

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JOEL BENGIAT and BARBARA BENGIAT,)	
)	
Plaintiffs,)	TC-MD 050673E
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s 2004-05 delinquency notices for Accounts 1238847, 1531845, and 0629889. Defendant determined Plaintiffs owed additional tax after denying Plaintiffs the early payment discount. A telephone trial in the matter was held September 1, 2005. Joel and Barbara Bengiat appeared on their own behalf. Gloria Rogers appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiffs testified that, for the past 10 years, they made full payment of their property taxes by the November 15 deadline so that they could take advantage of the three percent discount for early payment. Defendant acknowledges that Plaintiffs have a history of paying their property taxes in full by the November 15 deadline. Plaintiffs testified that their practice is to walk their payments to the courthouse on November 15. For the 2004-05 tax year, however, Plaintiffs knew they would not be able to submit the payment on November 15, which fell on a Monday. On Friday, November 12, 2004, Plaintiffs discussed whether they should mail the tax payments or walk them down to the courthouse that day. After discussing the matter, they determined that they had enough time to mail the payments and have them arrive by

November 15.¹ As a result, they mailed all three payments in one envelope and dropped the envelope off at the shared lock box mail receptacle on their street.

In May 2005, Plaintiffs received delinquency notices for all three accounts. After inquiring about the matter, Plaintiffs discovered that Defendant was denying them the three percent discount because the envelope containing their payment was postmarked November 19, 2004. Plaintiffs appeal, claiming they mailed their payments timely and, as a result, they should be allowed the early payment discounts.

II. ANALYSIS

ORS 311.505(3) grants taxpayers a three percent discount when they make full payment of their property taxes on or before the November 15 deadline. Because Plaintiffs' envelope was postmarked November 19, Defendant denied the three percent discount. Plaintiffs, however, claim they mailed the payments November 12. ORS 305.820 discusses when a writing is deemed received by the tax collector's office. It states, in pertinent part:

“Any writing or remittance required by law to be filed with or made to the * * * tax collector (designated by this section as the ‘addressee’) which is:

“(a) Transmitted through the United States mail or by private express carrier, shall be deemed filed or received on the date shown by the cancellation mark or other record of transmitted, *or on the date it was mailed or deposited if proof satisfactory to the addressee establishes that the actual mailing or deposit occurred on an earlier date.*”

ORS 305.820(1)(a) (emphasis added). The statute provides that a document is deemed received on the date shown by the post office cancellation mark *or* by an earlier date if “proof satisfactory to the addressee” demonstrates that the document was actually mailed on an earlier date. *Id.* The

¹ Plaintiffs were apparently under the mistaken assumption that tax payments must be physically received by the county by November 15. However, ORS 305.820(1) provides that a document mailed to the tax collector is considered received on the date shown by the post office cancellation mark. All references to the Oregon Revised Statutes (ORS) are to 2003.

determination of whether a taxpayer has submitted satisfactory proof is left to the discretion of the addressee. *See Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498 (1993). Because the determination is discretionary, the court reviews the county’s determination under an abuse of discretion standard. *See, e.g., Wiebe v. Marion County Assessor*, TC-MD No 010830D at 3 (Jan 25, 2002).

In the subject appeal, the court questioned Rogers about the standard used by Defendant for determining when a document is mailed. She testified that Defendant keeps envelopes of late payments and, when disputes occur, they use the post-office cancellation mark as their standard. She testified that Defendant considers no other evidence of mailing. In *Jackson County*, the court held that, if a county “refuse[s] to consider any evidence other than the post-office cancellation marked stamped upon the envelope,” it would be an abuse of discretion. 12 OTR at 500. The court observed that “[s]uch a policy would foreclose the exercise of any discretion.” *Id.* This court finds, therefore, that Defendant abused its discretion by not considering any evidence of mailing other than the post-office cancellation mark on Plaintiffs’ payment envelope. *See also Rice v. Clatsop County Assessor*, TC-MD No 000950F (Nov 21, 2000) (finding the county abused its discretion by not considering any evidence beyond the post-office cancellation mark). Therefore, the court’s review in the subject appeal is *de novo*, which means it considers brand new whether Plaintiffs timely submitted their property tax payments.

The Department of Revenue has promulgated a rule that sets forth criteria for addressees to consider when evaluating whether a taxpayer has submitted satisfactory proof of a timely mailing. OAR 150-305.820(1) states, in pertinent part:

“(1) Satisfactory proof will consist of one or more of the following:

“* * * * *

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“(d) If the writing or remittance bears a postmark date that is not legible or bears a postmark date dated later than the due date, it will be treated as having been mailed on or before the due date provided the person who is required to file the writing or remittance establishes by sworn affidavit that it was actually deposited on or before the due date in the hands of a private express carrier or in a government mail receptacle before the last collection of mail for the place in which it was deposited.”

The rule provides that, if a document is postmarked after the due date, the sender can establish that it was, in fact, mailed before the due date by submitting a sworn affidavit to that effect. The sworn affidavit is considered “satisfactory proof” of an earlier mailing pursuant to the rule.

In the subject appeal, Plaintiffs testified definitively that they mailed their payments Friday, November 12. They testified that they engaged in a dialogue about whether they had sufficient time to mail the payments or whether they should drop them off personally that day. Their testimony about such a specific conversation lends credibility to their claim that they mailed their payments November 12. In addition, Plaintiffs testified under oath that they mailed the payments November 12, thus satisfying the “sworn affidavit” element of the rule. Finally, and of equal importance, Plaintiffs have a history of timely making their payments before the November 15 deadline. Considering all the factors, the court is persuaded that Plaintiffs have provided “satisfactory proof” that they mailed their 2004-05 property tax payments prior to the November 15 deadline. As a consequence, the court finds Plaintiffs are entitled to the three percent discount.² *See generally Rice*, TC-MD No 000950F (finding the plaintiff submitted satisfactory proof of timely payment because she testified with credibility that she mailed the payment November 2 and because she immediately contacted the county when she realized her check had not cleared the bank).

² OAR 150-305.820(1)(d) only requires taxpayers to demonstrate, through sworn affidavit, that they mailed the writing or remittance by the deadline. In this appeal, the court considered not only the sworn statements of the Plaintiffs, but also their history of timely filing and the credibility with which they testified about the circumstances that led them to decide to mail the payments, rather than drop the payments off in person.

III. CONCLUSION

It is the conclusion of the court that Plaintiffs demonstrated through satisfactory evidence that they timely submitted their 2004-05 property tax payments. Plaintiffs are, therefore, entitled to the three percent early payment discount. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is granted. Defendant shall cancel the delinquency notices issued for Accounts 1238847, 1531845, and 0629889 for the 2004-05 tax year and refund the excess taxes paid, if any.

Dated this _____ day of January 2006.

COYREEN R. WEIDNER
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 Coyreen R. Weidner January 30, 2006. The Court filed and entered this document January 30, 2006.