

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MONROE A. JUBITZ, JR.)	
and NANCY T. JUBITZ,)	
)	
Plaintiffs,)	TC-MD 050544B
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs' appeal concerns certain payment matters relating to real property taxes for the 2004-05 tax year.

A case management conference was convened on July 11, 2005. Monroe A. Jubitz, Jr. (Jubitz) appeared for Plaintiffs. Gary L. Bartholomew represented Defendant. The parties agreed to submit written statements that would constitute the record for this Decision. That record closed September 15, 2005.

I. STATEMENT OF FACTS

There is no dispute as to material facts.

Payments of 2004-05 real property taxes were due November 15, 2004. *See* ORS 311.505.¹ If paid in full by that date, taxpayers are entitled to a three percent discount. Plaintiffs intended to timely pay the entire amount due on their residence (Account R327234) and to receive the discount.

At that time, Plaintiffs utilized computer software to tender payments for bills due. On October 26, 2004, Jubitz made an electronic instruction to the third party service requesting

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

payment to Defendant.² Here, for reasons unknown, the *electronic payment* was made payable to “AT&T,” transmitted there, and cashed by that entity. After much investigation, the funds were later recovered by Plaintiffs. There was no “paper check” involved in that initial transaction; it was through electronic modes only.

Defendant did not receive Plaintiffs’ payment prior to November 15, 2004. The first payment was received on April 5, 2005. As a result, Plaintiffs incurred the loss of the three percent discount (\$271.98) and were charged interest (\$282.05) on the unpaid balance. Plaintiffs request this court order a refund of this \$554.03 total.

II. ANALYSIS

ORS 305.820 allows for certain exceptions to the November 15 due date. Primarily, it involves cases where the typical paper checks via the United States mail or by private express carrier are “lost in transmission.” In this case, there is no physical envelope that can be viewed to verify a stamped official postmark date. Furthermore, required is a mailing “addressed correctly to the addressee.” ORS 305.820(1)(c)(A). Certain references to electronic filings refer to certain exemption matters and property valuation appeals. None of the very limited exceptions apply in this case.

Through no direct fault of their own, Plaintiffs’ attempted payment was unsuccessful. No exceptions apply to this case.

Plaintiffs have the burden of proof and must establish their 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 taxpayer will have failed to meet his

² Plaintiffs’ letter to Defendant, dated March 31, 2005, is attached to Complaint filed April 25, 2005.

burden of proof.” *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990). Plaintiffs have not met that statutory requirement in this record.

III. CONCLUSION

There is no error or omission by Defendant in this case. Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied.

Dated this _____ day of January 2006.

JEFFREY S. MATTSO
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 January 25, 2006 . The Court filed and entered this document January 25, 2006.