

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MARILYN D. HENDERSON,)	
)	
Plaintiff,)	TC-MD 060762C
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff seeks a reduction in the real market value (RMV) of certain real property for tax years 2000-2001 through 2005-06. The Complaint was filed November 7, 2006. The court held a case management conference January 25, 2007. Plaintiff appeared on her own behalf. Defendant was represented by Roy Routledge (Routledge), an appraiser in the assessor’s office, and his supervisor Joe Nelson (Nelson). Defendant questioned the court’s jurisdiction. This Decision addresses that issue.

I. STATEMENT OF FACTS

The subject property consists of two contiguous tax lots, 3101 and 1900,¹ each improved with a commercial building. The property is contaminated by petrochemical fuel that leached into the groundwater from an adjoining lot at a higher elevation. In 2006, Plaintiff found it necessary to remove one of the buildings on tax lot 1900 because “the main source of contamination was under its basement floor and created a faulty pathway for gases to enter the structure[,]” rendering the building unsafe. (Ptf’s Compl at 2.)

The contamination was discovered in the early 1990s, and cleanup has been underway for many years. Peavey Oil Company (Peavey) was originally responsible for, and initiated, an

¹ Tax lot 3101 is more fully described as map 2S12CB-03101, Account R466025, and tax lot 1900 is map 2S12BD-01900, Account R464483.

environmental cleanup program beginning in 1995. (Ptf's Compl at 4.)² Peavey subsequently asserted that it was financially incapable of continuing with the cleanup operation and the DEQ determined that "Peavey Oil does not have the resources to continue the cleanup work." *Id.* The DEQ's February 24, 2003, letter also announced its determination that Plaintiff and her husband were the "responsible parties for the Hudson Plaza cleanup project" because they were the owners of the subject property. *Id.*

Concerned with the impact on value stemming from the cleanup costs that Plaintiff now had to bear, Plaintiff filed a petition with the county board of property tax appeals (BOPTA), seeking a reduction in the RMV, after receiving the property tax statement in October 2006. That appeal involves both tax lots, and is currently pending before BOPTA. Routledge indicated that his office was very sympathetic with Plaintiff's situation and that he would be recommending to BOPTA that at least some of the values for the 2006-07 tax year be reduced. Nelson questioned the court about its jurisdiction to address prior years, because Plaintiff did not file a petition with BOPTA in any of the years 2000 through 2005. The parties agree Plaintiff was successful in petitioning BOPTA in 1993.

II. ANALYSIS

The appeal involves tax years 2000-2001 through 2005-06. The court must determine whether it can consider Plaintiff's request for a reduction in the RMV for any of the years at issue because Plaintiff has not timely appealed to this court from an order of BOPTA.

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² The Complaint includes a February 24, 2003, letter from the Department of Environmental Quality (DEQ) that addresses the contamination problem, the clean up history, and responsible party determinations.

A. *Tax Court Appeals - Property Value - Generally*

A property value appeal to the Oregon Tax Court must be filed with the Magistrate Division within 30 days of the date of mailing of a BOPTA order. *See* ORS 309.110(7)³ (providing for an appeal “to the magistrate division of the Oregon Tax Court” from BOPTA orders other than those relating to personal property penalty waiver requests); ORS 305.275(1) and (3) (authorizing aggrieved taxpayers to appeal to the Magistrate Division of the Oregon Tax Court “from an order of the board as a result of the appeal under ORS 309.100”); and ORS 305.280(4) (providing that an appeal of a BOPTA order must be filed within 30 days of the date the order is mailed). Plaintiff has not appealed within 30 days of the date of mailing of a BOPTA order for any of the years at issue. In fact, Plaintiff did not file a petition with BOPTA for any of those years. Without additional statutory authority, this analysis would conclude Plaintiff’s appeal. However, there are certain circumstances in which the court can consider an appeal notwithstanding the taxpayer’s failure to petition BOPTA.

B. *ORS 305.288 Appeals - Commercial Property*

In the case of commercial property not used for residential purposes, the court can consider an appeal, and order a reduction in value, if the appealing party has good and sufficient cause for not timely appealing to the court, and the years at issue fall within the relevant three-year statutory window. The statute is ORS 305.288, and it provides in relevant part:

“(3) 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.” (Emphasis added.)

