

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax Deferral Program

ASHLEY LIVING TRUST,	)	
	)	
Plaintiff,	)	TC-MD 050574B
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	
State of Oregon,	)	
	)	
Defendant.	)	<b>DECISION</b>

A case management conference was convened on August 1, 2005. Bonnie Jensen (Jensen) participated on Plaintiff's behalf. Bobbie Barrott represented Defendant. The parties requested that the proceeding be converted to a trial; sworn testimony was offered and arguments were made.

I. STATEMENT OF FACTS

Bonnie Jensen is the daughter of Ervin and Melba Ashley. She and her brother are heirs of the Ashley Living Trust property, which included a residence in the estate.

The Ashleys enrolled in the Oregon Senior Citizens' Property Tax Deferral program in 1990. Each year thereafter, through November 15, 2004, Defendant paid the annual property taxes due on the residence.

Melba Ashley predeceased her husband. Ervin Ashley died in early 2005. The residence was sold in May of 2005. In the closing transaction, the title company paid over to Defendant a total due of \$25,981.03, which was allocated \$17,883.76 to taxes paid, \$20.00 for recording fees, and \$8,077.77 in accrued interest.

Jensen has appealed on behalf of the trust. She contends her father would have never enrolled in the program had he fully known that 6 percent interest would be charged. She

explained that he was “frugal with his money and buying on credit was unheard of with him.” (Ptf’s Second Am Compl.) She believes that Defendant should have explained the program in more detail in its written publications. Because of those circumstances and her father’s possible misunderstanding, she asks that the interest charges be refunded or reduced.

Defendant disagrees with Plaintiff’s request. Its representative notes that an annual statement of the deferral account was mailed to Plaintiff each year. (Def’s Answer, Ex B.) That statement clearly showed the interest accruing on the account. Also included was information about making payments on the account to reduce such accrued interest. No interest payments were made in this case.

## II. ANALYSIS

ORS 311.674(3)<sup>1</sup> mandates that “[i]nterest shall accrue on the actual amount of taxes advanced to the county for the tax-deferred property at the rate of six percent per annum.” Annual statements on the account are required to be mailed. ORS 311.678(1). That was done. Defendant notes that Mr. Ashley never inquired about the details or interest charges on the statements after receipt. That, it argues, is strong evidence of full acceptance of the program and all its terms. Plaintiff could have withdrawn from the program at any earlier time.

Plaintiff’s representative has not cited - nor has the court located - any statutory authority that would allow for refunding the interest charges imposed under the facts presented herein. There is no evidence of fraud or misleading contact. There is no evidence of error or omission by Defendant.

Plaintiff has the burden of proof and must establish its case by a “preponderance” of the evidence. *See* ORS 305.427. A “[p]reponderance of the evidence means the greater weight of

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

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

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

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

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JEFF 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 Jeff Mattson November 23, 2005. The Court filed and entered this document November 23, 2005.***