

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

HELPING HANDS RESOURCES,	)	
	)	
Plaintiff,	)	TC-MD 060506E
	)	
v.	)	
	)	
MARION COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s disqualification of the subject property from exempt status for the 2003-04 tax year. Defendant, in its Answer filed May 22, 2006, requested that the court dismiss the appeal, claiming Plaintiff failed to timely appeal the notice of disqualification. During the telephone conference held July 25, 2006, the parties discussed whether Plaintiff had good and sufficient cause for failing to timely appeal. The parties submitted the case to the court for ruling.

I. STATEMENT OF FACTS

Plaintiff is a nonprofit organization staffed completely with volunteers. It was formed over 30 years ago for the purpose of collecting, storing, and disbursing clothes and household items to the needy. Plaintiff relies on contributions for its operations. In the early 1990s, Plaintiff began leasing the subject property and entered into annual lease agreements with the lessor.<sup>1</sup> Early on, Plaintiff filed an application for exemption with Defendant and was granted the exemption. Each year thereafter, according to Defendant, Plaintiff provided Defendant with a

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<sup>1</sup> The property is identified in Defendant’s records as Account R85557.

copy of its new lease agreement.<sup>2</sup> Based on the lease renewals, Defendant continued the exemption on the roll.

Tax year 2003-04 is an anomaly in the history of the subject property's taxation. Prior to and subsequent to the 2003-04 tax year, Plaintiff timely submitted its lease agreements and Defendant permitted the exemption. For tax year 2003-04, however, Plaintiff failed to provide a copy of its new lease agreement. The individual responsible for obtaining the exemption was Plaintiff's treasurer. During that time period, he was diagnosed with and suffering from Lou Gehrig's disease, and he eventually passed away.

On August 6, 2003, Defendant sent Plaintiff a letter advising the organization that the property was being disqualified from exemption because Plaintiff was "no longer leasing the property." (Ptf's Am Compl at 2.) Defendant reached its conclusion because, as stated, no new lease agreement was provided to Defendant for that year. That letter, however, was sent to the treasurer at his home address, which is apparently where Plaintiff had requested tax information be sent. The treasurer failed to act on the letter or notify other individuals in the organization about the letter.

In the fall of 2003, other staff members became aware that the treasurer was no longer able to adequately perform his duties and a new treasurer was appointed. No one was aware that the 2003-04 filing had not occurred and the treasurer did not make them aware of it.

Defendant added the property to the tax roll and sent the tax statement to the property owner.

The property owner never paid the liability and failed to notify Plaintiff of the lack of exemption.

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<sup>2</sup> The court questioned Defendant as to whether a new application is required each year or whether Plaintiff need only submit a copy of its lease renewal. Defendant's representative advised that, once exemption is granted, a copy of the new lease is all that is required to continue the exemption. The court observes, however, that OAR 150-307.112(1) (2003) requires a new claim be filed when a "new lease" or "extension of current lease" is made.

For the 2004-05 tax year, the new treasurer timely submitted its application for exemption and the exemption has continued in place since then.

In the spring of 2006, Plaintiff decided to purchase the subject property. During that process, Plaintiff discovered that a lien existed on the property for outstanding 2003-04 property taxes. That is the first anyone in the organization, other than the treasurer, had received notice that exemption had not been awarded for that year. Plaintiff promptly filed an appeal with the Tax Court seeking exemption for the 2003-04 tax year.

Defendant claims the appeal should be dismissed because Plaintiff does not have good and sufficient cause for failing to appeal the notice of disqualification issued in August 2003. Defendant admits, however, that if the court makes a finding of good and sufficient cause, then exemption of the property is appropriate.

## II. ANALYSIS

ORS 305.275(1)(a)(C)<sup>3</sup> permits any person aggrieved by an act of a county assessor to file an appeal with the Magistrate Division of the Oregon Tax Court. “[A]n appeal under ORS 305.275(1) or (2) shall be filed within 90 days after the act, omission, order or determination becomes actually known to the person, but in no event later than one year after the act or omission has occurred[.]” ORS 305.280(1). Defendant notified Plaintiff in August 2003 that the property was being disqualified from exempt status. Plaintiff had 90 days to appeal that notice to the court. Having failed to do so, Plaintiff’s appeal rights expired. The legislature, however, recognized that situations may exist which prevent a taxpayer from timely filing an appeal. As a result, the legislature granted the court authority to review untimely appeals when  
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<sup>3</sup> All references to the Oregon Revised Statutes (ORS) are to 2005.

the taxpayer establishes “good and sufficient cause” for not timely pursuing its statutory right of appeal. ORS 305.288(3).<sup>4</sup>

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.)

The statute 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.”

ORS 305.288(5)(b).

Defendant claims the treasurer’s failure to file an appeal was the result of inadvertence or oversight and, therefore, the circumstances do not qualify as good and sufficient cause. The court disagrees. For a healthy individual who overlooks an appeal deadline, the situation may be that of inadvertence or oversight. In this case, however, the only person with knowledge of the denial was suffering a terminal illness and unable to perform his duties. Those duties were taken away from him soon after the notice of disqualification was sent when it became apparent he was no longer able to perform the tasks required. Under the facts presented, the court finds the

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<sup>4</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)(b). The property at issue is not residential and, therefore, the 20 percent error provision does not apply.

treasurer's terminal illness presented an extraordinary circumstance that was beyond his control. The court finds, therefore, that good and sufficient cause exists for Plaintiff's failure to timely appeal Defendant's notice of disqualification.

### III. CONCLUSION

The court finds Plaintiff has established good and sufficient cause for not timely filing its appeal. As a result, based on Defendant's agreement, the court finds the property should be granted exemption for the 2003-04 tax year. Now, therefore,

IT IS THE DECISION OF THIS COURT the property identified as Account R85557 shall be exempt for the 2003-04 tax year.

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

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COYREEN R. WEIDNER  
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 Coyreen R. Weidner on August 14, 2006. The Court filed and entered this document on August 14, 2006.***