

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

UNION MANOR, INC,	)	
	)	
Plaintiff,	)	TC-MD 070131B (Control)
	)	070132B
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

Plaintiff appeals the assessment of taxes for tax years 2005-06 and 2006-07 for property identified as Account R102226. The subject property is commercial in character. Defendant filed Motions to Dismiss on April 26, 2007. A case management conference was held in this matter. Mark Reed, an authorized employee, participated for Plaintiff. Jeff Cavanaugh and Ronald Rodwick appeared for Defendant. Subsequently, written submissions were filed by the parties.

At issue is whether Plaintiff's appeal for the 2005-06 and 2006-07 tax years may now be heard by this court. For tax years 2005-06 and 2006-07, Plaintiff did not submit timely appeals with the local board of property tax appeals (BOPTA). The first and only appeal was filed with this court on March 9, 2007.

The parties agree that the court's jurisdiction, if any, to hear Plaintiff's appeal is found in ORS 305.288(3)<sup>1</sup> which provides:

“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.”

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

The parties agree that Plaintiff has no statutory right of appeal remaining. The parties disagree whether Plaintiff had “good and sufficient cause” for failing “to pursue the statutory right of appeal.” *Id.*

Plaintiff alleges it had good and sufficient cause because it did not receive annual tax statements for those two years. Defendant sent the tax statements to the post office box address of record. However, it appears that digits may have been transposed in the zip code. Plaintiff concludes that these were “extraordinary circumstances.” (Ptf’s Ltr. at 2, Aug 2, 2007.)

The term “good and sufficient cause” is defined in ORS 305.288(5)(b) as follows:

“ ‘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.”

ORS 305.288(5)(b)(A) sets forth a two-prong test. First, good and sufficient cause is “an extraordinary circumstance that is beyond the control of the taxpayer.” *Id.* In this case, Plaintiff’s nonreceipt of the tax statements may be the fault of Defendant. It is unclear whether the minor zip code mistake caused the statements to go astray.

However, the statute requires a real causal connection between the key event that was beyond a taxpayer’s control and the failure “to pursue the statutory right of appeal.” In this case, there is no connection. The lack of receiving a tax statement did not prevent or bar Plaintiff from

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pursuing an avenue of appeal. It is possible that Plaintiff could have earlier inquired of the Defendant about the assessment magnitude and obtained the missing statements.

The Oregon Supreme Court has held that every taxpayer is responsible for knowing their property is taxable. In *Hood River County v. Dabney*, the court stated:

“[E]very citizen ‘is presumed to have known that his land was taxable, that in due course it would be assessed, a tax levy extended against it, and it would be placed on the tax rolls, that it was his duty to timely pay his taxes, that if he failed to do so, his land would be offered for sale and resale at a time and place specified in the statutes \* \* \* .’ ”

*Hood River County v. Dabney*, 246 Or 14, 28, 423 P2d 954 (1967) (citation omitted).

Property owners are expected to know when they should receive their property tax statements. Failing to receive a property tax statement does not excuse a taxpayer’s late payment of property taxes. ORS 311.250(2).<sup>2</sup> Similarly, it does not excuse a taxpayer from failing to timely appeal to the county board. See generally *GTB Associates Inc. v. Multnomah County Assessor*, TC-MD No 000096C (Apr 24, 2000); *Mack v. Clackamas County Assessor*, TC-MD No 990799E (Aug 31, 1999); *Nelson v. Lincoln County Assessor*, TC-MD No 040095E (May 5, 2004).

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<sup>2</sup> ORS 311.250(2) provides that “[t]he failure of a taxpayer to receive the statement described in this section shall not invalidate any assessment, levy, tax, or proceeding to collect tax.”

Under these specific facts, not receiving a property tax statement does not constitute good and sufficient cause for failing to earlier perfect an appeal. *See* ORS 305.288(5)(b)(B). Now, therefore,

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

Dated this \_\_\_\_\_ day of September 2007.

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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 September 13, 2007. The Court filed and entered this document on September 13, 2007.***