

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SABROSO COMPANY,)	
)	
Plaintiff,)	TC-MD 060396B
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant's denial of the three percent early payment discount and the charge of interest for failure to remit its 2005-06 property tax payment by the statutory due date, November 15, 2005. In two other cases currently before the court, TC-MD No 060277B and TC-MD No 060395B, Plaintiff is appealing similar charges by Jackson and Marion counties.

A telephone trial was held October 26, 2006, for all three cases. Plaintiff was represented by Zachery Woody, owner of Dash Delivery Inc. (Dash). Patty Birdsong represented Jackson County, Rex Weisner represented Marion County, and Diane Belt represented Washington County and also participated as chief spokesperson for all three defendants. Defendants submitted joint Exhibits A through E; Plaintiff submitted Exhibits A through P, which the court has re-numbered 1 through 16¹ for ease of reference. The parties also submitted letters. All exhibits and letters were received by the court without objection.

I. STATEMENT OF FACTS

Dash is an Oregon company that primarily serves the Rogue Valley medical community and also provides "late afternoon mail pick up" for local businesses, including Plaintiff. (Ptf's Ltr, Apr 13, 2006.) "Dash Delivery Inc provides same day pick up and delivery for numerous

¹ See Tax Court Magistrate Division Rule 10(B)(1).

customers on a daily basis but may also be asked to provide other types of delivery service[,] for example filling the role of the origin carrier in a multi-carrier delivery.” (Ptf’s Ltr at 1, Nov 13, 2006.)² Plaintiff’s testimony and exhibits indicate that the practice of multi-carrier deliveries, *i.e.* multiple carriers being involved in a single delivery, is common in the parcel transportation industry, and that transport agencies perform “deliveries in conjunction with other agencies on a daily basis.” (*See, e.g., id.* at 3-4.)

Dash is a member of the Express Carriers Association, of which DHL, Federal Express (FedEx), and UPS are also members. (*See Ptf’s Exs 2-5.*) Dash works with those carriers in different capacities: it receives shipments from UPS on an almost daily basis, breaks down the shipments, and makes the final deliveries; it provides similar services for FedEx as well as packing shipments for FedEx customers with FedEx supplies; and it picks up packages for shipment hub-to-hub by DHL, which are then delivered by another carrier. (Ptf’s Ltr at 3, Nov 13, 2006; *see Ptf’s Exs 6, 7.*)

At a recent Express Carriers Association’s convention, Dash met with FedEx Smart Post and discussed a potential multi-carrier transport and delivery scenario: United States Postal Service (USPS) mail would be picked up at the FedEx hub in Seattle, driven to post offices in southern Oregon by Dash, and then delivered to its final destinations by the USPS. (Ptf’s Ltr at 3, Nov 13, 2006.) Plaintiff also describes several other processes in which the USPS uses independent contractor carriers to move mail between post offices after postal cancellation and

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² Plaintiff’s letter is dated “November 13, 2006” on the first page, and “November 15, 2006” on subsequent pages. The court will refer to the letter as dated on the first page.

between hubs or sorting locations prior to delivery, and how the USPS holds mail for “Will-Call” pick up by such carriers, who then deliver the mail directly to the final destination. (*See id.*; *see* Ptf’s Ex 14.) Plaintiff states that “[t]he USPS is [] known in the transportation industry for using more independent contractors than any other transportation organization in the nation. * * * NO PART of the parcel delivery through the USPS is handled exclusively by the USPS and its personnel.” (Ptf’s Ltr at 3-4, Nov 13, 2006.) (Emphasis in original.)

The following facts are undisputed: (1) On November 11, 2005, Dash picked up outgoing mail from Plaintiff for delivery to the USPS; (2) the mail included envelopes containing checks in payment of Plaintiff’s property tax assessments in Jackson, Marion, and Washington counties;³ (3) the property tax payment envelopes were metered by Plaintiff’s postage machine with the date “11/11/2005”;⁴; and (4) Dash did not deliver Plaintiff’s mail to the USPS until November 18, 2005, on which date the envelopes containing Plaintiff’s property tax payment were postmarked by the USPS. (*See* Ptf’s Ltr at 1-2, April 13, 2006; *see* Def’s Ltr at 1, Sept 26, 2006; *see* Def’s Exs D, E.)

