

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JAMES W. WORLEIN)	
and SHELLEY E. BUHLER,)	
)	
Plaintiffs,)	TC-MD 040271A
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appealed a correction to the roll, for the 1999-2000 through 2003-04 tax years, as to their home, identified by Account R185082. Plaintiff’s counsel was Kirkland T. Roberts. Defendant appeared through Doug Kelsay, of its staff.

I. STATEMENT OF FACTS

For the periods at issue, Defendant’s assessment and tax roll contained the following information:

	<u>1999-2000</u>	<u>2000-2001</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>
Market Value:					
Land	\$ 59,000	\$ 77,700	\$ 77,700	\$ 77,700	\$ 82,500
Improvement	<u>\$217,500</u>	<u>\$315,950</u>	<u>\$309,830</u>	<u>\$318,160</u>	<u>\$287,800</u>
Total	\$276,500	\$393,650	\$387,530	\$395,860	\$370,300
Assessed Value:	\$ 38,660	\$124,290	\$128,010	\$131,850	\$135,800

Defendant issued tax statements for the disputed periods containing that information and calculated a tax due on the basis of each year’s assessed value. Plaintiffs paid the sums demanded.

Defendant subsequently decided that the tax roll and tax statements for each of those years was in error. The error was not in the determination of the property’s market value. The

///

error was in the assignment of an assessed value. Defendant seeks the following correction to the tax rolls:

	<u>1999-2000</u>	<u>2000-2001</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>
Assessed Value	\$123,380.00	\$211,560.00	\$217,900.00	\$224,430.00	\$231,160.00
Additional Tax	\$ 1,415.93	\$ 1,431.41	\$ 1,595.25	\$ 1,627.20	\$ 1,664.30

Plaintiffs do not dispute that the assessed value originally set for their property was in error, or that the corrected amounts were the proper values. The only issue in this appeal is whether Defendant is able, despite its mistake, to now collect the taxes that otherwise ought to have been imposed on Plaintiffs.

II. ANALYSIS

The relevant statute is ORS 311.205.¹ That law groups errors or omissions on the tax roll into three groups. The first is clerical errors. A clerical error is an error on the roll that arises from an error in the ad valorem tax records of the assessor that, had it been discovered by the assessor prior to the certification of the assessment and tax roll, would have been corrected as a matter of course. The information necessary to make the correction is contained in the records. ORS 311.205(1)(a). The second category of error that might occur on the tax roll is an error in valuation judgment. ORS 311.205(1)(b). The third, is any other error or omission of any kind. *Id.*

The categorization of errors is important due to the consequences. The only error in which the correction does not require the property owner to pay additional tax is an error in value judgment. Clerical errors, as well as any other error or omission of any kind, result in taxpayers being forced to pay additional tax.

What type of error occurred in this appeal? The key fact is that Defendant's error was not

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

in the assignment of real market values to the property. Defendant's mistake was limited to the assignment of assessed values. Assessed values are assigned to the property in a very mechanical process. Defendant looks to the property's maximum assessed value, compares it to the property's real market value, and assigns the lesser of the two as the assessed value.

ORS 308.146(2)(a)(b). Maximum assessed value is also very simply determined. It is set, for new property, by multiplying the value of new improvements or property by a ratio of average assessed value over average real market value, and for subsequent tax years, by setting it at 103 percent of the prior year's assessed value.

Defendant's error was not the sort of mistake that occurs when an appraiser analyzes the elements of a property that add or detract from its value. Instead, Defendant's error occurred when the results of its appraisal were processed according to the steps that tax the property not at its real market value, but at a lower assessed value. In order to correct the mistake, Defendant did not need to re-appraise the property. Instead, it was the type of error which, had it been discovered by Defendant prior to the certification of the roll, would have been corrected as a matter of course and where all the information necessary to make the correction was in Defendant's records. That statement is consistent with the statutory definition of a clerical error. ORS 311.205(1)(a). The conclusion that mistakes that occur as real market value and maximum assessed value are processed to set assessed value are the type of errors in which the correction results in additional tax being sought from a taxpayer is consistent with a line of previous cases decided by this court. *See, e.g. Elwess v. Deschutes County*, TC-MD 020066C (Oct. 20, 2002).

Plaintiffs' most sincere argument is not related to the construction of the statute. Plaintiffs reason that they paid the taxes demanded of them at the time when those amounts were due and did not know they were paying less than the sums they should have. Now, half a decade later, they face genuine hardship in order to rectify the mistake made by their government. That

is an important point.

However, as to that point, the legislature has spoken. The most relief the legislature has chosen to extend has been to permit under certain circumstances, the payment of the additional tax without interest. ORS 311.208(2)(2000). The court cannot say that this choice is unconstitutional. Any sympathy the court has with Plaintiffs does not allow it to fashion a remedy.

III. CONCLUSION

Now, therefore,

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

Dated this _____ day of Spetember 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 ON SEPTEMBER 27, 2004. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 27, 2004.