

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KEVIN L. KLUKAS,)
)
 Plaintiff,) No. 011078C
)
 v.)
)
 DESCHUTES COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appealed the assessment of additional property taxes under ORS 311.205¹ arguing that Defendant's error does not meet the statutory standard for clerical error. Trial was held on June 21, 2002, in Bend, Oregon. Kevin Klukas appeared on behalf of Plaintiff. Laurie Craghead, Assistant Legal Counsel, Deschutes County, represented Defendant.

STATEMENT OF FACTS

Plaintiff owns property in Deschutes County identified for purposes of property taxation as Account No. 18-11-25D0-12700/109739.

On September 24, 2001, Defendant mailed Plaintiff a letter explaining that an error had been discovered in the assessment and tax roll for Plaintiff's property and as a result the county intended to correct the assessed value (AV). This letter explained that a clerical error was made when the county transitioned to a new computer system

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¹ All references to the Oregon Revised Statutes are to 1999.
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to implement the changes in property tax calculations in conformity with Measure 50.² As a result of the correction the increase in taxable assessed values (TAV) were \$13,861 for 1997-98, \$14,276 for 1998-99, \$14,706 for 1999-2000, and \$15,147 for 2000-2001. (See Def's Ex E.) The clerical error corrections made by Defendant increased the TAV of the property by adding the maximum assessed value (MAV) of the raw land. The value was omitted from the calculation performed by the computer program when calculating the 1997 MAV for the property and the error was carried forward through 2000.

Subsequently, on October 16, 2001, Defendant sent Plaintiff, via certified mail, written notice of additional property value added to the assessment roll for the tax years 1997-98 through 2000-2001. (Def's Ex G.) Plaintiff filed an appeal with this court on October 15, 2001, requesting the court deny the increase in taxes. Defendant timely filed its Answer, responding that the correction was "not a change in the real market value, but a correction in the calculation of the maximum assessed value." (Def's Answer at 1.) Defendant requested the court dismiss the case.

Plaintiff requests the court overturn the tax as invalid under the provisions of ORS 311.205 or the Measure 50 limitation that taxes may increase by no more than 3 percent a year. Or Const, Art XI, § 11(1)(b); see *also* ORS 308.146(1).³ In the event the court finds the assessment to be valid, Plaintiff requests the court order a payment plan

² In May 1997, the voters approved Measure 50 by referendum. Prior to Measure 50, property was taxed at its real market value (RMV). To implement the limit on the growth of assessed value for property taxes required by Measure 50, the concept of "maximum assessed value" (MAV) was established. For the 1997-98 tax year, which was the implementation year for Measure 50, 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). Following the implementation of Measure 50, property is taxed at the lesser of its MAV or its RMV. Or Const, Art XI, § 11(1)(f).

³ Article XI, section 11(1)(b) of the Oregon Constitution reads: "[f]or tax years beginning after July 1, 1997, the property's maximum assessed value shall not increase by more than three percent from the previous tax year."

to provide relief from the increased tax burden.

In response to Plaintiff's argument, Defendant asserts that the correction is allowed under both ORS 311.205 and the Oregon constitution. Defendant also explained the error leading to this correction was the consequence of taxpayer phone calls questioning unusual changes in their tax statements for the 1997 tax year. An investigation disclosed computer computational errors initially affecting roughly 5,000 accounts. In the intervening years several hundred additional errors were found and corrected. A pattern emerged reflecting errors of two types; one involved improvement value errors and the other land value errors. In the case of land value errors, the computer program dropped one (or in some cases both) of the two components of land value, either raw land or on-site developments (septic/sewer, water, landscaping, etc.). In Plaintiff's case, the computer program substituted a zero for the MAV of the raw land, thus, when reducing the 1995 land value by 10 percent to establish the base (MAV), as required by Measure 50, the only land value used was the on-site developments because the computer program substituted a zero for the MAV of the raw land.

