

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MARSHALL M. SMITH)	
and CHARLOTTE S. SMITH,)	
)	
Plaintiffs,)	TC-MD 050919E
)	
v.)	
)	
BENTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s notices of omitted property assessments dated August 31, 2005. Plaintiffs request the court’s assistance in developing a payment plan for the omitted liabilities. The court held a case management conference March 9, 2006, to discuss the appeal. Marshall M. Smith appeared on behalf of Plaintiffs. Douglas Hillpot appeared on his own behalf. At the conclusion of the conference, the parties submitted the case to the court for ruling.

I. STATEMENT OF FACTS

Plaintiffs began constructing a home in 1998 and continued to build the house over the course of several years.¹ Eventually, Defendant discovered that the home had been completed and that the county had failed for several years to assess the property accordingly. As a result, Defendant determined the additional value was subject to assessment under the omitted property statutes. On August 31, 2005, Defendant notified Plaintiffs that it had added value to the subject account for the 2000-2001 through 2004-05 tax years and recalculated the taxes accordingly. Defendant advised Plaintiffs that the additional liabilities would be billed to them on their 2006-07 tax statement.

¹ The property is identified in the county’s records as Account 028377.

Plaintiffs do not contest the addition of value for the subject tax years. Plaintiffs contend, however, that they should be permitted to pay the liabilities over the course of several years.

II. ANALYSIS

ORS 311.206² sets forth the payment process for taxes resulting from an omitted property assessment. The statute states, in pertinent part:

“(1)(a) * * * [W]hen the roll is corrected under ORS 311.205, and taxes are added to the roll, the additional taxes shall be added to the tax extended against the property on the general property tax roll for the tax year following the current tax year, *to be collected and distributed in the same manner as other ad valorem property taxes imposed on the property*. Notwithstanding ORS 311.205(2)(b), for purposes of collection and enforcement, the additional taxes added to the roll under this subsection *shall be considered delinquent as of the date the other taxes for the year in which the additional taxes are added to the roll become delinquent.*”

ORS 311.206 (emphasis added).

The statute provides that the additional taxes due from the omission are collected and treated the same as the taxes collected for the current year. ORS 311.505(1) sets forth how taxes are generally collected. In particular, it provides that property taxes be paid in three installments, with the first one-third due November 15, the second one-third due February 15, and the final one-third due May 15. If a taxpayer fails to pay a liability by the due date, the liability becomes delinquent. *See* ORS 311.505(2). If a taxpayer chooses to pay an installment sooner than required, a discount is awarded.³ Because omitted taxes are collected in the same manner, a

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

³ ORS 311.505(3) states:

“(3) Discounts shall be allowed on partial or full payments of such taxes, made on or before November 15 as follows:

“(a) Two percent on two-thirds of such taxes so paid.

“(b) Three percent where all of such taxes are so paid.”

taxpayer must pay the liability in thirds on the designated due dates. If a taxpayer fails to pay the liabilities by the designated date, the omitted liability becomes delinquent. Similarly, if a taxpayer pays the omitted liability in advance of the due date, he is entitled to a discount.

Plaintiffs argue that it is unfair to require them to pay five years' worth of additional taxes in one year. Because it took Defendant five years to discover the omission, Plaintiffs reason, they should be allowed five years to pay the liability. First, the court observes that Plaintiffs received notice of the liabilities in August 2005 and the final one-third payment will not be due until May 2007. That allows Plaintiffs nearly two years to plan for payment of the additional taxes. Second, the legislature has set forth a designated process for collection of additional taxes resulting from an omitted property assessment. The court has no authority to deviate from the clear statutory process. The payment process Plaintiffs seek requires a legislative change.

Plaintiffs note that they are not the only taxpayers faced with such liabilities and that equity requires allowing them the opportunity to pay the liability over an extended period. The court agrees that other taxpayers have appealed raising arguments similar to Plaintiffs' claims. However, for those taxpayers, the court uniformly rejected their claims based on the statutory process provided. *See, e.g., Nguyen v. Multnomah County Assessor*, TC-MD No 021258B (Aug 5, 2003) ("this court has no authority to prescribe a payment plan different than that provided by statute"); *Givon v. Lane County Assessor*, TC-MD No 030831C (Oct 16, 2003) ("the court has no statutory authority by which to grant the [payment plan] request"); *Klukas v. Deschutes County Assessor*, TC-MD No 011078C (Aug 23, 2002) ("ORS 311.206 establishes the intent of the legislature to provide a process for payment of additional taxes arising because of a correction made to the tax roll pursuant to ORS 311.205, therefore, the court must deny [the] [p]laintiff's request for a long-term payment plan").

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III. CONCLUSION

The legislature has set forth a statutory process for collection of additional taxes due from an omitted property assessment. The court cannot ignore the statutory process and award Plaintiffs an extended payment plan. Now, therefore,

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

Dated this _____ day of March 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 March 24, 2006. The Court filed and entered this document March 24, 2006.