

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DAVID B. SHARPS,)
)
 Plaintiff,) TC-MD 030784E
)
 v.)
)
 BENTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

This case concerns a single-family residence identified as Benton County Assessor's Account 232367. A trial was held at the Benton County Courthouse November 5, 2003. David Sharps appeared *pro se*. Jennifer Lorenz appeared as a witness for Plaintiff. Joanne Gough, Benton County Appraiser, and Mary Otley, Benton County Tax Collector, appeared for Defendant.

I. STATEMENT OF FACTS

This property has been the subject of three previous appeals to this court.¹ In *Sharps III*, this court set forth a timeline of the history of those appeals. That timeline shows the results of an unfortunate series of events, including the timing of board of property tax appeals (board) orders and judgments from this court. The events subsequent to those set forth in the *Sharps III* timeline are set forth in the order in which they occurred.

1. On November 15, 2002, Plaintiff made the first trimester payment of \$774.73 for the subject property's 2002-03 property taxes. The total taxes of \$2,324.19 were

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¹ See *Sharps v. Benton County Assessor*, OTC-MD 000515C (June 7, 2001) (*Sharps I*), *Sharps v. Benton County Assessor*, OTC-MD 010678C (Oct 18, 2001) (*Sharps II*), and *Sharps v. Benton County Assessor*, OTC-MD 020705F (June 30, 2003) (*Sharps III*).

based on an assessed value of \$150,585. The real market value was \$183,700; the maximum assessed value was \$150,585.

2. On December 31, 2002, Plaintiff appealed tax year 2002-03 to the board.
3. On February 15, 2003, Plaintiff made the second trimester payment of \$774.73 for the subject property's 2002-03 property taxes.
4. The board issued its order on April 9, 2003, sustaining the real market value at \$183,700 and the maximum assessed value and assessed value at \$150,585.
5. Plaintiff appealed the board's order to the Magistrate Division on May 8, 2003.
6. On June 30, 2003, this court issued the Decision in *Sharps III* that reduced the real market value and maximum assessed value for tax year 2001-02. The real market value was set at \$140,000; the maximum assessed value was set at \$144,200. Thus, when the board sustained Defendant's determination of value for tax year 2002-03, the board relied on values that were affected by the court's reductions for tax year 2001-02.
7. On September 3, 2003, this court issued the Judgment in *Sharps III*. Pursuant to the Judgment, Defendant made adjustments to the property's real market value and maximum assessed value for tax years 2000-2001 and 2001-02. Consistent with the adjustments, on September 8, 2003, Defendant credited the subject account \$280.68 including \$245.40 in overpaid taxes and \$35.28 in statutory interest for tax year 2001-02. Also on September 8, 2003, Defendant credited the account \$237.37 including \$182.19 in overpaid taxes and \$55.18 in statutory interest for tax year 2000-2001. The two amounts total \$518.05 and were credited to unpaid taxes for tax year 2002-03.

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8. On November 17, 2003, Plaintiff made the third trimester payment of \$278.49 for the subject property's 2002-03 property taxes. Because the payment was due on May 15, 2003, the payment included \$21.81 in interest.²

II. ANALYSIS

Plaintiff's Complaint raises three issues. The first issue is the correct real market, maximum assessed value, and assessed value of the subject property for tax year 2002-03. The second issue concerns the refund and associated interest Plaintiff is entitled to as a result in any reduction in value of the subject property. The third issue concerns any refund and associated interest Plaintiff is entitled to as a result of the Judgment in *Sharps III*.

A. *Valuation of Property for Tax Year 2002-03*

The first issue is the correct real market value, maximum assessed value, and assessed value for tax year 2002-03. Neither side presented evidence relating to the trend from tax year 2001-02 to 2002-03. The court finds that there was no evidence because there was no trend, that is, there was no increase. Hence, pursuant to ORS 309.115³ and the court's judgment in *Sharps III*, the real market value of the subject property for tax year 2002-03 is \$140,000.

The maximum assessed value of the subject property for tax year 2002-03 is determined by the application of ORS 308.146(1), which states that "[t]he maximum assessed value of property shall equal 103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the

² Total taxes for tax year 2002-03 were \$2,324.19. Plaintiff had previously paid or been credited a total of \$2,067.51 (\$774.73 + \$774.73 + \$518.05), leaving a balance of \$256.68 in unpaid taxes. The difference between the final payment of \$278.49 and \$256.68 is an interest payment of \$21.81.

