

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

LARRY SCHMIT and EILENE SCHMIT, )  
 )  
 Plaintiffs, ) No. 011201F  
 )  
 v. )  
 )  
 LANE COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

Plaintiffs appeal the imposition of interest for delinquent property taxes for tax years 1997-98 through 2001-02. Larry and Eilene Schmit appeared pro se. Gloria Rogers, Deputy in Collections/Foreclosures, appeared for Defendant.

**STATEMENT OF FACTS**

Plaintiffs purchased two adjoining parcels in 1992, a 14-acre parcel and a 17-acre parcel. In 1995 or 1996 the parcels were combined to form one tax lot. The new 31-acre tax lot has two accounts assigned to it. The bulk of the property, 26 acres, is specially assessed forestland. The balance of the property, five acres, is where the improvements associated with the property are located.<sup>1</sup> In 1997, Plaintiffs purchased a manufactured structure and had it placed on the five-acre portion of the property.

In the information Defendant received from the Department of Motor Vehicles (DMV), the ownership and address information was as follows:

"REG: SCHMIT, LAWRENCE GENE  
REG: SCHMIT, EILENE VIOLA  
ADD: 88403 VINEYARD VENE  
PO BOX 21734  
EUGENE OR 97402 LANE"

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<sup>1</sup>It is unclear what is included in the improvements. However, they are not insubstantial. In tax year 2000-01 the real market value of the improvements was \$17,330; in tax year 2001-02 the real market value was \$61,530.

(Def's Ex A.)

When Defendant received the above information, it set up a third account.<sup>2</sup> Defendant listed the owner and address of the account as "Larry Schmit, 88403 Vineyard Lane, Veneta, OR 97487." (Def's Feb 6, 2002, Ltr at 1.) Accordingly, Defendant mailed the tax statements to the Vineyard Lane address. This is the address where the property is located. Plaintiffs have never received their mail at the Vineyard Lane address. Their mailing address is P.O. Box 21734, Eugene, Oregon 97402. They never received the tax statements for the manufactured structure. They only learned that property taxes for the manufactured structure had never been paid when they applied to refinance their home.

During the summer of 1997, after the manufactured structure was placed on the property, a representative from Defendant visited the property to "appraise the value of our property with the manufactured home that was now located on said property." (Pfts' Mar 16, 2002, Ltr at 1.) That representative told Mr. Schmit that the manufactured structure and the five acres would be one tax statement while the 26-acres would be on a second tax statement. This is consistent with what Plaintiffs were told after the two original lots were combined. In the first year after the lots were combined, Plaintiffs received a single tax statement. When they checked with Defendant they were told that they would receive two tax statements in the following year.

## **COURT'S ANALYSIS**

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<sup>2</sup> It is possible that Defendant set up a third account because the ownership information for the manufactured structure was not precisely the same as the ownership information for the land. See OAR 150-308.875-(A). Pursuant to that administrative rule, "[i]f the taxpayer submits documentation establishing that the ownership of the manufactured structure and land upon which the structure is located is the same, the assessor must classify the manufactured structure as real property."

ORS 311.555<sup>3</sup> requires that owners of taxable property inform "the tax collector of the county where such real or personal property is situate[d] \* \* \* of the true and correct address of the person, firm or corporation." Correspondingly, the tax collector is required to note on the tax roll "the true and correct address of each person, firm or corporation owning real or personal property in this state, as furnished under ORS 311.555 or as otherwise ascertained by the tax collector." ORS 311.560 (emphasis added). Plaintiffs, through DMV, informed Defendant of their mailing address. Defendant had to choose between the situs address and Plaintiffs' mailing address. In choosing the incomplete situs address, Defendant had to make the assumption that "VENE" meant Veneta. Then an employee had to look up the zip code for Veneta. On the other hand, the Eugene mailing address was complete. Additionally, the use of a post office box in the Eugene address suggests a mailing address.

The issue in this case is whether Defendant choosing the incomplete situs address instead of the complete correct mailing address, combined with the statement by Defendant's representative that Plaintiffs would receive two tax statements, are mistakes such that Plaintiffs should be relieved of the interest charges.

While "[t]he failure of the tax collector to keep true and correct addresses, as provided in ORS 311.560 \* \* \* [does] not invalidate any proceeding to collect taxes, but [instead] shall subject the tax collector to any damages sustained by any person injured by the failure of the tax collector to keep the addresses \* \* \* ." ORS 311.565. In the present case, Defendant failed to note the "true and correct address" as required by ORS 311.560. Additionally, Defendant inadvertently misled Plaintiffs by telling them

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<sup>3</sup> All references to the Oregon Revised Statutes are to 2001. However, the court notes that none of the statutes cited have changed since 1981.

that they would receive two rather than three tax statements. Plaintiffs have been damaged by Defendant's imposition of interest. See generally *Russell v. Lane County Assessor*, OTC-MD 010128C, 2001 WL 455725 (Apr 18, 2001) and cases cited therein.

Defendant also argues that Plaintiffs should have noticed that they were not paying property taxes on the manufactured structure. Certainly, if a tax statement is not received, a taxpayer is still obligated to pay the property taxes owed. However, since they received two tax statements as mentioned by Defendant's representative, they had no reason to inquire about a potential third tax statement. Furthermore, Plaintiffs argue for relief from only the interest imposed.

### **CONCLUSION**

The court finds that Defendant shall cancel the interest charged for the late payment of taxes for tax years 1997-98 through 2001-02 because the late payment resulted from the tax collector's failure to note the "true and correct address" on the tax roll. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Defendant shall cancel the interest charged for the late payment of taxes for tax years 1997-98 through 2001-02.

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

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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 JUNE 19, 2002. THE COURT FILED THIS DOCUMENT ON JUNE 19, 2002.**