

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BINH NGUYEN and MARIA NGUYEN,)	
)	
Plaintiffs,)	TC-MD 021258B
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the real market value (RMV) of property identified as Account R209161 for tax years 1998-99, 1999-2000, 2000-2001, and 2001-02.

A case management conference was held by telephone on March 3, 2003. Binh Nguyen appeared on behalf of Plaintiffs; Leslie Cech, Real Property Supervisor, appeared for Defendant. The parties agreed that this decision would be based on written submissions. The record closed April 4, 2003.

STATEMENT OF FACTS

While performing audits “conducted to assure quality of residential property valuations,” Defendant noted that Plaintiffs’ account included a sale dated October 1, 1997 for \$124,000. (Def’s Resp at 1.) However, Plaintiffs’ official property account included only a 140 square foot shed, and Defendant had received no notice of a building permit from the City of Portland for any new construction on this account. The City of Portland confirmed that construction of a house was completed on Plaintiffs’ property on September 5, 1997. Consequently, Defendant undertook a closer review of Plaintiffs’ account and assessed the property pursuant to ORS 311.205 through 311.232, providing for

corrections to the tax roll in the case of certain omitted property.¹ Based on that investigation, Defendant increased the value of the subject property for the tax years at issue by approximately \$65,000 to \$70,000 per tax year, in order to reflect the clear and significant improvements to the property. (Def's Resp at 2.) For example, the 1998-99 assessed value (AV) increased from \$8,800 to \$74,370. The 2001-02 AV increased from \$9,600 to \$81,250. These corrections had the effect of increasing Plaintiffs' property taxes by approximately \$1,300 - \$1,400 for each of the subject tax years.²

Defendant informed Plaintiffs of these corrections in a letter dated September 9, 2002. Plaintiffs filed an appeal with this court, claiming that the county had "incorrectly * * * and/or incompetently assessed the true value." (Ptf's Compl at 2.) Plaintiffs ask for a reduction in the AV, a "[l]onger payment [plan] with no assessed interest on the reassessed value", and a deduction of the "amount paid by property/mortgage lien holder" for the subject period. (*Id.*) The court interprets Plaintiffs' statements to mean that a portion of the assessed taxes have already been paid by a third party, and that any outstanding balance should be reduced accordingly.

Defendant stands by the corrected AV for the omitted property on Plaintiffs' account. Defendant submitted a letter stating that the Multnomah County tax accounting section offered Plaintiffs the statutorily mandated three-part payment plan. (Def's Resp at 1.)

ANALYSIS

¹ All references to the Oregon Revised Statutes (ORS) are to 2001. Statutes covering earlier tax years did not change in any significant way.

² The additional taxes owing are \$1,333.82 for 1998-1999, \$1,355.12 for 1999-2000, \$1,457.36 for 2000-2001, and \$1,492.21 for 2001-2002.

The first question before the court is Plaintiffs' request for a reduction in the RMV of their property for the subject tax years. ORS 308.205(1) defines RMV as:

“[T]he amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm's length transaction occurring as of the assessment date for the tax year.”

Plaintiffs bear the burden to show, by a preponderance of the evidence, that the official RMV as of the assessment date was in error and should be corrected. See ORS 305.427.

Plaintiffs have presented no evidence to show such an error. Plaintiffs' Complaint states a belief that the assessment is “unethical and unfair” and that the assessed taxes for the subject years had been “scheduled to pay through the property/mortgage lien holder” as part of a third-party payment plan. (Ptf's' Compl at 2.) Plaintiffs have presented no evidence to support either claim. The complaint further states that it is “unethical and unfair” for Defendant to perform the omitted property assessment and ask for payment in a lump sum. However, the statutory basis for Defendant's actions is clear. See ORS 311.205 to 311.232. (Providing the authority to correct errors or omissions in the tax rolls for all tax years not exceeding five years prior to the last roll returned.)

Plaintiffs' claim of “unethical and unfair” treatment by Defendant might be characterized as an estoppel argument. Estoppel is granted in extremely rare circumstances

“when there is proof positive that the collector has misinformed the individual taxpayer and the taxpayer has a particularly valid reason for relying on the misinformation and that it would be inequitable to a high degree to compel the taxpayer to conform to the true requirement.”

Johnson v. Tax Commission, 248 Or 460, 463-64, 435 P2d 302 (1967). Thus, to prove estoppel, a plaintiff must prove that (1) there were deliberately misleading statements or

conduct by defendant; (2) plaintiff relied on conduct in good faith; and (3) plaintiff was injured by the reliance. *Sayles v. Dept. of Rev.*, 13 OTR 324, 328 (1995). In this case, Plaintiffs did not show evidence of any of the elements of estoppel. Plaintiffs must provide more than a conclusory statement that Defendant's treatment was "unethical and unfair" in order to prove an estoppel claim.

Plaintiffs' second request is for a payment plan "with no assessed interest on the reassessed value." (Ptf's Compl at 2.) ORS 311.206(1) provides the only statutory authority for the payment process resulting from a correction of an error on a tax roll:

"When the roll is corrected under ORS 311.205, and taxes are added to the roll, the additional taxes shall be added to the tax extended against the property on the general property tax roll for the tax year following the current tax year, to be collected and distributed in the same manner as other ad valorem property taxes imposed on the property."

Therefore, additional taxes arising from a re-assessment of omitted property are added to the tax roll for the year following the last corrected year. Because the roll was corrected to add the omitted property in 2002, Defendant then made the payment due in November 2003. In addition, state law provides only one method of payment other than lump sum payment. Taxpayers may pay in three installments, each consisting of at least one third of the total amount owed, the first in November, the second the following February, and the third the following May. See ORS 311.505(1). The statute further authorizes a discount of 2 percent if two thirds of the taxes are paid by the first deadline, and of 3 percent if all of the taxes are paid by then. See ORS 311.505(3). That is the only discount available by statute for interest on property taxes. The statute clearly states how such interest shall be charged and collected, and leaves no room for discretion. See ORS 311.505(2).

Although the court understands Plaintiffs' financial constraints, the statute leaves no

discretion in this matter. Plaintiffs need not pay the taxes in one lump sum, but this court has no authority to prescribe a payment plan different than that provided by statute.

Finally, Plaintiffs request a deduction of the “amount paid by property/mortgage lien holder” for the subject period. (Pfts’ Compl at 2.) Defendants computations and tax due balances are consistent with this request.

CONCLUSION

Plaintiffs’ appeal is denied. Plaintiffs presented no evidence to support their claim of “unethical and unfair” treatment in the assessment of their omitted property for the subject years. To modify the longer payment plan request is beyond the jurisdiction of this court. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

Dated this _____ day of August, 2003.

JEFF MATTSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 5, 2003. THE COURT FILED THIS DOCUMENT ON AUGUST 5, 2003.