

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DONNA DELL PICKERING,)	
)	
Plaintiff,)	TC-MD 070088C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on motion by Defendant Department of Revenue (department) to remove the department as a party and to dismiss Plaintiff’s Complaint because Plaintiff has named no other defendant in her Complaint. Plaintiff was given an opportunity to respond to the department’s preliminary motion in accordance with Tax Court Rule-Magistrate Division (TCR-MD) 6 B(3). Plaintiff has responded, and this Decision contains the court’s ruling.

Plaintiff’s February 26, 2007, Complaint named only the department as Defendant and did not include copies of the notices being appealed. On March 1, 2007, court staff reviewing the Complaint requested that Plaintiff provide those notices by March 12, 2007. Plaintiff responded by letter dated March 8, 2007,¹ stating that she is appealing her taxes for 2006-07 following a property line adjustment that created a new tax lot, and providing tax statements issued by Lane County. Plaintiff did not amend the Complaint to name the Lane County Assessor as the defendant. The court served only the department with a copy of the Complaint. TCR-MD 1C (providing that the court serves copies of the complaint upon the defendant when

¹ That letter was filed with the court on March 12, 2007.

the taxpayer is the appealing party). In response, by motion filed April 12, 2007, the department moved to dismiss the Complaint. The department served Plaintiff with a copy of its motion on April 12, 2007. The department clearly spelled out in its motion the reasons it was seeking to be removed as a party and to have the appeal dismissed.

The court issued an Order April 17, 2007, providing Plaintiff an opportunity to respond to the motion before it ruled on the matter, in accordance with TCR-MD 6 B(3) (authorizing a magistrate to rule on preliminary motions before the first case management conference, but precluding any ruling on such motions before the nonmoving party is given an opportunity to respond). Plaintiff responded by letter dated April 23, 2007, stating that she is “still interested in appealing the tax amount on [her] property.” Plaintiff did not name the county assessor as a defendant.

It is clear from Plaintiff’s Complaint and other materials submitted to the court that Plaintiff is alleging that she has been aggrieved by the Lane County Assessor’s assessment of her property for the 2006-07 tax year. In Section 1 of her Complaint, Plaintiff indicates that she is appealing the “2006” tax year because, as explained in Section 3, “taxes increased with prejudice when property lines were moved.” The relief requested in Section 4 is to be “taxed to compareable (sic) parcels.”

Nowhere in Plaintiff’s Complaint or supplemental filings does she allege that the department has acted or failed to act to her detriment with respect to the assessment of her property for the 2006-07 tax year. Moreover, Plaintiff has never named the county assessor as a defendant.

///

///

///

ORS 305.275(1)(a)² requires that the person appealing “must be aggrieved by and affected by an act, omission, order or determination of [the relevant governmental body].” The relevant governmental body can be the department, the county board of property tax appeals, the county assessor, or the tax collector. ORS 305.275(1)(a)(A) through (D). ORS 305.560(2) requires the appealing party to state in the complaint “the facts showing how the plaintiff is aggrieved and directly affected by the order, act, omission or determination and the grounds upon which the plaintiff contends the order, act, omission or determination should be reversed or modified.” Plaintiff’s Complaint and supplemental filings reflect that Plaintiff is aggrieved, if at all, by an act of the assessor.

ORS 305.560(1)(c)(A) requires the taxpayer to name the county assessor as the defendant whenever the “complaint relates to value of property for ad valorem property tax purposes and the county has made the appraisal.”³ Plaintiff’s Complaint relates to the value of property for ad valorem tax purposes, and she has not named the assessor as the defendant. Accordingly, the department is not a proper party to the litigation and should be removed as a defendant.

///

///

///

///

///

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

³ That statute provides in relevant part:

“* * * [i]f the complaint relates to value of property for ad valorem property tax purposes and the county has made the appraisal, the complaint shall be entitled in the name of the person filing the same as plaintiff and the county assessor as defendant.”

ORS 305.560(1)(c)(A).

Plaintiff has not named another defendant. The department has been removed from the case. Because there is no longer an action against a named party defendant, Plaintiff's Complaint is dismissed. Now, therefore,

IT IS THE DECISION OF THIS COURT that Department of Revenue, State of Oregon is removed as defendant in this matter; and

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

Dated this _____ day of May 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 May 22, 2007. The Court filed and entered this document on May 22, 2007.