

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JOHN F. WHITE III and ELIZABETH ANN WHITE,)	
)	
Plaintiffs,)	No. 011147F
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant's assessment of additional property taxes under ORS 311.205,¹ arguing that all of the information necessary to make the corrections is not in the records submitted into evidence. Trial was held on June 20, 2002, in Bend, Oregon. Plaintiffs were represented by Martin Hansen, Attorney at Law, Bend. Defendant was represented by Laurie Craghead, Assistant Legal Counsel for Deschutes County.

STATEMENT OF FACTS

Plaintiffs own certain real property in Deschutes County identified in the assessor's records as Account No. 17-13-28 0002200, Serial # 109350. The real market value (RMV) of the property for tax purposes for the 1995-96 tax year was set by Defendant at \$203,828. Because the property was under farm use special assessment, the assessed value (AV) that year was \$136,155. The RMV for the 1997-98 tax year was \$255,105, with \$99,250 allocated to the land and \$155,855 allocated to the improvements. The increase was due in part to new construction in 1996. Plaintiffs added a deck, a garage and some concrete that year. The AV appearing on Plaintiffs' tax statement in 1997 (for the 1997-98 tax year) was \$31,555, a decrease of more than

¹ Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 1999.
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\$100,000 from the 1995-96 tax year. On August 6, 1998, Defendant made a slight correction to the AV, which increased that value by \$70, to \$31,625. Thereafter, the AV increased 3 percent per year through tax year 2000-2001.

On September 24, 2001, Defendant mailed Plaintiffs a letter explaining that an error had been discovered in the assessment and tax roll for Plaintiffs' property, and as a result the county intended to increase the AV. This letter explained that a clerical error was made when the county was "implementing the changes required by Measure 50." (Def's Ex E, at 1.) Measure 50 was a referendum Measure approved by the voters in May 1997 that generally reduced property tax values beginning with the 1997-98 tax year and limited future growth in those values. As a result of Defendant's correction to Plaintiffs' account, the increase in AV was \$103,127 for 1997-98, \$106,223 for 1998-99, \$109,410 for 1999-2000, and \$112,693 for 2000-2001. (See Def's Ex E.) Defendant explained that the clerical error corrections increased the AV of the property by adding the maximum assessed value (MAV) of the original improvements, which had been omitted from the calculation performed by the computer program when calculating the total 1997 MAV for the property. The error was carried forward through 2000.

The assessor's office sent Plaintiffs written notice dated October 16, 2001, explaining that additional property value was added to the assessment roll for the tax years 1997-98 through 2000-2001. (Def's Ex G.) Plaintiffs filed an appeal with this court on November 8, 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.

In their Complaint, Plaintiffs request that the taxable assessed value (TAV) be
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reduced. At the conclusion of the trial, Plaintiffs argued that the information provided by Defendant and submitted into evidence to support the correction was not sufficient to perform the calculations necessary to make changes. Plaintiffs stipulated to the authenticity of the Defendant's records, except for Exhibit J, which, on its face, declares the information "not warranted or guaranteed accurate."

In response to Plaintiffs' argument, Defendant asserts that the correction is allowed under both the ORS 311.205 and that all the information necessary to support the correction is contained in the assessor's records as submitted into evidence. Moreover, Defendant stresses that the correction only added the MAV of the original buildings, which was dropped when the computer was calculating the improvement MAV in 1997.

COURT'S ANALYSIS

An overview of the applicable law is helpful to an adequate understanding 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).² 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). There are exceptions to the 3 percent annual limit on growth in value that are not relevant here. See ORS 308.146(3)

² 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).

to 308.153 (providing a method for calculating MAV where there are changes to the property such as new construction, partitioning, rezoning, etc.)

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 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).

Defendant also explained that 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 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 Plaintiffs' case, Defendant asserts that the computer program substituted a zero for the MAV of the original improvements. As a result, only the adjusted value of the new construction in 1996, plus the land maximum special assessed value (MSAV), was used to calculate the total AV for the 1997-98 tax year.

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 submitted for trial.

Defendant's Exhibit C is a copy of microfiche records from the assessor's office showing land and improvement values for 1995. That exhibit shows a 1995 RMV for improvements (buildings) of \$114,585. Reducing this value by 10 percent, as required by Measure 50 in calculating the 1997-98 MAV, results in an improvement MAV of \$103,127. 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 the land MAV carried over from page 1 of that exhibit (\$81,130) plus the MAV of the new construction in 1996 (\$18,575).³ Page 1 of Exhibit H also shows a land maximum special assessed value (MSAV) of \$13,050. However, there are no numbers in the MAV column on page 2 above the \$81,130 land MAV. According to the testimony, the 1997 MAV for the existing structures (the house) belongs in that column. The explanation given for the absence of that number is that the base improvement MAV (1995 improvement RMV less 10 percent) is missing altogether and was omitted by the computer, which picked up only the new construction, with a RMV of \$21,350.

³ In the column marked "Ratio."

Defendant's Exhibit I is a computer screen print-out for 1997 after the disputed correction. Page 2 of Exhibit I shows \$103,127 at the top of the MAV column. Below that number appears the number \$184,257, which is the sum of the base improvement MAV of \$103,127, plus the land MAV of \$81,130 carried over from page 1. The \$103,127 building MAV is easily verified because it is 90 percent of the 1995 building RMV, as required by Measure 50. This is the clerical error correction made by the county for the 1997-98 tax year. The original assessment that year was only \$31,625, which was the sum of the MSAV of the land (\$13,050) and the MAV of the new construction in 1996 (\$18,575). The final TAV is \$134,752 and is the sum of the base improvement MAV of \$103,127, the land MSAV of \$13,050, and the new construction MAV of \$18,575.

The court acknowledges that it is difficult to sort out all the numbers on the printed versions of the computer screens before and after the correction, marked as Defendant's Exhibits H and I. Some of the difficulty interpreting those pages stems from the fact that a portion of the land is under special assessment. The 1996 construction adds an additional wrinkle. However, after a 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 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). The court would be more comfortable if the final TAV of \$134,752 appeared somewhere on Defendant's Exhibit I, not because there is any doubt about the validity of that number, but because there is some concern that future

calculations may come up with the wrong number.⁴ However, the corrections made by Defendant and disputed by Plaintiffs were done in accordance with the statute.

The additional taxes are not due until November 15, 2002. ORS 311.206. Moreover, 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).

CONCLUSION

The court concludes that Defendant's assessment of additional taxes to correct a clerical error made in 1997 and carried forward through tax year 2000-2001 meets the statutory standard of ORS 311.205. The additional taxes for the 1997-98, 1998-99, 1999-2000 and 2000-2001 tax years, 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,

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IT IS THE DECISION OF THIS COURT that Defendant's clerical error correction resulting in the assessment of additional taxes for tax years 1997-98, 1998-99, 1999-2000 and 2000-2001 is upheld.

Dated this _____ day of October, 2002.

⁴ Especially troubling is the fact that the computer on page 2 of Exhibit I adds the base MAV of \$103,127 to the land MAV of \$81,130, and nowhere on that exhibit is there a summing of the base MAV, the land MSAV, and the new construction MAV.

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.