

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

RONALD D. WIEBE )  
 )  
 Plaintiff, ) No. 010830D  
 )  
 v. )  
 )  
 MARION COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

Plaintiff appeals Defendant's denial of the three percent discount and interest charged to him for failure to remit his 2000-2001 property tax payment by the statutory deadline, November 15.

A telephone trial was held on Thursday, December 13, 2001. Mr. Ronald Wiebe represented himself. Ms. Gloria Roy, Assistant County Counsel, appeared on behalf of Defendant. Mr. Rex Weisner, Senior Tax Clerk, testified on behalf of Defendant.

**STATEMENT OF FACTS**

Mr. Wiebe testified that between the hours of 5:00 p.m. and 7:00 p.m. on November 15, 2000, he hand delivered his 2000-2001 Marion County real property tax payment to the Salem Post Office. At the same time, Mr. Wiebe testified that he also delivered his Clackamas County real property tax payment to the Salem Post Office.

In May, 2001, Mr. Wiebe received a notice from Marion County stating that he owed additional tax for the tax year. After further review, Mr. Wiebe found that his November payment was not received by Defendant before the November 15 deadline. Defendant provided him with a copy of the envelope containing the payment, showing that it was postmarked November 16, 2000. Mr. Wiebe testified that he did not receive a similar late payment notice from Clackamas County.

Mr. Wiebe questioned how one tax payment can be late and another on time when mailed at the same time at the same place. Mr. Wiebe contacted Clackamas County. He submitted a letter from Ms. Lynne Newhouse, Clackamas County Assessor and Tax Collector, stating that the county does not keep “the envelopes for payments received on or before the 15<sup>th</sup> of the month of November.” Ms. Newhouse enclosed a copy of the county’s receipt detail. The receipt stated that on November 20, 2000, payment in the amount of \$742.55 was tendered in the form of a personal check.

Mr. Wiebe also submitted a copy of his US Bank Uni-Statement. He indicated that Check No. 008367 in the amount of \$3,668.99 was made in payment of his Marion County real property taxes. Mr. Wiebe submitted a copy of the canceled check made payable to Marion County Tax Collector, dated November 15, 2000, in the amount of \$3,668.99. He also indicated that Check No. 008366 in the amount of \$1,949.27 was made in payment of his Clackamas County real property taxes. Mr. Wiebe did not submit to the court a copy of the canceled check made payable to Clackamas County. Ms. Roy asked Mr. Wiebe to explain why the amount of Check No. 008366 was \$1,949.27 instead of \$742.55 as shown on the Clackamas County receipt detail he submitted to the court. Mr. Wiebe was unable to explain the difference in the two amounts.

Mr. Weisner testified that he has been a Marion County senior tax clerk for the last eight years and prior to that he was a tax clerk. He testified that it is the general policy of Marion County to use the postmark or mailed date as the received date for real property tax payments. Mr. Weisner referenced the Oregon Administrative Rule (OAR) 150.305.820 which reads:

“\* \* \*If the writing or remittance is not received within the period of time, it must be shown by satisfactory proof to the Department that the writing or remittance was placed in the hands of the United States Postal Service or in the hands of a private express carrier on or before the due date.”

He also quoted from OAR 150.305.820(1)(d) which reads:

“If the writing or remittance bears a postmark date \* \* \* dated later than the due date, it will be treated as having been mailed on or before the due date provided the person who is required to file the writing or remittance establishes by sworn affidavit that it was actually deposited on or before the due date \* \* \* in a government mail receptacle before the last collection of mail for the place in which it was deposited.”

In this case, Mr. Weisner testified that the envelope containing Mr. Wiebe’s 2000-2001 Marion County real property tax payment was postmarked November 16. Mr. Weisner testified that he verified with the Salem Post Office that the last pick-up on November 15 was 5:30 p.m. According to Mr. Weisner, after reviewing the postmark and Mr. Wiebe’s statement that he hand delivered the payment to the Salem Post Office no later than 7:00 p.m., Defendant concluded that Mr. Wiebe’s payment was not made before the last mail pick-up on November 15. Defendant denied Mr. Wiebe the three percent discount.

