

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

DAVID B. SHARPS	)	
and RHONDA K. SOULE,	)	
	)	
Plaintiffs,	)	TC-MD 030774F
	)	
v.	)	
	)	
BENTON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs' appeal concerns a single family residence identified as Benton County Assessor's account number 232417. A trial was held in the Benton County Courthouse on November 5, 2003. David Sharps (Sharps) and Rhonda Soule (Soule) appeared for themselves. Jennifer Lorenz appeared as a witness. Joanne Gough, Benton County Appraiser, and Mary Otley, Benton County Tax Collector, appeared for Defendant.

I. STATEMENT OF FACTS

The present litigation represents one of the latest events in a lengthy history between David Sharps and Defendant.<sup>1</sup> Plaintiffs appealed tax year 2001-02 to the board of property tax appeals (board). The board lowered the real market value, maximum assessed value, and assessed value to \$135,000 for the 2001-02 tax year. Plaintiffs did not appeal further. When Plaintiffs received their 2002-03 property tax statement it showed a real market value of \$162,300, a maximum assessed value of \$135,000 and an assessed value of \$162,300. Thus, the property taxes were

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<sup>1</sup> For a detailed outline of this history see *Sharps v. Benton County Assessor*, OTC-MD No 020705F (June 30, 2003). The prior litigation between Sharps and Defendant involved a different parcel of property.

calculated on an assessed value of \$162,300 rather than the correct assessed value<sup>2</sup> of \$135,000. The error was due to conversion problems in Defendant's computer program.

Plaintiffs appealed tax year 2002-03 to the board, asking that the real market value be corrected pursuant to the 2001-02 board order and ORS 309.115.<sup>3</sup> On January 21, 2003, while Plaintiffs' board appeal was pending, Defendant sent Plaintiffs a Notice of Clerical Error Correction. The correction noted a change in the real market value and assessed value to \$135,000. Believing that the incorrect values had been corrected, Plaintiffs did not attend the April 2, 2003, board hearing. At that hearing, Defendant agreed that the 2002-03 real market value should have been \$135,000. The board ordered the real market value changed to that amount. Based on information supplied by Defendant, the order incorrectly stated the maximum assessed value of the property as \$278,100. Again, Defendant's computer system erred due to conversion problems that inadvertently and unknowingly changed the maximum assessed value on many properties.

Complying with that order, Defendant made a correction to the roll and issued a refund to Plaintiffs on April 23, 2003.<sup>4</sup> The refund was in the amount of \$396.38,

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<sup>2</sup> Assessed value is defined as the lesser of real market value and maximum assessed value. ORS 308.146(2).

<sup>3</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

<sup>4</sup> Given the history between the parties, it is not surprising that Defendant acted as promptly as it did, issuing a refund only two weeks after the board issued its order. However, it appears that Defendant acted prematurely. The statute requires the refund of overpaid taxes and associated interest be paid "whenever a change in the value of property is ordered by a county board of property tax appeals \* \* \* and **no appeal is taken** or can be taken from the board's \* \* \* order \* \* \* and the order constitutes a final determination of the matter." ORS 311.806(1)(a); See also ORS 311.812 (2)(e) (interest is paid on "[r]efunds due to reductions in value ordered by a county board of property tax appeals where no appeal is taken.")

including \$3.92 in statutory interest. Plaintiffs were entitled to that refund because they had previously paid taxes that were based on the incorrect assessed value of \$162,300. Plaintiffs paid those taxes in three installments on November 15, 2002, February 15, 2003, and April 15, 2003. Defendant mailed the refund check to the address given by Plaintiffs when they purchased the property. In a letter dated April 28, 2003, Soule requested Plaintiffs' refund check.

After Plaintiffs received the board's order showing the incorrect maximum assessed value, they filed this appeal. On May 30, 2003, Defendant signed their Answer. The Answer included a motion to dismiss due to lack of aggrievement. Also on May 30, 2003, Defendant corrected the property's maximum assessed value from \$278,100 to \$139,050.

During a September 19, 2003, meeting between Defendant and Plaintiffs, Defendant learned that Soule had not received the April 23, 2003, refund check. Plaintiffs believed the check had been sent to an incorrect address.<sup>5</sup> On September 24, 2003, Defendant sent and Soule received a letter that included a replacement refund check of \$396.38.

## II. ANALYSIS

The first issue in this case is the subject property's maximum assessed value. At trial, the parties agreed that the property's maximum assessed value is \$139,050 for tax year 2002-03. Defendant assured the court and Plaintiffs that the tax roll had already been corrected to reflect that change.

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<sup>5</sup> Defendant suggested that Plaintiffs file a form to change the address of record in Defendant's files.

