

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

CHARLES R. SCOTT and JOAN L. SCOTT,	)	
	)	
Plaintiffs,	)	TC-MD 070557C
	)	
v.	)	
	)	
LANE COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs seek a reduction in property taxes for the 2005-06 and 2006-07 tax years. Because the appeal involves prior tax years, the court must determine whether it has statutory authority to grant the requested relief. Accordingly, the court swore the parties and explored the facts relevant to that issue at the August 8, 2007, case management conference. Plaintiffs appeared on their own behalf. Defendant was represented by Bryce Krehbiel (Krehbiel), an appraiser with the assessor’s office.

I. STATEMENT OF FACTS

The appeal involves Plaintiffs’ personal residence, which they purchased as a new home in June 2004 for \$235,000. Plaintiffs considered selling their home in early 2007 and, in talking with several Realtors and representatives from the assessor’s office, discovered that Defendant had incorrectly recorded the square footage of their home and their land. Defendant corrected those errors and adjusted Plaintiffs’ property tax values, including the maximum assessed value (MAV), for the current (2007-08) tax year, as provided in ORS 311.234 (2005).<sup>1</sup> Plaintiffs’ request that those same corrections be applied to the two previous tax years, with reductions to assessed value (AV) and, more importantly, to their property taxes. Plaintiffs contend that the

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<sup>1</sup> Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 2003.

AV for the 2005-06 tax year should be approximately \$134,000 and that the taxes should be reduced by \$235.81. Plaintiffs further request a \$218 reduction in taxes for the 2006-07 tax year. They did not specify an AV for the 2006-07 tax year.

According to Krehbiel's testimony, the property was first put on the assessment and tax rolls for the 2004-05 tax year with a real market value (RMV) of \$203,694, and an MAV and AV of \$154,434. The RMV on the rolls for the 2005-06 tax year was increased to \$243,663; the MAV and AV that year were \$159,067, which is three percent greater than the 2004-05 values. The tax year 2006-07 RMV increased to \$336,677, and the MAV and AV again rose three percent to \$163,839.

When questioned by the court, Plaintiffs opined that the 2005-06 county RMV of \$243,663, which is about \$8,600 more than they paid for the property six months earlier, was probably very close to the actual market value as of the January 1, 2005, assessment date. Plaintiffs believe that the 2006-07 county RMV of \$336,677 is too high, and should be reduced to somewhere between \$290,000 and \$310,000. Plaintiffs informed the court that they did not petition the county board of property tax appeals (board) in 2005 or 2006 because they were unaware of the square footage errors at that time. However, Plaintiffs reiterated that their primary concern is with their property taxes, which they believe should be lowered approximately \$200 each year to account for the errors in square footage.

## II. ANALYSIS

### A. *Relief for Prior Years*

The statutory framework governing the property appeal process contemplates an annual system of property assessment and taxation and an annual appeal of the resulting values, if deemed necessary by the property owner. The first step in the process is to file a petition with

the county board of property tax appeals (board) on or before December 31 of the current tax year. ORS 309.100(2). Taxpayers unhappy with the board's decision can appeal to the Tax Court pursuant to ORS 309.110(7) (providing for an appeal to the magistrate division of the Oregon Tax Court from an order of the board); ORS 305.275(3) (providing for an appeal from an order of the board following an appeal filed under ORS 309.100); ORS 305.280(4) (requiring that the appeal be filed within 30 days after the date of the mailing date of the board order). Plaintiffs seek relief for the 2005-06 and 2006-07 tax years and Plaintiffs did not appeal to the board in either 2005 or 2006.

The legislature recognized that taxpayers in some instances would not timely petition the board but ought, nonetheless, to be able to obtain a reduction in value if they either have a sufficient reason for not petitioning the board, or can demonstrate a significant enough error in the value of their property. The applicable statute is ORS 305.288.

1. *Do Plaintiffs have a statutorily sufficient reason for not petitioning the board?*

Under that statute, the court can excuse the failure to properly pursue the statutory appeal if the taxpayer establishes "good and sufficient cause" for the failure to do so.

ORS 305.288(3). The term "good and sufficient cause" is defined in the statute as "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[.]" ORS 305.288(5)(b)(a).

Plaintiffs testified that they did not petition the board in 2005 or 2006 because they were unaware of the error in square footage, which they believe warrants a reduction in value. The statute specifically excludes "lack of knowledge" from the definition of good and sufficient

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cause. ORS 305.288(5)(b)(B). The court, therefore, cannot excuse Plaintiffs' failure to petition the board for the years at issue under the good and sufficient cause standard.

2. *Have Plaintiffs demonstrated a statutorily sufficient error in value?*

The other instance in which the court can reduce the value of a property for a prior tax year is when the taxpayer asserts, and the court determines, "that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent." ORS 305.288(1)(b).

Plaintiffs testified that they felt the RMV on the rolls for the 2005-06 tax year was "very close" to the market value of the property as of January 1, 2005. Thus, there is no allegation of an error in value for that year. Plaintiffs believe that the RMV for the 2006-07 tax year should be reduced from \$336,677 to perhaps \$290,000. The \$290,000 estimated value represents an alleged error of approximately 14 percent, which is below the 20 percent threshold.

Because Plaintiffs have not established good and sufficient cause for not petitioning the board, and have not alleged an error in their RMV of at least 20 percent, the court cannot reduce their values for the 2005-06 or 2006-07 tax years under ORS 305.288. Moreover, as will become apparent from the discussion below, a reduction in RMV would not have any impact on Plaintiffs' MAV or AV, unless the reduction was significant. Therefore, Plaintiffs' property taxes cannot be reduced.

