

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ROSELAND INVST and ROSELAND PLAZA)
APTS,)
)
Plaintiffs,) TC-MD 030911C
)
v.)
)
MARION COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiffs have appealed certain additional charges added to their personal property tax liability for the 2002-03 tax year, imposed by Defendant for late payment of the taxes. The October 6, 2003, case management conference was converted to a trial at the parties' request. Keith Eibel and Donna Eibel (the Eibels), owners¹ of the subject property, appeared for Plaintiffs on their own behalf. Rex Weisner, tax office supervisor, Marion County Assessor's Office, appeared for Defendant.

I. STATEMENT OF FACTS

The charges at issue relate to certain personal property acquired by the Eibels in June 2002 as part of the acquisition of an apartment complex in Salem known as Roseland Plaza Apartments. The property was purchased from Roseland Investment, Ltd., Lake Oswego, Oregon (Roseland). The legal owner of the subject property is Full House Investments LLC, a company created and operated by the Eibels.

Property taxes for the real property were timely paid by the mortgage company in November 2002. The Eibels mistakenly believed that those taxes covered all of the property, real and personal, related to the apartment complex. On or about July 3, 2003,

¹ The property is held in the name of Full House Investments, LLC, of which the Eibels are the key principals.

the property management company overseeing the day-to-day management of the apartment building, forwarded the personal property tax bill to the Eibels. That bill had originally been mailed by Defendant to the previous owner, Roseland. Donna Eibel placed a number of calls to the assessor's office and the mortgage company and discovered that the additional tax bill pertained to the office equipment (the facsimile, copier, etc.) they acquired as part of the purchase of the apartment building and that the mortgage company only received the real property tax bill. Taxes on the personal property were \$735.95, or \$713.87 with the full 3 percent statutory discount. The total liability grew to \$841.83, and included a \$47 warrant fee and interest of \$58.88. The Eibels paid \$713.87 in late August 2003.

II. ANALYSIS

Property taxes in Oregon are due in trimester payments on the 15th day of the months of November, February, and May. ORS 311.505(1).² The first one-third in this case was due on or before November 15, 2002. *Id.* The statute provides that the taxes "shall be paid on or before November 15." *Id.* Use of the word "shall" makes the requirement mandatory.

ORS 311.555 requires owners of personal property to keep the tax collector informed of their address. The statute provides in relevant part:

“Each person, firm or corporation owning real or personal property within the state, or against whom taxes upon real or personal property are chargeable, shall keep the tax collector of the county where such real or personal property is situate informed of the true and correct address of the person, firm or corporation.”

ORS 311.555. After acquiring the property here at issue, the Eibels were required to inform the collector of the “true and correct address” of the owner, Full House Investments,

² All references to the Oregon Revised Statutes (ORS) are to 2001.
DECISION TC-MD 030911C

LLC. Such notice was not given. The court understands that the Eibels believed everything was subsumed under the real property account and that notice of the change in ownership would be given by the title company. Nonetheless, their misunderstanding does not excuse them from following the law. Moreover, the statute further provides that the failure to keep the collector so informed (of the owner's address) precludes the person, firm or corporation from pleading lack of notice of delinquency. ORS 311.555.

Defendant mailed the tax bill for the personal property to the previous owner because Roseland had filed the personal property tax return required by ORS 308.290 and was considered the owner of record by Defendant for purposes of ORS 311.250(1), which dictates the mailing of tax statements.

The Eibels object to the imposition of interest and the denial of the 3 percent discount available to taxpayers who timely pay their taxes in full. They would like the court to cancel the interest and grant them the benefit of that discount. Both issues are governed by statute, which provides, in relevant part:

"(2) Interest shall be charged and collected on any taxes on property, * * * or installment thereof not paid when due, at the rate of one and one-third percent per month, or fraction of a month until paid.

"(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.

The taxes in this case were not paid until August 2003, and then only partial payment was tendered. Plaintiffs' payment was late and Defendant imposed statutory interest and denied the discount. 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
DECISION TC-MD 030911C

are not paid on time.

III. CONCLUSION

The court concludes that Plaintiffs' request to have the interest waived and the 3 percent discount granted is denied because the taxes on the personal property were not timely paid; the taxes were not paid because the Eibels did not receive the tax statement and such nonreceipt was due to their failure to notify the tax collector where to mail the tax statement. Now, therefore,

IT IS THE DECISION OF THIS COURT that the relief requested by the Complaint 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.