

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

NOFFSINGER MANUFACTURING CO, INC.,)	
)	
Plaintiff,)	TC-MD 040841D
)	
v.)	
)	
UMATILLA COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s assessment of interest on its delinquent payment of personal property taxes for tax year 2003-04. A telephone trial was held Wednesday, June 8, 2005. Mel Moore (Moore), Controller, appeared on behalf of Plaintiff. Paul Chalmers (Chalmers), Director of Umatilla County Department of Assessment and Taxation, and Rhonda Schultz (Schultz), an employee of Defendant, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

The parties agree to the following sequence of events: On October 24, 2003, the county processed an omitted property assessment for Plaintiff; on October 27, 2003, Defendant mailed a property tax statement labeled “corrected” to Plaintiff; on or around November 5, 2003, Plaintiff received the corrected property tax statement; on the corrected property tax statement, Moore circled the amount of tax (\$4,479.49) and wrote “ok”, signed his name and dated it “11/5/03.” At some point, after making the notations on the corrected statement, Moore contacted Defendant. Moore testified that he spoke to Shirley, at the Umatilla County Department of Assessment and Taxation, who told him that he would be receiving a corrected property tax statement. Unfortunately, according to Defendant, Moore had received the corrected statement prior to the time he spoke to Defendant’s representative, Shirley.

On May 25, 2004, Defendant mailed out a delinquent tax notice to Plaintiff because the property tax had not been paid. After receiving the delinquent tax notice, Moore called Defendant, stating “that they had been waiting for a corrected statement since last November.” (Def’s Answer, email from Rhonda Schultz dated July 27, 2004.) Plaintiff paid the tax assessed, less the interest charged, on June 1, 2004.

Plaintiff appeals the interest charged. On December 6, 2004, Plaintiff presented its request for relief from the interest charged to the Oregon Department of Revenue (Department). The Department issued its Conference Decision No. 04-0256 (Decision) on December 23, 2004. In its Decision, the Department concluded, first, that there was “no substantiated evidence of misleading factual representation or conduct by the tax collector” and, second, that “the assessment of interest for the 2003-04 tax year conforms to law, and waiving the interest would be contrary to law.” Plaintiff’s request was denied.

Plaintiff asks the court to overrule the Department’s Decision and waive the interest charged.

II. ANALYSIS

Plaintiff requests that the interest charged be waived. The law clearly states that “[i]nterest shall be charged and collected on any taxes on property, other charges, and on any additional taxes or penalty imposed for disqualification of property for special assessment or exemption, 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.” ORS 311.505(2).¹ In this case, there is no disagreement that Plaintiff did not pay the property tax until June 1, 2004, which was beyond the

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

due date of November 15, 2003. Interest was charged as required by statute. From a policy perspective, the interest charged compensates Defendant for the time period when it was entitled to the funds but Plaintiff had the use of those funds.

During one of the case management conferences held to discuss Plaintiff's appeal, Plaintiff was told that the court does not have the discretionary authority to waive lawfully assessed interest. In response to that information, Plaintiff filed a petition with the Department seeking a discretionary waiver of the interest charged. After holding a telephone conference, the Department issued its Decision, denying Plaintiff's request. The court has no authority to overrule the Department unless it abused its discretion. There is no basis for the court to conclude that the Department abused its discretion.

The Department's Decision states that it reviewed the conduct of Defendant and concluded that there was no evidence of "misleading factual representation or conduct by the tax collector." With respect to this determination, Moore disagrees with the Department's conclusion, stating that, to his detriment, he relied on an oral statement from one of Defendant's employees. This court has previously concluded that "[t]here are many possibilities for misunderstanding with oral communication." *Mahler v. Dept. of Rev.*, 11 OTR 367, 370 (1990). Moore, who is an experienced business professional, knew that the property taxes were due November 15, 2003, because the corrected statement clearly stated a balance of \$4,479.49, the amount Moore circled and "okayed" in the section of the statement entitled, "tax pay-off summary for 11/15/03." "When written materials containing accurate information and advice are given to taxpayers, taxpayers may not continue to rely on an understanding based on oral representations or discussions which are contrary to the written information." *Smith v. Dept. of Rev.*, 13 OTR 206, 210 (1994). There is nothing in the evidence to suggest that the Department

abused its discretion in concluding that Plaintiff was provided with “factual” information sufficient to inform it of the amount of property tax assessed and the due date for payment of that assessment. In addition, the Department concluded that the interest charged was lawfully assessed. As previously discussed, this court agrees with the Department. There is no basis for the court to conclude that the Department abused its discretion. The Department’s Decision is upheld.

III. CONCLUSION

Through an unfortunate set of events, Plaintiff failed to timely pay the property taxes assessed for the 2003-04 tax year. The court concludes that the Department’s Decision stating that the interest charged cannot be waived is upheld. Now therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal is denied.

Dated this _____ day of July 2005.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on July 15, 2005 .
The Court filed this document on July 15, 2005.***