

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

RODNEY K. SWIFT and GARY J. WIGHT,	)	
	)	
Plaintiffs,	)	TC-MD 070107C
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on Defendant’s Motion to Dismiss (motion), filed March 19, 2007, asserting that the case should be dismissed because “plaintiff has not alleged facts showing that plaintiff is ‘aggrieved’ within the meaning of ORS 305.275 \* \* \*.” The court addressed the motion with the parties at the May 2, 2007, initial case management conference. Plaintiff Rodney Swift (Swift) appeared for Plaintiffs, with his certified public accountant Dick Rocci. Ron Patton and Ken Collmer appeared for Defendant.

Plaintiffs’ appeal was the product of a misunderstanding about the taxes levied against the subject property for the 2006-07 tax year. The property is identified as Account R159613.

The Complaint asserts “a mathematical error in the property tax calculation” and requests a recalculation of the tax. Swift explained at the May 2, 2007, hearing that he believes the taxes are some \$4,000 higher than they should be, based on other properties he owns in the county. In response, Defendant’s representatives explained that the taxes were higher because an additional tax of \$4,342.36 was added to the current year (2006-07) tax as an omitted tax from the previous year. The additional tax stems from a January 5, 2006, correction to the roll based on an omitted property assessment increasing the value of the property.

///

On December 14, 2005, Defendant sent Plaintiffs a notice of intention to change the roll. The notice reflected the increase in value and stated that there would be additional taxes owing in the amount of \$4,342.36. (Def's Ltr at 2, Dec 14, 2005.) On December 29, 2005, Swift returned to Defendant a signed statement on page three of Defendant's letter "authoriz[ing] the assessor to make the correction." (*Id.* at 3.) Defendant subsequently issued a letter dated January 5, 2006, announcing the correction to the roll. Swift did not remember signing that authorization and did not appeal within the 90 day period specified in the January 5, 2006 letter. Plaintiffs later appealed the increase in taxes reflected in their 2006-07 tax statement to the county board of property tax appeals (board), and on February 9, 2007, the board dismissed their petition for lack of jurisdiction. Plaintiffs appealed that decision to this court on March 5, 2007.

There was considerable discussion at the May 2, 2007, hearing to clarify the basis of the appeal and Defendant's motion. It became apparent during that discussion that Swift was unaware of the imposition of the additional tax related to the omitted property assessment. Swift expressed some disagreement with that assessment and stated he should probably be appealing the omitted property assessment rather than the calculation of the tax. The court considered Swift's statements challenging the omitted property assessment as an amendment to the Complaint. Defendant's representatives responded by stating that, if Plaintiffs were appealing the omitted property assessment, the appeal is untimely and should be dismissed.

There has been no demonstration of an error in the calculation of the tax. In fact, Swift abandoned that position at the May 2, 2007, hearing. As a result, only the omitted property assessment is at issue.

///

///

An appeal of an omitted property assessment must be made “within 90 days after the correction of the roll.” ORS 311.223(4).<sup>1</sup> The correction was made January 5, 2006, and Plaintiffs did not appeal until March 5, 2007, more than a year after the correction. The appeal is clearly untimely. Moreover, Swift authorized the correction of the roll and Plaintiffs are probably not aggrieved as required by ORS 305.275. However, the untimeliness of the appeal is sufficient reason to dismiss the Complaint, and the court will act on that basis. Now, therefore,

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

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.***

---

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