

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

LUCE FAMILY TRUST,	)	
	)	
Plaintiff,	)	TC-MD 060687D
	)	
v.	)	
	)	
LINCOLN COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s failure to adjust the 2005-06 property tax value due to a fire that destroyed its property. A case management conference scheduled for Tuesday, December 5, 2006, was converted to a trial. Marilyn K. Luce (Luce) appeared on behalf of Plaintiff. Kathy Leib (Leib), Appraiser, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff’s house, greenhouse, and landscape were destroyed in a fire on February 22, 2006. Luce testified that on March 21, 2006, she called the county assessor’s office “to report the fire and to see what we needed to do.” (Ptf’s Ltr dated Sept 15, 2006.) Luce stated that the individual to whom she spoke stated that the “property had already been red-tagged, and that an appraiser would be up at the property to re-appraise it in July.” (*Id.*) Luce testified she was not told that she needed to complete an application to request a property tax refund. She stated that she would not have called the assessor’s office if she had not had a question, and it would have been helpful if the individual had stated that Luce needed to complete an application form. Luce testified that, at the conclusion of the conversation, it was her understanding that “after the

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appraisal, our overpayment would be credited on the next year's tax (2006-2007) [statement].”

(*Id.*) At a later date, Luce called the assessor's office and was informed that, because she failed to file an application form, no refund would be issued.

Leib testified that the tax assessor does not handle property tax refunds. She stated that those matters are handled by the tax collector. Leib testified that she agreed that someone in the appraiser's office may have told Luce that her property was “red-tagged.” She testified that it is customary for the appraiser's office to advise an individual that all refunds are handled by the tax collector and to contact that office to obtain an application for refund. Leib testified that the tax collector's office staff does not contact individuals who own property damaged or destroyed by fire.

Plaintiff appeals Defendant's failure to refund property taxes from February 23, 2006, to June 30, 2006.

## II. ANALYSIS

A property owner whose property is destroyed or damaged by fire or an act of God can apply for at least one, and in some cases two, types of property tax relief. Because the fire occurred on February 22, 2006, Plaintiff was entitled to request a proration of taxes under ORS 308.425<sup>1</sup> and a redetermination of real market and assessed value under ORS 308.428. Tax proration was available for the 2005-06 tax year and value redetermination was available for the 2006-07 tax year. However, Plaintiff never filed applications. Plaintiff missed the deadlines.

ORS 308.425 permits property taxes to be prorated when an application is filed “not later than the end of the tax year or 30 days after the date the property was destroyed or damaged, whichever is later.” ORS 308.425(2). Plaintiff's property was destroyed by fire on February 22,

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<sup>1</sup> All references to the Oregon Revised Statutes are to 2005.

2006. Plaintiff could have requested that its taxes be prorated from February 23, 2006, to June 30, 2006. However, Plaintiff did not file an application by the due date, which was no later than “30 days after the date the property was destroyed.” *Id.*

Plaintiff explained that it did not file an application because it did not know that one was required to be filed. The filing requirement is mandatory, and the deadline cannot be excused.

At the end of the trial, Plaintiff asked how the value of its property could be adjusted for tax year 2006-07. Under ORS 308.428, Plaintiff could have applied for a determination of value as of July 1, 2006, which would have resulted in a value for the 2006-07 tax year that reflects the loss of its house and other out-buildings. The value of the house and other out-buildings was included in the 2006-07 property tax statement because the fire occurred after the assessment date, January 1, 2006. *See* ORS 308.007 and 308.210(1). The redetermination of value set forth in ORS 308.428 requires an application “on or before August 1 of the current year.”

ORS 308.428(2).<sup>2</sup> In this case, the application was due on or before August 1, 2006. Plaintiff failed to file an application. Unfortunately, the court lacks the authority to excuse or otherwise overlook the failure to file an application.

Plaintiff may be able to proceed under a “hardship” statute by applying “to the Director of the Department of Revenue for a recommendation that the value of [the] property be stricken from the assessment roll.” ORS 307.475(1). An application is required for that process and the deadline in this case appears to be **December 15, 2006**. *See* ORS 307.475(3) The court explained during the trial that it cannot give Plaintiff legal advice, and the court encouraged Plaintiff to seek legal counsel. The court, during the trial, stated that Plaintiff may write to the Director of the Oregon Department of Revenue, seeking discretionary relief. *See* ORS 306.115.

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<sup>2</sup> “Year” is defined as assessment year under ORS 308.007(2)(b) and “ [a]ssessment year’ means calendar year.”

### III. CONCLUSION

After carefully reviewing the applicable law and the facts of this situation, Plaintiff's request for property tax relief for tax year 2005-06 is denied because Plaintiff failed to file an application prior to the mandatory deadline. The court does not have the legal authority to waive the filing deadline or excuse Plaintiff's failure to comply with the deadline. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

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

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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 December 5, 2006. The Court filed and entered this document on December 5, 2006.***