

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DANUSHKA FLANAGAN,)	
)	
Plaintiff,)	TC-MD 050087C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff has requested a reduction in the real market value of her property for the 2004-05 tax year. Defendant, in its Answer, indicated a willingness to accept a reduction in value to the purchase price, but noted that Plaintiff had not filed an appeal with the county board of property tax appeals (board). The court explored the procedural aspects of the appeal during a case management conference held April 28, 2005.

I. STATEMENT OF FACTS

The property at issue, identified in the assessor’s records as Account 1067956 (Map 17 03 21 31 00144), is Plaintiff’s home. Plaintiff purchased the property on August 24, 2004, for \$196,600. The real market value on the assessment and tax rolls is \$228,601. Plaintiff testified that she spoke with a neighbor who advised her that she should not be taxed on a value above what she paid for the property. The assessed value of the subject property is \$142,312. Plaintiff was asked by the court why she did not file a petition with the county board. Plaintiff testified that she is new to Oregon, having moved here from Colorado about two years ago. Plaintiff further testified that she was too late to go to the board and that “they” told her to “go to Salem.” Plaintiff is not sure if she spoke to someone in person or over the telephone, or whether the person with whom she spoke worked for the assessor’s office or for the county board.

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II. ANALYSIS

The legislature established an appeal process whereby the taxpayer first petitions the board as provided in ORS 309.100.¹ 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).

Although the parties have agreed that a reduction in value is warranted based on the purchase price, the court cannot simply accept the party's agreement unless one of the provisions of ORS 305.288 is satisfied. *See Seifert v. Dept. of Rev.*, 14 OTR 401 (1998) (requiring the court to find that one of the provisions of ORS 305.288 are satisfied before accepting a stipulated agreement). Plaintiff was advised to submit a petition to the Oregon Department of Revenue (department) for consideration under ORS 306.115. Defendant's representative indicated a willingness to execute a stipulated agreement and to mail that to Plaintiff along with a blank petition form for the department.

ORS 305.288 authorizes a court to order a change or correction in value in two circumstances. One circumstance 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

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¹ All references to the Oregon Revised Statutes (ORS) are to 2003.
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20 percent.” ORS 305.288(1)(b).² Taxpayer has not alleged an error in value of 20 percent. The real market value on the assessment and tax rolls is \$228,601 and taxpayer seeks a reduction to \$196,600. That amounts to an alleged error in value of 14 percent.

The other instance in which this court could ultimately order a reduction in value is when the taxpayer has a statutorily acceptable reason for not petitioning the board before appealing to the court. ORS 305.288(3) provides:

“(3) The tax court may order a change or correction applicable to a separate assessment of property 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.)

Plaintiff in this case does not know why she missed the deadline for petitioning the board. Plaintiff testified that she did receive her tax statement on time. Plaintiff eventually spoke with someone connected with the county tax office and was advised to appeal to the Tax Court. That explanation does not constitute a good and sufficient cause, as required by ORS 305.288(3), set forth above. ORS 305.288(5) provides in relevant part:

² The full text of subsection (1) of ORS 305.288 provides:

“(1) The tax court shall order a change or correction applicable to a separate assessment of property 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, or for any or all of those tax years, 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 (or is vacant) and was and is a single-family dwelling, a multifamily dwelling of not more than four units, a condominium unit, a manufactured structure or a floating home.

“(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.”

“(b) ‘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.)

Plaintiff was not prevented from appealing to the board in a timely fashion due to extraordinary circumstances beyond her control. The situation is more appropriately characterized as inadvertence, oversight, and/or lack of knowledge.

III. CONCLUSION

Although the parties have agreed to a 14 percent reduction in the real market value of Plaintiff's property, the court cannot accept the parties' agreement because Plaintiff did not petition the board before appealing to the Tax Court, and Plaintiff does not meet the requirements of ORS 305.288. Now, therefore,

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

Dated this _____ day of May 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 May 13, 2005. The Court filed and entered this document May 13, 2005.