

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RIVER PLACE PARTNERS, LLC,)	
)	
Plaintiff,)	TC-MD 060059D
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the assessed value of property for the 2005-06 tax year.¹ Defendant answered Plaintiff’s complaint by filing a Motion to Dismiss (Motion) on April 20, 2006. A case management conference was held May 22, 2006. Michael Simpson (Simpson), Certified Public Accountant, appeared on behalf of Plaintiff. Richard Sanderman, Multnomah County Appraiser, appeared for Defendant. At the conclusion of the conference, Plaintiff was provided an opportunity to submit a written response to Defendant’s Motion. Simpson’s written response to Defendant’s Motion was filed on June 5, 2006.

I. STATEMENT OF FACTS

On or about December 30, 2005, Plaintiff contacted Defendant’s office to ask “if there was any extension period for filing an appeal” of the 2005-06 assessment of its property. (Ptf’s Ltr, June 2, 2006.) Plaintiff alleges that Defendant said Plaintiff “could simply file an appeal directly to the Oregon Tax Court if [it] missed the deadline for filing with the county.” (*Id.*) Plaintiff did not file an appeal with the Multnomah County Board of Property Tax Appeals
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¹ The property is identified in Defendant’s records as Account R273073.

(BOPTA) for the 2005-06 tax year. (Def’s Mot to Dismiss at 1.) On February 16, 2006, it appealed directly to this court.

II. ANALYSIS

Defendant asserts that Plaintiff’s appeal should be dismissed because the court lacks jurisdiction under ORS 305.275(3)² and ORS 305.288(3). (Def’s Mot to Dismiss at 1.)

“[T]he Oregon Legislature has developed an appeals procedure for taxpayers to follow when challenging the values assigned to their property.” *Marsee v. Clackamas County Assessor*, TC-MD 050041D, WL 1089833 at *1 (Mar 24, 2005). In most cases, taxpayers are required to appeal the county’s assessment to BOPTA by December 31 of the current tax year. *See* ORS 309.100(2).³ A taxpayer may not appeal to this court without first appealing to BOPTA unless a statutory exception applies. *See Dept. of Rev. v. Oral and Maxillofacial Surgeons*, 15 OTR 284, 287-88 (2001); ORS 305.275(3). Such an exception is found in ORS 305.288.⁴

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² Plaintiff’s right to appeal is not found in ORS 305.275(3). The applicable statute is ORS 305.288(3).

³ All references to the Oregon Revised Statutes (ORS) are to 2003.

⁴ ORS 305.288(1) provides another exception:

“(1) The tax court shall order a change * * * applicable to a separate assessment of property to the assessment and tax roll for the current tax year * * * if all of the following conditions exist:

“(a) For the tax year to which the change * * * is applicable, the property was * * * used primarily as a dwelling* * *.

“(b) The change * * * 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.”

Because the property is undeveloped, specifically it is not “used primarily as a dwelling,” this exception is not applicable.

That statute provides that 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 * * * if * * * taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.”

ORS 305.288(3). Having failed to appeal to BOPTA by the December 31 deadline, Plaintiff has no statutory right of appeal remaining. The court now turns to the issue of good and sufficient cause.

Good and sufficient cause “[d]oes 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)(B). However, under the statute, good and sufficient cause does include circumstances where relevant “misleading information” is provided by an “authorized tax official.” *See Marsee*, TC-MD No 050041D. Plaintiff argues that this is the situation here. Plaintiff states in its response to Defendant’s Motion to Dismiss, that Defendant told Plaintiff it could appeal directly to the Tax Court. That statement was accurate; it is true that Plaintiff can file a direct appeal in this court. *See* ORS 305.288. However, an appeal can be dismissed if the court does not have jurisdiction because a plaintiff fails to meet the statutory requirements of good and sufficient cause. *See Marsee*, TC-MD No 050041D (dismissing plaintiffs’ direct appeal to the Magistrate Division because plaintiffs lacked good and sufficient cause for failing to timely pursue their remedy with BOPTA).

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This court has held that in order to prove misleading conduct, or misleading information from an authorized tax official, a taxpayer must provide “proof positive” that it was misled.⁵ *Webb v. Dept. of Rev.*, 18 OTR 381, 384 (2005). This is a “stringent proof requirement” requiring “strong support.” *Id.* (citing *Hoyt Street Properties LLC v. Dept. of Rev.*, 18 OTR 313, 319 (2005)). Mere testimony that the government orally misguided a taxpayer is generally, by itself, insufficient to show “proof positive” that the taxpayer was misled. *Schellin v. Dept. of Rev.*, 15 OTR 126, 131 (2000). *See also Strand v. Multnomah County Assessor*, TC-MD 991472C, WL 367900, at *2 (Mar 20, 2000) (noting that even statements by a board clerk that arguably amounted to misleading conduct do not rise to the level of estoppel because the clerk was technically correct in her statements). It is more difficult to prove where the alleged misconduct is oral misinformation because of the “many possibilities for misunderstanding with oral communication.” *Mahler v. Dept. of Rev.*, 11 OTR 367, 370 (1990). In addition, “general” descriptions of oral conversations lack the specificity required to show proof positive. *Patton v. Dept. of Rev.*, 18 OTR 111, 122 (2006).

With respect to good and sufficient cause, this court has stated (without being specific) that “[i]n some instances, being given misleading information by a tax official could constitute good and sufficient cause.” *Oral and Maxillofacial Surgeons* at 289. This case before the court is not one of those “instances.” *Id.* The response to Plaintiff’s question was in the form of one oral statement. Plaintiff’s recitation of the statement fails to explain how the response stating a complaint may be filed was misleading. In addition, Plaintiff offers nothing apart from the oral statement, such as written statements, to substantiate its claim. Plaintiff’s allegation lacks the

⁵ Although Plaintiff’s response does not specifically make a claim of estoppel, the court will discuss one of the required elements of estoppel, “misleading conduct on the part of defendant,” in conjunction with its analysis of ORS 305.288(5)(b).

specificity required to overcome the high threshold of “proof positive” under *Schellin* and therefore any claim of estoppel fails.

Plaintiff may believe that the information was incomplete. When incomplete but not necessarily inaccurate information is given to a taxpayer by a tax official, it is the taxpayer’s burden to look “to published law to fill the void.” *Webb*, 18 OTR at 386. If Plaintiff had questions about the appeals process, it should have looked to the applicable law rather than relying on an oral communication from a member of Defendant’s staff.

III. CONCLUSION

Plaintiff did not prove that it had good and sufficient cause for failing to appeal to BOPTA by the December 31 deadline and, therefore, the court has no jurisdiction to hear Plaintiff’s appeal under ORS 305.288(3) and any claim of estoppel by Plaintiff fails. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s Motion to Dismiss be granted.

Dated this _____ day of July 2006.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on July 24, 2006. The Court filed and entered this document on July 24, 2006.