

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KATES PIZZA & HEPPNER VIDEO,)
)
 Plaintiff,) No. 020217C
)
 v.)
)
MORROW COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

This case involves an appeal by Kathie Maben (Maben), former owner of Kates Pizza and Heppner Video, of the decision of the county assessor to pursue her [hold her liable] for unpaid personal property taxes for the 2001-02 tax year. The trial was held by telephone on May 29, 2002, and originated as a case management conference. Maben appeared on her own behalf. Defendant appeared through Greg Sweek.

STATEMENT OF FACTS

Maben sold Kates Pizza and Heppner Video to John Gochnauer as of March 1, 2001, at which time Gochnauer began operating the business. Maben filed a personal property tax return on March 5, 2001. The return reported the value of the property and the sale to Gochnauer. Personal property taxes for the 2000-2001 tax year, which ran from July 1, 2000, to June 30, 2001, were prorated between buyer and seller as part of the sale of the business because the transaction occurred midway through the tax year. The parties made no agreement regarding the taxes for the 2001-02 tax year, which began on July 1, 2001.

The tax bill for the 2001-02 tax year, mailed by Defendant in October 2001, was sent to "MABEN, KATHIE DBA, C/O KATES PIZZA & HEPPNER VIDEO." Maben received the bill, either directly or from Gochnauer. Maben did not pay the taxes because she sold the property before the tax year began. Gochnauer did not pay the

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taxes, although he told Maben he had done so. On approximately January 22, 2002, Maben received a reminder notice stating the amount of past due and delinquent taxes. Maben filed this appeal on March 14, 2002, seeking to have the tax liability shifted to the buyer so that she would be absolved of any liability.

Maben argues that she did not own the property or have possession or control of the property for the tax year at issue and should not be responsible for the property taxes. Defendant responds that because Maben owned and possessed the property on the assessment date of January 1, 2001, she is responsible for the taxes.

The issue presented in this case is whether an individual who owns personal property on the assessment date but who sells the property before the commencement of the tax year is legally responsible for the taxes.

COURT'S ANALYSIS

ORS 308.105¹ provides generally that "all personal property shall be assessed for taxation each year at its situs as of the day and hour of assessment prescribed by law." The date and hour prescribed by law is January 1, at 1 a.m. ORS 308.210(1). January 1 is thus the assessment date in Oregon. ORS 308.007(1)(a). The tax year, however, is a twelve-month period beginning on July 1. ORS 308.007(1)(c). The January 1 assessment date corresponds to the upcoming tax year which begins six months later on July 1. ORS 308.007(2)(a). In this case, the assessment date was January 1, 2001, and the tax year began on July 1, 2001. Plaintiff owned the property on the assessment date but sold it some four months before the beginning of the applicable tax year (2001-2002).

Property becomes subject to tax in Oregon based on its status as of January 1.

¹ All references to the Oregon Revised Statutes (ORS) are to 1999.
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That is, its status on that date determines whether a property is liable for tax and, if so, the value of the property for tax purposes. ORS 308.210(1).²

Under ORS 308.215(2)(a), January 1 is also the date the assessor uses to determine ownership for purposes of the assessment roll. The statute provides that for personal property the assessor shall set down on the assessment roll the value of the property and "[t]he names * * * of all persons, whether individuals, partnerships or corporations * * * owning or having possession or control of taxable personal property on January 1, at 1:00 a.m." *Id.*

Personal property taxes are a personal liability of the owner. ORS 311.455. The statute provides in relevant part that "[a]ll taxes levied on personal property shall be a debt due and owing from the owner of the personal property." *Id.* Ownership for purposes of ORS 311.455 is determined as of the January 1 assessment date because that is the date provided in ORS 308.215 and, unlike real property and manufactured structures assessed as personal property, the assessor cannot update its records to reflect transfers of personal property after January 1. See ORS 308.210(2).³

In addition, changes to property, such as new construction, between the January

² ORS 308.210(1) provides in relevant part that "[t]he assessor shall proceed each year to assess the value of all taxable property within the county * * *." *Id.* That statute further provides:

"The assessor shall maintain a full and complete record of the assessment of the taxable property for each year as of January 1, at 1:00 a.m. of the assessment year, in the manner set forth in ORS 308.215. Such record shall constitute the assessment roll of the county for the year."

Id.

³ ORS 308.210 provides in relevant part:

"(2) Except as provided in subsections (3) and (4) of this section, the ownership and description of all real property and manufactured structures assessed as personal property shall be shown on the assessment roll as of January 1 of such year or as it may subsequently be changed by divisions, transfers or other recorded changes. This subsection is intended to permit the assessor to reflect on the assessment roll the divisions of property or the combining of properties after January 1 so as to reflect the changes in the ownership of that property and to keep current the descriptions of property."

1 assessment date and the commencement of the tax year, are not reflected until the following year because of the January 1 assessment date. And, but for certain express statutory provisions, property converted from taxable to exempt use between January 1 and July 1 would remain taxable. See ORS 311.410.

It is true that taxes are levied for a fiscal year, which is the tax year beginning on July 1. See *e.g.*, ORS 310.010, ORS 310.020, ORS 308.007(1)(c), and OAR 150-311.250. July 1 is also the lien date. ORS 311.405(3)(b).⁴ However, the lien date is merely the day the liability attaches to the property assessed. It is the date that the property assessed is impressed with a lien. The significance of the lien is that it allows the lienholder to pursue the underlying obligation by foreclosing the property, even in hands of third parties. See ORS 311.410(2) ("No sale or transfer of personal property or any part thereof shall affect the lien under ORS 311.405(3)(a)(A).") That remedy is in addition to other remedies available to the assessor, including the ability to maintain an action against the owner under ORS 311.455(2) or to seize and sell other taxable personal property of the owner as provided in ORS 311.640 (1)(a)(B).

This court has previously ruled that the assessment date controls. For example, in *Reliable Transfer Co., Inc. v. Multnomah County Assessor*, OTC-MD No. 000724F, WL 33244282 (Sept. 29, 2000), plaintiff who went out of business in April 1999 and liquidated its business assets was held responsible for the property taxes for the upcoming tax year, which began on July 1, 1999, because it was the owner on the January 1 assessment date. In *Sproul v. Commission*, 1 OTR 31, 53 (1963), the Tax Court stated that "placing of the assessed value on the roll by the assessor create[s] a liability which has the finality of a judgment."

⁴ ORS 311.405(3)(b) provides that "liens for taxes on personal property shall attach on and after July 1 of the year of assessment."

The court holds that the liability for personal property taxes arises on the January 1 assessment date, and not the July 1 lien date. Because Maben owned the property on the assessment date, she is personally liable for the taxes under ORS 311.455.

CONCLUSION

Where personal property is sold between January 1 and July 1, the seller is responsible for the property taxes because the January 1 assessment date provided in ORS 308.210(1) controls. Maben owned the personal property on the January 1, 2001, assessment date. Now, therefore,

IT IS THE DECISION OF THIS COURT that Maben is personally responsible for the 2001-02 personal property taxes.

Dated this _____ day of October, 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 OCTOBER 23, 2002. THE COURT FILED THIS DOCUMENT ON OCTOBER 23, 2002.