Dismiss because Plaintiffs did not file a petition with the county board of property tax appeals (board) before appealing to the Tax Court. Defendant also contended that the court lacks jurisdiction under ORS 305.288(1)² because the complaint does not request a reduction in real market value equal to or greater than 20 percent. Defendant has subsequently withdrawn its motion, as explained below. Nonetheless, the court, concludes that Plaintiffs' appeal must be dismissed.

A case management conference was held on April 12, 2005. Defendant's motion was addressed at that proceeding. Michael Nyland (Nyland) appeared for Plaintiffs. Marie Wardwell (Wardwell) appeared for Defendant. After some discussion, the parties agreed that the real

¹ Although Plaintiffs' complaint was couched in terms of property tax relief, their concern is over the disparity in taxes between themselves and their neighbors stemming, at least in part, from an error in the county's records concerning the size of their home. As such, the appeal involves a request for a reduction in value, which the parties agree is appropriate. In the arena of property tax disputes, this court does not have the authority to determine the correct tax. Rather, the court's authority is limited to the question of whether the value should be adjusted, or where there is a dispute over qualification of the property for special assessment or exemption.

² All references to the Oregon Revised Statutes (ORS) are to 2003.

market value of Plaintiffs' home should be reduced from \$616,430 to \$560,000, based on a correction to the square footage.³ Defendant further indicated that the exception real market value should be reduced from \$80,810 to \$13,910. To facilitate the court's acceptance of the stipulated agreement, Defendant withdrew its motion. After further discussion, the court advised the parties to submit an agreement to the Department of Revenue (department) for consideration under ORS 306.115 and the corresponding administrative rule.⁴

The legislature established an appeal process whereby the taxpayer first petitions the board as provided in ORS 309.100. The petition to the board is filed after the annual tax statement arrives in the fall (around mid-October) and on or before December 31 of that calendar year. ORS 309.100(2). A taxpayer dissatisfied with the board's decision may appeal to the Tax Court pursuant to ORS 309.110(7) and ORS 305.275(3). The board's order must be appealed within 30 days of the date the order is mailed. ORS 305.280(4). The taxpayer has the option of coming directly to the Tax Court under the provisions of ORS 305.288(1), provided the property is used primarily as a dwelling of no more than four units and the taxpayer believes there is an error in value of at least 20 percent. However, the taxpayer runs the risk of having the appeal denied if the court concludes that the magnitude of the error is less than 20 percent, even if a substantial value reduction appears warranted.

When, as in this case, a taxpayer does not timely appeal to this court from an order of the board, the court cannot grant relief unless one of the provisions of ORS 305.288 is satisfied. *See Seifert v. Dept. of Rev.*, 14 OTR 401 (1998). This is so regardless of whether the parties

³ Defendant measured Plaintiffs' home and agreed the size should be reduced from 5,259 square feet to 4,036 square feet.

⁴ Plaintiffs need not wait until they receive a stipulated agreement from the assessor's office, but can initiate the process by submitting a petition to the department.

stipulate to a reduction in value, as they have done this case. In *Seifert*, the Magistrate Division ordered a reduction in the value of taxpayers' home for the two tax years open to consideration (tax years 1995-96 and 1996-97) under ORS 305.288, based on the agreement of the parties.⁵ *Seifert v. Clackamas County Assessor*, TC-MD No 980283 (May 10, 1998). The value reduction was based on an error in square footage. On appeal to the Regular Division of the Tax Court, the department argued that the court could not grant relief unless one of the provisions of ORS 305.288 is satisfied. The court agreed and, because neither of the provisions of that statute was satisfied, the Decision of the Magistrate Division was overturned. *Seifert*, 14 OTR at 404-405.

The court now turns to the applicable statute in light of the facts of this case. ORS 305.288 authorizes a court to order a change or correction in value in two circumstances. One is if "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." ORS 305.288(1)(b). The parties' agreement in this case reflects an error in value of approximately 9 percent.⁶ That amount is less than half of the statutory threshold. As such, relief cannot be granted under ORS 305.288(1).

The other instance in which this court could ultimately order a reduction in value is where 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

⁵ The court can order a reduction in value under subsections (1) and (3) of ORS 305.288 for the current tax year, and either, or both, of the two immediately preceding tax years.

⁶ $\$616,430 - \$560,000 = \$56,430$; $\$56,430 \div \$616,430 = .09154 = 9.2$ percent.

appeal.” ORS 305.288(3).⁷ Plaintiffs meet the first requirement because they missed the deadline for petitioning the board. The question, then, is whether Plaintiffs have “good and sufficient cause” for missing the board deadline. ORS 305.288(5)(b)(A) defines a good and sufficient cause as “an extraordinary circumstance that is beyond the control the taxpayer, or the taxpayer’s agent or representative.” Nyland testified that he thought he had “about three months” to appeal to the board after the November 15 deadline for paying property taxes. The deadline is December 31 each year, which is about two and one-half months from the time the property tax statement arrives in October. Plaintiffs were busy over the holidays and Nyland began to do some internet research for the board appeal on New Year’s Day. At that point, Plaintiffs had already missed the deadline. Plaintiffs then attempted to file their board petition in mid-January and were advised to appeal to the Magistrate Division of the Tax Court. Plaintiffs simply misunderstood the deadline. ORS 305.288(5)(b)(B) provides that lack of knowledge does not constitute good and sufficient cause. Accordingly, Plaintiffs do not meet the good and sufficient cause standard and the court cannot accept the parties’ stipulated agreement. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs’ appeal must be dismissed because Plaintiffs did not first petition the board, and they do not meet the requirements of ORS 305.288. Although the parties agree that a \$56,000 value reduction is warranted, the

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⁷ If the taxpayer is able to overcome the hurdle of not properly pursuing the statutory appeal, the taxpayer must then satisfy the court that a reduction in value is warranted.

magnitude of the error is less than 20 percent, and Plaintiffs do not have a statutorily sufficient reason for missing the deadline for petitioning the board.

Dated this _____ day of April 2005.

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 April 28, 2005. The Court filed and entered this document April 28, 2005.