

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

BARBARA K. RICE,)
)
 Plaintiff,) No. 000950F
)
 v.)
)
 CLATSOP COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff filed an appeal as to a payment of property taxes due, for the 1999-00 tax year, on Clatsop County property account number 8706. A case management conference was held on October 11, 2000. Barbara Rice appeared for herself. Suzanne Johnson appeared for defendant. Trial was held at the date and time set for the case management conference.

The Complaint was submitted as a small claims case. However, such topics as claims regarding loss of a property tax discount and interest waivers are not appropriate for small claims. The court received the additional filing fee on October 16, 2000. This case is converted to a standard designation.

STATEMENT OF FACTS

Plaintiff received her 1999-00 property tax statement. She testified that she mailed check number 949 in the amount of \$1,456.57 to defendant on November 2, 1999. She noted the check number and the date on her copy of the property tax statement. The payment was for the entire amount of property taxes due, less the available three percent discount. See ORS 311.505(3)(b). Plaintiff testified that she regularly pays her property

taxes in November to avail herself of the three percent discount. Ms. Johnson agreed that plaintiff has a history of timely payments.

In January 2000 plaintiff discovered that the check had not cleared her account. On January 18, 2000, plaintiff called defendant and spoke to Megan. That same day plaintiff mailed a replacement check for \$1,456.71 and a letter explaining the situation to defendant. In her letter, plaintiff asked defendant to waive any additional fees and penalties. On January 19, 2000, defendant received plaintiff's replacement check. Also on January 19, 2000, plaintiff asked her bank to stop payment on check number 949. On February 25, 2000, plaintiff sent defendant a second letter asking defendant to waive any fees and penalties. She also enclosed a copy of the stop payment confirmation from her bank.

Defendant replied to plaintiff's letters on February 29, 2000. Defendant declined the waive any fees and/or penalties. Ms. Johnson testified that because defendant does not have a policy to consider anything other than the post office cancellation mark they did not consider the specifics of plaintiff's situation.

Ms. Johnson asked the court to determine whether Ms. Rice should receive the three percent discount and a waiver of the accrued interest.

COURT'S ANALYSIS

Plaintiff argues that she timely paid her 1999-00 property taxes by placing the payment in the United States mail on November 2, 2000, but that it was lost in the mail. ORS 305.820(1)(c) governs when remittances are lost in the mail. The statute provides that:

“Any * * * remittance required by law to be * * * made to the * * * tax collector (designated in this section as the "addressee") which is:

“* * * * *

“(c) Lost in transmission through the United States mail or private express carrier, shall be deemed filed and received on the date it was mailed or deposited for transmittal if the sender:

“(A) **Can establish by competent evidence satisfactory to the addressee** that the writing or remittance was deposited on or before the date due for filing in the United States mail, or with a private express carrier, and addressed correctly to the addressee; and

“(B) Files with the addressee a duplicate of the lost writing or remittance within 30 days after written notification is given by the addressee of its failure to receive such writing or remittance.”

(Emphasis added.)

The court faced a similar situation in *Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498 (1993). In *Jackson County* the taxpayer claimed to have deposited her property tax payment on November 15. The statute at issue was ORS 305.820(1)(a) (1991) which provided that any remittance sent through the United States mail "shall be deemed filed or received on the date shown by the post-office cancellation mark stamped upon the envelope containing it, or on the date it was mailed if proof satisfactory to the addressee establishes that the actual mailing occurred on an earlier date." The payment was postmarked on November 18. Jackson County had adopted a policy to help it determine whether a mailing was timely. The court found that “[i]n using the terms ‘satisfactory to the addressee,’ the legislature conferred broad discretion upon individual tax collectors.” *Jackson County*, 12 OTR at 500. The court went on to state that “[i]t would be an abuse of discretion if plaintiff refused to consider any evidence other than the

post-office cancellation mark stamped upon the envelope. Such a policy would foreclose the exercise of any discretion.” *Id.*

Defendant, in this case, does not have a policy.¹ Following the court’s reasoning in *Jackson County*, it was an abuse of defendant’s discretion for defendant to decline to consider the specifics of plaintiff’s situation.

Because defendant asked the court to determine whether plaintiff timely mailed her property tax payment, the court will examine the evidence presented.

Ms. Rice testified that she mailed the property tax payment on November 2, 1999, nearly two weeks before the due date. The courts finds her testimony credible.

Additionally, as soon as she realized that her check had not been paid by her bank, she called defendant and explained the situation. She mailed a replacement check the same day she called defendant. Included with the check was a letter, also describing the situation. She filed a stop payment request with her bank. She sent defendant a second letter. The second letter included a copy of the stop payment confirmation from her bank. Plaintiff acted promptly as soon as she discovered that defendant had not received the property tax payment. Lastly, the parties agree that plaintiff has a history of timely paying the property taxes on the subject property.

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¹Ms. Johnson agreed that it would be a good idea for defendant to develop a policy.

CONCLUSION

Based on the evidence presented, the court finds that plaintiff mailed her property tax payment on November 2, 1999.² She is entitled to the three percent discount and a waiver of the accrued interest.

IT IS THE DECISION OF THE COURT that defendant shall credit plaintiff with the three percent discount and remove the accrued interest from the account.

Dated this _____ day of November, 2000.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON NOVEMBER 21, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 21, 2000.

²Plaintiff acted prior to receiving any written notification that her payment had not been received. See ORS 305.820(1)(c)(B). Therefore, the requirements of ORS 305.820(1)(c)(B) are not at issue.