

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

NORMAN L. AND DONNA L. MILLER,)	
)	
Plaintiffs,)	No. 000892C
)	
v.)	
)	
TILLAMOOK COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed an omitted property assessment concerning tax years 1995-96 through 1999-00, inclusive. Two issues are presented: whether the county assessor (the county) actually omitted certain property from assessment and taxation and whether the county properly added the value to the rolls under ORS 311.216. A trial was held December 20, 2000, in Tillamook, following a telephone hearing on September 13.

STATEMENT OF FACTS

Plaintiffs bought the subject property, a dairy farm, in 1977. The property consisted of a farmhouse, a barn and a milk room. Plaintiffs added onto the barn structure in 1980 and again in 1983 and 1985, adding additional space and apparently reconfiguring at least some of the existing space. The barn, which exceeds 10,000 square feet, is used to milk and feed the cows. Plaintiffs also added a manufactured home to the property in 1984. Initially all the property was carried on a single assessor account (Ref. R2S 9 6 02400; # 171281). The manufactured home was added to the rolls in 1985 and listed separately in the records as a subaccount ("SU1") on the original account. It was split off onto a separate account (# M2152) in 1990.

The assessor's office physically reappraised the property in October 1984 and the

appraiser sketched the buildings on the land, including the barn structure then in existence and the mobile home. (Def's Ex A, at 2). In addition to the sketch, two appraiser worksheets dated October 1984 reflect features associated with the farmhouse and the carport, such as property class and quality, gable roof, for the farmhouse, and the 19 x 24 ft. carport. (Def's Ex A, at 3 & 4). These worksheets make no mention of the barn or the mobile home. *Id.* It is these worksheets that are used to establish the value of the property which is placed on the assessment and tax rolls.

A county appraiser again visited the property in October 1999 and sketched the buildings observed, including the expanded barn structure and the manufactured home. *Id.* at 5 & 6. A more detailed breakdown of the property by land and improvements, including subcategories for the land (e.g., SP6, SP3, HUSITE, etc.) and itemizations for the single-family residential home, the carports (CP3A & CP4A) and the manufactured home, entitled "Appraisal Record Form[s]" and dated "08/22/90", was prepared by the assessor's staff and submitted as defendant's exhibit A, pages 7 & 8. These computer generated forms show dollar values assigned to the various features associated with the land and improvements. There is no mention of the barn in these detailed value breakdowns. The last two documents are tables with rows and columns that reflect the values assigned to the property beginning with the 1980-81 tax year for the main account and the 1990-91 tax year for the manufactured home account.

The county asserts that the barn structure was not added to the tax rolls for tax year 1984-85 or for any years thereafter. Plaintiffs dispute this point, as explained below. When the assessor's office became aware of the alleged omission it sent plaintiffs a letter notifying them of the intent to add the omitted property to the tax rolls for tax years 1995-96,

1996-97, 1997-98, 1998-99 and 1999-00. The roll was corrected on or about January 28, 2000. The county valued the barn at roughly \$56,000 and added that amount to the improvement value on the main account for each of the five tax years. (Ptf's Complaint, at 2).

ANALYSIS OF THE COURT

The question presented is whether the outbuildings were omitted from the tax rolls and if so, whether the assessor acted properly in adding the value to the rolls as omitted property. For the reasons set forth below the court concludes the value was omitted and that by statute the assessor can add the value to the rolls, including prior years.

As to the first issue, a review of the information provided by the assessor's office makes it clear that the barn building was known to the assessor, but not assessed and taxed. For example, defendant's August 22, 1990, "Appraisal Record Form" shows the land, including the homesite, the single family residence, the mobile home, with an attached general purpose building (notated as a "MH room addition"), and two carports. (Def's Ex A, at 7 & 8). A dollar value is assigned to each of these items. There is no mention of the barn. Thus, the final value figures, carried over to the tax rolls, excludes the barn.

Looking more closely at the county's numbers, the total building value on the county's "Appraisal Record Forms", defendant's exhibit A, at 7 and 8, for 1990 (1990-91 tax year) was \$53,590 and consisted of "BLDGS" at \$33,990 (the farm house, two carports, and a 20' x 40' addition to the MH - Def's Ex A, at 7) and "BLDGS" (manufactured home - Def's Ex A, at 8) valued at \$19,600. The land carried an additional value of \$19,010. These numbers correspond to the numbers on the county's value data

sheets (Def's Ex A, at 9 & 10), represented as "Improvements" valued at \$23,900, "Features" valued at \$10,090¹, and "Improvements" (Mobile Home) valued at \$19,600. *Id.* at 9 & 10. There is no mention of the barn in these tabulation worksheets.

