

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

GARY EDWARD CONMY,)	
)	
Plaintiff,)	No. 020112B
)	
v.)	
)	
MARION COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the interest imposed by Defendant for late payment of property taxes for 2000-2001 and 2001-02. The parties agreed to a decision based on the written record.

STATEMENT OF FACTS

Plaintiff was awarded ownership of real property located in Silverton, Oregon as a result of a divorce decree dated September 30, 1998. Due to the divorce settlement, a new deed for the property was filed. The deed clearly states that tax statements are to be mailed to Plaintiff, but Defendant mistakenly registered the property under the name Ruth An Conmy, Plaintiff's ex-wife. Defendant admits that it received the information from the new deed and that it registered the property incorrectly. Consequently, the 2000-2001 and 2001-02 tax statements were sent to Ruth An Conmy. The property taxes for the years in question were paid on January 15, 2002, by Key Title Company.

Plaintiff claims that he realized the property taxes had not been paid during a refinancing of his property. Plaintiff further states that he assumed the taxes had been paid by a prior refinancing, and therefore was not concerned that he had not received a property tax statement.

Plaintiff's Complaint requests a refund of penalties because the tax statement

was sent to the wrong address. Plaintiff seeks both a waiver of the interest charges and entitlement to the 3 percent discount allowed for full payment before the statutory deadline.

Defendant argues that failure of a taxpayer to receive a tax statement does not invalidate any tax because every citizen is presumed to know that their land is taxable. Therefore, Defendant requests that the refund of interest charges be denied because payment was not made before the statutory due date.

COURT'S ANALYSIS

The issue in this case is whether Defendant's error in sending the 2000-2001 and 2001-02 tax statements to the wrong address excuses Plaintiff from his duty to timely pay property taxes and allows him to recover the accrued interest for late payment and be granted the 3 percent discount for timely payment in full.

The failure of a taxpayer to receive a tax statement does not invalidate the tax amount due. ORS 311.250(2)¹; *See also Powell v. Lane Co.*, OTC-MD No. 991429B, WL 290836, at *1 (March 15, 2000) (holding that the defendant's failure to maintain the taxpayer's true and correct address does not negate taxpayer's responsibility to pay the taxes due). "[E]very citizen 'is presumed to have known that his land was taxable, that in due course it would be assessed, a tax levy extended against it, [and] * * * that it was his duty to timely pay his taxes[.]'" *Hood River County v. Dabney*, 246 Or 14, 28, 423 P2d 954 (1967). Consequently, the sole issue is whether Plaintiff should be granted a waiver of interest charges and entitlement to the 3 percent discount.

Plaintiff kept the tax collector informed of his "true and correct address" as

¹ All references to the Oregon Revised Statutes are to 2001.
DECISION CASE NO. 020112B

required by ORS 311.555.² Defendant, however, failed to register the property under the correct name in violation of ORS 311.560³. Consequently, according to ORS 311.565, Plaintiff may recover for damages incurred as a result of the mistake. ORS 311.565 states:

"The failure of the tax collector to keep true and correct addresses, as provided in ORS 311.560 * * * shall not invalidate any proceeding to collect taxes, but shall subject the tax collector to any damages sustained by any person injured by the failure of the tax collector to keep the addresses or to give the notice." (Emphasis added).

Interest charges were incurred as a result of Defendant's failure to keep Plaintiff's true and correct address. Interest charges constitute damages that are Defendant's responsibility. *See Campbell v. Mult. Co.*, OTC-MD No. 020187C (July 19, 2002); *See also Russell v. Lane Co.*, OTC-MD No. 010128C, WL 455725 at *2 (April 18, 2001); *See also Ohren v. Marion Co.*, OTC-MD No. 991449B, WL 290841 at *1 (March 15, 2000).

There have been cases where the court refused to waive interest charged by the county. *See Gordon v. Dept. of Rev.*, 12 OTR 288, 290 (1992) (upholding interest charges against a taxpayer because the taxpayer had over two years to realize that the county did not have the correct address). The present case is distinguished from *Gordon*, however, because Plaintiff realized the county's mistake in just over one year. Previously, the court has granted waiver of interest charges to a taxpayer who recognized the county's mistake after a similar amount of time. *See Argo Investment Corp. v. Marion Co.*, OTC-MD No. 991105E, WL 1567155 (November 5, 1999)

² The deed created as a result of the divorce settlement contained Plaintiff's correct information. Information from new deeds is given to Defendant as part of its business practices.

³ ORS 311.560 states:

"The tax collector shall note upon the tax roll * * * the true and correct address of each person, firm or corporation owning real or personal property in this state[.]"

(granting refund of interest charges to a taxpayer who did not realize the county's mistake for one and one-half years). Plaintiff, therefore, is entitled to a refund of interest charges for both tax years.

This court must next determine if Plaintiff should be granted the 3 percent discount for payment before the statutory deadline.

Discounts for early payment are incentives to pay early, not damages as a result of late payment. *Campbell*, OTC-MD No. 020187C. ORS 311.505 provides in part:

"(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."

Plaintiff did not timely pay the taxes; it is unclear whether payment would have been made timely had the tax statements been received without error. Therefore, the court holds Plaintiff is not entitled to the 3 percent discount for early payment in full.

CONCLUSION

Defendant failed to keep Plaintiff's true and correct address, and therefore is legally responsible for the resulting damages according to ORS 311.565. Plaintiff is entitled to a refund of the interest paid, but because discounts are incentives to pay early rather than damages as a result of late payment, Plaintiff is not entitled to credit for the 3 percent discount. Now, therefore,

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IT IS THE DECISION OF THE COURT that the interest charged by Defendant be canceled and any payment thereon refunded.

Dated this _____ day of August, 2002.

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 AUGUST 26, 2002. THE COURT FILED THIS DOCUMENT ON AUGUST 26, 2002.