³ All references to the Oregon Revised Statutes (ORS) are to 2001.

prior year, whichever is greater." The assessed value of the property for tax year 2001-02 was \$140,000, the lower of the real market value of \$140,000 and the maximum assessed value of \$144,200. The assessed value of \$140,000 multiplied by 103 percent equals \$144,200. The maximum assessed value of the prior year was, as previously stated, \$144,200. Thus, pursuant to the calculation required by ORS 308.146(1), the maximum assessed value for tax year 2002-03 shall be \$144,200.

Assessed value is defined as the lesser of real market value or maximum assessed value. ORS 308.146(2). Because the real market value of \$140,000 is less than the maximum assessed value of \$144,200, the assessed value of the subject property for tax year 2002-03 is \$140,000.

B. Tax Year 2002-03 Overpayment and Interest Calculation

The second issue is the amount of refund and statutory interest Plaintiff is entitled to as a result of the reduction in the assessed value for tax year 2002-03. The reduction in the assessed value requires a recalculation of the amount of tax Plaintiff owes on the subject property for the 2002-03 tax year. Plaintiff's property taxes for tax year 2002-03 were initially calculated on an assessed value of \$150,585. Dividing \$2,324.19 by \$150,585 gives a millage rate of .0154344.⁴ Multiplying the millage rate of .0154344 times the assessed value of \$140,000, the tax for the subject property is \$2,160.82.

Each party owes the other interest. Plaintiff is entitled to statutory interest on the amount Plaintiff overpaid for tax year 2002-03. Pursuant to ORS 311.806(1)(a), the county governing body must refund to taxpayers the amount of taxes that were overpaid

⁴ $\$2,324.19 \div 150,585 = .0154344$. Pursuant to OAR 150-310.090 (1), "the computed tax rate shall be carried to seven decimal places and truncated."

and interest as provided in ORS 311.812. Interest is paid on refunds "ordered by the Oregon Tax Court * * *." ORS 311.812(2)(c). 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 an administrative rule that further explains the correct calculation of interest. The rule provides, in part, that:

"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). Notwithstanding the general rule, "[w]hen there is a balance on the account in the year for which overpayment occurred, the overpayment is credited to the trimester(s) still outstanding. No refund interest is paid until the overpayment exceeds the total amount of corrected tax." OAR 150-311.812(3) (3). *See also* OAR 150-311.812(3) (3)(b) (providing an example for proper calculation when two trimester payments were paid after the due dates).

Plaintiff also owes interest because the third trimester payment, due on May 15, 2003, was not paid until November 17, 2003, six months and two days after the due date. Intuitively, it would appear that subtracting \$2,324.19, the amount of tax on the subject property based on an assessed value of \$150,585, from the correct tax of \$2,160.82 would indicate an overpayment in the amount of \$163.37. However, because Plaintiff paid the third trimester after the due date of May 15, 2003, Defendant is required to charge interest on the late payment. ORS 311.505(2). ("Interest **shall** be charged and collected on any taxes on property * * * or installment thereof not paid when due * * *.") (emphasis added). Interest is charged at the statutory rate of 1a

percent per month. *Id.* As will be shown, Plaintiff is entitled to something less than \$163.37.

The calculation of the refund and associated interest⁵ is somewhat complicated by two factors. First, the court must include Plaintiff's late payment of the third trimester into its calculations. Second, pursuant to the court's Judgment in *Sharps III*, Defendant made an adjustment to the tax roll and applied two credits totaling \$518.05 to Plaintiff's 2002-03 taxes on September 2, 2003. In effect, Plaintiff made a partial payment on September 2, 2003, and the final payment on November 17, 2003. Thus, there are three interest calculations to be made. First is the interest Plaintiff owed Defendant for the period from May 15, 2003, to September 2, 2003. Second is the interest owed Defendant for the period from September 3, 2003, to November 17, 2003. Third is the interest Defendant owes Plaintiff from November 17, 2003, until paid.

Following ORS 311.812(3), ORS 311.505(2), and associated administrative rules, the court calculates the refund and interest as set forth below. As a starting point, the total amount Plaintiff overpaid in each tax year is divided by three to determine the amount of refund due to Plaintiff for each trimester of overpayment. ORS 311.812(3) and OAR 150-311.812(3).

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⁵ All interest calculations are truncated. For example, 1 percent of \$50.51 is truncated to \$.50. That is the case when calculating interest Plaintiff owes Defendant as well as when Defendant owes Plaintiff.