COURT'S ANALYSIS

An overview of the applicable law is helpful to an adequate understanding of the court's review of the legality of the disputed correction. Prior to 1997, property was assessed at 100 percent of its RMV. ORS 308.232 (1995). Significant changes were made to the law in 1997 when, as a result of the passage of ballot Measure 50, the state's Constitution was amended to provide for a MAV which, beginning with tax year 1997-98, could not exceed 90 percent of the property's RMV for the 1995-96 tax year. Or Const, Art XI, § 11(1)(a).⁴ AV was to be the lesser of RMV or MAV. ORS 308.146(2)

⁴ Section 11 provides in part as follows:

(1997). Thereafter, "the property's maximum assessed value shall not increase by more than three percent from the previous tax year." Or Const, Art XI, § 11(1)(b). Thus, unless there are changes to the property the TAV each year will generally rise 3 percent over the previous year. By way of example, a property with a 1995-96 RMV of \$100,000 would have an MAV in 1997-98 of \$90,000, regardless of the RMV in 1997. Unless RMV was less than MAV in 1997, AV would be \$90,000. This example assumes no significant changes to the property (e.g., a remodel adding value in excess of \$10,000 in one year).

Turning to Defendant's clerical error correction, ORS 311.205 provides, in pertinent part:

"(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 or the department 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.

"(b) The officer may not correct an error in valuation judgment, except as provided in ORS 308.242 (2) and (3). Such errors are those where the assessor would arrive at a different opinion of value. The officer may correct any other error or omission of any kind. Corrections that are not corrections of valuation judgment errors include, but are not limited to, the elimination of an assessment to one taxpayer of property belonging to another on the assessment date, the correction of a tax limit calculation, the correction of a value changed on appeal, or the correction of an error in the assessed value of property resulting from an error in the identification of a unit of property, but not an error in a notice filed under ORS 310.060." (Emphasis added.)

maximum assessed value for ad valorem property tax purposes that does not exceed the property's real market value for the tax year beginning July 1, 1995, reduced by 10 percent." Or Const, Art XI, § 11(1)(a).

The additional assessment in this case covered four tax years, beginning with 1997-98. The primary issue is whether the information necessary to make the correction was contained in the assessor's records. After careful examination of the evidence pertaining to tax year 1997-98 the court is satisfied that the records contain the information necessary to make the correction. The court finds the evidence presented by Defendant is reliable and accurately reflects the assessor's records. Moreover, the correction was not a result of valuation judgment, which is prohibited by paragraph (b) of subsection (1) of the statute. See ORS 311.205(1)(b).

Defendant's Exhibit C is a copy of microfiche records of the assessor's office that shows land and improvement values for 1995. This exhibit shows a 1995 RMV for land of \$29,090; reducing this value by 10 percent, as required by Measure 50, results in a land MAV of \$26,181. Defendant's Exhibit H is a computer screen printout for 1997 before the correction was made. According to the testimony, this information was retrieved from computer back-up tapes by the Information Technology Department and made available to staff members of the assessor's office. Page 1 of Exhibit H indicates the values for land, including one row labeled "RL" referring the raw land and another row labeled "SD" referring to the on-site developments. In the "RL" row, no value is indicated for the raw land under the column labeled "MAV". The only value appearing in the MAV column is \$12,320, which appears in the site-developments row. The computer screen print-out after the correction, reflected in Defendant's Exhibit I, page 1, shows a value of \$26,181 in the MAV column, which is 90 percent of the 1995 land RMV.

Defendant's Exhibit B is a spreadsheet document prepared by the assessor's office which shows the account information before and after the correction. For the 1997-98 tax year the corrected assessed value (AV) for land is \$26,181, a difference of \$13,861 from the original assessed amount of \$12,320 for land. The clerical error

correction made by Defendant in 2001 increased the value for the 1997-98 tax year by \$13,861 (from \$75,535 to \$89,396). (See Def's Ex G.)⁵ After a painstaking review of the evidence, the court finds the documents to be accurate and reliable and the correction proper under the standards of ORS 311.205.

