

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

PATRICIA H. FIELDS,)
)
 Plaintiff,) No. 000979E
)
 v.)
)
 WASHINGTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals the real market value of her home, identified as Account No. R320236, for the tax years beginning 1973 through 1999-2000.¹ Trial in the matter was held October 24, 2000.² Patricia H. Fields appeared on her own behalf. Tony Rosatti, Residential Supervisor, appeared on behalf of defendant. For ease of reference herein, the parties are referred to as “taxpayer” and “the county.”

STATEMENT OF FACTS

In June of 2000, taxpayer decided to sell the subject property. Her real estate agent provided her with information on her property that the agent had obtained from the county’s offices. After reading the information, she discovered that the county showed her home as having 2,904 square feet of living space, four bedrooms, and three

¹ During the proceeding, the court also discussed plaintiff’s default request. Because the county filed its Answer before the court received plaintiff’s default request, the Answer is considered timely. See *Reeder v. Marshall*, 214 Or 154, 156, 328 P2d 773 (1958) (“Where a plaintiff, after the time expressly granted for filing a pleading has expired, suffers further time to elapse without taking any action thereon, he in effect grants further time to plead, with the result that a general appearance made before default entered is in time.”)

² The proceeding was converted from a case management conference into a trial based on the representation of the parties they were prepared to present their case at that time. The court left the record open one week for defendant to submit the county’s appraisal records for the subject property and for plaintiff to provide a written response to the evidence.

baths. In reality, the home has only 2,344 square feet of living space, three bedrooms, and two baths. Taxpayer pointed the error out to the county and it adjusted its records accordingly. It also reduced the 2000-01 market value down \$17,000 based on the correction. The assessed value was not impacted by the correction. As a result of the county's error, taxpayer maintains she had to reduce the selling price to account for the fact that taxes on her property are at a higher percentage of the property's real market value than other homes in the neighborhood. Taxpayer subsequently sold the home.

Taxpayer appeals seeking retroactive tax relief for the years 1973 through 1999-2000. The county acknowledges the mistake but is uncertain of any process that would allow the court to correct the roll as requested.

COURT'S ANALYSIS

The court has limited authority to grant retroactive tax relief. Taxpayer asks the court to adjust the roll going back to the 1973 tax year. The court does not have such broad authority. Given these facts, the furthest the court can possibly go back is five years under ORS 311.205.³

ORS 311.205 provides for the correction of a clerical error. A correction ordered under the clerical error statute may only be made to years "not exceeding five years prior to the last roll so certified." ORS 311.205(2)(a). The last roll certified at the time this appeal was filed was the 1999-2000 tax roll. As a result, the court, at the most, may order a correction back to the 1994-95 tax year.

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³ All references to the Oregon Revised Statutes are to the 1999 provisions.
DECISION

ORS 311.205 allows a 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 which is a failure to correctly reflect the ad valorem tax records of the assessor * * * and which, had it been discovered by the assessor * * * 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) (emphasis added.)⁴

The question the court must answer is whether the information necessary to correct the county’s error is contained in its records.

Mr. Rosatti testified that the error occurred when the house was originally placed on the roll in 1973. The appraiser’s notes from that time are no longer available so he is uncertain how the error was created. As ORS 311.205(1) makes clear, clerical errors include mathematical mistakes where, for example, it is apparent that the appraiser erred in multiplying two numbers; or copying and transcription mistakes such as carrying an incorrect number over from the data card to the roll. Nothing in the county’s records suggest the error was the result of a mathematical, copying, or transcription

⁴ The Oregon Administrative Rules expand on the definition of a clerical error as follows:

“Clerical errors are those procedural or recording errors which do not require the use of judgment or subjective decision making for their correction. A clerical error is an arithmetic or copying error or an omission on the roll or misstatement of property value that is apparent from assessor office records without speculation or conjecture, assumption or presumption, **and that is correctable without the use of appraisal judgment or the necessity to view the property.**” OAR 150-311.205(1)(a)(1) (emphasis added).

error. Mr. Rosatti testified it was his belief the original appraiser simply erred in determining the square footage of the home. After reviewing the records, it is the court's opinion that there is no way to know an error existed on the roll. As a consequence, the mistake does not meet the statutory definition of a clerical error because the information necessary to correct the error is not contained in the county's records. The court's finding is supported by OAR 150-311.205(1)(b)(1), which states:

"(1) [t]he officer may not correct an error or omission on the roll of value of land, improvement, personal or other property * * * 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) thinking that a house has a basement when it does not; or

"(b) making a mathematical error when computing the square footage, the acreage, or some other factor[.]"

Taxpayer argues at length that she had no way of knowing about the county's mistake because at no time did the square footage of the home appear on her tax statement. However, in *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998), the Regular Division of the Oregon Tax Court held, on similar facts, that a square footage error, where not apparent from the assessor's records, was not correctable as a clerical error under ORS 311.205. In that case, the court noted:

"This situation highlights the need for property owners to audit the government's property tax records. Most taxpayers are familiar with our income tax systems under which *taxpayers* keep the records and assess the tax, and the government audits for accuracy and correctness. In contrast, the property tax system requires the *government* to keep the records and assess the tax, and the taxpayer audits for accuracy and correctness. Both systems impose time limits on the right to audit. A failure to audit and challenge the assessment within the time limit will result in a loss by the party responsible for the audit." *Id.* at 404 (quoting *Taft Church v. Dept. of Rev.*, 14 OTR 119, 122 (1997)).

Taxpayer complains that the system is unfair because, if she had made a mistake, the county would have been able to collect taxes, penalty, and interest for her error. In the property tax system, however, there is little room for taxpayer error because the county keeps the records and assesses the tax. A taxpayer may review the assessment to determine its accuracy before paying the liability, or the taxpayer may pay the liability without verifying its accuracy. By not verifying the accuracy of the records for the subject property, taxpayer accepted the county's assessment and may not, at this late date, challenge an error that occurred almost 30 years ago.

CONCLUSION

It is the conclusion of the court that the square footage error is not a clerical error correctable under ORS 311.205. Now, therefore;

IT IS THE DECISION OF THIS COURT that plaintiff's Motion for Default is denied;
and

IT IS FURTHER DECIDED that plaintiff's appeal is denied.

Dated this _____ day of November, 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 NOVEMBER 16, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 16, 2000.