

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Property Tax

PETER D. ZUPAN and DELORES W. ZUPAN,	)	
	)	
Plaintiffs,	)	TC-MD 040776B
	)	
v.	)	
	)	
MARION COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION AND JUDGMENT</b>

Plaintiffs appealed Defendant's imposition of charges for the late payment of 2003-04 property taxes on real property identified as Account R64379.

A case management conference was scheduled for September 14, 2004. At the request of the parties, that proceeding was converted to a trial; sworn testimony was provided and arguments were made. Peter D. Zupan (Zupan) testified on his own behalf; Rex Weisner participated for Defendant.

I. STATEMENT OF FACTS

Zupan testified he is very aware of the importance of timely mailing property tax payments. He testified that before the filing deadline of November 17, 2003, he placed the property tax payment in an official receptacle for the United States Postal Service. Sufficient postage was attached and it was correctly addressed. He has followed the same pattern since 1968. The personal check was dated November 15, 2003.

When Defendant received the payment, it noted that the cancellation mark on the envelope was dated November 20, 2003. As a result, the county sent Plaintiffs a notice that the county was charging them interest (\$9.27) and disallowing a discount (\$62.52) for the late payment of those property taxes. Plaintiffs now seek a refund of \$71.79.

Defendant’s representative testified that the only information they considered was the official postmark on the envelope. No other factors are deemed relevant to the inquiry as to timeliness.

## II. ANALYSIS

ORS 311.505(1)<sup>1</sup> provides that the first one-third of all property taxes due from a taxpayer “shall be paid on or before November 15[.]” ORS 311.505(2) provides that “[i]nterest shall be charged and collected on any taxes on property \* \* \* not paid when due[.]” When a payment is mailed through the United States mail, the cancellation mark on the envelope is generally considered the date payment is received. *See* ORS 305.820(1)(a). When a cancellation mark is after the due date, but the taxpayers contend they actually mailed the document on or before the due date, the taxpayers must establish that they, in fact, mailed the document on the earlier date. ORS 305.820(1)(a) states:

“(1) Any writing or remittance required by law to be filed with or made to the \* \* \* county \* \* \* tax collector (designated in this section as the ‘addressee’) which is:

“(a) Transmitted through the United States mail \* \* \* shall be deemed filed or received on the date shown by the cancellation mark \* \* \* **or on the date it was mailed or deposited if proof satisfactory to the addressee establishes that the actual mailing or deposit occurred on an earlier date.**” (Emphases added).

The legislature recognized that circumstances may exist where actual mailing occurs on a date prior to the date shown by the cancellation mark. To use an earlier date as the date of mailing, the taxpayer must submit “proof satisfactory to the addressee” that the taxpayer mailed the remittance earlier. *Id.* The county is the “addressee” in this case, so it has the initial statutory authority to determine whether Plaintiffs have sufficiently demonstrated they actually

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.  
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mailed the payment on November 15, 2003. The county concluded Plaintiffs had not made such a demonstration. The court is now in a position of reviewing the county's initial determination.

This court has held that review of the county's determination under ORS 305.820(1)(a) is limited to whether the county "abused its discretion." *See Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498, 500 (1993). As a consequence, this court is not evaluating de novo (or "anew") whether Plaintiffs have submitted satisfactory evidence that it timely mailed the payment.

In *Jackson County Tax Collector*, the court considered facts similar to those presented here. In that case, the taxpayer claimed to have deposited her payment in the U.S. postal deposit box on the morning of November 15, 1991. When the county received the payment, the envelope contained a cancellation mark of November 18, 1991. The taxpayer had no independent corroborating evidence to support her assertion she mailed the payment November 15<sup>th</sup>. Jackson County had a policy that postmark dates are the *preferred* method of proving mailing dates. Its policy allowed taxpayers to demonstrate an earlier mailing date by providing corroborating evidence. The policy stated in part:

"Taxpayer may support a claim of timely mailing by presenting a postal receipt, letter from the post office or parcel delivery service, or other credible corroborating evidence. A taxpayer's uncorroborated assertion of timely mailing is not satisfactory proof of mailing." *Jackson County Tax Collector*, 12 OTR at 499.

The court found the county had not abused its discretion in finding taxpayer had failed to demonstrate she mailed the payment on an earlier date. The court concluded:

"The court finds it is not unreasonable for the [county] to require corroborating evidence. The policy, as stated, does not require written proof. The corroborating evidence could be the testimony of an individual who witnessed the mailing or of a postal employee who explains why the mail was not postmarked in a timely fashion. Requiring some corroborating evidence is not an abuse of discretion. **It would be an abuse of discretion if [the county] refused to consider any evidence other than the post-office cancellation mark**

**stamped upon the envelope. Such a policy would foreclose the exercise of any discretion.”** (Emphasis added). *Id.* at 500.

According to the undisputed trial testimony, the county in this case applied a rigid postmark date policy, which did not permit any corroborating evidence to support a claim of earlier mailing. According to *Jackson County Tax Collector*, that does not allow these taxpayers to provide any alternative proof. Under the specific facts of this case, the court finds the county abused its discretion in determining that Plaintiffs failed to offer satisfactory proof of timely mailing.

### III. CONCLUSION

It is the conclusion of the court that the county did abuse its discretion in determining that Plaintiffs failed to prove timely mailing of their 2003-04 property tax payment. Now, therefore,

IT IS THE DECISION OF THE COURT that the county’s imposition of interest for the late payment of property taxes is overturned and a refund shall issue to Plaintiffs with statutory interest, if any.

Dated this \_\_\_\_\_ day of December 2004.

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JEFF MATTSON  
MAGISTRATE

**THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JEFF MATTSON DECEMBER 9, 2004. THE COURT FILED THIS DOCUMENT DECEMBER 9, 2004.**