

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CHARLIE DUH,)	
)	
Plaintiff,)	TC-MD 070613C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on its own motion to dismiss Plaintiff’s appeal for failure to pursue the applicable statutory right of appeal or to satisfy the requirements of ORS 305.288.¹ Plaintiff’s appeal seeks a refund of property taxes for Account 1655024. The court addressed the appeal in a hearing held August 15, 2007. Plaintiff appeared on his own behalf. Defendant was represented by Bryce Krehbiel (Krehbiel), an appraiser with the assessor’s office.

I. STATEMENT OF FACTS

The appeal involves Plaintiff’s new home, which he purchased in September 2005 for \$410,000. The home was approximately 2,300 square feet in size, but Defendant erroneously recorded the home as 2,901 square feet. Defendant determined that the real market value (RMV) was \$497,294, with \$391,040 allocated to the improvement (*i.e.* the home). All of the improvement value was “new property” as defined in ORS 308.149(5)(a), and was added to the rolls as exception value² as provided under ORS 308.153.

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¹ All references to the Oregon Revised Statutes (ORS) are to 2005.

² The significance is that whereas a reduction in RMV of an existing improvement may not generate a reduction in assessed value (AV) or taxes, a reduction in the RMV of new property added to the rolls as exception value will generally translate into a reduction in maximum assessed value (MAV) and AV.

Plaintiff applied for a loan in April 2007, and the lender commissioned an appraisal of the subject property. The appraiser discovered the square footage error in the county's records and suggested that Plaintiff contact the assessor's office to get the error corrected, and possibly receive a reduction in value and taxes. Plaintiff subsequently contacted the assessor's office, and a representative from the assessor's office measured Plaintiff's home and verified the error. Unfortunately, the error was discovered too late to allow Defendant to correct the maximum assessed value (MAV) under ORS 311.234 for the 2006-07 tax year, which is the first year the home was taxed by Defendant. Plaintiff appealed to this court seeking a correction of the rolls and a refund of excess taxes paid.

II. ANALYSIS

Plaintiff's view is that the square footage error resulted in an error in the value of his property, and that the court should correct the mistake and order a refund of excess taxes. Had Plaintiff discovered the error before December 31, 2006, Defendant could have corrected the MAV as authorized in ORS 311.234 (authorizing the assessor to correct MAV based on a demonstrated error in the square footage provided that a petition is filed by the property owner "on or before December 31 of the current tax year"). Plaintiff, however, did not discover the error until April 2007.

The court's authority is confined to the parameters of ORS 305.288. The court can act under that statute in two situations: 1) where the taxpayer alleges an error in RMV of at least 20 percent; or 2) where the taxpayer "has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the * * * taxpayer to pursue the statutory right of appeal." ORS 305.288 (1)(b), (3).

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A. *20 Percent Error*

ORS 305.288(1) authorizes the court to order a reduction in the value of a property based on a demonstrated error in the RMV of at least 20 percent. The statutory threshold requires an allegation that the RMV is \$397,835 or less. Although pressed by the court, Plaintiff never really asserted a “correct” RMV. Plaintiff’s interest is simply in obtaining a reduction in taxes because of the error in the square footage of his home. Plaintiff paid \$410,000 and has not asserted that he paid more than the home was worth. Plaintiff purchased the home roughly three months before the applicable assessment date of January 1, 2006. The purchase price is a fair indicator of value. Krehbiel opined that the value should perhaps be reduced to \$435,000 based on a per foot adjustment to the improvement value to account for the error and square footage. Neither of those figures meets the 20 percent statutory threshold.

B. *Good and Sufficient Cause*

The court can also reduce the value of Plaintiff’s property, resulting in a corresponding reduction in taxes (because the home is new and the exception MAV would be reduced), if the court determines that Plaintiff has “good and sufficient cause” for not pursuing the statutory right of appeal. ORS 305.288(3).

The initial problem posed by that provision is the determination of Plaintiff’s statutory right of appeal. It is not clear to the court that ORS 311.234, the statute authorizing a taxpayer to “petition” the county assessor for a correction in the MAV, is an appeal statute. Assuming it is, the deadline to act was December 31, 2006, and Plaintiff did not seek a correction in MAV until sometime after April 2007. The reason Plaintiff did not act sooner is that he was unaware of the error in square footage until the appraisal was ordered by the lender. The statute

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specifically excludes “lack of knowledge” from the definition of good and sufficient cause.
ORS 305.288(5)(b)(B).

Alternatively, Plaintiff could have petitioned the county board of property tax appeals (Board) for a reduction in value as provided in ORS 309.026, but the deadline for filing a petition was December 31, 2006. *See* ORS 309.100(2). Again, assuming Plaintiff was even aware of the option of petitioning the Board, he was not aware of the error warranting such action until after the applicable deadline. The reason for his failure to act was his lack of knowledge about the square footage error prior to the deadline. Lack of knowledge does not constitute good and sufficient cause. ORS 305.288(5)(b)(B).

The court did discuss the option of Plaintiff petitioning the Oregon Department of Revenue under ORS 306.115, given that Defendant appears to acknowledge that a correction in value is warranted and that such correction would reduce the exception RMV and exception MAV, which would ultimately reduce Plaintiff’s AV and his property taxes.

III. CONCLUSION

The court concludes that it cannot order a refund of Plaintiff’s property taxes because the vehicle for achieving such a result first requires a reduction in RMV, and Plaintiff has not satisfied the requirements of the only statute pursuant to which this court could reduce Plaintiff’s RMV. Specifically, Plaintiff has not alleged an error in RMV of at least 20 percent, and Plaintiff lacks good and sufficient cause for failing to act on the matter before any applicable deadline.

Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's appeal must be dismissed for failure to satisfy the provisions of ORS 305.288.

Dated this _____ day of August 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 August 31, 2007. The Court filed and entered this document on August 31, 2007.