

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

DANIEL HARRISON,	)	
	)	
Plaintiff,	)	TC-MD 050091C
	)	
v.	)	
	)	
DESCHUTES COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff seeks a reduction in the real market value of certain real property for the 2004-05 tax year. Defendant asserts that the tax roll value is correct. The property at issue is identified in the Assessor's records as Account 242057. A case management conference was held April 14, 2005. The court reviewed the matter under the provisions of ORS 305.288 because Plaintiff did not petition the county board of property tax appeals (board) before appealing to this court.

I. STATEMENT OF FACTS

The subject property is a 3.61 acre undeveloped parcel acquired by Plaintiff from the Tumalo Irrigation District pursuant to a lot line adjustment. The land was adjacent to Plaintiff's 6.3 acre homesite and became part of Plaintiff's homesite, which now constitutes approximately a 10 acre parcel. Plaintiff paid \$50,000 for the subject property in December 2003. The real market value on the assessment and tax rolls for the 2004-05 tax year is \$104,330.

Calendar year 2004 was a busy time for Plaintiff. Plaintiff's uncle, who lived in New York, passed away in April 2003. Plaintiff, who is a veterinarian in the Bend area, was appointed executor. The uncle was a concert pianist who owned a considerable amount of property, including a home in Long Island and some art and bronze work. Plaintiff is also legal guardian for his aunt, who has Alzheimer's disease. Plaintiff was required to make a number of

round-trips to New York in connection with his uncle's estate and his aunt's medical needs.

Plaintiff testified that he was involved in a deposition in New York in November 2004 related to his uncle's estate. Several months earlier that year, Plaintiff was before a judge in a New York court regarding the guardianship appointment for his aunt.

When the tax statement arrived in mid-October 2004, Plaintiff paid the bill and set the paperwork aside. After returning to Oregon from the deposition in New York, Plaintiff had family from out-of-town stay in his house over the Thanksgiving holiday. The visitors slept in Plaintiff's home office. In preparation for their visit, the paperwork in Plaintiff's office was consolidated to a single pile. After the holidays (including Christmas), Plaintiff came upon the property tax statement at the bottom of a pile of papers in his office. Upon careful review, Plaintiff realized that the county had placed a value of \$104,330 on the 3.61 acres under appeal, which was more than twice the \$50,000 purchase price in December 2003. Plaintiff called the assessor's office to inquire about an appeal and was directed to the Magistrate Division of the Tax Court. Plaintiff also testified that he had never appealed his property value before and that he was not aware of the deadlines.

After the April 14, 2005, court proceeding, Plaintiff submitted a letter to the court dated April 21, 2005.<sup>1</sup> In that letter, Plaintiff provided additional information about his activities in the latter part of calendar year 2004. Plaintiff attended a professional conference in Denver, Colorado, between November 26 and December 5, 2004, and, as a member of the organization

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<sup>1</sup> The court did not leave the record open for the submission of additional information. However, in the interests of justice, the court considered the additional information presented in that letter, notwithstanding the fact that it was not presented in the form of an affidavit. Additionally, before ruling on the case, the court transmitted a copy of the letter by facsimile to Defendant, and offered Defendant an opportunity to respond, which Defendant declined.

sponsoring the conference, Plaintiff had additional organizational duties consuming his time before and after the Colorado conference.

## II. ANALYSIS

A taxpayer dissatisfied with the real market or assessed value assigned to its property can appeal to the county board as provided in ORS 309.100.<sup>2</sup> The petition to the board must be filed after the tax statement is mailed in the fall and before December 31 of the current tax year.

ORS 309.100(2).<sup>3</sup> Plaintiff missed that deadline.

The legislature recognized that situations may exist which prevent a taxpayer from timely appealing to the board. To address that situation, the legislature granted the Tax Court authority to review untimely appeals when the taxpayer establishes “good and sufficient cause” for not timely pursuing its statutory right of appeal. ORS 305.288(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.)

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

<sup>3</sup> 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 in this case is not residential, and therefore the 20 percent error provision does not apply.

ORS 305.288(5)(b) 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.”

(Emphasis added).

The death of Plaintiff’s uncle certainly constitutes an extraordinary circumstance that was beyond his control. However, the court concludes that the family tragedy was not the cause of Plaintiff’s failure to timely petition the board in 2004. Plaintiff’s uncle died in April 2003. Plaintiff received his tax statement for the 2004-05 tax year in October 2004, and had until December 31, 2004, to petition the board. During that time-frame, Plaintiff made a trip to New York for a deposition related to his uncle’s death. Plaintiff was also busy entertaining out-of-town guests and organizing and attending a professional conference in Colorado. That, coupled with the daily stresses of life faced by all, no doubt kept Plaintiff busy between October 15, 2004, and December 31, 2004. However, the reason Plaintiff missed the December 31 deadline was because he was unaware of the deadline. Plaintiff testified that when the tax statement arrived in October, he paid the bill and set the paperwork aside. Plaintiff was not familiar with the appeal process and did not properly scrutinize the tax statement until after the December 31 deadline. The county mails a statement of appeal rights with each tax statement. Had Plaintiff reviewed that information, he would have been aware of the deadline and acted accordingly. As indicated above, inadvertence, oversight, and lack of knowledge are expressly excluded from the statutory definition of good and sufficient cause.

### III. CONCLUSION

Plaintiff's appeal, involving a 3.61 acre undeveloped parcel, cannot move forward under ORS 305.288(3) because Plaintiff has not persuaded the court that he missed the deadline for petitioning the board for the 2004-05 tax year by reason of extraordinary circumstances beyond his control. Because Plaintiff has not established good and sufficient cause for failing to pursue his statutory right of appeal, the appeal must be dismissed. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is dismissed.

Dated this \_\_\_\_ day of May 2005.

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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 May 13, 2005. The Court filed and entered this document May 13, 2005.**