

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

|                             |   |                              |
|-----------------------------|---|------------------------------|
| COMMERCIAL EQUIPMENT LEASE, | ) |                              |
|                             | ) |                              |
| Plaintiff,                  | ) | TC-MD 051010C                |
|                             | ) |                              |
| v.                          | ) |                              |
|                             | ) |                              |
| DOUGLAS COUNTY ASSESSOR,    | ) |                              |
|                             | ) |                              |
| Defendant.                  | ) | <b>DECISION OF DISMISSAL</b> |

This matter is before the court on Defendant’s oral motion to dismiss, made during the February 28, 2006, case management conference. Defendant asserts that Plaintiff did not timely appeal.

The appeal involves a C-23 Berger Yarder (yarder) owned by Plaintiff and leased to a third-party for logging. Plaintiff did not complete its personal property reporting for the 2004-05 tax year, but the lessee did report the value of its leased property, including the subject yarder. Plaintiff’s failure to complete the reporting process in 2004 is blamed on the negligence of the previous third-party service provider who was assisting Plaintiff with its tax matters. The yarder was nonetheless assessed and taxed in 2004 pursuant to the lessee’s reporting, with the value appearing on the property tax statement Defendant issued in October 2004. Defendant subsequently determined that the yarder was entitled to exemption from property taxes under ORS 307.831 and exempted the yarder for the 2005-06 tax year.<sup>1</sup> Plaintiff has requested that the yarder be exempted for the 2004-05 tax year, asserting that the reason it was taxed (in error)<sup>2</sup> is

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

<sup>2</sup> Although Plaintiff continued to refer to the property as exempt in the assessment as erroneous, Defendant informed the court that it believed the exemption for the 2005-06 tax year was granted in error because the property does not meet all the requirements of ORS 307.831.

that it (Plaintiff) failed to complete the personal property reporting process in 2004, and that, had it followed through, the yarder would have been reported as exempt, and exempted accordingly.

Plaintiff's appeal to this court is filed under the provisions of ORS 305.275(1)(a)(C), which authorizes an appeal to the Magistrate Division of the Oregon Tax Court by a party "aggrieved by and affected by an act, omission, order or determination of \* \* \* a county assessor." Plaintiff is aggrieved by Defendant's determination to assess and tax the yarder. However, under ORS 305.280(1), Plaintiff was required to appeal "within 90 days after the act, omission, order or determination bec[ame] actually known to [it], but in no event later than one year after the act or omission has occurred \* \* \*." Thus, regardless of when Plaintiff actually became aware the yarder was being taxed, it had no more than one year from the date of the act, in this case the 2004 tax statement, to appeal. Plaintiff appealed in December 2005, missing the deadline by more than two months.

Plaintiff argues that the problem was due to the mistake of its previous tax preparer, that it has replaced that entity, and has paid considerable penalties as a result of the previous preparer's mistakes. Plaintiff stated that it would appreciate any flexibility or leniency the court could provide. The court's authority, however, is conferred by the legislature and governed by statute. There is no statute under which the court can excuse Plaintiff's untimeliness.

Plaintiff has not presented any fact or argument which prevents the application of the statutes referenced above. Accordingly, Defendant's motion is granted. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is allowed.

The Complaint is dismissed.

Dated this \_\_\_\_\_ day of March 2006.

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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 March 6, 2006. The Court filed and entered this document March 6, 2006.***