

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

VIEN G. NGUYEN,)	
)	
Plaintiff,)	TC-MD 060637B
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss, filed instead of an answer on October 6, 2006. Defendant requests that the Complaint be dismissed because the appeals were not first presented to the Multnomah County Board of Property Tax Appeals (board).

After an initial case management conference, the parties submitted written arguments. The record closed February 5, 2007. The Complaint named tax years 1995-96 through 2005-06. The filing was prompted by value reductions made by Defendant for the 2005-06 tax year. Plaintiff accepts the official valuation for 2005-06.

This appeal concerns the assessment of certain land only; the property is not improved with structures. No petitions were earlier submitted to the board. The first, and only, Complaint was filed with the Magistrate Division on August 24, 2006.

To appeal for value reductions, taxpayers typically must go to their county board of property tax appeals by December 31 of the current tax year. *See* ORS 309.100.¹ Here, Plaintiff admits he did not timely appeal those earlier years.

///

¹ All references to the Oregon Revised Statutes (ORS) are to 2005.

The court's authority in such cases extends only to the current tax year (2006-07) and the two prior years: 2004-05 and 2005-06. *See* ORS 305.288(3). Therefore, the earliest tax years cited in the Complaint are beyond the reach of this court. The claims for tax years 1995-96 through 2003-04 shall be dismissed.

The legislature has provide a limited opportunity to contest certain earlier year assessments. For properties not improved with residential structures, the court can grant taxpayers relief only in very limited circumstances. In order to prevail, a taxpayer must establish good and sufficient cause as to why he did not file a timely appeal.

The court will consider Plaintiff's valuation appeal for tax year 2004-05 if there is substantive evidence of good and sufficient cause for failing to earlier timely appeal.

ORS 305.288(3) provides:

“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.)

ORS 305.288(5)(b) defines what constitutes good and sufficient cause:

“ ‘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.”

Here, Plaintiff admits he did not timely appeal because he was not aware of the assessment magnitude and comparative market sales information until a later date. A written statement filed on his behalf stated:

“[W]e did not at the time feel we had sufficient grounds to argue the case in court. With the 2005 appraisal to a much lower value, we finally felt we had sufficient grounds to challenge the 1995 reappraisal.”

(Ptf’s ltr at 2, filed Jan 4, 2007.)

This situation is not beyond Plaintiff’s control; an earlier investigation could have been made. Independent examination could have been done through a fee appraiser, real estate agent. or similar professionals.

Under these particular facts, the court finds that Plaintiff does not have good and sufficient cause for failing to timely appeal.

CONCLUSION

After considering Defendant’s request, the court concludes that the motion should be granted. Now, therefore,

IT IS HEREBY ORDERED that Defendant’s Motion to Dismiss is granted.

Dated this _____ day of February 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on February 21, 2007. The Court filed and entered this document on February 21, 2007.