It is apparent that the county was aware of the existence of the barn as far back as 1984. It appears in a sketch of the property done by a county appraiser in October 1984. (Def's Ex A at 2). However, the barn is not costed out in the county's appraisal data records that year. (Def's Ex A at 3 & 4). The barn appears again in the county's October 1999 sketch, but again is not assigned a value, or even mentioned, in the county's detailed "Appraisal Record Forms ". (Def's Ex A at 5, 7 & 8).

The county added \$55,809 to the 1995-96 roll value to account for the missing barn. The total roll value for the land and improvements (exclusive of the manufactured home) prior to the correction was \$67,707.² The addition represents 45 percent of the adjusted value. The added value exceeds the value previously assigned to the improvements on the main account (\$41,502), which included the farmhouse plus carports and other features. Assuming roughly the same value relationship existed between the farmhouse and the barn in 1985, the year the manufactured home was added, the farmhouse would have been valued for tax purposes at \$11,500 and the barn, which exceeds 10,000 square feet, at \$9,500. These numbers seem unlikely.

Since the county's calculations reference the farmhouse and the manufactured home, plus two carports and an addition to the manufactured home, but contain no

¹Note that these numbers, for "bldgs" and "features", total \$33,990, which is the total "BLDGS" value from def's ex A, at 7.

²The manufactured home was carried on a separate account valued at \$25,544 in 1995) beginning with the 1990-91 tax year and is therefore excluded from the omitted property notice and the court's percentage calculation.

reference to the barn, the court is persuaded by a preponderance of the evidence that the barn was in fact omitted from the assessment and tax rolls. ORS 305.427.³

Plaintiffs posed the possibility that the barn was valued and the farmhouse omitted, but offered no support for their speculation. Plaintiffs further assert that the county's numbers are so "jumbled" that it is impossible to tell what was taxed in prior tax years. That being the case, plaintiffs insist the county should be precluded from adding any additional property value. The court agrees that the written records submitted into evidence by the county leave some unanswered questions. For example, the county asserts that the manufactured home was added to the tax rolls in 1984 at a value of \$16,400. However, the \$16,400 figure first appears in the county's value sheet (Def's Ex A, at 9) for the 1985-86 tax year. This is one year after the "SU1" subaccount appears, which the county testified was created for the manufactured home. And, there is a value of \$20,840 assigned to the SU1 account for the 1984-85 tax year. Finally, the improvement value was lowered \$6,900 in tax year 1985-86, the year the county claims the manufactured home was added to the tax rolls. While these inconsistencies are somewhat troubling the court is nonetheless persuaded that the barn was omitted from assessment and taxation as the county claims.

The court believes that the county dropped the barn from the tax rolls the year it added the manufactured home. This, however, is merely speculation.

Turning to the second issue (whether the assessor can add omitted property to the rolls), ORS 311.216 provides in relevant part:

“(1) Whenever the assessor discovers or receives credible

³Reference to the Oregon Revised Statutes (ORS) is to 1999.

information, or if the assessor has reason to believe that any real or personal property, including property subject to assessment by the Department of Revenue, or any buildings, structures, improvements or timber on land previously assessed without the same, has from any cause been omitted, in whole or in part, from assessment and taxation on the current assessment and tax rolls or on any such rolls for any year or years not exceeding five years prior to the last roll so returned, the assessor shall give notice as provided in ORS 311.219.”⁴

It is clear that the law allows the assessor to add to the rolls the value of property previously omitted “from any cause”. *Id. See also Marion County v. Dept. of Rev.*, 10 OTR 265 (1985) (where taxpayer added onto house without building permit or informing assessor, subject property can be added as omitted property); *Olsen v. Commission*, 3 OTR 31 (1967) (assessor can add property value where old residence replaced by a new apartment building without knowledge of the assessor). A case on point is *Decker v. Dept. of Rev.*, 13 OTR 443 (1996). In *Decker* the assessor’s office divided taxpayer’s property into two accounts because of a city boundary change. In the process, the assessor omitted the house and garage. As in the present case, records from the assessor’s office clearly evidenced the omission. Since it was clear the property was omitted, the assessor was required to add it via the omitted property procedures. That is essentially the situation now before the court. And, as in *Decker*, the assessor acted appropriately in adding the property to the rolls in a retroactive fashion under ORS 311.216 *et seq.*