³ All references to the Oregon Revised Statutes (ORS) are to 2005.

1. *Three-Year Window*

The “current tax year” is the tax year in which the appeal is filed with the Tax Court. ORS 305.288(5)(a) (providing that “ ‘[c]urrent tax year’ has the same meaning given the term in ORS 306.115”); ORS 306.115(5) (defining “current tax year” as the “tax year in which the need for the change or correction is brought to the attention of the department”); and ORS 308.007 (defining a “tax year” as a 12-month period beginning on July 1).

Plaintiff’s Complaint was filed November 7, 2006, which was during the 2006-07 tax year. That tax year is currently pending before BOPTA. The two prior tax years are 2005-06 and 2004-05. Under the statute, the court cannot consider tax years prior to 2004-05. Accordingly, tax years 2000-2001 through 2003-04 are dismissed because they are beyond the relevant three-year window.

2. *Good and Sufficient Cause*

Turning to tax years 2004-05 and 2005-06, this court can reduce the value of Plaintiff’s property provided Plaintiff has “good and sufficient cause, for failing “to pursue the statutory right of appeal.” ORS 305.288(3).

The “statutory right of appeal” referred to in the statute is a timely annual appeal to BOPTA as provided in ORS chapter 309, and a timely appeal to this court from BOPTA’s order as provided in ORS 305.275 and ORS 305.280, discussed above. Plaintiff failed to pursue the statutory right of appeal, and the court must therefore determine whether she has “good and sufficient cause” for that failure.

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ORS 305.288(5) defines good and sufficient cause as follows:

“(b) ‘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.”

Plaintiff provided the following explanation as to why she did not petition BOPTA for a reduction in value in 2004 or 2005. Plaintiff was not initially responsible for the costs of cleanup, and, therefore, apparently did not pay close attention to the tax roll values. Plaintiff discovered she would be held responsible for the cleanup costs in 2003. Plaintiff had attorneys working with DEQ and helping her persuade the insurance company to pay for at least some of the cleanup costs. Plaintiff finally succeeded in obtaining some money from the insurance company in late 2005 and early 2006. Later in 2006, Plaintiff razed one of the buildings on tax lot 1900 and contacted the insurance company to remove the insurance on that structure (and thereby reduce the cost of insurance). Plaintiff made a “mental note” to see that the building would not be taxed by the county, and then more carefully scrutinized her tax statements in the fall of 2006. Additionally, Plaintiff discovered that the cost of remediation were greater than initially anticipated and concluded that the property had less value. Plaintiff contacted the assessor’s office and was told she could appeal prior years to the Tax Court. When pressed by the court, Plaintiff candidly admitted that she did not go over her tax statements closely enough in 2004 or 2005, and simply had not paid close enough attention to the value and resulting taxes.

Plaintiff’s explanation is certainly understandable. The ongoing struggles with the contamination became the focal point of Plaintiff’s efforts, and issues of value and taxes became

secondary. Additionally, the cost of cleaning up the property was, and remains, somewhat of a mystery, making it difficult to ascertain the impact on value. Nonetheless, Plaintiff was receiving an income stream from the rental of the property and had that information available to estimate value of her property compared to Defendant's tax roll values. More importantly, Plaintiff candidly admitted that she simply did not pay close enough attention to her tax statements. Inadvertence and oversight are specifically excluded from the definition of good and sufficient cause, and appear to outweigh any lack of knowledge Plaintiff labored under.

III. CONCLUSION

After carefully considering the matter, the court concludes that Plaintiff's appeal must be dismissed because tax years 2000-2001 through 2003-04 are beyond the court's reach under ORS 305.288(3), and Plaintiff lacks good and sufficient cause for not challenging the values at the BOPTA level in 2004-05 and 2005-06. Now, therefore,

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

Dated this _____ day of February 2007.

DAN ROBINSON
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 Dan Robinson on February 12, 2007. The Court filed and entered this document on February 12, 2007.