



	<u>From</u>	<u>To</u>
1997-98 RMV	\$173,880	\$156,117
1997-98 AV	\$140,400	\$126,057
1998-99 RMV	\$178,100	\$160,517
1998-99 AV	\$144,610	\$130,333
1999-2000 RMV	\$182,820	\$165,058
1999-2000 AV	\$148,490	\$134,470

The county acknowledges the square footage error and has corrected its records for the 2000-01 tax year. It is uncertain whether correcting the square footage for the prior years would result in a lower real market value. Regardless, the county notes that for tax years 1997-98, 1998-99, and 1999-2000, reducing the real market value pursuant to taxpayers' request would not result in tax relief because, under Measure 50, the assessed value would remain the same.

### **COURT'S ANALYSIS**

#### Clerical Error

Taxpayers claim the square footage error in the assessor's records should be corrected retroactively to the 1990-91 tax year. ORS 311.205 does allow "clerical errors" to be corrected in the assessor's rolls, but only for the five prior tax years.

ORS 311.205(2)(a). The statute provides for the 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 the records of the Department of Revenue for property assessed under ORS 306.126, or which is a failure to correctly reflect the ad valorem tax records of the assessor, or the records of the Department of Revenue for property assessed under ORS 306.126, and

which, had it been discovered by the assessor or the department 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)(a) (emphasis added).

The statute excludes errors relating to an appraiser’s judgment from being a clerical error. The statute states:

“(b) The officer may not correct an error in valuation judgment, except as provided in ORS 308.242 (2) and (3). Such errors are those where the assessor would arrive at a different opinion of value. The officer may correct any other error or omission of any kind. Corrections that are not corrections of valuation judgment errors include, but are not limited to, the elimination of an assessment to one taxpayer of property belonging to another on the assessment date, the correction of a tax limit calculation, the correction of a value changed on appeal, or the correction of an error in the assessed value of property resulting from an error in the identification of a unit of property, but not an error in a notice filed under ORS 310.060.” ORS 311.205.

The Oregon Administrative Rule relating to ORS 311.205 provides that errors in measuring or calculating the square footage of a home is an appraisal error and not a clerical error correctable under ORS 311.205. It states:

“(1) The officer may not correct an error or omission on the roll \* \* \* if the correction requires that the officer exercise judgment to determine the value, formulate an opinion as to value, or inquire into the state of mind of the appraiser.

“Mistakes of this nature may be:

“(a) [T]hinking that a house has a basement when it does not; or

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“(b) [M]aking a mathematical error when computing the square footage, the acreage, or some other factor[.]”  
OAR 150-311.205(1)(b).

Previous cases dealing with a square footage error have likewise held that an error in square footage is not a clerical error but an appraisal error. *See, e.g., Seifert v. Dept. of Rev.*, 14 OTR 401, 403 (1998). The court concludes, therefore, that the error is not correctable under ORS 311.205.

### Jurisdiction

During the case management conference, the court explained that, in certain circumstances, it has authority to order the roll changed for the current tax year and the two prior tax years. *See* ORS 305.288. The court can order the roll changed only if the taxpayer has “good and sufficient cause” for not timely appealing to the county board or the taxpayer has alleged an error of 20 percent or more. Taxpayers in this case do not claim an error of 20 percent, and their failure to timely appeal from their tax statement was the result of their lack of knowledge regarding the square footage error. The statute, however, specifically excludes lack of knowledge from being good and sufficient cause.<sup>1</sup> Further,

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<sup>1</sup> Good and sufficient cause is defined in the statute as follows:

“(b) "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.”

the square footage error did not *cause* them to fail to pursue their appeal rights.

Therefore, the court does not have jurisdiction under ORS 305.288 to adjudicate the 1997-98, 1998-99, and 1999-2000 tax years.

### Aggrievement

In any case, even if the court were to reduce the real market value as requested by taxpayers for the 1997-98, 1998-99, and 1999-2000 tax years, it would not lower the market value below the assessed value. As explained at the conference, a taxpayer generally pays taxes on the lesser of a property's real market value or maximum assessed value (calculated by formula under Measure 50). Based on the facts of this case, the court has no authority to modify the maximum assessed value. Therefore, to lower the assessed value of the property (which is the value taxpayers pay taxes on), taxpayers would need to demonstrate the real market value is less than the maximum assessed value. For tax years 1997-98, 1998-99, and 1999-2000, taxpayers have not alleged a real market value that is less than the maximum assessed value. As a consequence, even if the court were to order the real market value reduced, it would not impact taxpayers' tax liability.

Mr. Marek requests fairness arguing the error should be corrected because it was the county's mistake, not taxpayers, that led to the problem. However, in *Running v. Dept. of Rev.*, 10 OTR 42, 43 (1985), the Tax Court held that taxpayers have an obligation to monitor the assessor's records to ensure the accuracy of those records. The court stated:

“This case invites re-examination of the relationship between the government and the taxpayer in the process of assessing and collecting property taxes. Like all tax systems, both parties bear some responsibility in the process. Most citizens are painfully aware that in the income tax system it is

the taxpayer who has the burden of keeping records and initially assessing the tax. On the other hand, the ad valorem or property tax system requires the assessor to keep the records and to initially assess the tax. Under both tax systems, the law imposes an obligation on the other party to verify, question, test and object to the assessing party's records or work if there is any doubt or question as to their correctness. *Knapp v. Josephine County et al.*, 192 Or 327, 235 P2d 564 (1951). The tax authorities certainly do not hesitate to audit income tax returns and question the taxpayer's records and assessments. The property taxpayer should be just as alert in his audit of the assessor's work.

" 'Error is human. Everyone knows that governmental officers, agents and employees are capable of error. The prudent taxpayer does not take official conclusions as to tax values on faith.' *Rosboro Lbr. Co. v. Heine et al*, 8 OTR 221, 225 (1979)." *Id.*

### CONCLUSION

The court concludes that the square footage error is not an error correctable under ORS 311.205 and, therefore, the court cannot order the roll corrected for the five prior tax years. The court further concludes it does not have jurisdiction under ORS 305.288 to hear tax years 1997-98, 1998-99, and 1999-2000 because taxpayers have not alleged a 20 percent error nor have they demonstrated good and sufficient cause for failing to timely appeal. However, even if the court did accept jurisdiction under ORS 305.288, taxpayers' real market value allegations would provide them with no tax relief; as a consequence, they are not aggrieved. Now, therefore;

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IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

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

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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 SEPTEMBER 5, 2000. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 5, 2000 .**