There are limitations to the assessor’s authority. Specifically, the assessor is

⁴ The notice provision found in ORS 311.219 provides:

“Notice shall be given to the person claiming to own the property or occupying it or in possession thereof of the assessor's intention to add the property to the assessment or tax roll under ORS 311.216 to 311.232 and to assess the property in such person's name.”

prohibited from making corrections in value due to an “error in valuation judgment.” ORS 311.205(1)(b). The applicable statute provides:

“(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.” ORS 311.205(1)(b).

This limitation was highlighted in *West Foods, Inc. v. Dept. of Rev.*, 10 OTR 7 (1985), where the assessor was allowed to add the value of certain growing beds constructed by a mushroom plant owner after a county on-site inspection in 1973, but was prohibited by the court from adding value for beds observed during that inspection but omitted from rolls. This was because the growing beds observed but allegedly omitted were “an integral part of the growing rooms [included in the 1973 appraisal] and were part of the real property.” *Id.* at 11. The court observed that “[t]he failure of the appraiser to include the beds in the growing rooms resulted in an undervaluation of the growing rooms and not an omission of any 'buildings, structures or improvements' under the statute.” *Id.* The emphasis under the statute is on the omission of property and not value.

Plaintiffs argue that the statute only allows the county to add the value of property not previously assessed and that if the barn in this case was originally included in the tax rolls, but omitted at some point, the statute precludes the assessor from adding the value as omitted property. That argument, while interesting, is not a fair (or correct) reading of the statute. ORS 311.216(1) requires the assessor to add as omitted property the value of any real or personal property that “has from any cause been omitted, in whole or in part, from assessment and taxation * * *.” There is no mention of previous assessment.

The referenced statute prohibits the assessor from changing the value of an item (e.g., land, a home, a garage) already assessed. The prohibition exists to prevent the

assessor from simply changing his or her mind as to an item already valued (except by appeal) and issuing a supplemental billing. In this case, an appraiser from the assessor's office visited the property and observed a collection of outbuildings. The appraiser even sketched the property and indicated where each of the buildings was located. (Def's Ex A, at 5). For reasons unknown to the court, the value of the barn was not reflected on the assessment or tax roll. The roll correction in this case was not based on an error in valuation judgment. Rather, property (barn) omitted was later added.

As a matter of fairness, plaintiffs believe that they should not be responsible for the county's error. The court disagrees with that assessment. Had the assessor not omitted the outbuildings, plaintiffs' annual tax statements for as many as the past 15 years would have been considerably higher than they were, as they would have included the structures omitted. The retroactive assessment, which only goes back five years, seeks to collect the tax on property that previously escaped assessment and taxation. It is clear the county was entitled to the money. In fact, they were entitled to considerably more money, but the omitted property statutes limit the reach of the law.

It is understandable that plaintiffs are upset. They are being asked to make a lump sum payment to cover a portion of their taxes for five years. The bill would likely have been easier to pay in annual increments, as part of the fall tax statement each year, which would have been the case if the tax statements had included the outbuildings. Nonetheless, the law provides for property omitted to be subsequently valued and taxed.

CONCLUSION

After carefully reviewing the evidence, the court concludes that the outbuildings added as omitted property were in fact omitted from the rolls. Moreover, the addition to

the rolls by the assessor's office was in accordance with applicable law. Finally, while retroactive assessments covering a period of five years are in a sense regrettable, the assessment is in accordance with governing law (ORS 311.216). Plaintiffs are not, as they contend, being punished for the county's error.

IT IS THE DECISION OF THE COURT that the county's omitted property assessment for tax years 1995-96 through 1999-00, inclusive, on Acct. No. 171281, reflected in its May 31, 2000 notice, is upheld. The maximum assessed value shall be determined as provided in ORS 308.156.

Dated this _____ day of January, 2001.

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 97301. 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 JANUARY 24, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 24, 2001.