

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ROBERT P. COSTA (Trustee))	
and REGINA A. COSTA,)	
)	TC-MD 070644E
Plaintiffs,)	
)	
v.)	
)	
JOSEPHINE COUNTY ASSESSOR,)	
)	DECISION
Defendant.)	

Plaintiffs appeal the real market value and assessed value assigned to their home for tax years 1994-95 through 2006-07. The court held a case management conference in the appeal October 1, 2007. Robert P. Costa (Costa) appeared on behalf of Plaintiffs. Michael L. Schneyder (Schneyder), Josephine County Assessor, appeared on his own behalf. At the conclusion of the conference, the parties submitted the case to the court for decision.

I. STATEMENT OF FACTS

Plaintiffs built the subject home in 1992.¹ In 1994, an appraiser from Defendant's office visited the property, drew a map of the home, and measured the home. Unbeknownst to anyone, the county appraiser had not measured the home correctly and overstated the home's square footage by approximately 583 square feet.² Plaintiffs subsequently received tax statements for several years and never questioned the values assigned to their home. In early 2007, Plaintiffs refinanced their home. As part of that process, they had their property appraised by an independent appraiser. That appraiser questioned the difference between the square footage

¹ The subject property is identified in Defendant's records as Account R321210.

² Although neither party testified to the exact square footage error, the court calculated the error from Schneyder's letter to Plaintiffs notifying them he had corrected the 2007-08 roll by reducing the square footage from 3,148 square feet to 2,565 square feet. (Ptf's' Compl at 2.)

recorded in Defendant’s records and his own measurements. Plaintiffs contacted the assessor’s office about the inconsistency. After the contact, a county appraiser visited the property to remeasure the home. It was then the assessor’s office realized the property had been measured incorrectly in 1994. Plaintiffs filed an application to correct the square footage, which Defendant granted for the 2007-08 tax year. Schneyder explained he could not provide retroactive relief under the statutes. As a result, Plaintiffs appeal to this court seeking value reductions back to tax year 1994-95.

II. ANALYSIS

The Oregon Legislature has developed an appeals system for taxpayers to follow when challenging the assessed and real market values assigned to their properties. The first step in the appeal process is to a county board of property tax appeals (BOPTA). Taxpayers are required to file appeals with the appropriate BOPTA by December 31 of the current tax year.

ORS 309.100(2).³ In this appeal, Plaintiffs acknowledge they failed to timely challenge each year’s values.

There are statutory exceptions to the timely appeal requirements. Two exceptions have potential application in this appeal. The first is ORS 311.205, which allows local assessors to correct clerical errors on the roll “for any year or years not exceeding five years prior to the last roll so certified.” ORS 311.205(2)(a). The second is ORS 305.288(3), which grants the court authority to review untimely appeals for the current year and the two prior years when the

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³ All references to the Oregon Revised Statutes (ORS) and the Oregon Administrative Rules (OAR) are to the 2005 provisions.

taxpayer establishes “good and sufficient cause” for not timely pursuing his statutory right of appeal. ORS 305.288(3).⁴

A. *Clerical Error*

ORS 311.205 provides for the correction of a clerical error. A correction ordered under the clerical error statute may only be made for years “not exceeding five years prior to the last roll certified.” ORS 311.205(2)(a). The last roll certified at the time Plaintiffs filed this appeal was the 2006-07 tax roll. As a result, the court, at the most, may order a correction back to the 2001-02 tax year.

ORS 311.205 allows a correction as follows:

“(1) After the assessor certifies the assessment and tax roll to the tax collector, the officer in charge of the roll may correct errors or omissions in the roll to conform to the facts, as follows:

“(a) The officer may correct a clerical error. A clerical error is an error on the roll which either arises from an error in the ad valorem tax records of the assessor * * * or which is a failure to correctly reflect the ad valorem tax records of the assessor * * * and which, had it been discovered by the assessor * * * prior to the certification of the assessment and tax roll of the year of assessment would have been corrected as a matter of course, *and the information necessary to make the correction is contained in such records*. Such errors include, but are not limited to, arithmetic and copying errors, and the omission or misstatement of a land, improvement or other property value on the roll.”

