

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DAVID FOX and JACKIE FOX,)	
)	
Plaintiffs,)	TC-MD 050711E
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s omitted property notice dated June 7, 2005. A telephone trial in the matter was held October 20, 2005. David Fox appeared on behalf of Plaintiffs. Joe Nelson appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

In 1984, Plaintiffs obtained a permit to construct an addition to their home.¹ Defendant’s records show a building permit was issued for the property September 1, 1984. (Ptf’s Ex 1.) The records also show a check date of March 1, 1985, with a note that the addition was 100 percent complete. (*Id.*) According to Defendant, that addition was never included in the value of the property.

In 1994, Defendant performed a reappraisal of the property. Defendant’s records show the reappraisal occurred June 6, 1994. (*Id.*) Defendant claims the addition was missed in that reappraisal. In 2005, an appraiser visited the property and asked about the addition. The appraiser reviewed the matter and determined the county had never included the value of the addition on the tax rolls. As a result, the appraiser notified Plaintiffs that the value for tax years

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¹ The property is identified in Defendant’s records as Account R661484.

1999-2000 through 2004-05 would be increased to reflect the addition. Plaintiffs appeal claiming Defendant cannot increase the values at such a late date.

II. ANALYSIS

ORS 311.216² allows county assessors to retroactively add to the tax roll property that has been omitted from taxation. The statute states, in pertinent part:

“(1) Whenever the assessor discovers or receives credible information, or if the assessor has reason to believe that any real or personal property, including property subject to assessment by the Department of Revenue, or any buildings, structures, improvements or timber on land previously assessed without the same, has from any cause been omitted, in whole or in part, from assessment and taxation on the current assessment and tax rolls or on any such rolls for any year or years not exceeding five years prior to the last certified roll, the assessor shall give notice as provided in ORS 311.219.”

ORS 311.216(1).

ORS 311.216(1) states that where property has been omitted “from any cause” it may be added through the omitted property statutes. In *West Foods v. Department of Revenue*, 10 OTR 7 (1985), the Oregon Tax Court addressed when property may *not* be added to the tax roll. In that case, the subject property was a mushroom plant. The property consisted of growing rooms inside large concrete buildings. Inside the growing rooms were “growing beds,” which were wooden racks used to grow the mushrooms. The assessor’s office had physically appraised the property in 1973. In 1980, an appraiser again visited the property. During that visit, the appraiser discovered the growing beds had not been included in the 1973 appraisal. He observed that the field notes for 1973 included the growing rooms, but did not include the beds within those rooms. He concluded that the 1973 appraiser had simply missed the beds. *Id.* at 10. As a result, the appraiser determined the growing beds were omitted property and added their value

² All references to the Oregon Revised Statutes (ORS) are to 2003.

retroactively to the tax roll. The court found that the growing beds were *not* omitted property. The court observed that the beds were “an integral part of the growing rooms and were part of the real property.” *Id.* at 11. The court went on to hold that “[t]he failure of the appraiser to include the beds in the growing rooms resulted in an undervaluation of the growing rooms and not an omission of any ‘buildings, structures or improvements’ under the statute.” *Id.*

The Department of Revenue promulgated a rule that reflects the holding in *West Foods*. OAR 150-311.216 (2004) states, in pertinent part:

“(1) Omitted property includes any part of any real or personal property that has been omitted due to the assessor’s lack of knowledge of its existence
* * *

“(2) * * *

“* * * * *

“(b) Improvements which are in existence and are an integral part of property which is physically appraised by an assessor may not later be revalued and added as omitted property under ORS 311.216. Undervaluation of a property due to failure to consider a portion of the property is not omitted property correctable under ORS 311.216.”

In contrast, in *Marion County Assessor v. Department of Revenue*, 10 OTR 265 (1986), the Oregon Tax Court held that where an addition to a building occurs *after* an appraiser visits the property, it is omitted property. The court compared its holding with the holding in *West Foods*, noting:

“The holding of *West Foods* is that improvements which are in existence and an integral part of property which is physically appraised by an assessor may not be later revalued and added as omitted property under ORS 311.207. As a corollary, this court now holds that where such improvements are added to or made a part of other property *after* the other property has been physically appraised and are later discovered by the assessor, they may be subject to taxation as omitted property under ORS 311.207. Improvements not in existence at the time of appraisal cannot be deemed to have been undervalued.”

Id. at 270 (emphasis in original).

A tension exists between the policy of taxing property that has been omitted and providing finality to assessments. The court in *Marion County Assessor* recognized the tension, yet reaffirmed the conclusion in *West Foods* that, if improvements are in existence and an integral part of property that is appraised yet, for whatever reason, were not included in the appraisal, those improvements are undervalued and not omitted.³

In the subject appeal, Defendant's records demonstrate that it had knowledge of the addition, which is an integral part of the home. It received notice of the permit in 1984 and an appraiser visited the property in 1985 to confirm its completion. Another appraiser visited the property for appraisal purposes in 1994. Where an appraiser has twice visited the property since completion of the addition, the court must conclude that Defendant's failure to consider the addition is an undervaluation of the property and not an omission. To rule otherwise would create potential for error. Although there are no notes or drawings showing the addition, an appraiser visited the property in 1984 and confirmed its completion. That confirmation is a part of Defendant's records. It is quite possible the appraiser included value for the addition, yet failed to note the additional square footage in the drawings. One would need to review the actual records from 1985 to know with certainty what occurred. Those records, however, were not available for review.

³ The court observed:

"The *West Foods* case in its holding makes bare the bedrock issue in this case and that is how to distinguish an undervaluation from an omission? If an appraiser undervalues a property because he or she failed to see or take into consideration some portion of that property, has that portion been 'omitted' within the meaning of ORS 311.207? As the department correctly points out, if this is the rule, there never will be any finality to assessments (at least until they are more than five years old). On the other hand, the language of ORS 311.207 reflects an intent to provide that all taxable property be assessed and taxed and that any errors in the assessor's knowledge or perceptions be corrected."

Marion County Assessor, 10 OTR at 269-70.

III. CONCLUSION

The court concludes that Defendant's failure to include the value of the addition on two separate occasions, once in 1985 and the other in 1994, results in an undervaluation of the property and not an omission. As a result, Defendant's omitted property notice must be canceled. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's omitted property notice dated June 7, 2005, shall be canceled. The increased assessments for tax years 1999-2000 through 2004-05 resulting from the omitted property notice shall be canceled.

Dated this _____ day of February 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 on February 28, 2006. The Court filed and entered this document on February 28, 2006.