

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

MICROWAVE TOWER SERVICES, INC. and)
MARALYN S. DAVIS,)
) No. 000351E
Plaintiffs,)
)
v.)
)
MARION COUNTY ASSESSOR,)
) **DECISION**
Defendant.)

Plaintiffs appeal defendant's denial of the three percent property tax discount for the 1999-2000 tax year. Trial in the matter was held May 16, 2000.¹ Maralyn S. Davis appeared on behalf of plaintiffs. Rex Weisner appeared on behalf of defendant (the county).

STATEMENT OF FACTS

Microwave Tower Services, Inc. (MTS) has operated in Marion County since 1981 and, during that time, it has taken advantage of the three percent discount every year by paying its property taxes in full by the November 15 deadline. The past year, however, has been a period of change for MTS. On February 25, 1999, MTS merged with American Tower Corporation, which resulted in many procedural and employee changes. Ms. Davis testified that, in November and December 1999, MTS had sales increase from five million dollars to eleven million dollars, with no increase in

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¹ The court converted the proceeding from a case management conference into a trial based on the representation of the parties that they were prepared to submit the case to the court for decision.

staff. Due to the various changes, MTS missed the November 15, 1999, deadline for taking advantage of the three percent discount. In a letter attached to the Complaint, Ms. Davis explains the oversight as follows:

“As a result of this unbelievable growth in the month of November and December and the changes made in our banking, computer upgrade to ACCPAC for WINDOWS, new Corporate filings, and new personnel being hired and changes due to the move to the new Corporate facility in Waterbury, Connecticut, this paperwork got missed in the check run that is mandated by American Tower Corporation in Boston. When I discovered that the NEW computer system on the accounts payable system by-passed this check run I personally delivered the Microwave Tower Service check to Marion County.” (Pltfs' Complaint at 2).

She further explained that MTS “just did not have enough hours in the day to accomplish all the checks needing to be issued that week, on a new accounts payable computer system, short staffed, and being funded from a Fleet Bank in Boston.” *Id.* Ms. Davis immediately paid the taxes on November 19, 1999, once the oversight was discovered. She wrote a personal check to cover the discount lost by MTS’s failure to pay the taxes on November 15, 1999. Plaintiffs now appeal asking the court to grant MTS the three percent discount based on its circumstances over the past year and its history of timely paying its property tax liability.

COURT'S ANALYSIS

ORS 311.505 provides a three percent discount when a tax liability is paid in full by November 15 of the current tax year. It states, in pertinent part:

“(1) Except as provided in subsection (6) of this section, the first one-third of all taxes and other charges due from the taxpayer or property, levied or imposed and charged on the latest tax roll, shall be paid on or before November 15, the second one-third on or before February 15, and the remaining one-third on or before May 15 next following.

“* * * * *

“(3) Discounts shall be allowed on partial or full payments of such taxes, made on or before November 15 as follows:

“(a) Two percent on two-thirds of such taxes so paid.

“(b) Three percent where all of such taxes are so paid.”
ORS 311.505.

The statute provides that the first one-third of property taxes owed on a property is due by November 15. If a taxpayer pays the full liability by November 15, it is entitled to a three percent discount on the liability. The statute is clear that, to receive the benefit, the payment must be made “on or before November 15.” *Id.* There are no late payment exceptions found in the statute or administrative rule. To grant MTS the discount, even though it made the payment late on November 19, would be permitting something the statute does not allow. If the legislature intended to provide exceptions to the due date of the payment, it would have provided so in the statute. What plaintiffs ask the court to do is judicially create an exception to the statute. The court simply does not have the authority to do this. The court recognizes the late payment was the result of extenuating circumstances and that failing to make the payment by the deadline was not intentional. Regardless, the statute is clear that, to receive the benefit, the payment must be made by November 15.

CONCLUSION

The court concludes MTS is not entitled to a three percent discount because it paid its property taxes after the November 15 deadline. Now, therefore;

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IT IS THE DECISION OF THIS COURT that plaintiffs' appeal is denied.

Dated this _____ day of June, 2000.

COYREEN R. WEIDNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 JUNE 8, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 8, 2000.