ORS 311.205(1) (emphasis added).⁵

⁴ The court may also review untimely appeals in residential cases where the taxpayer alleges a value error of at least 20 percent. ORS 305.288(1). Because the parties agree the error is less than 20 percent, the 20 percent error provision does not apply.

⁵ The Oregon Administrative Rules expand on the definition of a clerical error as follows:

“Clerical errors are those procedural or recording errors which do not require the use of judgment or subjective decision making for their correction. A clerical error is an arithmetic or copying error or an omission on the roll or misstatement of property value that is apparent from assessor office records without speculation or conjecture, assumption or presumption, *and that is correctable without the use of appraisal judgment or the necessity to view the property.*”

The statute is clear that a clerical error is an error where, to correct the error, the assessor's office need look no further than its own records. As a result, the question becomes whether the information necessary to correct the county's square footage error is contained in its records.

Schneyder testified that the county's records contain a drawing made by the appraiser who originally visited the property. The drawing includes the incorrect square footage and supports Schneyder's claim that the appraiser made a mistake in measuring the property. As ORS 311.205(1) makes clear, clerical errors include mathematical mistakes where, for example, it is apparent that the appraiser erred in multiplying two numbers; or copying and transcription mistakes such as carrying an incorrect number over from the data card to the roll. In this case, nothing in the county's records suggests the error was the result of a mathematical, copying, or transcription error. Where an appraiser simply fails to measure a property correctly, there is no way for the county to know an error existed on the roll. As a consequence, the mistake does not meet the statutory definition of a clerical error because the information necessary to correct the error is not contained in the county's records.

Costa argues he should be entitled to some recovery because he had no way of knowing of Defendant's mistake. However, in *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998), the Regular Division of the Oregon Tax Court held, on similar facts, that a square footage error, where not apparent from the assessor's records, was not correctable as a clerical error under ORS 311.205.

In that case, the court noted:

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“ ‘This situation highlights the need for property owners to audit the government’s property tax records. Most taxpayers are familiar with our income tax systems under which *taxpayers* keep the records and assess the tax, and the government audits for accuracy and correctness. In contrast, the property tax system requires the *government* to keep the records and assess the tax, and the taxpayer audits for accuracy and correctness. Both systems impose time limits on the right to audit. A failure to audit and challenge the assessment within the time limit will result in a loss by the party responsible for the audit.’ ”

Id. at 404-05 (quoting *Taft Church v. Dept. of Rev.*, 14 OTR 119, 122 (1997) (emphasis in original)).

Costa is frustrated that he has “given money away” for several years to Defendant. However, in the property tax system, a taxpayer may review the assessment to determine its accuracy before paying the liability, or the taxpayer may pay the liability without verifying its accuracy. By not verifying the accuracy of the records for the subject property, Plaintiffs accepted the county’s assessment and may not, at this late date, challenge an error that occurred 13 years ago.

B. *Good and Sufficient Cause*

The second avenue for retroactive relief is under the provisions of ORS 305.288(3), which states, in pertinent part:

“The tax court may order a change or correction * * * 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 * * * 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.*”

(Emphasis added.)

The statute defines good and sufficient cause 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) (emphasis added).

Plaintiffs did not file earlier appeals because they were unaware of the square footage error in the assessor’s records. A similar situation occurred in *Seifert* where the taxpayers were unaware of a square footage error in the county’s records. As observed by the court in *Seifert*, “[w]hether viewed as lack of knowledge, oversight or inadvertence, it does not qualify as ‘good and sufficient cause.’ ” 14 OTR at 404.

III. CONCLUSION

It is the conclusion of the court that the square footage error is not a clerical error correctable under ORS 311.205. The court further concludes that being unaware of an error in the assessor’s records is not good and sufficient cause for failing to timely pursue a statutory remedy. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs’ appeal is denied.

Dated this _____ day of October 2007.

COYREEN R. WEIDNER
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 Coyreen R. Weidner on October 29, 2007. The Court filed and entered this document on October 29, 2007.