

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

HEATHER AND TONY GENDVILAS,)
)
 Plaintiffs,) No. 010506E
)
 v.)
)
 CLACKAMAS COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on its own motion to determine whether it has authority to grant plaintiffs the relief they request. The court discussed its motion with the parties during the case management conference held June 7, 2001. Heather Gendvilas appeared on behalf of plaintiffs. Suzanne Warman, Senior Appraiser, appeared on behalf of defendant. For ease of reference herein, the parties are referred to as “taxpayers” and “the county.”

Taxpayers appeal the assessed value of their home¹ for tax years 1998-99, 1999-2000, and 2000-01 claiming their home’s tax liability is approximately \$800 higher than neighboring properties. For tax year 1998-99, taxpayers had appealed the assigned real market value (RMV) to the county board. On March 10, 1999, the county board ordered the RMV reduced to \$408,000 based on the purchase price paid by taxpayers months earlier. The maximum assessed value on the property for 1998-99 was \$347,500. Because the maximum assessed value remained less than the RMV, the RMV reduction did not impact the tax liability on the home. For the years under appeal, the following values appear on the tax roll:

¹ The subject property is identified in the county’s records as Account No. 01563445.

	1998-99	1999-2000	2000-01
RMV	\$408,000	\$417,350	\$430,700
MAV	\$347,500	\$357,920	\$368,658

Taxpayers do not necessarily disagree with the RMV determinations of the county, although they believe 2000-01 may be about \$10,000 high. What they really appeal is their tax liability because they believe it should be similar with what their neighbors pay on their properties.

As explained during the conference, Oregon voters passed by referendum Measure 50 in May 1997. This measure substantially modified the property tax system in Oregon. Prior to Measure 50, a property was taxed at its RMV. Due to increasing values, Oregon voters chose to limit the growth of assessed values. In doing so, Measure 50 created the concept of “maximum assessed value” (MAV). For the 1997-98 tax year, which was the implementation year for Measure 50, the MAV was calculated by taking the property’s 1995-96 RMV that appeared on the roll and subtracting ten percent. Or Const, Art XI, § 11(1)(a).² In this case, the property’s 1995-96 RMV on the roll was \$374,880. The county, therefore, took this value and subtracted ten percent to arrive at the 1997-98 MAV of \$337,392. Measure 50 requires that a property be taxed at the lesser of its MAV or its RMV. Or Const, Art XI, § 11(1)(f).³ The 1997-98 RMV was \$412,330. Because the 1997-98 MAV was the lesser of the two values, it was the value the prior owners paid taxes on for tax year 1997-98.

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² See also Or Laws 1997, ch 541, § 2(2), *compiled as a note after* ORS 308.146.

³ See also ORS 308.146(2) and Or Laws 1997, ch 541, § 2(3), *compiled as a note after* ORS 308.146.

Measure 50 provides that, for each successive year, the MAV may increase no more than three percent a year. Or Const, Art XI, § 11(1)(b); see *also* ORS 308.146(1). For each successive year, the MAV of the subject property remained below the RMV and, as a consequence, the property continued to be taxed at its MAV.

Ms. Gendvilas explained that when calculating the 1997-98 MAV, an error occurred because the 1995-96 RMV was too high given a square footage error contained in the county's records. However, prior case law has established that when calculating the MAV in 1997-98, the county was required to use the 1995-96 RMV appearing on the roll and was not permitted to do an independent investigation of the 1995-96 RMV. In *Ellis v. Lorati*, 14 OTR 525, 532 (1999), the Regular Division of the Tax Court stated:

“Contrary to taxpayers’ assertions, the court concludes that the voters intended to refer to the real market value on the assessment and tax roll [in 1995-96] precisely because it did provide certainty. By the spring of 1997 there would have been few properties whose real market value was still in question. It is significant that the voters selected July 1, 1995. That date became the starting point for all future calculations of MAV and is significant because section 11 [of the Oregon Constitution] also requires establishment of permanent tax rates. Establishing permanent tax rates suggests the need for certainty in the calculation of those rates. **Allowing property owners to appeal and change the real market value used for the 1995-96 tax year is inconsistent with the establishment of permanent tax rates.**” (Emphasis added.)

At this point in time, it is too late for taxpayers to adjust the 1995-96 tax roll. If the 1995-96 value appearing on the roll was in error, it was the responsibility of the prior owner to bring it to the attention of the assessor after receiving the 1995-96 tax statement. It is simply too late in time for the court to review the value assigned for tax year 1995-96.

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Ms. Gendvilas spoke at length about the amount of their property tax bill and how it is not in line with comparable properties. However, the MAV is derived using a

constitutional formula and, as a result, the court is unable to modify the subject property's MAV.⁴ To lower their tax bill, taxpayers would need to demonstrate the property's RMV was near or below the MAV. No such allegation has been made.

Furthermore, the Regular Division of the Tax Court has already accepted that Measure 50 will result in some degree of nonuniformity. In *Ellis v. Lorati*, the court stated:

“The court recognizes that in one sense MAV is somewhat artificial or arbitrary. That is inherent in the overall scheme of section 11 [of the Oregon Constitution]. The concept may, over time, result in various degrees of nonuniformity in the property tax system. Section 11(18) contemplates this and excuses itself from complying with other constitutional provisions requiring uniformity, specifically Article IX, section 1, and Article I, section 32.” *Id.* at 535.

The court recognizes taxpayers may indeed be paying disproportionately higher taxes than their neighbors. That such incidences occur demonstrates the inequity in the taxing scheme. Unfortunately for taxpayers, there is simply no basis for the court to adjust the MAV and, as stated above, the constitution permits the inequity presented in this appeal. Now, therefore;

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IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

Dated this _____ day of June, 2001.

⁴ There are certain circumstances when the court may review a property's MAV. For example, when an addition is added to a building, the county must increase the MAV. The value added to the MAV is the RMV of the addition multiplied by the ratio of the average MAV to average RMV of similarly situated property. Or Const, Art XI, § 11(1)(c). The court may evaluate the RMV of the addition, which will ultimately impact the property's MAV. No circumstances are presented in this case to allow the court to review the property's MAV.

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 THIS DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON JUNE 18, 2001. THE COURT FILED THIS DOCUMENT ON JUNE 18, 2001.