Date of Payment	Amount Due	Corrected Amount	Overpaid
Nov. 15, 2002	\$774.73	\$720.27 ⁶	\$54.46
Feb. 15, 2003	\$774.73	\$720.27	\$54.46
Sept. 2, 2003 - interest	\$ 32.60 ⁷	\$ 32.60	
Sept. 2, 2003 - principal	\$485.45 ⁸	\$485.45	
Nov. 17, 2003 - interest	\$ 5.01 ⁹	\$ 5.01	
Nov. 17, 2003 - principal ¹⁰	\$273.48	\$234.83	\$38.65 ¹¹

The next calculations, including the refund and interest, are as follows:

1 st trimester payment	\$774.73
Less: corrected amount	\$720.27
1 st trimester overpayment	\$ 54.46
2 nd trimester corrected amount	\$720.27
Less: 1 st trimester overpayment	\$ 54.46
2 nd trimester due February 15, 2003	\$665.81
2 nd trimester payment	\$774.73
2 nd trimester overpayment	\$108.92 ¹²
3 rd trimester corrected amount	\$720.28
Less: 2 nd trimester overpayment	\$108.92
3 rd trimester due May 15, 2003	\$611.36

⁶ $\$2,160.82 \div 3 = \720.27 . Due to rounding, the third trimester amount is \$720.28.

⁷ See note 13 for the calculation.

⁸ $\$32.60 + \$485.45 = \$518.05$.

⁹ See note 16 for the calculation.

¹⁰ $\$5.01 + \$273.48 = \$278.49$. $\$485.45 + \$234.83 = \$720.28$.

¹¹ This overpayment would have been \$54.45, but for the unpaid interest that Plaintiff owes Defendant. As of November 17, 2003, Defendant had charged Plaintiff \$21.81 in interest, rather than the correct amount of \$37.61 ($\$32.60 + \5.01), for a difference of \$15.80. $\$38.65 + \$15.80 = \$54.45$.

¹² $\$774.73 - \$665.81 = \$108.92$.

Interest due as of September 2, 2003	\$ 32.60 ¹³
Applied toward 3 rd trimester payment	\$485.45 ¹⁴
Balance after September 2, 2003, \$518.05 credit	\$125.91 ¹⁵
Interest due as of November 17, 2003	\$ 5.01 ¹⁶
Balance of 2002-03 taxes	\$125.91
Overpayment	\$147.57 ¹⁷
Interest due Plaintiff on overpayment, per month	\$ 1.47 ¹⁸

Applying the calculations from ORS 311.812(3) and OAR 150-311.812(3), Plaintiff shall receive statutory interest for the overpayment of his taxes for tax year 2002-03. Plaintiff is entitled to \$1.49 per month from November 17, 2003,¹⁹ until the date Defendant makes the adjustment to the tax rolls and refunds the overpayment of taxes.²⁰

C. *Tax Years 2000-2001 and 2001-02 Overpayment and Interest Calculation*

The third issue concerns the amount of statutory interest due Plaintiff for tax years 2000-2001 and 2001-02. In his Complaint, Plaintiff claims that Defendant failed to

¹³ The credit was applied to the property's account on September 8, 2003, 3 months and 24 days, calculated as four months, after the due date of May 15, 2003. $\$611.36 \times 1\% = \8.15 interest per month. $\$8.15 \times 4 = \32.60 interest.

¹⁴ $\$32.60 + \$485.45 = \$518.05$ amount credited to account.

¹⁵ $\$611.36 - \$485.45 = \$125.91$.

¹⁶ The interest applied to the September 8, 2003, credit was for four months or through September 15, 2003. The final payment was made on November 17, 2003, two months and two days, calculated as three months, after September 15, 2003. $\$125.91 \times 1\% = \1.67 interest per month. $\$1.67 \times 3 = \5.01 interest.

¹⁷ $\$278.49 - \$5.01 - \$125.91 = \147.57 refund due Plaintiff.

¹⁸ $\$147.57 \times 1\% = \1.47 .

¹⁹ November 17, 2003, is the date Plaintiff made the payment that resulted in an overpayment of the property taxes for tax year 2002-03.

