

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

SUANNE Y. JONES,)
)
 Plaintiff,) No. 011025C
)
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff has appealed the imposition by Defendant of interest for the 2000-01 tax year.¹ The case management conference scheduled for November 28, 2001, was converted to a trial. Plaintiff appeared on her own behalf. Defendant appeared through Ms. Gloria Rogers, an employee with the Lane County Department of Assessment and Taxation.

STATEMENT OF FACTS

The property on which the taxes and interest were imposed is a home built in 1999 in a new subdivision. Plaintiff bought the home in December 1999. The taxes for the 1999-2000 tax year were presumably paid at the time of closing. Plaintiff did not receive the fall property tax statement for the 2000-01 tax year. Plaintiff understood that taxes are due each year in November or December and wondered why she had not received her statement. Plaintiff telephoned the county tax office sometime in November or December 2000 to inquire about her taxes. According to the sworn testimony, Plaintiff was told to be patient because it could take some time for her tax statement to arrive. The explanation for the delay was tied to the fact that the home was located in a new subdivision and that account numbers were being assigned.

¹Plaintiff elected the court's small claims procedure. The case does not qualify for small claims and is therefore converted to a standard appeal. ORS 305.514. The additional filing fee of \$15 is waived.

Plaintiff does not know the name of the woman with whom she spoke. Plaintiff later received a notice from the lender informing her the taxes had not been paid and instructing her to attend to the matter. Plaintiff again phoned the county tax office to inquire about the unpaid taxes. The woman Plaintiff spoke with on that occasion investigated the matter and discovered the county records had not been updated to reflect the change of ownership and address. Again Plaintiff did not make a note of the name of the person with whom she spoke.

Ms. Rogers testified that the tax account was new in 1999 and that the tax statement for the 2000-01 tax year was mailed to a Mr. Carlson, the contractor who constructed Plaintiff's home. Ms. Rogers further testified that the deed for the subject property was recorded on December 17, 1999, and that the county typically receives a copy of the deed within several months. Ms. Rogers further testified that "it appears our records were not updated when the deed was received." The records were not updated until after Plaintiff telephoned the county tax office in July 2001.

The deed includes the following instructions: "Until a change is requested, all tax statements shall be sent to the following address: 2290 33RD STREET, SPRINGFIELD, OR 97477." This is Plaintiff's address.

COURT'S ANALYSIS

The interest imposed by the county was mandatory under ORS 311.505(2)² because the taxes were not timely paid. That statute provides in relevant part:

"Interest *shall* be charged and collected on any taxes on property, * * * or installment thereof not paid when due, at the rate of one and one-third percent per month, or fraction of a month until paid." ORS 311.505(2) (emphasis added).

Plaintiff asks the court to negate the interest charge because she did not receive

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

her tax statement in time to make the payments when required under the law³ and because, in Plaintiff's view, the fault lies with the county. Defendant directs the court to various statutes which, it asserts, support the conclusion the assessment of interest should be upheld and the case dismissed. Defendant's primary argument seems to be that under ORS 311.250(2)⁴ the failure of the taxpayer to receive the statement does not invalidate the assessment. That statute provides:

"The failure of a taxpayer to receive the statement described in this section shall not invalidate any assessment, levy, tax, or proceeding to collect tax." ORS 311.250(2).

Defendant also argues that the law provides a mechanism under which Plaintiff could have tendered payment if the exact amount of the tax was not known. ORS 311.250(4) provides:

"Where, for any reason the taxes due on any property on the assessment roll in any year cannot be ascertained from the tax roll by November 5 of that year, within 15 days thereafter the owner or other person liable for or desiring to pay the taxes on such property may tender to the tax collector, and the tax collector may collect, a payment of all or part of the taxes estimated by the tax collector to be due on such property. Immediately after the taxes are actually extended on the tax roll, the tax collector shall credit the amount paid as provided by law, allowing the discount under ORS 311.505 and not charging interest for the amount of taxes satisfied by such payment. Where there has been an underpayment, additional taxes shall be collected, and where there has been an overpayment, refund shall be made as otherwise provided by law."

