

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

EDWARD C. WIEMKEN)	
and BIRDIE L. WIEMKEN,)	
)	
Plaintiffs,)	TC-MD 050238C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the imposition of interest by Defendant for late payment of property taxes for the 2002-03 tax year on property identified in the assessor's records as Account P349952.¹ The May 2, 2005, case management conference was converted to a trial at Plaintiffs' request, with Defendant's concurrence. Plaintiffs appeared in person and presented their case through the testimony of Edward Wiemken (Wiemken). Patrice Kilmartin (Kilmartin), an employee in the Multnomah County tax collector's office, appeared by telephone on behalf of Defendant. For ease of reference, and unless noted otherwise, the parties will be referred to as taxpayers and the collector's office.

I. STATEMENT OF FACTS

The subject property is a floating home purchased by taxpayers from John W. and Darlene Ridgeway (Ridgeway) on October 11, 2002. Taxpayers live in California and bought the property as a second home. It is their first property purchase in Oregon. Taxpayers were not charged for property taxes by the title company at the time of closing, but they were credited for the sellers' portion of the taxes due from the beginning of the tax year (July 1, 2002) until the

¹ Plaintiffs' new Account number is P529791.

date of the sale. The amount of the credit was \$900.28. On September 4, 2002, prior to the purchase, taxpayers received a lien search report from the title company indicating that the property taxes for the 2002-03 tax year were a “lien not yet payable.”

In mid-October 2002, the collector’s office mailed the property tax bill for the 2002-03 tax year to the Ridgeways. The Ridgeways did not pay the taxes and apparently did not forward the bill to taxpayers. Sometime in November 2002, the tax collector’s office mailed a delinquency notice to the Ridgeways. That notice was returned by the post office with a label indicating that the Ridgeways had moved to Las Vegas. The collector’s office re-sent the notice to the Ridgeways’ Las Vegas address. It was not returned as undeliverable. In December 2002, the collector’s office issued a warrant to the Ridgeways. The Ridgeways called in January 2003 and stated that they would have the Oregon State Marine Board² notify the collector’s office of the title change. The collector’s office did not receive payment of the taxes.

Meanwhile, in December 2002, the appraisal department of the office of assessment and taxation received notice of the title change. That department set up a new account for the property, but did not notify the collector’s office of the sale. However, the collector’s office did learn of the ownership change and set up a new account for the property on December 11, 2002. Consistent with office policy, the property was assigned a new account number at that time. Although it is not entirely clear, it appears that the collector’s office did not know the name and address of the new owner (taxpayers) until March 2003. The collector’s office records were updated on March 25, 2003, to reflect taxpayers’ names and address as the new owners. The collector’s office records do not indicate the source of information that enabled it to update its records.

² Floating homes must be registered with the Oregon State Marine Board as set out in ORS 830.850 to 830.870.

Taxpayers were not billed for the tax year 2002-03 taxes until September 24, 2004. Meanwhile, taxpayers received their tax statement for the 2003-04 tax year in October 2003, and timely paid the bill.

The September 24, 2004, notice from the collector's office indicated that the county had learned of the sale of the property and that taxpayers were responsible for the taxes for the 2002-03 tax year. That notice states, "[t]he property taxes became a lien on the property the day prior to transfer (ORS 311.405(5)(a) and the transferees are responsible to see that th[e] lien is paid in full." The notice further indicates that "[t]he lien 'attaches' to the property" and that the "Tax Collector has authority to take possession of the property and to auction it in order to satisfy the tax debt owed." Taxpayers found that notice very upsetting.

Taxpayers contacted the collector's office after receiving the September 24, 2004, notice. Taxpayers complained about the untimeliness of the billing and about the additional charges for interest. Taxpayers finally agreed to pay the tax but not the interest, and were told that the tax liability for 2002-03 was \$3,217.62.

Taxpayers' November 22, 2004, payment of \$3,217.62 was applied first to interest and a \$47.00 warrant fee, and then to taxes. Taxpayers' outstanding balance was \$990.83 as of November 26, 2004; \$790.55 of that amount was for additional taxes. At time of trial, taxpayers had paid \$743.55 in interest and continue to owe \$790.55 for taxes and an additional \$252.98 in interest.

Taxpayers contend they were unaware of the unpaid taxes and argue that the collector's office should not have waited nearly two years to send them a bill. The delay in billing caused interest to accumulate, and taxpayers have requested that the court waive all or a portion of the interest. The collector's office responds that taxpayers knew or should have known that the taxes

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were not paid, that it complied with the law in pursuing collection, and that interest is a mandatory charge for delinquent tax payments.

