

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

YATTEL, INC.,	)	
	)	
Plaintiff,	)	No. 011111F
	)	
v.	)	
	)	
MORROW COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on the Defendant's motion to dismiss, alleged in Plaintiff's Answer, on the ground that the Plaintiff failed to appeal within the 90 days required by ORS 305.280[2](1).<sup>1</sup> This matter is also before the court on the Defendant's Motion for Summary Judgment filed February 14, 2002. The subject property is identified as Account No. R09733 by the Morrow County Assessor. The property was added as an omitted property assessment for tax years 1996-97 through 2000-01.

Lanita Aylett appeared for Yattel, Inc. (Yattel) and Assessor Greg Sweek and Lead Appraiser Cyde Marie Estes appeared for the Defendant.

**FACTS**

The property at issue was the subject of a previous appeal to this court. See *Aylett v. Morrow County Assessor*, OTC-MD No. 991392C (Dec. 29, 2000). The property consists of rock crushing equipment. In *Aylett* the county issued an omitted property assessment against Jedediah Aylet for tax years 1996-97 through 1998-99 on August 20, 1999. Tax years 1999-2000 and 2000-2001 were later added to the appeal. Mr. Aylett obtained the property in early to mid-1996 for use in his gravel business. He

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<sup>1</sup> Unless otherwise noted, all references to the Oregon Revised Statutes are to 2001.

had at one time negotiated to buy the property from Spokane Machinery. However, negotiations fell through so he never completed the purchase. *Id.* at 2-4. The court found that the rock crushing equipment was real property. As such, it was taxable to the owner. Mr. Aylett was not responsible for the property taxes on the equipment because he did not own the property. *Id.* at 7.

Ms. Estes met with Mr. Aylett and his daughter Lanita Aylett in May 1999, prior to the property being added to the assessment roll as omitted property. Ms. Estes discussed with both parties the Defendant's intent to add the subject property to the assessment and taxation roll as omitted property. As noted earlier, the Defendant added the property to the roll on August 20, 1999. Yattel purchased the property from Spokane Machinery on August 23, 1999. Yattel's principals are Mr. Aylett's children. In fact, Ms. Aylett testified at her father's trial. Yattel leases the gravel pit from Mr. Aylett.

After the court's determination in *Aylett*, the Defendant reissued the omitted property roll correction notice to Yattel. On April 6, 2001, the Defendant sent notice to Yattel that it had corrected the roll. On October 2, 2001, the Plaintiff filed its appeal with this court. The Plaintiff objects to paying property taxes for tax years prior to its ownership of the property. Ms. Aylett stated that when Yattel purchased the property it believed that Spokane Machinery should have been billed for the prior years' property taxes. The Plaintiff further objects that the Defendant overvalued the property.

As noted earlier, in its Answer, the Defendant asked the court to dismiss the appeal because the Plaintiff's appeal was not timely filed. The Defendant's Motion for Summary Judgment alleges that, as to tax years 1996-97 through 1998-99, the taxes were a lien on the property at the time of the Plaintiff's purchase. Ms. Estes also pointed out that the Plaintiff, through its representative Lanita Aylett, had actual notice

of the Defendant's intent to assess the property via Ms. Aylett's meeting with Ms. Estes in May 1999.

### COURT'S ANALYSIS

A review of the Plaintiff's materials shows the Defendant gave the Plaintiff actual notice of the Defendant's roll correction for omitted property no later than April 6, 2001. The Plaintiff did not file its appeal until October 24, 2001. This interval is longer than the 90 days required by ORS 305.280(1), which reads, in part:

"Except as otherwise provided in this section, an appeal under ORS 305.275 (1) or (2) shall be filed within 90 days after the act, omission, order or determination becomes actually known to the person, but in no event later than one year after the act or omission has occurred \* \* \*."

The Plaintiff has not presented any fact or argument that prevents the application of this statute. The Defendant's motion is granted.<sup>2</sup> Now, therefore,

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IT IS THE DECISION OF THIS COURT that the Defendant's motion to dismiss is allowed. The Complaint is dismissed.

Dated this \_\_\_\_\_ day of May, 2002.

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<sup>2</sup>Because the court is granting the Defendant's motion to dismiss it need not rule on its Motion for Summary Judgment. However, the court notes that taxes on omitted property, either real or personal, become a lien on the property on the date that the addition is made on the tax roll. ORS 311.405(7) (1999). The property was added to the roll, albeit as personal property rather than real property, on August 20, 1999. The Plaintiff purchased the property on August 23, 1999.

Additionally, because the Plaintiff had actual notice of the Defendant's intent to add the property to the roll as omitted property prior to its purchase, there is some doubt as to whether the Plaintiff is a bona fide purchaser.

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SALLY L. KIMSEY  
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 SALLY L. KIMSEY ON MAY 31, 2002. THE COURT FILED THIS DOCUMENT ON MAY 31, 2002.**