

IN THE SUPREME COURT OF THE STATE OF OREGON

VILLAGE AT MAIN STREET
PHASE, II, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,
State of Oregon; and
CLACKAMAS COUNTY
ASSESSOR,

Defendants-Appellants.

VILLAGE AT MAIN STREET
PHASE, II, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,
State of Oregon; and
CLACKAMAS COUNTY
ASSESSOR,

Defendants-Appellants.

Continued...

VILLAGE RESIDENTIAL, LLC,

Tax Court No. 5054

Supreme Court No. S061133
(Control)

Tax Court No. 5055

Supreme Court No. S061137

Tax Court No. 5056

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,
State of Oregon; and
CLACKAMAS COUNTY
ASSESSOR,

Defendants-Appellants.

Supreme Court No. S061138

VILLAGE RESIDENTIAL, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,
State of Oregon; and
CLACKAMAS COUNTY
ASSESSOR,

Defendants-Appellants.

Tax Court No. 5057

Supreme Court No. S061139

APPELLANT CLACKAMAS COUNTY ASSESSOR'S REPLY BRIEF

Direct Appeal from the limited judgments of the Oregon Tax Court entered
January 31, 2013,
The Honorable Henry C. Breithaupt.

Continued...

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Defendant-Appellant Clackamas County Assessor (the Assessor) submits this Reply Brief in response to Plaintiffs-Respondents' (Plaintiffs) Answering Brief.

Plaintiffs argue that the Tax Court limited its decision to the appeals before it, and only decided the date on which plaintiffs' appeals were "commenced" to determine whether or not to conduct a retroactivity analysis. Answering Brief at pp. 6, 11-12, 20 and 22. Plaintiffs argue this court does not need to decide whether the Tax Court's construction of the term "appeal" in ORS 305.287 (the Statute) is correct.

First, the Tax Court had to construe "appeal" because it is the triggering term in the statute. The Statute provides "Whenever a party **appeals** the real market value of one or more components of a property tax account, any other party to the appeal may seek a determination from the body or tribunal of the total real market value [***.]" (Emphasis added). A party's right to request a determination of the total value for all components of the property is triggered by another party's filing of an appeal. The Tax Court construed "appeal" as that term is used in the Statute to apply only in the tax court's Magistrate Division - this conclusion has broader application than these appeals, if affirmed. ER 21-22. Whether that construction of the Statute is correct is one of the issues on appeal.

Plaintiffs also argue that Appellants did not challenge the Tax Court's retroactivity analysis. To the contrary, Appellants argued that the Tax Court's analysis in construing "appeal" in the Statute to apply to only one level of the tax court system is flawed, and asserted that the Tax Court's retroactivity analysis is improper because Plaintiffs' appeals to the Tax Court's Regular Division were filed after the effective date of the Statute.

1. Plaintiffs Filed Their Appeals in the Regular Division After the Effective Date of the Statute.

A. Plaintiffs Filed "Appeals" in the Regular Division.

Plaintiffs argue that the Tax Court's decision should be affirmed because plaintiffs' "disputes" were "commenced" before the effective date of the Statute. Thus, in their view, the Tax Court properly conducted a retroactivity analysis to determine that the Statute applied to plaintiffs' appeals. This position relies on a "one court, one appeal" view in construing "appeal". See the Answering Brief at p. 15; ER 24. That position requires this Court to find that plaintiffs filed only one "appeal" in two courts. Plaintiffs' view is contrary to the statutes governing appeals in the tax system, and the language of the Statute and its legislative history. The legislators created an independent proceeding in the Regular Division which is conducted *de novo*, *i.e.* new issues may be raised on appeal. ORS 305.425(1). Plaintiffs' view is also contrary to the legislative history of ORS

305.187, which shows the legislature intended the Statute to apply to all levels of the tax system (except the Supreme Court, where the issues are not reviewed *de novo*, and preservation principles guide review)¹.

Plaintiffs use the term “tax disputes” rather than “appeals” throughout their brief. However, it is undisputed that an appeal of a written decision of a Magistrate to the Regular Division is an “appeal” under the tax statutes, ORS 305.501(5)(a) provides: “Any party dissatisfied with a written decision of a magistrate may **appeal** the decision to the judge of the tax court by filing a complaint in the regular division of the tax court [* * *.] (Emphasis added). See *also* ORS 305.570(1)(a): “Any person, including a county assessor or county tax collector aggrieved by and affected by a written decision of a tax court magistrate issued under ORS 305.501, or any person seeking a remedy in the tax court provided by statute [* * *] may **appeal** to the regular division of the Oregon Tax Court, and appeal shall be perfected in the manner provided in ORS 305.404 to 305.560.” (Emphasis

¹ The Statute does not apply to this Court since its review is limited, and does not include the ability to raise new issues on appeal, as noted in the Assessor’s Opening Brief at p. 12 n 11. The court’s limited review was in effect at the time the Statute was adopted. The legislature intended the Statute to apply to appeals to BOPTA (use of the term “body” in the Statute) and to both divisions of the tax court (see eg. the reference to appeals heard by the “magistrate or judge” in the legislative history in the Assessor’s Opening Brief at p. 13).

added). Plaintiffs filed “an appeal” in the Regular Division as that term is used in ORS 305.287.

