

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

AMERICAN KIWI TRUST, MICHAEL)
MRKONIC and JUDY MRKONIC,)
TRUSTEES,)
)
Plaintiffs,) TC-MD 030860C
)
v.)
)
COOS COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiffs seek a discretionary waiver of certain retroactive property tax assessments imposed by Defendant pursuant to an omitted property assessment. Michael Mrkonic (Mrkonic) appeared for Plaintiffs. David Koch, Assistant County Counsel, appeared for Defendant. The parties agreed during the September 24, 2003, case management conference, that the court should decide the matter based on the undisputed facts presented by the parties at that proceeding.

I. STATEMENT OF FACTS

Plaintiffs acquired certain commercial property, identified in the assessor's records as Account 64716.00, 10 or more years ago. There was a platted but unimproved street on or adjacent to the property. The street was vacated in 1972 pursuant to City of Coos Bay Ordinance 2533, recorded at 72-10-78275. Defendant was unaware of the vacation until 2003. When Defendant learned that the street had been vacated, it retroactively added the value of the property to Plaintiffs' property tax account as omitted property. The assessment increased the value of Plaintiffs' property for tax years 1997-98 through 2002-03, inclusive. According to Mrkonic, the boundaries of the property, as described by the realtor at the time of purchase, did not include the street and Plaintiffs were therefore

unaware that they owned that land. Mrkonic acknowledges that the assessment may be legal, but believes it is “immoral” because Plaintiffs are being penalized for Defendant’s errors. Defendant responds that the retroactive assessment is not a penalty because the taxes on the property for the 10 or more years that Plaintiffs have held title have been less than they should have been and the assessment captures only six of those years. The implication is that Plaintiffs enjoy an unintended windfall for at least four tax years.

II. ANALYSIS

Omitted property assessments are made in accordance with the provisions of ORS 311.216 through ORS 311.232.¹ ORS 311.216 provides, in relevant part:

“(1) Whenever the assessor discovers or receives credible information, or if the assessor has reason to believe that any real or personal property * * * has from any cause been omitted, in whole or in part, from assessment and taxation on the current assessment and tax rolls or on any such rolls for any year or years not exceeding five years prior to the last roll so returned, the assessor shall give notice as provided in ORS 311.219.”

ORS 311.219 requires notice to the owner “of the assessor’s intention to add the property to the assessment or tax roll.” The owner must be given an opportunity to appear and “show cause, if any, why the property should not be added to the * * * roll.” *Id.* If the owner either fails to appear or fails to persuade the assessor the assessment should not be made, “the assessor shall proceed to correct the assessment or tax roll or rolls from which the property was omitted.” ORS 311.223(1).

As the party seeking affirmative relief, Plaintiffs have the burden of proof and must show, by a preponderance of the evidence, that the assessor erred in making the omitted property assessment. ORS 305.427. Plaintiffs have produced no evidence of an error in the assessment. In fact, Plaintiffs have made no argument as to the legality or correctness

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
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of the assessment. Rather, Plaintiffs' concern is that the additional tax, which exceeds \$2,000, creates a hardship and, given that the error was made by Defendant, Plaintiffs believe a retroactive assessment is wrong. The court explored the matter in some detail and discovered no apparent irregularities in the assessment. Once omitted property is discovered it must be assessed and taxed. The assessor's notice of intent was issued on May 4, 2003, and the roll was apparently corrected on or about June 24, 2003. Because the correction was made during the final days of the 2002-03 tax year, the taxes were added to the regular annual tax liability for the following tax year (2003-04), payment for which is due on November 15, 2003.

ORS 311.229.

The interesting feature in this case is Plaintiffs' apparent lack of actual knowledge that they owned the property added by the disputed assessment. Typically a taxpayer knows he owns the property and it is only the assessor who is unaware of that fact. Moreover, often there is an unusually low tax bill to alert a taxpayer that certain property is escaping taxation. Of course, the city's action of vacating the street was recorded and the public was therefore on notice. Accordingly, Plaintiffs are not entitled to relief under ORS 311.235 as a bona fide purchaser.

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III. CONCLUSION

Plaintiffs' challenge to the omitted property assessment is denied because Plaintiffs have failed to show any error in the assessment. Now, therefore,

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

Dated this _____ day of October, 2003.

DAN ROBINSON
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 DAN ROBINSON ON OCTOBER 16, 2003. THE COURT FILED THIS DOCUMENT ON OCTOBER 16, 2003.