B. *Reduction in AV*

As indicated above, Plaintiffs are not really concerned with their RMV, but rather their AV and the resulting property taxes. Plaintiffs explained the methodology they employed to calculate the "correct" taxes based on proportionate reductions to the AV of their property to

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factor in the correct square footage of their home and land. The formula, although interesting, is not supported by the law.

The assessor was able to make changes to the MAV for the current tax year (2007-08) under the authority specifically granted to the assessor by ORS 311.234. Those adjustments will reduce Plaintiffs' AV and the corresponding property taxes. Plaintiffs, however, seek similar adjustments for the two prior tax years, and the court cannot grant the requested reductions because they are contrary to applicable law.

In Oregon, property values on the assessment and tax rolls are the product of several complicated calculations. Prior to the passage of Measure 50 in 1997, property was generally assessed at its full RMV, which meant that the tax rate, although actually applied to AV, was essentially applied to RMV (because the two were the same). ORS 308.232 (1995). Under that system, any reduction in RMV reduced AV, which in turn reduced property taxes. Notwithstanding the fact that Plaintiffs have not demonstrated an error in the RMV of the property, changes in the law make adjustments to MAV and AV rare.

Under current law, which reflects the incorporation of Measure 50, AV is the lesser of the MAV or RMV. *See* Or Const, Art XI, § 11(1)(f); *see also* ORS 308.146(2). MAV is an artificial value, the calculation of which is dictated by the Oregon Constitution. Or Const, Art XI, § 11(1); *see also* ORS 308.146(1). The benchmark year for the calculation of MAV was 1997, with a property's MAV equal to 90 percent of the RMV on the rolls for the 1995-96 tax year (*i.e.*, back two years, less 10 percent). Or Const, Art XI, § 11(1). Thereafter, MAV cannot rise by more than three percent. *See* Or Const, Art XI, § 11(1)(b); *see also* ORS 308.146(1). The intent was to limit the growth of AV.

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For new property (created after 1995), the MAV is calculated by multiplying the RMV of the property by a ratio of “the average maximum assessed value over the average real market value for the assessment year” of properties of the same class. ORS 308.153(1)(b); *see also* ORS 308.149(3)(a). That ratio is commonly referred to as the change property ration (CPR) and is intended to afford new properties a tax break equal to similarly situated properties that were in existence at the time Measure 50 was first implemented. Plaintiffs’ property was “new” for the 2004-05 tax year. Defendant determined that the RMV for that year was \$203,694, and the MAV was \$154,434. The applicable CPR was apparently approximately 76 percent (0.758167). Because MAV was less than RMV, Plaintiffs’ AV was \$154,434. By law, Plaintiffs’ MAV increased three percent in 2005 to \$159,067, and rose another three percent in 2006 to \$163,839. *See* ORS 308.146(1). Those values were less than the corresponding county assessor RMV determinations, and AV each year was therefore based on MAV.

Plaintiffs would have the court simply reduce their AV, perhaps in conjunction with a reduction in MAV. However, as explained above, MAV is determined by a statutorily prescribed formula (generally three percent greater than the prior year) and AV is the lesser of RMV or MAV. The court cannot independently adjust a property’s MAV or AV where, as here, there were errors in the property’s square footage at the time the initial values were determined.

If there is an error in Plaintiffs’ tax year 2005-06 or 2006-07 MAV (or AV), the error was created in tax year 2004-05, when the property was first put on the tax rolls. That is the year Plaintiffs’ MAV and AV were first established as a product of the RMV multiplied by the applicable CPR of 76 percent. The way to correct that error would be to reduce the 2004-05 RMV. However, the court cannot do that in this case because Plaintiffs have not even appealed the 2004-05 tax year. Moreover, the limited evidence before the court does not suggest an error

in the 2004-05 RMV. The tax year 2004-05 RMV on the assessment and tax rolls as of January 1, 2004, was \$203,694. Plaintiffs paid \$235,000 for the property six months later, in June 2004.

C. *Reduction in Taxes*

Finally, Plaintiffs really seek a reduction in property taxes, regardless of whether their 2005 or 2006 values are reduced; however, no Oregon statute gives the court authority to directly reduce the amount of tax in a property tax appeal. This court has previously observed that it “does not have the authority to independently adjust property taxes.” *Unck and Wright v. Multnomah County Assessor*, TC-MD No 070110B (July 30, 2007) (citing *Rothschild v. Multnomah County Assessor*, TC-MD No 040646C, WL 1421138 at \*2 (June 10, 2005)). Taxes are the result of the application of a tax rate to AV and, in this case, neither of those numbers can be adjusted by the court, as explained above.

III. CONCLUSION

The court’s authority to reduce Plaintiffs’ RMV for the 2005-06 or 2005-07 tax years lies, if at all, in ORS 305.288 and, for the reasons set forth above, relief under that statute is not available to Plaintiffs under the facts of this case. Nor, can the court reduce Plaintiffs’ MAV or AV for the years under appeal because those values are set by statute and really have no relationship to RMV, which is the only value the court could adjust but, as explained above, cannot in the this case. Finally, Plaintiffs’ request for a reduction in property taxes is denied because the court has no statutory authority to reduce taxes; rather the court can, in the appropriate case, reduce value which, in turn, can reduce taxes. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is dismissed because the court does not have the constitutional or statutory authority to grant the relief requested.

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

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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 August 31, 2007. The Court filed and entered this document on August 31, 2007.***