It is also undisputed, as the Tax Court conceded, that a taxpayer can “appeal” the real market value of his/her property to BOPTA. ER 19. See *also* ORS 309.025 (hearings on appeals of property values to BOPTA); ORS 309.150 (appeals of value for personal property heard by BOPTA in the same manner as other property tax assessments); ORS 305.275(3) (requiring taxpayer who can “appeal” to BOPTA to do so before appealing to the tax court). Thus, “appeal” in ORS 305.287 applies to BOPTA. As noted in Appellants Opening Briefs, there is no conflict in applying the Statute to the three levels of appeal in the tax system. See eg., the Assessor’s Opening Brief at pp. 19-21

Plaintiffs also argue that their appeals were “transferred” from the Magistrate Division to the Regular Division. See Plaintiffs’ Answering Brief at p. 24. As noted, an appeal of a magistrate’s written decision to the Regular Division is an “appeal” under the tax statutes. ORS 305.501(5)(a); ORS 305.570(1)(a). A party does not “transfer” a case from one level to another in the appeal scheme – a party files a petition or complaint to appeal to the next level. If the party chooses not to appeal the decision, the decision of the body or tribunal, from BOPTA through the Regular

Division, becomes the final judgment in the case. See ORS 309.115; ORS 305.501(7); ORS 305.440. BOPTA and the two divisions of the tax court are separate bodies with different authority. See the Assessor's Opening Brief at pp. 17-20.

Moreover, the legislature expressly created an original, independent proceeding when a party files an appeal in the Regular Division. ORS 305.425(1) and (2). An appeal to the Regular Division is not "one proceeding" under the tax court system. Rather, as the Tax Court notes, an appeal to the Regular Division is a new, independent proceeding, where new issues may be raised *de novo*. ER 20.

Plaintiffs' assertion that the case is "one case, one appeal" is contrary to the scheme created by the legislature for property tax appeals, as discussed more fully in the Assessor's Opening Brief. See the Assessor's Opening Brief at pp. 17-21. There is no dispute that plaintiffs filed "appeals" in the Regular Division within the meaning of ORS 305.501(5)(a) and ORS 305.570(1)(a). Neither statutory context nor the legislative history of ORS 305.287 support a view that the term "appeal" should be construed differently in the tax statutes. For the reasons stated in Appellants' Opening Briefs the Tax Court erroneously construed the Statute to apply only to an appeal filed at the Magistrate level.

B. Plaintiffs' Regular Division Appeals Were Filed After the Effective Date of the Statute.

While plaintiffs note that the enforcement of their property rights under the tax statutes can “commence” at BOPTA and in the Magistrate Division, they argue that in any case, their appeals were “commenced” before the effective date of the Statute. See Answering Brief at p. 21.

Plaintiffs further argue that the “tax court was never divested of jurisdiction.” *Id.* at p. 15. However, there is no jurisdiction in the Regular Division unless an appeal is filed. In addition, this argument ignores the independent nature of an appeal at each level of Oregon’s property tax system. There is no “one court, one appeal” under the system. Rather, the Tax Court has two divisions with two distinct and separate statutory appeal procedures.

Plaintiffs filed an “appeal” in the Regular Division pursuant to ORS ORS 305.501(5)(a) and ORS 305.570(1)(a) for each of their cases. Those appeals were filed after the effective date of the Statute. The Tax Court erroneously construed “appeal” in ORS 305.287 to apply to only one level of appeal in the tax court system. Such a construction of ORS 305.287 is contrary to the plain language of the Statute and its legislative history.

The Assessor asks this Court to reverse the Tax Court's decision, and grant the Assessor's motion to add a counterclaim under ORS 305.287.

Respectfully submitted this 24th day of September, 2013.

BY: Stephen L. Madkour, County Counsel
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CERTIFICATE OF COMPLIANCE

Brief length

I certify that: (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b); and (2) the word-count of this brief (using word processing information) is 1354 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and the footnotes as required by ORAP 5.05(4)(f).

/s/ Kathleen J. Rastetter

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CERTIFICATE OF SERVICE AND FILING

I hereby certify that on this date I served the foregoing APPELLANT
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Dated this 24th day of September, 2013.

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