²⁰ Each partial month will be calculated as a full month. For example, if Defendant made the adjustment on April 30, 2004, Defendant must multiply \$1.47 by six months to determine the statutory interest.

properly refund the amounts overpaid on his tax account plus the statutory interest of 1 percent per month. The court will not review tax year 1999-2000 because there has been no adjustment made to the tax roll since the Judgment in *Sharps III*. The court will review tax years 2000-2001 and 2001-02, but only to the extent that the adjustments were made as a result of the Judgment in *Sharps III*.²¹

Applying the calculations required by ORS 311.812(3) and OAR 150-311.812(3), Plaintiff is entitled to a total of \$46.17 for statutory interest for tax year 2001-02. The total amount Plaintiff overpaid in taxes on the subject property, \$245.40, is divided by three²² to determine the amount of refund due to Plaintiff for each trimester of overpayment. The date of adjustment to the property tax rolls was September 2, 2003. The time between the first trimester due date of November 15, 2001, and the date of adjustment was 21 months and 18 days, calculated as 22 months. The statutory interest for this period is \$17.82.²³ The time period from the second trimester due date of February 15, 2002, was 18 months and 18 days, calculated as 19 months, with \$15.39 in statutory interest due.²⁴ The time period from the third trimester due date of May 15, 2002, was 15 months and 17 days, calculated as 16 months, with \$12.96 in statutory interest due.²⁵

In addition, Plaintiff is entitled to a total of \$55.80 for statutory interest due for tax year 2000-2001. The total amount Plaintiff overpaid in taxes on the subject property,

²¹ Any other errors relating to tax years 1999-2000, 2000-2001, and 2001-02 became final when Plaintiff did not appeal the court's Decision in *Sharps III*.

²² $\$245.40 \div 3 = \81.80 .

²³ $\$81.80 \times 1\% = \$.81$ interest per month. $\$.81 \times 22 = \17.82 .

²⁴ $\$.81 \times 19 = \15.39 .

²⁵ $\$.81 \times 16 = \12.96 .

\$182.19, is divided by three²⁶ to determine the amount of refund due to Plaintiff for each trimester of overpayment. The date of adjustment to the property tax rolls was September 2, 2003. The time between the first trimester due date of November 15, 2000, and the date of adjustment was 33 months and 17 days, calculated as 34 months. The statutory interest for this period is \$20.40.²⁷ The time period from the second trimester due date of February 15, 2001, was 30 months and 18 days, calculated as 31 months, with \$18.60 in statutory interest due.²⁸ The time period from the third trimester due date of May 15, 2001, was 27 months and 17 days, calculated as 28 months, with \$16.80²⁹ in statutory interest due.

Plaintiff also requested that Defendant pay Plaintiff's court costs and expenses. Plaintiff claims that Defendant failed in its duty to follow the law and that Defendant's multiple errors caused Plaintiff 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 Plaintiff believes that he has been targeted by Defendant. Although the series of events that lead to this appeal and prior appeals are unfortunate, the court does not find that Defendant acted with any intention of harassing or targeting Plaintiff.

III. CONCLUSION

The court finds that for tax years 2002-03 the real market value and assessed value of the subject property is \$140,000 and the maximum assessed value is \$144,200. The court also finds that Plaintiff is entitled to \$147.57 in overpaid taxes for

²⁶ $\$182.19 \div 3 = \60.73 .

²⁷ $\$60.73 \times 1\% = \$.60$ interest due per month. $\$.60 \times 34 = \20.40 .

²⁸ $\$.60 \times 31 = \18.60 .

²⁹ $\$.60 \times 28 = \16.80 .

that year and \$1.47 per month in statutory interest from November 17, 2003, until a refund is issued. In addition, the court finds that Plaintiff is entitled to \$10.89³⁰ in additional statutory interest for tax year 2001-02 and \$.62³¹ in additional statutory interest for tax year 2000-2001. Now, therefore,

IT IS THE DECISION OF THIS COURT that for tax year 2002-03, the real market value of the subject property is \$140,000 and the maximum assessed value is \$144,200.

IT IS FURTHER DECIDED that Plaintiff is entitled to \$147.57 in overpaid taxes and \$1.47 per month in statutory interest from November 17, 2003, until the tax roll is adjusted and a refund is issued for the 2002-03 tax year.

IT IS FURTHER DECIDED that Plaintiff is entitled to \$10.89 in additional statutory interest on the amount of taxes overpaid for the 2001-2002 tax year.

IT IS FURTHER DECIDED that Plaintiff is entitled to \$.62 in additional statutory interest on the amount of taxes overpaid for the 2000-2001 tax year.

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

Dated this _____ day of March 2004.

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.

³⁰ Plaintiff previously received a refund of \$280.68, including \$35.28 in statutory interest for tax year 2001-02. Plaintiff is entitled to \$46.17 in statutory interest and must be paid the difference of \$10.89.

³¹ Plaintiff previously received a refund of \$235.75, including \$55.18 in statutory interest for tax year 2000-2001. Plaintiff is entitled to \$55.80 in statutory interest and must be paid the difference of \$.62.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON MARCH 17, 2004. THE COURT FILED THIS DOCUMENT ON MARCH 17, 2004.