

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BRENT C. CAMPBELL and PAMELA J. CAMPBELL TRUST,)	
)	
Plaintiffs,)	No. 020187C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appealed the county assessor's decision to include interest charges with the property tax statement which was originally mailed to the wrong address and resulted in late payment. Plaintiffs also appealed to receive credit for the three percent discount which would have been allowed had the payment been made on or before November 15, 2001. The trial was held by telephone on June 12, 2002.

STATEMENT OF FACTS

The subject property was conveyed by quitclaim deed by Brent C. Campbell and Pamela J. Campbell to "BRENT C. CAMPBELL and PAMELA J. CAMPBELL, Trustees, or their successor in trust, under THE CAMPBELL FAMILY TRUST" (Quit Claim Deed at 1). The deed was executed on March 28, 2001, and recorded July 16, 2001. The deed was not recorded properly by the county records office. While the deed indicates that the tax statements should be mailed to Mr. and Mrs. Brent C. Campbell in Mountain View, California, the records office recorded the mailing address as "Pacific Law Offices" in Costa Mesa, California. The reason for the mistake in recording is that the deed, in the upper left corner, below the spot reserved for indicating the name and address to which tax statements should be mailed, shows the deed was "Prepared By" Pacific Law Offices. Because of the recording error, the tax statement was mailed by

the county tax collector to Pacific Law Offices. The statement was mailed October 2001. A follow-up statement was mailed by the tax collector in February 2002. Meanwhile, in January 2002, Mr. Campbell was preparing his 2001 income taxes and discovered he had not paid the property taxes for the subject property. Mr. Campbell began making telephone calls and eventually learned that the tax statement had been misdirected to the law office that prepared the quitclaim deed. Mr. Campbell ascertained the tax due and paid the taxes on March 15, 2002.

Plaintiffs request a refund of the interest charged for the late payment of property taxes and credit for the three percent discount allowed for timely payment in full of the taxes.

Defendant argues that the interest was charged as required by statute and that failure of a taxpayer to receive a tax statement does not relieve the responsibility to pay the taxes. Furthermore, Defendant argues that there is no authority to allow the three percent discount because the taxes were not paid before the November 15 deadline.

COURT'S ANALYSIS

The issue presented in this case is whether Defendant's error in sending the 2001-02 tax statement to the wrong address excuses Plaintiffs from their duty to timely pay the taxes and allows them to recover the interest charged for the late tax payment and be granted the three percent discount for timely payment in full.

Plaintiffs kept the tax collector informed of their "true and correct address" as required by ORS 311.555¹. Furthermore, ORS 311.560 requires the tax collector to

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maintain the taxpayers correct address. It states:

“The tax collector shall note upon the tax roll, or in any other

¹All references to Oregon Revised Statutes (ORS) are to 2001.
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manner the tax collector deems most feasible, the true and correct address of each person, firm or corporation owning real or personal property in this state[.]” *Id.*

In this case, Defendant failed to correctly note Plaintiffs' address. However, “[t]he failure of a taxpayer to receive the [tax] statement * * * shall not invalidate any assessment, levy, tax, or proceeding to collect tax.” ORS 311.250(2). Plaintiffs are still responsible for paying the 2001-02 property taxes because “every 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).

While Defendant's mistake does not negate Plaintiffs' responsibility to pay the property taxes, ORS 311.565 provides:

“The failure of the tax collector to keep true and correct addresses, as provided in ORS 311.560, or to give the notice in the manner and form as provided for by ORS 311.545 to 311.550, 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.)

Thus, the question becomes whether the interest charged and the denial of the three percent discount constitutes “damages” for which the tax collector should be responsible.

In *Powell v. Lane Co. Assessor*, OTC-MD No. 991429B, WL 290836 (March 15, 2000), the defendant incorrectly recorded the plaintiffs' mailing address, and as a result, the tax statement was mailed to the wrong street number. The plaintiffs in that case were requesting a refund of the interest charged and recovery of the discount for early payment. *Id.* The court determined that the defendant was liable for all interest charged, but not for the discount. *Id.*

Creditors charge interest on late payments for loss of the use of the money. It

also operates as a deterrent to paying late. The practical effect from the debtor's viewpoint is that a penalty has been assessed. Interest on late tax payments is substantial; it accrues "at the rate of one and one-third percent per month, or fraction of a month until paid." ORS 311.505(2). In the present case, Defendant's error resulted in Plaintiffs accruing interest without their knowledge. The court accepts the testimony that some portion of the taxes would have been timely paid had the statement been mailed to the correct address. The additional charge constitutes a direct economic damage to Plaintiffs and subjects the collector to liability under ORS 311.565.

As for the three percent discount, Plaintiffs could have taken advantage of that benefit had the taxes been paid on time. The statute provides in relevant 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." ORS 311.505.

The discount is an incentive to taxpayers to pay at least two-thirds of the liability by November 15. In this case, the taxes were not paid timely. Plaintiffs insist they would have paid the full amount had they received the tax statement. Mr. Campbell testified to a past practice of full and timely payments to support the claim. Past practice, however, may or may not predict future behavior. The evidence is too speculative for the court to ascertain how much Plaintiffs would have paid; one-third, two-thirds, or the whole amount. Moreover, discounts are incentives to pay early rather than damages as a result of late payment. ORS 311.565 specifies that "damages sustained * * * by the failure of the tax collector to keep the [true and correct] addresses" subject the collector to liability for damages. The court has not previously granted the discount as part of a damages award. It is not inclined to do so now. It is simply too speculative. Therefore,

the court will allow for the recovery of interest, but Plaintiffs cannot be granted the three percent discount.

CONCLUSION

Defendant failed to keep Plaintiffs' true and correct address, and therefore is legally responsible for the resulting damages according to ORS 311.565. Plaintiffs are entitled to a refund of the interest paid, but not to the discount. Now, therefore,

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

Dated this _____ day of July, 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 JULY 19, 2002. THE COURT FILED THIS DOCUMENT ON JULY 19, 2002.