

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BRIDGET REILLY,)
)
 Plaintiff,) TC-MD 040028A
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON)
)
 Defendant.) **DECISION**

At issue is the disqualification of a residence, identified by Defendant as Reference Number 12355-48930 492 01 6 1, from property tax deferral. Plaintiff appeared and made her case. Defendant was represented by Bobbie Barott, of its staff.

I. STATEMENT OF FACTS

In 2001 Plaintiff and her spouse, John W. McCulloch (McCulloch), applied to Defendant to defer the property taxes that would otherwise be due upon their home. McCulloch met the disability requirements for Social Security. Plaintiff and her husband met the other eligibility requirements of ownership, residency, and income. Defendant granted their application and subsequently paid the property taxes due for the 2001-02, 2002-03, and 2003-04 tax years.

Plaintiff and her spouse subsequently divorced. Plaintiff received the property and its encumbrances as part of the divorce settlement. McCulloch no longer lives on the property.

Plaintiff is not disabled. She is less than 62 years of age.

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II. ANALYSIS

Defendant's reasoning begins with the assertion that the property was granted the deferral due to the disability of McCulloch, proceeds to observe that McCulloch no longer lives on the property, and concludes that the property has lost its ability to defer present and future taxes and that past taxes and their accrued interest must be repaid.

The court cannot agree with that analysis in its entirety, for the reason that Plaintiff and McCulloch filed a joint claim to defer the property. When those two individuals jointly elected to defer the property taxes through ORS 311.668(1),¹ each person became a "taxpayer" by operation of ORS 311.668(4) for purposes of construing ORS 311.666 to 311.701.

That is important because ORS 311.684, the statute that sets out the events requiring payment of the deferred tax and interest, sets out as a disqualifying event that "the tax-deferred property is no longer the homestead of the taxpayer. *Id.* at (3). In this case, the tax-deferred property remains the homestead of "the taxpayer," specifically Plaintiff by virtue of her joint election.

There are, of course, consequences to McCulloch's abandonment of the homestead. As there is no longer any disability attached to the electing owner, current and future property taxes may no longer be deferred and instead become payable when due through ORS 311.687(2). However, a critical distinction exists as to the treatment of taxes already deferred. In instances when disability is lost and the property remains the homestead on an electing owner, taxes previously deferred remain in that status and do not become due until the property becomes disqualified under ORS 311.684.

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Does that statutory analysis produce a fair result? It would seem so. The property initially qualified for deferral because one of the spouses had a disability, and

¹All references to the Oregon Revised Statutes (ORS) are to 2001.
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the income of both spouses was below the statutory threshold. It would appear inequitable to say that the spouse who retained the homestead must repay the deferred taxes, for it was her lack of income during the time that taxes were due that qualified the property for exemption. At the same time it seems fair to require the remaining spouse to pay current and future taxes as they come due, because lack of income alone is not a reason under ORS 311.666 to 311.701 to defer property taxes.

III. CONCLUSION

Plaintiff's appeal is granted in part. Property taxes previously deferred and their accrued interest are not now due and payable. However, current and future taxes may no longer be deferred. Now, therefore,

IT IS THE DECISION OF THIS COURT that this case is resolved as set out above.

Dated this _____ day of May 2004.

SCOT A. SIDERAS
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 SCOT A. SIDERAS MAY 17, 2004. THE COURT FILED THIS DOCUMENT MAY 17, 2004.