The second issue concerns the amount of statutory interest due Plaintiffs as a result of the decrease in assessed value. Pursuant to ORS 311.806(1)(a), the county governing body must refund the amount of taxes that were overpaid and associated interest. The interest is calculated “at the rate of one percent per month, or fraction of a month, computed from the time the tax was paid or from the time the first installment thereof was due, whichever is the later.” ORS 311.812(3). The Oregon Department of Revenue promulgated OAR 150-311.812(3) that further explains the correct calculation of interest. That rule provides, in part:

“Interest on refunds is based on the method the taxpayer used to pay taxes. \* \* \* If payments were made on the installment basis, interest is calculated on the amount overpaid as of each trimester due date or date of payment, whichever is later. Refund interest accrues at the rate specified in ORS 311.812(3) until paid.”

OAR 150-311.812(3) (1). See also OAR 150-311.812(3) (4)(a) (providing an example for proper calculation when all three trimester payments have been timely paid).

As noted earlier, Defendant issued Plaintiffs a refund of \$396.38. That amount included \$392.46 in overpaid taxes due to the incorrect assessed value. The parties agree that Plaintiffs are also entitled statutory interest on overpaid taxes. The total amount Plaintiffs overpaid, \$392.46, is divided by three to determine the amount of refund due Plaintiffs for each trimester of overpayment. ORS 311.812(3) and OAR 150-311.812(3). That amount, \$130.82, is multiplied by one percent as directed by ORS 311.812(3) to determine the amount of interest due per month. That number is then multiplied by the number of months that passed between each trimester overpayment and the date of adjustment.

The date of adjustment to the property tax rolls, April 23, 2003, is the ending date for the period of statutory interest. Defendant issued a check to Soule on that date,

mailing the check to the address listed on the deed to the property.<sup>6</sup> Defendant properly used the address in the recorded deed and thus does not have to pay additional statutory interest.

Using the above calculations, Plaintiffs are entitled to a total of \$11.79 in statutory interest on their overpayment. The time between the first trimester payment and the date of adjustment was five months and eight days, calculated as six months. The statutory interest due for this period is \$7.86.<sup>7</sup> The time period from the second trimester payment was two months and eight days, calculated as three months. For the second trimester payment \$3.93 in statutory interest is due.<sup>8</sup> Plaintiffs receive no interest on the third trimester because the refund was made prior to the third trimester due date.

In addition to a determination of maximum assessed value and the correct amount of statutory interest due, Plaintiffs have requested that Defendant pay Plaintiffs' court costs and expenses. Plaintiffs argue that Defendant has failed in its duty to "know and follow the statutes" and that Defendant's errors have caused Plaintiffs to incur excessive expenses in research and preparation costs and time. Considering the long and somewhat contentious history between the parties, it is easy to understand why Plaintiffs believe that they have been targeted by Defendant. Although the series of events that lead to this appeal and prior appeals is unfortunate, there is no evidence that Defendant acted with any intention of harassing or targeting Plaintiffs.

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<sup>6</sup> The property deed lists both Sharps' address and Soule's address. However, Plaintiffs' deed requests that all tax statements be sent to Soule's address.

<sup>7</sup>  $(130.82 \times .01) \times 6 = \$7.86.$

<sup>8</sup>  $(130.82 \times .01) \times 3 = \$3.93.$

### III. CONCLUSION

In compliance with the board's order and the determination of this court, the subject property has a real market value of \$135,000, a maximum assessed value of \$139,050, and an assessed value of \$135,000 for tax year 2002-03. Plaintiffs are entitled to a refund of \$392.46 in overpaid taxes and \$11.79 in statutory interest. Plaintiffs do not recover costs or expenses. Now, therefore,

IT IS THE DECISION OF THIS COURT that for tax year 2002-03, the maximum assessed value of the subject property is \$139,050 and the real market value and assessed value are \$135,000.

IT IS FURTHER DECIDED that Plaintiffs are entitled to \$7.87 in additional statutory interest on the amount of taxes overpaid.<sup>9</sup>

IT IS FURTHER DECIDED that the balance of Plaintiffs' appeal is denied.

Dated this \_\_\_\_\_ day of March, 2004.

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SALLY L. KIMSEY  
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 SALLY L. KIMSEY ON MARCH 8, 2004. THE COURT FILED THIS DOCUMENT ON MARCH 8, 2004.**

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<sup>9</sup> Plaintiffs previously received a refund of \$396.38, including \$3.92 in statutory interest. Plaintiffs are actually entitled to \$11.79 in statutory interest, and must be paid the difference of \$7.87.