### **COURT'S ANALYSIS**

Taxpayers are entitled to a three percent discount when paying their annual property taxes if a full or partial payment is made on or before November 15. See ORS 311.505(3).<sup>1</sup> Mr. Wiebe alleges that he made his payment on time because he delivered his tax payment to the Salem Post Office before 7:00 p.m. on November 15. Unfortunately, the postmark stamped by the Salem Post Office on the envelope containing his payment was November 16, indicating that his payment was received after the last pick-up on November 15.

The law governing a taxpayer’s payments transmitted through the United States mail is found in ORS 305.820(1) which reads:

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<sup>1</sup>All references to the Oregon Revised Statutes are to 1999.

“Any writing or remittance required by law to be filed with or made to the \* \* \* tax collector (designated in this section as the ‘addressee’) which is:

“(a) Transmitted through the United States mail or by private express carrier, shall be deemed filed or received on the date shown by the cancellation mark or other record of transmittal, or on the date it was mailed or deposited **if proof satisfactory to the addressee establishes that the actual mailing or deposit occurred on an earlier date.**” (Emphasis added.)

The legislature “conferred broad discretion upon individual tax collectors” when it inserted the statutory language that the proof must be “satisfactory to the addressee.”

*Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498, 500 (1993). “[S]atisfactory to the addressee” implies that individual tax collectors can set policies which vary from county to county; “there is no basis for inferring a need for uniformity.” *Id.*

The court’s standard of review is not to substitute its judgment on the reasonableness of Defendant’s actions but rather to determine if Defendant abused its administrative discretion in concluding that Mr. Wiebe’s payment was not timely. See *Dickinson v. Davis*, 277 Or 665, 673-675 (1977). According to Mr. Weisner, Defendant’s policy is to follow the guidelines set forth in the OAR, specifically that the postmark must be prior to November 15. The postmark on Plaintiff’s envelope clearly read November 16.

In reviewing other evidence offered by Plaintiff, Defendant has the discretion to determine what evidence is “satisfactory.” Plaintiff’s check in payment of his Marion County property taxes was not processed by his bank until November 28, 2000. Marion County requests taxpayers to send property tax payments to a bank “lock box” for immediate deposit. However, according to Mr. Weisner, bank personnel are instructed not to process any payments with a postmark date later than November 15. These payments are sent to Defendant for further review prior to being deposited. Because Plaintiff’s check was not processed by his bank until November 28, it is likely Defendant’s late

payment review procedures were followed.

Further, Plaintiff testified that the Clackamas County receipt was proof that Clackamas County received his 2000-2001 property tax payment by the statutory due date and it was mailed on the same day at the same time as his Marion County tax payment. Unfortunately, there was an unexplained discrepancy in the amount (\$742.56) stated on the Clackamas County receipt and the amount (\$1,949.27) of Check No. 008366 which Plaintiff testified was made in payment of his Clackamas County real property taxes. Plaintiff was unable to explain the discrepancy.

This court has previously noted that the legislature gave the decision making power to Defendant. *Hirsch v. Multnomah County Assessor*, OTC-MD No. 001071D (February 28, 2001). "Lacking any abuse of discretion, the court cannot substitute its judgment for that of defendant's." (*Id.*) In this case, the court concludes that Defendant did not abuse its discretion in finding Plaintiff's evidence unsatisfactory. Plaintiff's request that the court grant him the three percent discount and abate interest is denied.

### CONCLUSION

IT IS THE DECISION OF THE COURT that Plaintiff's appeal is denied.

Dated this \_\_\_\_\_ day of January, 2002.

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JILL A. TANNER  
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 TANNER ON JANUARY 25, 2002. THE COURT FILED THIS DOCUMENT ON THAT SAME DATE.**