

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CHRISTOPHER T. BILLINGS,)	
)	
Plaintiff,)	TC-MD 060309D
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss (Motion), filed May 2, 2006, requesting that the Complaint be dismissed. Plaintiff’s Response to Defendant’s Motion to Dismiss (Response) was filed October 31, 2006. Oral argument was held on Thursday, January 4, 2007. Ken Brinich, Attorney at Law, appeared on behalf of Plaintiff. Laurie E. Craghead, Assistant Legal Counsel of Attorneys for Deschutes County, appeared on behalf of Defendant.

Defendant’s Motion concludes that the court lacks subject matter jurisdiction for Plaintiff’s appeal of the real market value of property identified as Account 113582 for tax years 2000-2001, 2001-02, 2002-03, 2003-04 and 2004-05.¹ In its Response, Plaintiff “concedes that the Magistrate is without jurisdiction with regard to the 2000-2001 through 2002-03 tax years.” (Ptf’s Resp at 2.) For tax years 2003-04 and 2004-05, the parties agree that Plaintiff failed to file a timely appeal with the board of property tax appeals (BOPTA). Further, the parties agree that the court’s jurisdiction, if any, to hear Plaintiff’s appeal is found in ORS 305.288(3)² which provides:

¹ Plaintiff amended its Complaint to exclude tax year 2005-06 from this case. That year was appealed in TC-MD 060308D.

For tax years 2000-2001, 2001-02 and 2002-03, the property was identified as Account 201035C003100.

² All references to the Oregon Revised Statutes (ORS) are to year 2005.

“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 assessor or 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.”

The parties agree that Plaintiff has no statutory right of appeal remaining. The parties disagree that Plaintiff had “good and sufficient cause” for failing “to pursue the statutory right of appeal.” *Id.* Plaintiff alleges he had good and sufficient cause because the property was the subject matter of a lawsuit commencing October 22, 2003, which, if Plaintiff’s affirmative defenses prevailed, would have made “an appeal of the assessor’s valuation * * * unnecessary.” (Ptf’s Resp at 2.) Plaintiff concludes that the lawsuit and the ultimate dismissal without prejudice of the lawsuit by the plaintiffs which left Plaintiff “without the declaration that would free the property from their claims of unrecorded property rights” were “extraordinary circumstances.” (*Id.* at 2.)

The term “good and sufficient cause” is defined in ORS 305.288(5)(b) 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.”

ORS 305.288(5)(b)(A) sets forth a two part test. First, good and sufficient cause is “an extraordinary circumstance that is beyond the control of the taxpayer.” *Id.* In this case, Plaintiff was a named defendant in a lawsuit; being named a defendant is clearly beyond Plaintiff’s control.

Second, the statute requires a causal connection between the event that was beyond a taxpayer’s control and the failure “to pursue the statutory right of appeal.” In this case, there is no causal connection. The lawsuit did not prevent or bar Plaintiff from pursuing his statutory right of appeal. It is possible that while involved in the lawsuit Plaintiff overlooked or inadvertently

neglected to file an appeal, but “oversight” and “inadvertence” are not good and sufficient cause. See ORS 305.288(5)(b)(B).

Defendant, in its oral argument, stated that Plaintiff could have taken the “precautionary” step of filing an appeal which “could have been stayed” pending the outcome of the lawsuit. Plaintiff conceded that he could have filed “a precaution appeal”; however, Plaintiff would be in “precisely the same position” he is now. Unfortunately, the statute does not address the status of the parties at the time the statutory right of appeal exists compared to the actual date the appeal is filed. The court agrees with Defendant that Plaintiff could have filed a petition with BOPTA and, depending on the outcome of that proceeding, Plaintiff could have appealed the BOPTA order to the Tax Court. The court has a procedure allowing it to place cases in abeyance pending the outcome of other pending legal proceedings.

After careful review of the evidence, the court concludes that Plaintiff has not demonstrated good and sufficient cause for failing to pursue his statutory right of appeal. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of February 2007.

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 February 6, 2007. The Court filed and entered this document on February 6, 2007.