II. ISSUE

The issue is whether taxpayers are entitled to a waiver of the interest charges for the 2002-03 tax year.

III. ANALYSIS

A payment of at least one-third of the taxes was due on or before November 15, 2002. *See* ORS 311.505(1).³ No tax payment was made on the account by the applicable due date. The taxes became delinquent on November 15, 2002, because the subject property, a floating home, is personal property. *See* ORS 311.510. ORS 311.505(2) requires the collector's office to charge interest on taxes not paid when due, at the statutory rate of one and one-third percent per month.

Under ORS 311.547, the collector's office is required to send notice of delinquent taxes "[a]fter any installment of personal property taxes becomes delinquent, and from time to time thereafter at the discretion of the tax collector * * *." The notice is to be sent "*as soon as practicable* * * * to each person * * * in whose name personal property is shown on the tax roll." *Id* (emphasis added).⁴ Taxpayers were shown on the tax roll as the owners on March 25, 2003.

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

⁴ ORS 311.547 provides:

"After any installment of personal property taxes becomes delinquent, and from time to time thereafter at the discretion of the tax collector, the tax collector shall as soon as practicable send to each person * * * in whose name personal property is shown on the tax roll and on which the taxes due and charged have not been paid, a written notice stating:

"(1) The total amount of taxes due and delinquent;

"(2) The date of delinquency;

"(3) The rate of interest applicable thereto;

"(4) the date interest begins to run; and

"(5) The date on or after which property will be distrained or a warrant served as

provided by law."

At that point, the first two trimester tax payments, due November 15, 2002, and February 15, 2003, were delinquent. *See* ORS 311.505(1). The final payment was due May 15, 2003. The collector's office should have sent taxpayers a notice after the final installment became delinquent. The collector's office did not send taxpayers a delinquency notice until September 24, 2004, approximately 16 months after the final payment became delinquent.⁵

Under ORS 311.565, failure to give the notice required in ORS 311.547 "shall not invalidate any proceeding to collect taxes, but shall subject the tax collector to any damages sustained by any person injured by the failure of the tax collector * * * to give the notice." This court has previously canceled interest charges as damages under ORS 311.565. *See e.g., Leyva v. Lane County Assessor*, TC-MD No 021281E, WL 21277204 (February 28, 2003); *Campbell v. Multnomah County Assessor*, TC-MD No 020187C, WL 1611544 (July 19, 2002). The interest was canceled in those and other cases because the tax collector failed to correctly update its records as required by ORS 311.560 after the new owners informed the collector's office of their correct address as required by ORS 311.555. Damages in the form of cancellation of interest were imposed under ORS 311.565 because of "[t]he failure of the tax collector to keep true and correct addresses, as provided in ORS 311.560."

The court hereby concludes that the delay in issuing taxpayers a delinquency notice subjects the collector's office to damages under ORS 311.565. The appropriate damage award in this case is cancellation of a portion of interest imposed. The collector's office should have issued a notice to taxpayers after the third trimester payment became delinquent on May 15, 2003. At that point, taxpayers were the owners of record. Thirty days is an appropriate time for

⁵ Moreover, the delinquency notice sent to taxpayers does not comply with the statute. It does not separate the amount of taxes due, does not indicate the date of delinquency, the interest rate, the date interest began to run, or the date on or after which the property might be distrained or a warrant issued, all of which is required by ORS 311.547.

that notice to be sent and received, and the taxes paid. Accordingly, the court cancels any and all interest imposed on or after June 16, 2003, on any installment not paid when due.

It is true that taxpayers knew, or should have known, that the taxes were unpaid at the time of closing. Moreover, taxpayers were required to become conversant with Oregon's property tax system and to pay the taxes on time. The court's decision does not relieve taxpayers of responsibility for the taxes. The tax collector's liability for damages stems from its failure to give timely notice of the delinquency.

III. CONCLUSION

The court concludes that the collector's office did not give taxpayers timely notice of delinquent taxes in the manner and form provided by ORS 311.547. The delay subjects the collector's office to damages under ORS 311.565. The appropriate damage award in this case is cancellation of interest imposed on each delinquent installment, calculated from June 16, 2003, forward. Now, therefore,

IT IS THE DECISION OF THIS COURT that taxpayers' request for cancellation of all or a portion of the interest imposed by the collector's office is granted consistent with the court's Decision.

Dated this _____ day of September 2005.

DAN ROBINSON
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 Dan Robinson on September 8, 2005 .
The Court filed this document on September 8, 2005.*