

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

OSCAR LEYVA and DIANA LEYVA,)	
)	
Plaintiffs,)	TC-MD 021281E
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal to this court seeking a refund of \$163.99 in interest and taxes paid to Defendant. Trial in the matter was held by telephone on January 29, 2003. Diana Leyva appeared on behalf of Plaintiffs. Gloria Rogers appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as “taxpayers” and “the county.”

STATEMENT OF FACTS

In December 2001, taxpayers purchased the subject property located at 2771 Barbados Drive, Eugene, OR 97408.¹ The recorded deed provides that the tax collector’s office is to send tax statements to the address of the home. In recording the address, the tax collector’s office incorrectly inputted the zip code as the house number. That is, they entered the address as 97408 Barbados Drive. Consequently, in October 2002, the county mailed the tax statement to the wrong address and taxpayers never received it.

Taxpayers previously lived in Florida; the subject property was the first home they owned in Oregon. As a result, they had never paid property taxes to Oregon and were not familiar with the system. Diana Leyva testified that she was generally aware taxes were due by the end of the year. On November 25, 2002, she called the county’s office to inquire about when they would be receiving a tax statement. It was at this point the county

¹ The property is identified in the county’s records as Account 1583630.
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realized its error. It advised Leyva that tax statements had already been sent for tax year 2002-03 and that taxes on the property were past due. Taxpayers immediately paid the full amount of the tax (\$4,761) plus \$21.16 in interest for the late payment. Taxpayers appeal seeking a refund of the interest plus an additional \$142.83 for the 3 percent discount they would have received had they made a timely payment.

COURT'S ANALYSIS

ORS 311.555² requires each owner of taxable property to keep the tax collector informed “of the true and correct address” of the person. In this case, taxpayers provided the county with their correct address. ORS 311.560 requires the county to note on the tax roll “the true and correct address of each person * * * owning real or personal property in this state, as furnished under ORS 311.555 or as otherwise ascertained by the tax collector.” The county acknowledges it incorrectly noted taxpayers’ address on the roll. As a result of its error, the county sent the tax statement to the wrong address.

ORS 311.565 provides that the tax collector is responsible for damages suffered by a taxpayer when the tax collector fails to note the correct address on the roll. It 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 * * *.”

ORS 311.565.

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The question is whether interest and the 3 percent discount constitute “damages” for which the tax collector is responsible for payment. The court has previously addressed

² All references to the Oregon Revised Statutes (ORS) are to 2001.
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this issue and concluded that interest is recoverable under ORS 311.565, but the 3 percent discount is not.

In *Campbell v. Multnomah County Assessor*, OTC-MD No 020187C, WL1611544 (July 19, 2002), the court awarded interest as damages when the tax collector entered the wrong address in its records. The court noted:

“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 additional charge constitutes a direct economic damage to Plaintiffs and subjects the collector to liability under ORS 311.565.”

Id., WL 1611544 at *2. See also *Powell v. Lane County Assessor*, OTC-MD No 991429B, WL 290836 (March 15, 2000).

The court finds, therefore, that taxpayers are entitled to a refund of the interest charged for the late payment of property taxes. As for the 3 percent discount, the court in *Campbell* concluded that it is not recoverable under ORS 311.565. The court held:

“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.”

Id., WL 1611544 at *3.

Based on the decision in *Campbell*, the court finds taxpayers may not recover the 3 percent discount as damages under ORS 311.565.³ Taxpayers in Oregon are presumed

³ The court is including a copy of the decision in *Campbell* for the parties’ reference.
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to know their property is taxable and when their liability is due. Failure to receive the statement does not excuse taxpayers' failure to make timely payment.

CONCLUSION

It is the court's conclusion that taxpayers are entitled to damages in the amount of the interest paid for the late payment of property taxes because the county failed to accurately note taxpayers' address in its records. The court further concludes that taxpayers may not recover the 3 percent discount as damages. Now, therefore,

IT IS THE DECISION OF THIS COURT that the county shall refund to taxpayers \$21.16 for interest they paid on their 2002-03 taxes; and

IT IS FURTHER DECIDED that taxpayers' request for a refund of the 3 percent discount (\$142.83) is denied.

Dated this _____ day of February, 2003.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON FEBRUARY 28, 2003. THE COURT FILED THIS DOCUMENT ON FEBRUARY 28, 2003.