

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

TUNJI MABINUORI)	
and CHRISTI MABINUORI,)	
)	
Plaintiffs,)	TC-MD 040817E
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION and JUDGMENT

Plaintiffs appeal Defendant’s omitted property assessment for the 2003-04 tax year. Trial in the matter was held August 24, 2004.¹ Tunji Mabinuori (Mabinuori) appeared on behalf of Plaintiffs. Thomas L. Frederiksen appeared on behalf of Defendant.

I. STATEMENT OF FACTS

The subject property is Plaintiffs’ home, which they purchased new in December 2002.² When Defendant prepared the tax roll for the 2003-04 tax year, it was unaware that the home had been constructed. As a result, the home was omitted from the tax roll for the 2003-04 tax year. In the fall of 2003, after the tax roll had been certified, an appraiser from Defendant’s office visited the property. It was at that time Defendant became aware of the home. According to Mabinuori, the appraiser advised that taxes on the property would increase for the 2004-05 tax year due to the addition of the home but that no back taxes would be assessed.

On April 12, 2004, Defendant sent notice to Plaintiffs of its intent to add value to the 2003-04 tax roll due to the home’s omission. Plaintiffs appeal Defendant’s notice to this court. Plaintiffs argue that they had been assured by the appraiser who visited their home that they

¹ The proceeding began as a case management conference but was converted into a trial after both parties stated they were prepared for the court to rule on the matter.

² The property is identified in Defendant’s records as Account 1677614.

would not be assessed back taxes for the home. They further argue that they are unable to afford the increased amounts and that it is unfair to make them pay for the “county mistake.”

II. ANALYSIS

The Oregon Legislature was aware that when the county assessors prepare the tax roll each year, they may, through no fault of their own, omit certain property from taxation. As in this case, new property is constructed and often not discovered by the assessor until after the tax roll is completed. As a result, the legislature created a statutory process that allows assessors to retroactively add omitted property to the tax rolls and impose taxes that should have been imposed earlier. ORS 311.216(1)³ states, in pertinent part:

“Whenever the assessor discovers or receives credible information, or if the assessor has reason to believe that any real or personal property * * * or any buildings, structures, improvements or timber on land previously assessed without the same, 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 certified roll, the assessor shall give notice as provided in ORS 311.219.”

ORS 311.219 provides that the assessor shall give notice to the person owning the property of the assessor’s intent to add the omitted property to the roll and provides a taxpayer an opportunity to show cause why the property should not be added.

In this case, a new home was constructed on the property, and Defendant did not become aware of the home until after the 2003-04 tax roll had been certified. ORS 311.216 allows Defendant to add the omitted property to the tax roll retroactively. Plaintiffs argue that the retroactive nature of the assessment is unfair. However, the statute permits it, and Plaintiffs are not paying more than what they rightfully would have paid had Defendant become aware of the construction earlier. Plaintiffs argue they should not be penalized for Defendant’s “mistake.” Defendant, however, made no mistake; it was simply not made aware of the new construction

³ All references to the Oregon Revised Statutes (ORS) are to 2003.

until after the tax roll had been certified. Further, in contrast to Plaintiffs' argument, the omitted property statute was created so that taxpayers would not **benefit** from county omissions.⁴

Plaintiffs argue that they are unable to afford the additional tax burden. The court, however, is not in a position to judge a person's ability to pay, and its decisions are not dictated by whether a taxpayer can afford the tax burden. Instead, the court's decisions relate to the law and whether Defendant's actions are appropriate. In this case, Defendant acted properly when imposing the additional taxes for the 2003-04 tax year.

Plaintiffs further argue that the value added to the tax roll for the 2003-04 tax year is too high. During trial, Defendant agreed to reduce the value of Plaintiffs' property to the purchase price. As a result, the real market value added for the 2003-04 tax year is \$172,456, broken down \$169,473 for improvements and \$2,983 for on-site developments.

III. CONCLUSION

The court concludes that Defendant complied with ORS 311.216 when it notified Plaintiffs that it was amending the 2003-04 tax roll to add the home it had previously omitted. As agreed, Defendant shall reduce the value added. Now, therefore,

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⁴ During the trial, the court discussed with the parties the bona fide purchaser statute found in ORS 311.235. After further review, the court concludes that the statute does not apply to shield Plaintiffs from the liability. The statute protects bona fide purchasers only from taxes assessed for years prior to the year of purchase. In this case, taxes for the 2003-04 tax year had not yet been levied when Plaintiffs purchased the property. As a result, taxes levied for that year are Plaintiffs' responsibility.

IT IS ADJUDGED that Defendant shall adjust its 2003-04 omitted property assessment to reflect a total value added of \$172,456, broken down \$169,473 for improvements and \$2,983 for on-site developments.

Dated this _____ day of September 2004.

COYREEN R. WEIDNER
MAGISTRATE

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

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER
SEPTEMBER 22, 2004. THE COURT FILED THIS DOCUMENT SEPTEMBER 22,
2004.**