

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WILLIAM R. EVANS and JACQLYN R. EVANS,)	
)	
)	
Plaintiffs,)	No. 011132F
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal a clerical error assessment by Defendant for tax years 1997-98, 1998-99, 1999-2000, and 2000-2001.¹ Trial on the matter was held by telephone June 27, 2002. Jacquelyn Evans appeared for Plaintiffs. Laurie Craghead, Assistant Legal Counsel, for Deschutes County, represented Defendant.

STATEMENT OF FACTS

The subject property is a rental home owned by Plaintiffs, who live in Cottage Grove. The property is identified in the Deschutes County Assessor's records as Account No. 181124D007700 (Serial # 107365). The real market value (RMV) of the property in 1995 was \$52,940, with \$29,855 allocated to the land. (Def's Ex C.) The RMV for the 1997-98 tax year, which was the first year of the Measure 50 changes, was \$51,460. The maximum assessed value (MAV) on the tax statement that year was \$35,005. (Def's Ex D.) Because MAV was less than RMV, assessed value (AV) was \$35,005.

On September 24, 2001, Defendant sent Plaintiffs a "Notice of Intention to

¹ Plaintiffs' Complaint could be construed as appealing tax years 1990 forward, because paragraph I of the preprinted Complaint form reads: "For the tax year(s) 1990 - Present plaintiff owned/leased property identified by the assessor * * *." However, the focus of the balance of the Complaint clearly refers to Defendant's assessment of additional taxes, which affected 1997-98 through 2000-2001, and Plaintiffs' arguments at trial concerned only that assessment.

Assess Due to Clerical (or Other) Error.” (Def’s Ex E). That notice included the following language:

“A clerical error has been discovered on your account for the years 1997 through 2000. In 1997, Deschutes County encountered a number of serious issues while implementing the changes required by Measure 50. Unfortunately, during this complex implementation, we inadvertently left off a portion of your land value from the roll. This correction will also affect the 2001-2002 assessment roll and will be reflected on your upcoming tax statement. Any amounts owing for prior years will not be due and payable until November 15, 2002.”

(*Id.* at 1.) That notice further indicated that the taxable assessed value (TAV) would be increased from \$35,005 to \$47,649 for tax year 1997-98, from \$36,055 to \$49,075 for tax year 1998-99, from \$37,136 to \$50,546 for tax year 1999-2000, and from \$38,250 to \$52,063 for tax year 2000-2001. Plaintiffs were given until October 15, 2001, to show cause why the proposed correction should not be made. The corrections to the roll were made on or about October 16, 2001. Plaintiffs were sent a notice to that effect. (Def’s Ex G.)

Plaintiffs request “reversal” of the additional assessment, arguing that while “[t]his huge tax increase may be legal, * * * it is immoral and should be unconstitutional.” (Ptf’s Complaint at 1.)

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).² 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.

² Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 1999.
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Or Const, Art XI, § 11(1)(a).³ AV was to be 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. For example, a property with a 1995-96 RMV of \$100,000 would have a MAV in 1997-98 of \$90,000, regardless of the RMV in 1997. Unless the RMV was less than the MAV in 1997, the 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).

Defendant asserts a clerical error was made in 1997 when converting to the new Measure 50 changes, and that the mistake was carried forward for the next three tax years. The error is blamed on a computer glitch, which dropped a component of the property’s land value in 1997 when calculating MAV. Defendant relies on ORS 311.205 for the correction it made in October 2001.

ORS 311.205 provides, in relevant 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

³ 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).

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.)

Under the Measure 50 mandate, the MAV for the subject property in 1997 (1997-98 tax year) should have been \$47,646, which is 90 percent of the RMV on the roll as of July 1, 1995.⁴ However, the MAV in 1997 was only \$35,005, a difference of \$12,641. (See Def’s Ex D.) Because the land value in 1995 was \$29,855, the 1997 land MAV should have been \$26,869.⁵ Defendant’s Exhibit H, which is a photocopy of the computer screen for the subject property prior to the clerical error correction, shows that the MAV attributed to the land for tax year 1997-98 was only \$14,225. The corrected land MAV, shown on page 1 of Defendant’s Exhibit I, which is a photocopy of the computer screen after the correction, is \$26,869. The increase is \$12,644. The correction made by Defendant on October 5, 2001, increased the TAV for tax year 1997-98 by \$12,644, to \$47,649. (Def’s Ex F, at 1.) Each year thereafter, beginning with the 1998-99 tax year, Defendant increased the MAV 103 percent, as required by Measure 50. The court is satisfied that the information presented by Defendant accurately reflects the assessor’s records before and after the clerical error correction and that Defendant’s correction did not involve valuation judgment.

⁴ $\$52,940$ (1995 RMV) $\times .9 = \$47,646$.

⁵ $29,855 \times .9 = 26,869$.

Having found the correction to be valid, the court turns to Plaintiffs' request for relief in the form of an extended payment plan. 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 that version of the statute, the additional taxes would have become due on or about November 16, 2001, one month after the date Defendant added the additional taxes to the roll. (See Def's Ex G.) 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 concludes 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. The court must therefore deny Plaintiffs' 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, Plaintiffs have 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).

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CONCLUSION

In this case, the property's MAV and AV in 1997 were considerably less than 90 percent of the July 1, 1995, RMV (\$35,005 versus \$47,646). The error was discovered

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."

in 2001. Defendant then relied upon ORS 311.205 to correct the error. The information necessary to make the correction was contained in the assessor's records, and the correction was made in accordance with ORS 311.205. Accordingly, the correction was valid. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' request for reversal of the clerical error assessments is denied and the increased assessments and corresponding increases in taxes stand.

IT IS FURTHER DECIDED that Plaintiffs' request for a payment plan is denied.

IT IS FURTHER DECIDED that Defendant's request for dismissal, included in its Answer, is denied.

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.