

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WALTER A. KARDASH,)	
)	
Plaintiff,)	TC-MD 050240B
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

A trial was convened on March 23, 2006. Walter A. Kardash appeared on his own behalf. Laurie E. Craghead, legal counsel, represented Defendant. Theresa Maul, county appraiser, testified as a witness.

Plaintiff was allowed to amend his original Complaint.¹ At trial, the presentation focused on three key issues: (A) omitted property actions for tax year 2003-04; (B) the subject property's real market value (RMV) for tax year 2003-04; and (C) the RMV for tax year 2004-05.

I. PRELIMINARY MATTERS

Defendant's proposed trial exhibits were mailed on March 15, 2006, to a California address that was not Plaintiff's most current. Plaintiff did not receive the packet until March 21. He stated he was substantially prejudiced in his preparation by its tardy receipt, just two days prior to trial.

Plaintiff moved to exclude Defendant's trial exhibits. The court granted the request. The evidence was excluded pursuant to TCR-MD 10.²

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¹ Order Allowing Amendment of Complaint filed August 10, 2005.

² Tax Court Rules-Magistrate Division.

II. STATEMENT OF FACTS

The subject property³ is a single family residence located within the Elkai Woods Townhomes at the Widgi Creek subdivision in Bend, Oregon.

Plaintiff first contends that the omitted property actions for tax year 2003-04 are invalid. By way of a letter dated March 29, 2005, Defendant gave its intent to add certain omitted property to the tax roll for the 2003-04 tax year. The statutory time to “show cause” was provided. The correction was later made and the RMV was set at \$274,820.

For the subsequent 2004-05 tax year, that same total RMV was sustained by the Deschutes County Board of Property Tax Appeals.⁴

As to the property's RMV for these two years, Plaintiff points to his acquisition in May of 2002. The property was then listed with an area realtor. The total price paid was \$248,062, which included an undisputed \$7,760 in personal property. The net residual of \$240,302 is the RMV that Plaintiff requests for tax year 2003-04. As to tax year 2004-05, the evidence shows some appreciation in area property values between the two assessment dates.

Defendant's presentation as to the valuation was meager due to the exclusion of its proposed evidence packet. Some other sales transactions mentioned included substantial amenities not present at the subject property, and, as such, their comparability was questioned by Plaintiff.

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³ Account 200316.

⁴ Order dated February 25, 2005.

III. ANALYSIS

ORS 311.205⁵ through 311.232 commands that property omitted from the rolls must be added to the rolls within a precise statutory framework.

This same residential property was the subject of a Decision of this court for the earlier 2003-04 tax year. *See Kardash v. Deschutes County Assessor*, TC-MD No 040361F, WL 2641358 (Nov 10, 2004).⁶ There, the court held that the omitted property action was invalid for tax year 2003-04. The court concluded that:

“Defendant failed to comply with the statutory requirements For adding omitted property to the tax rolls because the correction was made before the expiration of the statutorily required show-cause period of a minimum of 20 days from the date the notice of intent was mailed.”

(*Id.* at *4.)

However, the magistrate noted: “Plaintiff should be aware that * * * the assessor may make a second attempt to add the value in compliance with the statutory notice requirements.”

(*Id.* at n6.) As to this revisited omission issue for the 2003-04 tax year, this time Defendant added the property correctly. The subject property addition is mandatory.

As to the property’s RMV for those two years, the sole reliable evidence was offered by Plaintiff and supported by sworn testimony. Plaintiff has the burden of proof and must establish his case by a “preponderance” of the evidence. *See* ORS 305.427. A “[p]reponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). “[I]f the evidence is inconclusive or unpersuasive, the

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⁵ All references to the Oregon Revised Statutes (ORS) are to 2003.

⁶ TC-MD No 040361F was not appealed to the Regular Division of this court.

taxpayer will have failed to meet his burden of proof.” *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990). Plaintiff has clearly met that statutory requirement in this record.

IV. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s addition of omitted property for 2003-04 is upheld; and

IT IS FURTHER DECIDED that the subject property’s RMV shall be \$240,300 for tax year 2003-04 and \$251,000 for tax year 2004-05.

Dated this _____ day of September 2006.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on September 19, 2006. The Court filed and entered this document on September 19, 2006.