

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

GARY E. BOWERS,)
)
 Plaintiff,) No. 011079D
)
 v.)
)
 DESCHUTES COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals the assessment of additional property taxes under ORS 311.205,¹ arguing that taxes were timely paid in full each year and that the corrected assessments operate as a penalty for which relief is in order. Plaintiff's position challenges generally Defendant's compliance with the statutory standards for clerical error corrections and seeks any equitable relief that may be appropriate. Trial was held on June 21, 2002, in Bend, Oregon. Plaintiff appeared on his own behalf. Defendant was represented by Laurie Craghead, Assistant Legal Counsel for Deschutes County.

STATEMENT OF FACTS

Plaintiff owns property in Deschutes County identified as assessor's Account No. 16-12-18 0001701, Serial # 175207. Plaintiff purchased the property in February 1998.

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). That letter explained that a clerical error was made when the county moved to a new computer system

¹ All references to the Oregon Revised Statutes (ORS) are to 1999.
DECISION CASE NO. 011079D

to implement the changes in property tax calculations in conformity with Measure 50.² As a result of the correction, the increases in taxable assessed values (TAV) were \$101,057 for 1997-98, \$104,088 for 1998-99, \$109,462 for 1999-2000, and \$112,746 for 2000-01. (See Def's Ex E.) However, because of the February 1998 purchase, Plaintiff is a bona fide purchaser (BFP) under ORS 311.235.³ Accordingly, if the correction is upheld by the court, Plaintiff will only be liable for the additional taxes for the 1999-2000 and 2000-2001 tax years.

The assessor's office added additional value in 1998 due to new construction with a real market value (RMV) of \$19,565. That value was adjusted to \$16,630 as provided in ORS 308.153(1)(b) (which adjusts the market value of the addition by multiplying that value by "the ratio of average maximum assessed value over the average real market value for the assessment year.") (Def's Ex B.) See also ORS 308.146(3)(a) (which provides an exception to the constitutional limit of a 3 percent annual increase in maximum assessed value.) The assessor also proposed adding \$2,251 to the 1999 MAV because of minor construction. Defendant has agreed to remove that proposed addition to maximum assessed value (MAV)⁴ because of the statutory limitation in ORS 308.149(5)(b)(B) prohibiting the addition of value for "minor construction", defined as that with a value in one year of \$10,000 or less. That amount, multiplied by 1.03, will be removed for tax year 2000-2001.

Returning to Defendant's correction, the assessor's office sent Plaintiff written

² In May 1997, the voters approved Measure 50 by referendum. Or Const, Art XI, § 1. Measure 50 amended the state's constitution to impose a limit on the growth of assessed value for property taxes.

³ The statute provides: "No ad valorem taxes imposed on real property * * * by a bona fide purchaser shall be a lien on the real property * * * unless at the time of purchase the taxes were a matter of public record." ORS 311.235. The parties agree Plaintiff meets the statutory definition of a bona fide purchaser.

⁴ The adjusted MAV addition was \$2,151.
DECISION CASE NO. 011079D

notice dated October 16, 2001, of additional property value added to the assessment roll for tax years 1997-98 through 2000-01. (Def's Ex G.) Plaintiff filed an appeal with this court on October 10, 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). In the event the court finds the assessment to be valid, Plaintiff requests the court order a payment plan 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 numerous 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 improvement value errors, the computer program dropped one (or in some cases both) of the components of improvements, either original improvements or new improvements added to the property between 1995 and 1997. In Plaintiff's case, the computer program allegedly substituted a zero for the MAV of the original improvements.

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).⁵ AV became the lesser of RMV or MAV. ORS 308.146(2) (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.

There were additions to the property in this case, as set out in the factual statement above. However, only the addition of the original buildings, which increases MAV by \$101,057, is at issue.

The statute providing for clerical error corrections reads, 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

⁵ Section 11 provides in part as follows: "For the tax year beginning July 1, 1997, each unit of property in this state shall have a 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).

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.”

ORS 311.205 (emphasis added).

According to Defendant, the clerical error corrections made increased the TAV of the property by adding the MAV of the original improvements, which had been omitted from the calculation performed by the computer program when calculating the 1997 MAV for the property. The error was carried forward through 2000. As a result, the additional assessment in this case covered four tax years, beginning with 1997-98, two of which drop off because of the BFP factor. The primary issue is whether the information necessary to make the correction was contained in the assessor’s records.

Defendant’s Exhibit C is a copy of a microfiche record from the assessor’s office that shows land and improvement values for 1995. That exhibit shows a 1995 RMV for improvements of \$112,285; reducing this value by 10 percent, as required by Measure 50, results in a land MAV of \$101,057. The 1997 improvement RMV was \$191,915. The increase is due in part to new construction between 1995 and 1997. The 1997 improvement MAV should have been the sum of 90 percent of the 1995 improvement RMV plus the adjusted value of the changes between 1995 and 1997. However, Exhibit D shows the total 1997 improvement MAV of \$41,990. That number is apparently the MAV of the new construction. Defendant’s Exhibit H is a computer screen print-out 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 2 of Exhibit H shows a zero where the improvement MAV should have appeared. The computer also carried over from page 1 of that exhibit the land MAV of \$89,235 instead of the land special assessed value (SAV) of \$12,865. The corrections appear on Defendant's Exhibit I, page 2. Defendant added \$101,057, representing 90 percent of the 1995 improvement RMV. The total MAV is \$155,912, which is the total of the land maximum special assessed value (MSAV) of \$12,865, the base improvement MAV of \$101,057, and the new construction MAV of \$41,990.

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 the buildings is \$101,057. The clerical error correction made by Defendant in 2001 increased the value for the 1997-98 tax year by \$101,057 (from \$54,855 to \$155,912).

After a painstaking review of the evidence, the court finds the documents to be accurate and reliable, and, in examining the evidence pertaining to tax year 1997-98, the court finds that the records contain the information necessary to make the correction. The corrections for subsequent years comport with the dictates of Measure 50. Finally, 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).

However, pursuant to ORS 311.235, Plaintiff qualifies as a bona fide purchaser of the property for 1997 and 1998. Accordingly, Plaintiff may be held liable only for the additional taxes for the 1999-2000 and 2000-2001 tax years.

At trial Plaintiff added a request for an extended payment plan. Plaintiff acknowledges that if the correction is valid, Defendant is entitled to collect the taxes;

however, Plaintiff requests that 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 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

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.

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

///

CONCLUSION

The court concludes that Defendant's assessment of additional taxes to correct a

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."

clerical error meets the statutory standard of ORS 311.205. The additional taxes for the 1999-2000 and 2000-2001 tax years were added to the roll on October 16, 2001. The additional taxes will be due on November 15, 2002. Payment of the taxes may be made under the provisions of ORS 311.505. The proposed addition of value in 1999, which Defendant has subsequently abandoned, will not be added. Finally, 103 percent of the 1999 erroneously added new construction value will also be removed. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's assessment of additional taxes for tax years 1999-2000 and 2000-2001 is upheld, with the adjustments to those years as set forth above.

Dated this _____ day of October, 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 OCTOBER 8, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 8, 2002.