

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ROBERT J. HAID,)
)
 Plaintiff,) TC-MD 021310C
)
 v.)
)
 WASHINGTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff has appealed Defendant's denial of the discount and imposition of interest for late payment of property taxes for tax year 2002-03, arguing extenuating circumstances.

STATEMENT OF FACTS

Plaintiff's property tax statement was timely mailed on October 25, 2002. Plaintiff did not pay the taxes on time. The reason for the delay is twofold; Plaintiff had cataract surgery on November 7, 2002, which, according to Plaintiff's testimony, left him unable to see for several weeks. At the same time Plaintiff's son was diagnosed with cancer and, on November 15, 2002, underwent surgery to remove the thyroid and several malignant lymph nodes. Plaintiff was concentrating on these medical issues and getting well. The taxes were paid on November 26, 2002. As a result, Defendant denied the 3 percent discount and charged interest at the statutory rate on the first one-third of the taxes due. Defendant mailed Plaintiff a billing notice showing a balance due of \$130.89, \$114 of which is due to the loss of the discount.

COURT'S ANALYSIS

Property taxes in Oregon are due in trimester payments on the 15th day of the months of November, February, and May. The first one-third in this case was due on or

before November 15, 2002. ORS 311.505(1).¹ The statute provides that the taxes “shall be paid on or before November 15.” *Id.* Use of the word “shall” makes the requirement mandatory.

A 3 percent discount is provided for timely payments of the full amount of the tax.

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.

On November 26, 2002, Plaintiff mailed a check for the full amount of the tax due, less the 3 percent discount. Plaintiff's payment was late and Defendant denied the discount. Defendant also imposed interest on the minimum amount of the tax that was due (one-third) on or before November 15, 2002, as provided in subsection (2) of ORS 311.505. That provision states that “[i]nterest shall be charged and collected on any taxes on property * * * not paid when due, at the rate of one and one-third percent per month, or fraction of a month until paid.” *Id.*

It is clear from the statute that the discount is contingent upon the timely payment of the tax and that Defendant must charge interest where taxes are not paid on time. Plaintiff views the charges as a penalty which he asks the court to dismiss. The court cannot act on Plaintiff's request without statutory authority and there is no authority to allow the discount and waive the interest when a taxpayer does not pay his property taxes by the due date. The court could cancel the charges if the facts showed that the discount was wrongly

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
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denied and the interest imposed contrary to statute. That is not the situation in this case, however. Additionally, the court notes that the denial of the discount is not a "penalty" because the discount is a reduction in the full amount of tax due and is provided by the legislature to encourage timely payment of at least two-thirds of the tax where the minimum required payment is only one-third. Losing the discount does not increase the tax, but rather eliminates the tax break. Moreover, interest is based on the principal of the time-value of money and is intended to allow the county to recover from the loss of the use of the money for the period involved.

CONCLUSION

Plaintiff's request for "dismissal" of the "penalty" charged by Defendant in the form of a denial of the 3 percent discount and the imposition of interest is denied because Plaintiff did not pay the taxes on time and the court lacks the statutory authority to waive or reduce the charges regardless of the circumstances involved. Now, therefore,

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

Dated this _____ day of April, 2003.

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 APRIL 9, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 9, 2003.