

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

RANDY SEXSMITH,)
)
 Plaintiff,) No. 010097E
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals defendant's 1999-2000 omitted property assessment notice in which defendant increased the value of the personal property identified in Account No. P422502. Trial in the matter was held July 31, 2001. Randy Sexsmith appeared on his own behalf. Dan Howard, Appraiser, appeared on behalf of defendant. For ease of reference herein, the parties are referred to as "taxpayer" and "the county."

STATEMENT OF FACTS

Taxpayer has been in the automotive repair business for approximately fourteen years. He started the subject business in mid-1998. For the 1999-2000 tax year, taxpayer's ex-wife filed a personal property return with the county identifying taxable personal property in the amount of \$11,300.¹ (Def's Ex A.) The county apparently made small adjustments to this return because it placed a value of \$12,550 on the 1999-2000 tax roll for the subject property.

For the 2000-01 tax year, taxpayer filed another personal property return with the county. Attached to this return was a copy of taxpayer's 1999 Schedule C depreciation schedule showing significant purchases of personal property made in 1998. (Def's Ex B at

¹ The return lists a subtotal for the Schedule 5 property of \$8,100. Adding the individual values together, the court arrives at a subtotal of \$8,400. The difference is inconsequential for purposes of this proceeding.

1.) Because the income tax schedule reflected equipment purchases greater than that reported on taxpayer's 1999 personal property return, the county added value to the 1999-2000 tax roll by increasing the value from \$12,550 to \$35,690. (Def's Ex B at 2.)

Taxpayer appeals this increase in value.

As part of the appeal, the county visited the business premises on two occasions to inventory the property and perform an appraisal. Recognizing the appraisal occurred two years after the January 1, 1999, assessment date, Mr. Howard, according to his appraisal and testimony, relied upon taxpayer to advise him as to which equipment was not on the premises as of January 1, 1999. Mr. Howard testified he took taxpayer at his word as to which items were acquired after the assessment date. He then prepared a list of the assets he identified as being in place on January 1, 1999, and went to several pricing guides and used dealers to arrive at a replacement cost new for the items. He then discounted each asset's value based on the age of the asset to arrive at an estimated real market value. His final conclusion of value for all the personal property was \$14,540.

COURT'S ANALYSIS

ORS 305.427² provides that in proceedings before the Tax Court, "[t]he burden of proof shall fall upon the party seeking affirmative relief." Because taxpayer is seeking relief in this case, he has the burden of proof. That means taxpayer must establish his claim "by a preponderance of the evidence, or the more convincing or greater weight of evidence." *Schaefer v. Dept. of Rev.*, OTC-RD No. 4530 (July 12, 2001) (citing *Feves v. Dept. of Revenue*, 4 OTR 302 (1971)).

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Taxpayer's case consisted of going through the county's appraisal and attacking

² All references to the Oregon Revised Statutes are to 1999.

the county's asset list and value conclusions. For example, for the battery charger, which the county valued at \$80, taxpayer testified he purchased it eight years ago for \$69. As a result, he believes the value should only be \$35. For the air compressor, which the county valued at \$500, taxpayer testified he purchased it ten years ago for \$699 and, therefore, claims it should only be valued at \$300. Similar testimony followed for most of the assets. Taxpayer also testified that some of the equipment was acquired after January 1, 1999, and that some of the equipment belonged to employees. Mr. Howard testified he omitted from the asset list several pieces of equipment observed during his visit because taxpayer advised him that either the property was not present on the assessment date or that it belonged to others.

The court is presented with an appraisal prepared by the county and criticisms presented by taxpayer. As already stated, taxpayer has the burden of proof in this case. In weighing the evidence, the court finds taxpayer has failed to satisfy his burden of proof. Taxpayer offered the court no evidence from which it could reach a value conclusion. All he offered the court was his opinion as to the value of the items listed on the county's appraisal. In doing so, he was testifying as to the costs of various pieces of equipment - much of it over five years old. Memories fade and the court questions the reliability of these cost figures. In any case, documentation in the form of receipts or invoices should have been provided to show the court the various costs. The county used several pricing sources to evaluate the used values of the subject property. If taxpayer believed the guides were in error, he should have provided the court with some evidence to demonstrate a different value.

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In addition, if taxpayer wanted to prove specific assets were acquired after the

assessment date, he should have produced receipts showing the later date. If an item belonged to an employee, he should have provided corroborating evidence to support his statements. It may be that some of the equipment was purchased after the assessment date and that some of it belonged to employees. However, without evidence to prove these claims, the court is left without sufficient evidence to find for taxpayer.

In *Schaefer*, the Regular Division of the Tax Court found the plaintiffs in that case also failed to satisfy their burden of proof. In so holding, the court noted that personal opinions without supporting evidence is often insufficient to satisfy the burden of proof. The court stated: "While [the plaintiff] expressed his personal opinion, he offered no supporting rationale for his conclusion. * * * Without more information, it is pure speculation that the court will neither indulge in nor accept." *Id.* Similarly, in this case, taxpayer has provided the court with only his personal opinions without any supporting evidence.³

CONCLUSION

It is the court's conclusion that, without any substantiating evidence or testimony, taxpayer failed to satisfy his burden of proof. The court further concludes that the county's recommended value conclusion of \$14,540 should be accepted. Now, therefore;

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IT IS THE DECISION OF THIS COURT that the 1999-2000 real market value of the property identified as Account No. P422502 was \$14,540 (allocated \$500 to Schedule 2 property, \$300 to Schedule 4 property, and \$10,050 to Schedule 5 property.); and

IT IS FURTHER DECIDED that the county shall correct the assessment and tax rolls

³ The court also observes that, if the county had not offered its appraisal as evidence, taxpayer would have had an even higher hill to climb because he provided the court with *no* evidence. The appraisal at least gave him an asset list to refer to in his testimony.

to reflect the above values. Any refund due following this correction shall be promptly paid with statutory interest pursuant to ORS 311.806 and 311.812.

Dated this _____ day of August, 2001.

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 97301-2563. 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 AUGUST 23, 2001. THE COURT FILED THIS DOCUMENT ON AUGUST 23, 2001.