

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Property Tax

KIRBY FIEGEL,	)	
	)	
Plaintiff,	)	No. 011204E
	)	
v.	)	
	)	
WALLOWA COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION AND JUDGMENT</b>

Plaintiff appeals Defendant’s denial of the three percent discount for the early payment of property taxes. Trial in the matter was held January 29, 2002.<sup>1</sup> Kirby Fiegel appeared on his own behalf. Gay Fregulia, Wallowa County Assessor, and Ernestine Kilgore, Wallowa County Tax Collector appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as “taxpayer” and “the county.”

**STATEMENT OF FACTS**

Taxpayer owns taxable property in Wallowa County. For unknown reasons, taxpayer never received a tax statement for the 2001-02 tax year. When returning home from work on November 15, 2001, taxpayer read an article in the local paper informing citizens that property taxes were due November 15. Because the county’s offices were closed by the time he read this article, taxpayer waited until the next day to inquire about his tax statement. On November 16, 2001, taxpayer went to the county’s offices and was advised the county mailed the statement a few weeks earlier. Taxpayer paid his tax liability at that time. In doing so, he incorporated the three percent discount and paid what would have been due November 15. The county

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<sup>1</sup> The court converted the proceeding from a case management conference into a trial at the request of the parties.

advised taxpayer there would be a balance left owing on the account. As a result, taxpayer filed this appeal.

Taxpayer maintains he should be entitled to the three percent discount because he never received his property tax statement. In discussions with the local post office, taxpayer was informed others had also not received their statements. During trial, both taxpayer and Ms. Kilgore testified that the post office identified one other property owner who had not received a statement. There was a question, however, whether the ex-husband of this person had received the statement instead. In any case, Ms. Kilgore testified that the county did not receive excess calls regarding missing tax statements so the county has no reason to believe it made a mistake when mailing the statements. Taxpayer maintains that, because there is doubt whether the county mailed his tax statement, he should be entitled to the three percent discount.

### **COURT'S ANALYSIS**

ORS 311.505<sup>2</sup> provides a three percent discount when a tax liability is paid in full by November 15 of the current tax year. It states, in pertinent part:

“(1) Except as provided in subsection (6) of this section, the first one-third of all taxes and other charges due from the taxpayer or property, levied or imposed and charged on the latest tax roll, shall be paid on or before November 15, the second one-third on or before February 15, and the remaining one-third on or before May 15 next following.

“\* \* \* \* \*

“(3) Discounts shall be allowed on partial or full payments of such taxes, made on or before November 15 as follows:

“(a) Two percent on two-thirds of such taxes so paid.

“(b) Three percent where all of such taxes are so paid.”  
ORS 311.505.

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<sup>2</sup> All references to the Oregon Revised Statutes are to 1999.

The statute provides that when a taxpayer pays his full tax liability by November 15, he is entitled to a three percent discount on the liability. The statute is clear that, to receive the benefit, the payment must be made “on or before November 15.” *Id.* There are no late payment exceptions found in the statute. To grant taxpayer the discount, even though he made the payment late on November 16, would be permitting something the statute does not allow.

Taxpayer maintains he should be entitled to the discount because there is a question whether the county mailed the statement. Upon reviewing the facts, the court does not believe taxpayer has raised sufficient doubt as to whether the county mailed the statement. In any case, ORS 311.250(2) provides that a taxpayer’s failure to receive a tax statement does not invalidate the tax due. Similarly, this court has held that failure to receive a tax statement does not entitle a taxpayer to the three percent discount when payment is not timely made. *See, e.g., Ohren v. Marion County Assessor*, OTC-MD No. 991449B (March 15, 2000). “This is because it is presumed that every citizen knows that his land is taxable, that it will be assessed and taxed in due course, and that it is his duty to pay taxes timely.” *Id.* (citing *Hood River Co. v. Dabney*, 246 Or 14, 423 P2d 954 (1967)). As a result, the court finds taxpayer is not entitled to the three percent discount in this case.

### **CONCLUSION**

The court concludes that taxpayer’s failure to receive his tax statement does not entitle him to receive the discount when full payment of the tax was not made by the November 15 deadline. Now, therefore,

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IT IS HEREBY ADJUDGED AND DECREED that taxpayer’s appeal is denied.  
DECISION AND JUDGMENT

The county's denial of the three percent discount is affirmed.

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

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COYREEN R. WEIDNER  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON  
MARCH 29, 2002. THE COURT FILED THIS DOCUMENT ON MARCH 29, 2002.**