Technically, the tax collector complied with the law governing the mailing of tax statements because the statement was "mail[ed] to [the] person * * * *shown on the tax roll* as an owner of [the property]." ORS 311.250(1) (emphasis added). Unfortunately for Plaintiff, the person shown on the tax roll as the owner was in fact the former owner because the county's records had not been updated to reflect the change in ownership.

³See ORS 311.505(1), requiring trimester payments on November 15, February 15, and May 15.

⁴Defendant actually cited subsection (3) of the statute for the rule pertaining to nonreceipt of tax statement, but the provision appears in subsection (2).

This brings the court back to Plaintiff's argument as to fault.

The question properly framed is whether the law provides for waiver of interest, where, as here, the taxpayer notifies the tax collector of a change of ownership and provides an address to which tax statements should be mailed and the tax collector fails to update the records and, as a result, sends the tax statement to the wrong address. The answer is that it does. A close examination of the statutes reveals a system of shared responsibility intended to ensure the fair and efficient collection of revenue.

Property owners are statutorily required by ORS 311.555 to keep the tax collector informed of their "true and correct address" and, under ORS 308.212, to notify the assessor of any change of address within 30 days of the date of the change. The tax collector, in turn, is to "note upon the tax roll * * * the true and correct address of each person * * * owning real or personal property in this state, as furnished under ORS 311.555 or as otherwise ascertained by the tax collector." ORS 311.560. If the property owner fails to provide current address information, the resulting failure to receive the tax statement comes at a cost: the imposition of interest. Thus, the rule found in subsection (2) of ORS 311.250, quoted above. On the other hand, if the tax collector fails to update the official records upon either notification or discovery of a change of address, the collector is liable for damages. The statute provides in pertinent part:

///

"The failure of the tax collector to keep true and correct addresses, as provided in ORS 311.560 * * * shall not invalidate any proceeding to collect taxes, *but shall subject the tax collector to any damages sustained by any person injured by the failure of the tax collector to keep the addresses or to give the notice [of delinquent taxes].*" ORS 311.565 (emphasis added).

Here the tax collector did not keep the true and correct address as provided in

ORS 311.560 and, under ORS 311.565, the collector is subject to damages. The interest imposed is a form of economic damage. This result does not vitiate the rule in ORS 311.250(2) because it is not the taxpayer's failure to receive the statement that invalidates the assessment of interest, but rather the failure of the tax collector to update the records upon taxpayer notification of a change of ownership and address.

In its Answer, Defendant asserts that the "legislature determined that all property owners are presumed to know, first, whether or not they have a tax burden, and next, that the statements are issued in the fall." In the present case, Plaintiff possessed a sufficient understanding of the law. She knew she had a tax burden and knew generally that statements are mailed in the fall. When Plaintiff pursued the matter, she received incomplete or incorrect information. At the very least her call to the county should have generated sufficient attention to bring about a workable and timely solution to the problem. Someone in the tax collector's office could have told Plaintiff where the statement was mailed and the amount of the tax imposed.

Admittedly, each party bears some responsibility for the untimely payment of the property taxes. Plaintiff did not pursue the matter as vigorously as she might have. For its part, Defendant did not attend to the change of address in a timely fashion and faltered when Plaintiff phoned to inquire. It was not until Plaintiff telephoned the county tax office a second time in July 2001 that the records were officially updated. This was well after the incorrect mailing of the tax statement. The testimony and physical evidence suggest Defendant received the deed by mid-February 2000 and that it had roughly six months to change its records before the tax statement was due to be mailed. On these facts, the law holds the tax collector responsible.

CONCLUSION

The court concludes that the interest imposed by the county tax authorities for

untimely payment of property taxes should be canceled pursuant to ORS 311.565 because the collector failed to update the records to reflect the change of ownership and address upon timely notification by Plaintiff.

IT IS THE DECISION OF THE COURT that the interest imposed by the county tax authorities is canceled.

IT IS FURTHER DECIDED that Defendant shall refund any interest paid. Costs to neither party.

Dated this _____ day of February, 2002.

DAN ROBINSON
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 DAN ROBINSON ON FEBRUARY 25, 2002. THE COURT FILED THIS DOCUMENT ON FEBRUARY 25, 2002.