

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

ORIX CAPITAL MARKETS, LLC, )  
 )  
 Plaintiff, ) No. 011226B  
 )  
 v. )  
 )  
 MULTNOMAH COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

Plaintiff appeals Defendant's imposition of interest for the late payment of property taxes for the 2001-02 tax year. Trial in the matter was held by telephone on April 24, 2002. Appearing for Plaintiff were Ms. Beverly A. Roberts and Ms. Kelley Ann Hendrix. Appearing for Defendant were Ms. Pat Frahler and Mr. Gary Bartholomew.

**STATEMENT OF FACTS**

Plaintiff, Orix Capital Markets, LLC, is responsible for the payment of property taxes for 15 parcels of property located in Multnomah County.<sup>1</sup> Payment of the first tri-annual installment of property taxes for the parcels was due to the Multnomah County Division of Assessment and Taxation by November 15, 2001. Plaintiff's payment of \$885,346.31 was sent via certified mail and postmarked November 13, 2001, from Dallas, Texas. The payment was addressed as follows: Tax Collector, Multnomah County, 421 SW 6th Avenue, Room 300, Portland, OR 97204. (Ptf's Ex Y.)

Defendant, Multnomah County Assessor, received and posted the payment on or about November 29, 2001. (Def's Ex A at 1.) Subsequently, an employee of Defendant called to advise Plaintiff that interest charges would be imposed because the payment was received late as it was addressed to Defendant's former address. During

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<sup>1</sup> The parcels are identified as Account Nos. R182265; R335449; R182407; R182260; R182264; R182266; R182267; R182268; R182269; R182315; R488239; R182272; R182251; R182250; R182316.  
DECISION CASE NO. 011226B

the early part of December 2001, Plaintiff and Defendant exchanged documentation and discussed the reasons for Defendant's decision to impose interest charges. On December 17, 2001, Plaintiff filed an appeal with this court.

Plaintiff argues no interest should be charged because the payment was postmarked on November 13, 2001, and was sent to an address that Plaintiff's records showed Defendant accepting tax payments. Because Plaintiff's payment was sent to an old address, the payment was forwarded by the United States Postal Service (USPS) to Defendant's new address. Plaintiff's position is that it properly addressed the payment and that it should not be held responsible for the fact that the USPS continued to forward mail to Defendant's new address after the forwarding order expired. Because the USPS continued to forward mail rather than return improperly addressed mail to the sender, Plaintiff argues it did not receive notice that Defendant was no longer accepting payments at its old address. Thus, Plaintiff asserts it had no actual notice that the address it used was incorrect.

Additionally, Plaintiff contends the Oregon statute governing the receipt of tax payments is intended to make sure taxpayers properly address and timely mail their tax payments. In Plaintiff's view, its actions conform to the spirit and purpose of the statute. Plaintiff requests the payment be accepted as timely and legally tendered due to the forwarding actions by the USPS.

Defendant agrees that Plaintiff's payment bears a timely postmark of November 13, 2001. However, Defendant's position is that the law requires a payment be both timely postmarked and properly addressed to be accepted as on time.

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Because Plaintiff failed to correctly address the payment, Defendant requests the court uphold the imposition of interest for failure to pay on time.

Defendant argues that its change in address was well publicized and Plaintiff had sufficient means of verifying the correct address. Mr. Bartholomew testified as to the measures undertaken by Defendant to notify taxpayers of the address change. According to his testimony, the first year of the address change a bright pink flyer was sent with tax statements. The county also includes an informational flyer every year with the tax statements. This flyer includes both the current street address and post office box mailing address.<sup>2</sup> (Def's Ex D.) Further, the county has an informational phone line and web site, both of which provide the correct street and mailing address. The tax statements also include the correct street and mailing address for Defendant. Thus, Defendant argues that Plaintiff was provided ample notice of the change in address and had any number of methods by which it could verify the correct address before sending its payment. Defendant concludes, therefore, that Plaintiff's payment was improperly addressed to Defendant's old address, the payment arrived late, and interest charges should be imposed as provided by statute.

### **COURT'S ANALYSIS**

ORS 311.505(1)<sup>3</sup> provides that the first one-third of all property taxes due from a taxpayer "shall be paid on or before November 15[.]" ORS 311.505(2) provides that "[i]nterest shall be charged and collected on any taxes on property \* \* \* not paid when due[.]"

When payment is mailed through the United States mail, the cancellation mark on the envelope is generally considered the date payment is received. See ORS 305.820(1)(a). If a payment is lost in transmission the provisions of ORS 305.820(1)(c)

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<sup>2</sup> The county's correct mailing address is: PO Box 2716, Portland, OR 97208-2716; the correct street address is: 501 SE Hawthorne Blvd, Portland, OR 97214.

<sup>3</sup> All references to the Oregon Revised Statutes are to 1999.

apply. The statute provides in pertinent part:

"(c) Lost in transmission through the United States mail or private express carrier, shall be deemed filed and received on the date it was mailed or deposited for transmission if the sender:

"(A) Can establish by competent evidence satisfactory to the addressee that the writing or remittance was deposited on or before the date due for filing in the United States mail \* \* \* and *addressed correctly to the addressee*[" ORS 305.820(1)(c) (emphasis added.)

OAR 150-305.820<sup>4</sup> provides further guidance for determining whether a payment is received and properly mailed. The rule provides in relevant part:

"Any writing or remittance received after the due date bearing a legible postmark dated on or before the due date will be considered timely filed if *properly mailed* and the postmark is that of the United States Postal Service.

" \* \* \* \* \*

"In order for a writing or remittance to be considered '*properly mailed*' it must have been placed in a *properly addressed envelope* or other appropriate wrapper, postage duly prepaid, and placed in the hands of a private express carrier or deposited in a government mail receptacle." OAR 150-305.820 (emphasis added).

Thus, for a tax payment to be considered properly mailed and received on time two requirements must be met: (1) the envelope must be postmarked prior to November 15; and (2) the envelope must be properly addressed.

It is undisputed that Plaintiff's payment bears a postmark of November 13, 2001, from a United States Post Office in Dallas, Texas. Thus, the payment meets the first requirement of proper mailing, bearing a postmark prior to November 15.

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The court finds that Plaintiff's payment fails to meet the *properly addressed* requirement. Plaintiff incorrectly addressed the envelope to Defendant's old street address. Consequently, the payment did not reach Defendant in a timely manner.

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<sup>4</sup> All references to the Oregon Administrative Rules are to January 2000.  
DECISION CASE NO. 011226B

Notice of the county's correct address was included in the tax statement mailed to Plaintiff, as well as all taxpayers generally. Defendant provides taxpayers numerous means of confirming the correct address to send payments including an informational flyer included with the tax statement, an informational telephone number, web site and the address on the tax statement. Because Plaintiff did not properly address the envelope, the court finds that the tax payment was not properly mailed to Defendant as required by ORS 305.820 and OAR 150-305.820.

### **CONCLUSION**

It is the conclusion of the court that Plaintiff's tax payment was not properly mailed to Defendant because the incorrect address was used on the envelope. Now, therefore,

IT IS THE DECISION OF THIS COURT that the county's imposition of interest for the late payment of property taxes is affirmed.

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

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JEFF MATTSON  
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 JEFF MATTSON ON JUNE 12, 2002. THE COURT FILED THIS DOCUMENT ON JUNE 12, 2002.**