Having found the correction to be valid, the court turns to Plaintiff's request for relief in the form of an extended payment plan. Plaintiff acknowledges that if the correction is valid Defendant is entitled to collect the taxes, however, they request a payment plan be established as relief from this substantial and unanticipated tax burden. Although agreeable to the request for a payment plan, Defendant could find no statutory authority nor any supervisory authority from the Department of Revenue by which it could establish such a plan.⁶

ORS 311.206 sets forth the process for payment of additional taxes arising from a correction of an error on the tax roll. In pertinent part, the statute provides:

"When the roll is corrected under ORS 311.205, and taxes are added to the roll, the additional taxes shall be added to the tax extended against the property on the general property tax roll for the tax year following the current tax year, to be collected and distributed in the same manner as other ad valorem property taxes imposed on the property." ORS 311.206(1) (emphasis added).

Thus, under ORS 311.206(1), additional taxes arising because of an error correction are added to the tax bill for the tax year following the correction. The phrase "tax year" is defined as follows: "[t]ax year' or 'fiscal year' means a period of 12 months beginning on July 1." ORS 308.007(1)(c). Accordingly, because the correction was added to the tax

⁵ Exhibit G is the "Clerical Error Assessed Notice", dated October 16, 2001.

⁶ The Oregon Department of Revenue (the department) maintains supervisory authority over the property tax system. ORS 306.115. Defendant contacted the department seeking approval of a payment plan whereby the taxes could be paid over a four year period. ORS 311.206 provides that additional taxes resulting from a clerical error correction be added to the tax roll for the tax year following the one in which the correction was made. The department determined it had no authority to override the specific statutory procedure of ORS 311.206. Therefore it denied Defendant's request for a payment plan.

roll by Defendant in October 2001, the additional taxes arising because of the correction will be due November 15, 2002.

This time frame for payment of additional taxes as provided in ORS 311.206(1) was recently extended by the legislature. Prior to 1999, ORS 311.206 required that additional taxes from the correction of an error became due essentially one month after the tax roll was corrected. See ORS 311.206 (1997).⁷ Under this version of the statute, the additional taxes because of Defendant's correction would have become due on or about November 16, 2001, one month after the date Defendant added the additional taxes to the roll. However, because of the revision to ORS 311.206 by the 1999 legislature, the additional taxes are not due until November 15, 2002, approximately one year following the notice of correction.

The court finds that ORS 311.206 establishes the intent of the legislature to provide a process for payment of additional taxes arising because of a correction made to the tax roll pursuant to ORS 311.205, therefore, the court must deny Plaintiff's request for a long-term payment plan. The court notes, however, that ORS 311.206(1) provides that the additional taxes shall "be collected and distributed in the same manner as other ad valorem property taxes imposed on the property." Because of this provision, Plaintiff has the option of paying the taxes in one-third installments due on or before November 15, 2002, February 15, 2003, and May 15, 2003. See ORS 311.505(1). Further, the 3 percent discount for full payment of taxes and the 2 percent discount for two-thirds

⁷ ORS 311.206 (1997) provided:

"When the roll is corrected under ORS 311.205, and taxes are added to the roll or taxes already on the roll are increased, the additional taxes becoming due shall be payable without interest if paid in the period prior to the 16th of the month next following the month of the correction. If not paid within such period, the additional taxes shall thereafter be considered for all purposes of collection and enforcement of payment as having become delinquent on the date they would normally have become delinquent if timely extended on the roll or rolls in the year or years for which the correction was made and shall bear interest at the rate provided in ORS 311.505 beginning with the 16th of the month next following the month of the correction, until paid."

payment of taxes also apply. See ORS 311.505(3).

CONCLUSION

The court concludes that Defendant's assessment of additional taxes to correct a clerical error meets the statutory standard of ORS 311.205. The additional taxes added to the roll on October 16, 2001, will be due on November 15, 2002; payment of the taxes may be made under the provisions of ORS 311.505. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is denied.

IT IS FURTHER DECIDED that Defendant's assessment of additional taxes is upheld.

Dated this _____ day of August, 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.