

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

FOREIGN MISSION FOUNDATION,)
)
Plaintiff,) No. 011081A
)
v.)
)
WASHINGTON COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Foreign Mission Foundation has appealed the assessment, as omitted property for the 1995-96 through 2000-01 tax years, buildings identified by Account No. R1453395 1S1 15BD 00602. Foreign Mission Foundation appeared through Gene Davis. Washington County was represented by its counsel, Elmer Dickens, with its employee, Chris Mejia, as a witness.

The question before the court is the application of the omitted property statutes, ORS 311.216¹ through ORS 311.232. A second issue, whether Foreign Mission Foundation made a timely appeal, was waived by Washington County.

STATEMENT OF FACTS

The property as to which the omitted property assessment was made consists of two buildings. Washington County appraised the buildings in 1994, and at that point decided that the buildings were incomplete. A value for assessment purposes was calculated from the determination that one of the buildings was 57.6% finished, while the other was 54% complete.

Washington County, through inadvertence, neglected to return to the property and subsequently reassess the buildings upon their completion. This lapse was not discovered until 2001. In May of 2001 Washington County sought to correct its error by

¹ All references to the Oregon Revised Statutes are to 2001.

revising the roll, seeking an additional \$16,776.19 in tax.

Foreign Mission Foundation, in addition to its other arguments, asserted that the buildings could not be assessed as omitted property, for a photograph from Washington County's files show one of the buildings as complete. Washington County did not unequivocally demonstrate when the photograph was taken. The photograph shows a small commercial building, apparently a fast food restaurant, and its parking lot, with a few outdoor tables. The building bears a sign, there are cars in the parking lot, and people about. The sun is shining. The people are lightly attired.

COURT'S ANALYSIS

Foreign Mission Foundation has argued that the law, and the facts, do not permit additional taxes to be imposed by way of omitted property. These arguments are not persuasive.

Foreign Mission Foundation's points with regard to the law begin with the argument that it is now inequitable to increase the tax burden imposed on the property, for the property is now leased under terms that do not permit this expense to be passed on to the tenants. However, equity arguments must be examined according to their context. Overwhelming numbers of taxpayers in Washington County during the years in question did pay taxes based on the entire assessable value of their property. It would be inequitable as to them to now permit Foreign Mission Foundation to be taxed on less than its entire property. It is this balancing of the equities, that of one property owner relative to the many, that caused the legislature to decide that the omission of an assessor ought to be correctable.

Foreign Mission Foundation's next argument relative to the law is that it is unfair to make the assessments, for Foreign Mission Foundation had no notice that the property had been assessed as incomplete. A response might be made that the values

presented on the tax statements ought to have been perceived by Foreign Mission Foundation as suspiciously low, as they were done at levels of 54% and 57.6% complete. *Decker v. Dept. of Rev.*, 13 OTR 443, 446 (1996). However, that point is not so compelling as previous decisions of this court, which found that one of the responsibilities that comes with owning property is the duty to monitor its assessment for tax purposes. *Jones v. Dept of Rev.*, 12 OTR 237, 241-242 (1992).

The remaining arguments of Foreign Mission Foundation relate not so much as to what the law ought to be as to attempts to prove specific points. One of these is the photograph. If the photograph was shown to have been taken on or about July 1, 1995² it would be an important piece of evidence. Inferences from the photograph lead the viewer to conclude that it could not be of a building on the order of half completed. If the building were in fact completed on or about July 1, 1995, Washington County could not add the property to the roll as omitted, for the improvements would have been in existence and part of the property at the time of its appraisal. *West Foods v. Dept. of Rev.*, 10 OTR 7 (1985).

The problem is that the court has no evidence as to when the photograph was taken. While it is clear that the photograph came from Washington County, testimony as to the time when the picture was taken was equivocal. This is hardly surprising in light of the fact that the event is on the order of seven years ago. The photograph itself gives no evidence as to when it was taken. The picture, standing alone, could as easily have been taken in September as July. If the photograph was taken sometime about September it is not at all inconsistent with the conclusion that on or about July 1 a building of this character was on the order of 50% complete. The best evidence of how

²A discussion of the importance of the July 1, 1995, assessment date is set out in *Ellis v. Lorati*, 14 OTR 525 (1999).

complete the building was on July 1, 1995, should be available from Foreign Mission Foundation. In the absence of such proof, and with only a bare photograph, the court will not go so far as to decide that the property was, contrary to the representation of Washington County, substantially complete on the assessment date.

Foreign Mission Foundation's next factual argument is the assertion that the value of the land is too high. In speaking to this point Foreign Mission Foundation presented 1995 land transactions as part of its proof, along with the assertion that due to the odd configuration of the property it is most realistically valued as one, rather than two tax lots. What robs this argument of its persuasiveness is that the land is not being assessed as omitted property. It is the value of the buildings that is in dispute. Neither Foreign Mission Foundation, nor Washington County, may use the omitted property statutes to revalue land previously assessed, and as to which the appeal period has lapsed.

Foreign Mission Foundation's final argument is that one of the buildings is smaller, by 412 s.f., than is shown in Washington County's records. The particular problem here is this allegation does not show that the omitted property assessment was in error. Washington County's assessment may be correct, despite its mistaken premise. Moreover, even if the assessment is in error, the amount of the correction has not been demonstrated. Foreign Mission Foundation has the obligation to persuade the court of the value of the property previously omitted from taxation. Pointing out a source of possible error in Washington County's calculation, specifically the square footage of the property, does not discharge this burden.³

CONCLUSION

³For purposes of this Decision the court does not need to construe ORS 311.234, as that statute does not apply until after July 1, 2002.

IT IS THE DECISION OF THIS COURT that Foreign Mission Foundation's appeal must be denied.

Dated this _____ day of March, 2002.

SCOT A. SIDERAS
PRESIDING 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 SCOT A. SIDERAS ON MARCH 13, 2002. THE COURT FILED THIS DOCUMENT ON MARCH 13, 2002.