

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

ALBERTO J. BECERRA, )  
 )  
 Plaintiff, ) TC-MD 020486D  
 )  
 v. )  
 )  
 LANE COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

Plaintiff appeals Defendant's Notice Of Intention To Add Tax Due To A Clerical Error, dated January 25, 2002. A telephone trial was held on Monday, January 27, 2003. Mr. David Carmichael, Attorney at Law, appeared on behalf of Plaintiff. Mr. Tom Frederiksen, Appraiser, appeared on behalf of Defendant. Mr. Frederiksen also appeared as a witness.

**STATEMENT OF FACTS**

On or about October 29, 2001, Plaintiff purchased the subject property identified as Lane County Assessor's Account 1523891. A warranty deed for the subject property was recorded on November 1, 2001. Subsequently, on January 25, 2002, Plaintiff received Defendant's Notice of Intention To Add Tax Due To A Clerical Error (Notice To Add Tax). In its Notice To Add Tax, Defendant advised Plaintiff that "the value" for the improvement of the subject property was "added" to the "assessment and tax roll due to the discovery of a clerical error." (Ptf's Ex 2.) Defendant wrote that the "increased value will result in additional taxes that will be added to the tax roll." (*Id.*)

Plaintiff had no prior knowledge of Defendant's Notice To Add Tax. However, on or about October 15, 2001, Defendant issued its Notice Of Intention To Add Value Due to A Clerical Error (Notice To Add Value) to the individuals from whom Plaintiff purchased the

subject property. In that Notice To Add Value, Defendant advised that it had discovered a clerical error and the value of the improvements of the subject property had not been placed on the tax roll at the time the improvements were completed, which was sometime in 1995. Defendant wrote that if the property owner(s) disagreed with Defendant an appeal could be filed with Defendant within 20 days. Apparently, the property owner(s) did not appeal to Defendant or communicate with Defendant because Defendant issued its Notice To Add Tax to Plaintiff in January 2002.

Plaintiff reviewed with the court the statutory requirements of when taxes become a lien. (ORS 311.235.) Plaintiff alleged that he was a bona fide purchaser. Mr. Frederiksen testified that the tax roll for the tax year in which the purchase occurred had been prepared. Plaintiff closed the purchase transaction on November 1, 2001. Plaintiff alleged that the earliest date the additional taxes could be a lien on the subject property was November 5, 2001. Plaintiff argued that Defendant's October 15, 2001, notice to the property owner(s) permitted a 20 day appeal period. The end of the 20 day appeal period was November 5, 2001, a date after Plaintiff's date of purchase. Under ORS 311.235, Plaintiff concluded that the taxes were not a lien on the property because at the time of purchase the taxes could not be a matter of public record until after the 20 day appeal expired (November 5, 2001).

Plaintiff's second argument focused on Defendant's decision to use the clerical error statute (ORS 311.205) to place the value of the improvements of the subject property on the tax roll. Arguing that the statute does not permit valuation judgment to be used in determining the amount of the clerical error, Plaintiff concluded that Defendant used judgment in determining the value to be added to the tax roll. Plaintiff's conclusion was based on a comparison of the trended roll value of his two neighboring properties and

Defendant's "back trended" value of his improvements.

### **COURT'S ANALYSIS**

Defendant notified Plaintiff of its intention to assess Plaintiff for property that was omitted from the tax rolls. The statutory requirement for proper notification is found in ORS 311.219<sup>1</sup> which provides:

**"Notice shall be given to the person claiming to own the property or occupying it or in possession thereof of the assessor's intention to add the property to the assessment or tax roll under ORS 311.216 to 311.232 and to assess the property in such person's name. \* \* \* It shall describe the property in general terms, and require the person to appear at a specified time, not less than 20 days after mailing the notice, and to show cause, if any, why the property should not be added to the assessment and tax roll and assessed to such person.**

(Emphasis added.)

In accordance with ORS 311.219, notice must be given to the same person who will be assessed.

Defendant issued its Notice To Add Value on October 15, 2001. Defendant's Notice To Add Value was not issued to Plaintiff. It was issued to the individuals from whom Plaintiff purchased the property (the prior owners of Plaintiff's property). When the prior owners of the subject property did not file an appeal, Defendant issued its Notice To Add Tax to Plaintiff on January 25, 2002. However, Defendant's Notice To Add Tax was incorrectly addressed.

ORS 311.219 requires Defendant to assess the person to whom the notice was given. In this case, Plaintiff was not given proper notice under ORS 311.219. Until proper notice is given to Plaintiff, Defendant cannot assess Plaintiff. (See *Preble v. Dept. of Rev.*, 331 Or 320, 324, 14 P3d 613 (2000) (holding that "shall" expresses a

---

<sup>1</sup> Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 1999.

///

///

clear legislative mandate with respect to the content of a valid notice.)

Plaintiff presented the court with two arguments in support of its position that Defendant's Notice To Add Tax was improperly issued to Plaintiff. Because the court concludes that Defendant's Notice To Add Tax issued to Plaintiff was not valid, the court need not consider any additional arguments in support of Plaintiff's requested relief.

### **CONCLUSION**

Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's Notice Of Intention To Add Tax Due To A Clerical Error, dated January 25, 2002, issued to Plaintiff is not valid and Plaintiff's appeal is granted.

Dated this \_\_\_\_\_ day of March, 2003.

---

JILL A. TANNER  
PRESIDING 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 JILL A. TANNER ON MARCH 25, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 25, 2003.**