

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Property Tax

GARY ANDERSON	)	
and CAROL ANNE ANDERSON,	)	
	)	
Plaintiffs,	)	TC-MD 040957A
	)	
v.	)	
	)	
LANE COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION and JUDGMENT</b>

Plaintiffs appealed Defendant's assessment of additional taxes for the 1999-2000 through 2003-04 tax years. Plaintiffs appeared and made their arguments. Defendant participated through Thomas Frederiksen, of its staff.

I. STATEMENT OF FACTS

The property at issue is a small dwelling at 1600 Lawrence St., Eugene, which, according to Plaintiffs, was remodeled in the 1930s, 1940s, 1950s, and 1990s. The consequences of the last remodeling are at issue in this appeal.

Apparently, in 1993, the owner of the premises decided to convert the garage to living space. A permit was taken out. The work was begun. Prior to the completion, Defendant's appraiser inspected the site. The conversion was added to the roll on the basis that it was 80 percent complete on the assessment date in question. The conversion was subsequently finished.

Defendant asserts that it never corrected its tax records to reflect the completed garage conversion, and that Defendant never added the additional incremental value to the tax roll. In August 2004, Defendant subsequently determined that the garage conversion had, in fact, been

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completed for at least the last six years. Defendant then gave notice to Plaintiffs of its intention to add omitted property to the roll.

For the 1999-2000 tax year, Defendant added \$8,000 in real market value raising the improvement value to \$63,140, and bringing the total value of the improvements to \$86,000. The corresponding change in assessed value was from \$51,674 to \$62,145. Other changes for the subsequent years were made so that by the 2003-04 tax year, \$10,354 in real market value was added to an improvement value of \$63,880, causing the total real market value of the parcel to climb from \$94,954 to \$105,308. The addition to assessed value for the 2003-04 tax year, \$11,784, increased total assessed value to \$69,944.

For its part, Plaintiffs testified they purchased the property in 1999. Plaintiffs specifically stated that, as they read their annual tax statements and paid their taxes each year, they had no idea their property was being assessed at anything other than 100 percent of its value.

## II. ANALYSIS

If property has been omitted from the roll, the assessor has the responsibility to discover the omission and make the necessary correction. ORS 311.216.<sup>1</sup> However, that duty exists only if the property has, in fact, been omitted from the roll. An assessor may not, for example, correct an error in value judgment. ORS 311.205.

How does a party prove whether or not a property has been omitted? The first source of any proof must be the assessor's records. In this case, Defendant's records are equivocal. They show the conversion as being "incomplete". From that, Defendant reasons that additional value must be added because, if it had, the notation would have been changed. However, that is not the

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<sup>1</sup>All references to the Oregon Revised Statutes (ORS) are to 2003.

only explanation. It could also be true that one of Defendant's appraisers did visit the property in the early to mid-1990s. He or she might have decided, following their view of the property, that the conversion as completed did not enhance the value of the house as much as had been anticipated. The appraiser might have decided that the value assigned to the property, as 80 percent complete, in fact already accurately captured all the value of the conversion. Satisfied with the value of the property as already shown on the roll, the appraiser might have then inadvertently failed to remove the notation "incomplete".

With the assessor's records inviting only guesses as to what occurred, the court looks for other proofs. In many cases involving the addition of omitted property to the roll, the values at which the account was taxed are themselves proof that property must have been omitted. If the roll value was too low for the property that was, in fact, there during the assessment dates in question, it naturally follows that some of the property must have escaped taxation.

Here the roll values do not make such statement. Defendant seeks to add about 16 percent to the real market value of the improvements and about 10 percent to the total value of the property. Those corrections do not in themselves point out property that must have escaped taxation. Instead, they are, if not within the range of value contemplated on the roll, certainly close to it.

The burden of proof in this case rests with Plaintiffs. Plaintiffs have challenged Defendant to show the property was omitted from tax, which is a prerequisite to Defendant's actions. The conclusion of the court is that Defendant has not shown, by a preponderance of the evidence, that the property was omitted from tax. The notations in Defendant's records are equivocal. The values on the roll, and Defendant's requested corrections, reflect the range of appraisal judgment as much as an omission of property. Plaintiffs' appeal is granted.

### III. CONCLUSION

Plaintiffs' challenge to Defendant's conclusion that the property was omitted is successful. Now, therefore,

IT IS ADJUDGED that the appeal is granted.

Dated this \_\_\_\_\_ day of February 2005.

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SCOT A. SIDERAS  
MAGISTRATE

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

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON  
FEBRUARY 11, 2005 . THE COURT FILED THIS DOCUMENT ON FEBRUARY 11,  
2005.**