

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ROGER DALE CENTER,)
)
 Plaintiff,) TC-MD 050733A
)
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appealed the assessment of Account 1738523 as omitted property for the 2003-04 and 2004-05 tax years. Plaintiff was represented by David Carmichael, attorney at law. Defendant appeared through Thomas Frederiksen, of its staff.

I. STATEMENT OF FACTS

Plaintiff purchased the subject property and split it into two tax lots, respectively Accounts 1738515 and 1738523. The latter is the subject property. Plaintiff proceeded to build houses on each tax lot. Defendant inspected Account 1738515 and added the improvement to the tax roll. The subject property, Account 1738523, was not inspected. Its improvement was not added to the tax roll. Defendant did not discover that error until February 10, 2005, after which, it began this correction.

Defendant subsequently sent its Notice of Intention to Add Omitted Property on May 31, 2005. That notice contained incorrect values, as it reversed the value before correction and the value being added to the tax roll. That error did not follow through to the Notice of Intention to Add Tax Due to Omitted Property. Sent to Plaintiff by certified mail on June 27, 2005, it unequivocally declared Defendant's intention to seek from Plaintiff additional tax in the amount of \$2,737.92. Defendant added the property to the tax roll using a value of approximately \$100 per square foot, which it supported by reference to comparable sales.

Plaintiff had not attempted to evade the tax. He secured the necessary building permits and otherwise met all the responsibilities imposed upon him. Plaintiff testified that he believed, after receiving the tax statement for Account 1738515, that it included all the changes to the property as a whole, including the improvement to Account 1738523.

Other discussion followed as to the value of the property. Plaintiff spoke about his costs to construct, the values indicated by Defendant's comparable sales, and the nuisance factor due to the characteristics of a nearby park.

II. ANALYSIS

This case was very thoroughly argued by the parties. The court's decision on the issues is as follows:

First, this is not a case where Defendant, in appraising the property, made a mistake in value judgment which it now seeks to correct. If it were, it would be prohibited. Instead, this is an instance where the house was omitted from assessment. The proof to that is, when the improvement was completed, it did not appear in any way, shape, or form, on the tax roll. That is the type of error intended to be corrected by the omitted property statutes. *Compare* OAR 150-311.205¹ with OAR 150-311.216.

Next, while Defendant did make a mistake in its Notice of Intention to Add Omitted Property, that shortcoming is not fatal. While the notice was confusing, it did tell Plaintiff that Defendant intended to take action that would be of consequence to Plaintiff. That is all that is required by the statute. ORS 311.219² does not require that Defendant provide its calculations as to the addition to the tax roll.³ Moreover, the act which triggered Plaintiff's appeal rights, the

¹ All references to the Oregon Administrative Rules (OAR) are to 2003.

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

³ The importance of focusing on what the notice statutes specifically provide was made clear in *Smith v. Dept. of Rev.*, 17 OTR 357 (2004).

subsequent Notice of Intention to Add Tax, was unequivocal. It declared value had been added to the account and that Plaintiff was now obliged to pay additional tax. That cured any defect in the previous correspondence. There was certainly no confusion on Plaintiff's part, for this appeal followed in a timely fashion.

Finally, there remains the value to be added to the tax roll. After reviewing the testimony of the witnesses, the evidence as to the costs to construct the dwelling, the characteristics of the neighborhood, and Defendant's comparable sales, the court is of the opinion that the real market value of the improvement previously omitted from taxation is \$90,000. Plaintiff's appeal is granted to that extent.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal is granted to the extent of correcting the real market value of the improvement added to the tax roll for Account 1738523 to \$90,000.

Dated this _____ day of February 2006.

SCOT A. SIDERAS
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 Scot A. Sideras on February 21, 2006 . The Court filed this document on February 21, 2006.