

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

WILLIAM A. and IOLA A. LARSON,	)	
	)	
Plaintiffs,	)	No. 000816C
	)	
v.	)	
	)	
MARION COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appealed the interest imposed by the Marion County Tax Collector for late payment of taxes for tax years 1998-99 and 1999-00. A hearing was held by telephone August 16, 2000. Plaintiffs appeared on their own behalf. Defendant appeared through Mike Engberg, an employee with the tax collector's office.

**STATEMENT OF FACTS**

Plaintiffs bought their home in Woodburn in September 1996 and moved in the following month (October 1996). The deed was recorded in September 1996. The deed includes the following instructions in the upper left corner: "After recording return to William A. Larson, 1030 SE 3rd Street, Bandon, OR 97411." Immediately below that the following appears: "Until a change is requested tax statements shall be sent to the following address: SAME AS ABOVE."

Plaintiffs did not receive their tax statement for 1998-99 or 1999-00, which were mailed in the fall of 1998 and 1999. They did receive their 1997-98 tax statement and paid the bill the following day. The envelope in which the check was mailed had a return address of 2258 Country Club Road, Woodburn, OR 97071. The check also had the Woodburn address on it. Plaintiffs ultimately received a bill for the two tax years which

included an interest charge of \$308.45. It is the interest that plaintiffs object to paying.

### **COURT'S ANALYSIS**

Plaintiffs did not pay their taxes on time. By law, interest is imposed on late payments. ORS 311.505 provides:

“(2) Interest shall be charged and collected on any taxes on property, other charges, and on any additional taxes or penalty imposed for disqualification of property for special assessment or exemption, or installment thereof not paid when due, at the rate of one and one-third percent per month, or fraction of a month until paid.”

Plaintiffs feel that the fault in this case lies with the tax collector and that they should not have to pay for the collector's mistake. They believe that the 1997 tax payment should have put the collector on notice of their correct address. Both the check and the return address on the envelope had plaintiffs' Woodburn address. Additionally, since the 1997-98 tax statement was mailed to their Woodburn address, future statements should have been mailed to Woodburn as well, particularly since payment was then promptly made. This, plaintiffs believe, would suggest to any reasonable person that the Woodburn address was valid and the old Bandon address invalid. Plaintiffs are both in their eighties and find it difficult enough to keep up with day-to-day matters. They did not notice that they did not receive tax statements in 1998 or 1999. They will now mark their calendar as a reminder in the future.

The tax collector's office responds that it mailed the tax statement to the address reflected on the deed. The collector's office was never "officially" notified of a change of address. Mr. Engberg stated that the 1997-98 tax statement, originally mailed in October or November, was returned by the Postal Service as undeliverable and re-mailed to plaintiffs' Woodburn address after a search by temporary employees of

telephone books and other sources led to a Woodburn address that may be valid.

The law requires the county tax collector to mail tax statements to the record owners of all real and personal property. ORS 311.250(1).<sup>1</sup> Property owners are statutorily required by ORS 311.555<sup>2</sup> to keep the tax collector informed of their “true and correct address” and, under ORS 308.212<sup>3</sup>, to notify the assessor of any change of address within 30 days of the date of the change. Moreover, ORS 311.555 provides:

“No person, firm or corporation who fails to keep the tax collector so informed shall be permitted to plead lack of due notice given by the tax collector in any suit, action or other proceedings commenced or prosecuted under the provisions of

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<sup>1</sup> ORS 311.250(1) governs the mailing of tax statements by the county tax collector. It reads as follows:

“Except as to real property assessed to ‘unknown owners’ pursuant to ORS 308.240(2), on or before October 25 in each year, the tax collector shall deliver or mail to each person (as defined in ORS 311.605) shown on the tax roll as an owner of real or personal property, or to an agent or representative authorized in writing pursuant to ORS 308.215 by such person, a written statement of property taxes payable on the following November 15.” ORS 311.250(1). (Emphasis added.)

<sup>2</sup> ORS 311.555 provides in part:

“Each person, firm or corporation owning real or personal property within the state, or against whom taxes upon real or personal property are chargeable, shall keep the tax collector of the county where such real or personal property is situate informed of the true and correct address of the person, firm or corporation. \* \* \*”

<sup>3</sup> ORS 308.212 provides in relevant part:

“(1) Any person who owns real property located in any county shall notify the county assessor for the county where the property is located of that owner’s current address and, within 30 days of the change, shall notify the assessor of any change of address.

“(2) A notice required under subsection (1) of this section does not meet the requirements of this section unless the notice is in writing and:

“(a) For an individual, the notice contains the residence address of the person.” (Emphasis added).

ORS 311.545 to 311.565 or in any matter growing out of the administration of ORS 311.545 to 311.565.”

Actual receipt of the tax statement is not required. ORS 311.250(2)

provides that:

“[t]he failure of a taxpayer to receive the statement described in this section shall not invalidate any assessment, levy, tax, or proceeding to collect tax.”

As plaintiffs noted during the hearing, the law is decidedly in favor of the government. However, Mr. Engberg explained during the hearing that if the county were to change its records based on the address appearing on the check each year or the return address on the payment envelope from the property owner, it would create as many problems as it solved and the people who did not want the records changed would complain that the collector was never officially notified to change the address. In fact, one could argue the collector was not notified at all, officially or otherwise. The correction plaintiffs feel the county should have made would have been an intuitive one and could have been wrong. This is not to say the collector’s office could not have done more than it did. A phone call may have cleared up any confusion. However, the collector’s office deals with thousands of accounts each year and presumably receives a considerable amount of returned mail. Such personalized service may not be practical. It is clearly not required by law. The county should not be punished for finding plaintiffs in 1997 and failing to do so thereafter.

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## **CONCLUSION**

After carefully reviewing the facts and the law, the court concludes that the

imposition of interest for late payment of property taxes is in accordance with applicable law and that there is no basis in the law by which the court can grant plaintiffs' request for a waiver. Now, therefore;

IT IS THE DECISION OF THE COURT that the interest imposed by the tax collector for late payment of property taxes is upheld. Plaintiffs' appeal is denied.

Dated this \_\_\_\_\_ day of August, 2000.

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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, 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 DAN ROBINSON ON AUGUST 25, 2000. THE COURT FILED THIS DOCUMENT ON AUGUST 25, 2000.**