

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JUDITH J. BOYD and HAROLD S. BOYD,)	
)	
Plaintiffs,)	No. 020011C
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed the imposition of interest and the denial of the three percent discount on certain property identified in the county assessor’s records as Account No. 6010-140915-B0-00900 (Serial # 145440), for the 2001-02 tax year.

When Plaintiffs filed their Complaint they elected the court’s small claims procedure. However the issue raised by the Complaint does not qualify for small claims. See ORS 305.514¹. This defect was not discovered by the court until after the Complaint was processed and the Answer received. Accordingly, the court is converting the case from small claims to standard and waiving the additional \$15 filing fee required by ORS 305.490(1)(b).

Plaintiffs insist payment, which was mailed from Mr. Boyd’s business office in Salem, was timely made. The envelope containing the payment was run through the business’ metered postage machine and bears a “postage” date of November 15, 2001. The postmark date fixed by the U.S. Postal Service is November 16, 2001. The mail was picked up from Mr. Boyd’s office by a private mail carrier and delivered to the main post office in Salem.

It is entirely within the discretion of the assessor and tax collector to determine whether they are satisfied that the payment was timely mailed. The applicable statutory

¹ References to the Oregon Revised Statutes are to 2001.

provision is ORS 305.820, which provides in relevant part as follows:

“(1) Any writing or remittance required by law to be filed with or made to the * * * county assessor or tax collector (designated in this section as the ‘addressee’) which is:

“(a) Transmitted through the United States mail or by private express carrier, shall be deemed filed or received on the date shown by the cancellation mark or other record of transmittal, or on the date it was mailed or deposited if proof satisfactory to the addressee establishes that the actual mailing or deposit occurred on an earlier date.” (Emphasis added.)

After a case management conference, held by the court on March 11, 2002, Plaintiffs submitted additional information both to the county and the court that was intended to verify Plaintiffs’ allegation that the envelope was given to the private mail carrier on the November 15 due date and mishandled either by the private mail carrier or the U.S. Postal Service. Defendant reviewed that information and by letter dated March 27, 2002, has agreed to refund the additional amounts imposed. Defendant is satisfied that Plaintiffs did timely mail their tax payment. Defendant’s action, taken pursuant to ORS 305.820(1)(a), is administrative in nature and does not require an order or decision by the court. In fact, the court lacks the authority to grant the requested relief because the statute specifically provides that the proof necessary to establish the claim of timely payment must be found satisfactory by the addressee, which is the assessor or tax collector, not the court. See ORS 311.505.

Plaintiffs have insisted all along that it was their intent to mail the payment on November 15 and that the metered mail date should be viewed by Defendant as determinative of the date the payment was in fact mailed, rather than relying on the postmark cancellation date affixed by the U.S. Postal Service. Plaintiffs believed their case may set a precedent for the future handling of tax payments. The court is not prepared to adopt Plaintiffs’ position as law. ORS 311.505 provides that payment shall be made on or before the due date and ORS 305.820(1)(a) provides that the payment

is generally to be deemed received “on the date shown by the cancellation mark * * *.”

The court cannot rewrite the statutes.

Because Defendant has decided to grant the relief requested pursuant to its independent administrative authority conferred by the legislature pursuant to ORS 305.820, Plaintiffs' Complaint is moot. There is no matter remaining in dispute.

After a full review and the court being fully advised, now, therefore,

IT IS THE DECISION OF THE COURT that Plaintiffs' Complaint is dismissed.

Dated this ____ day of April, 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 APRIL 29, 2002. THE COURT FILED THIS DOCUMENT ON APRIL 29, 2002.