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³ The Washington County property is identified as Accounts P862908, R1448222, R2113540, and R751332.

⁴ Defendant’s Exhibits D and E are photocopies of the envelopes sent to Marion and Washington counties.

Defendant denied Plaintiff the three percent discount, stating that “[t]he mailing date is clearly November 18, 2005-which is after the due date to receive the 3% discount.” (Def’s Ltr at 1, Sept 26, 2006.)⁵ Interest charges were also assessed. Defendant argues that “the envelopes were transmitted through the United States mail and not by a private express carrier.” (*Id.*)

II. ANALYSIS

ORS 311.505(3)(b)⁶ grants taxpayers a three percent discount when full payment of the property tax is made on or before the November 15 due date. Under ORS 311.505(2), interest is charged on property taxes not paid when due.

Under ORS 305.820(1)(a), a remittance to a county assessor or tax collector that is

“[t]ransmitted 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 transmittal, 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.”

(Emphasis added.) The parties do not dispute that November 11, 2005, is the day Dash picked up the property tax payment from Plaintiff. Therefore, the question before the court is whether Dash, as an entity, is a “private express carrier,” and if so, whether the additional requirements of ORS 305.820(1)(a) have been met.

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⁵ Defendant’s letter of September 26, 2006, accompanied the exhibits submitted jointly by Jackson, Marion and Washington counties.

⁶ All references to the Oregon Revised Statutes (ORS) are to 2003.

A. *Is Dash a “private express carrier” as described in ORS 293.660?*

A private express carrier “means a carrier described under ORS 293.660.” ORS 305.820(3)(a). ORS 293.660(2) provides that a

“ ‘private express carrier’ means a common carrier that transports small parcels in an expedited manner and has one or more of the following characteristics:

“(a) Same day pickup and delivery.

“(b) Expedited pickup and delivery.

“(c) Residential door-to-door pickup and delivery.

“(d) Special or unique handling and packaging features designed to meet a special need.”

When “interpreting a statute, the court’s task is to discern the intent of the legislature.” *PGE v. Bureau of Labor & Industries*, 317 Or 606, 610, 859 P2d 1143 (1993) (*PGE*). “[T]he text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature’s intent.” *Id.* In examining the text of the statute, “words of common usage typically should be given their plain, natural, and ordinary meaning.” *Id.* at 611. If the legislative intent is clear from the text and context, then under *PGE*, “further inquiry [into legislative history] is unnecessary.” *Id.*

Looking at the text of ORS 293.660(2), with the exception of the term “common carrier,” the words of are of common usage and may, under *PGE*, be given their plain, natural, and ordinary meaning. “Common carrier” is neither of common usage nor defined in ORS 293.660, however “[w]here a statute fails to define a word or phrase, a dictionary definition may prove

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helpful.” *Julian v. Dept. of Rev.*, 17 OTR 384, 394 (2004), *rev’d on other grounds*, 339 Or 232, 118 P3d 798 (2005). “Common carrier” is defined as:

“one that undertakes for hire the carrying of goods, persons, or messages treating its whole clientele without individual preference or discrimination, and being responsible for all losses and injuries except those in consequence of an act of God, of the enemies of the country, or of the owner of the property himself. * * * [C]ompare CONTRACT CARRIER.”

Webster’s Third New Int’l Dictionary 458 (unabridged ed 2002) (emphasis in original). Further definition is found in *Black’s Law Dictionary*, which provides that a “common carrier” is “[a] carrier that is required by law to transport passengers or freight, without refusal, if the approved fare or charge is paid. — Also termed *public carrier*.” *Black’s Law Dictionary* 205 (7th ed 1999) (emphasis in original). The plain, natural, and ordinary meaning of the words, along with the definition of “common carrier” make the legislative intent of ORS 293.660(2) clear; therefore, further inquiry into the statute’s legislative history is unnecessary.

In determining whether Dash is a common carrier, the court looks at its operations as a corporate entity, rather than solely based on the service it performed for Plaintiff as related to this case. Plaintiff’s exhibits and testimony show that Dash provides services to the Rogue Valley community: pick-up, transport, and delivery of goods and freight, including mail. Dash performs services, both directly to members of the public and indirectly in conjunction with other carriers, in a variety of capacities. (*See* Ptf’s Ltr at 3-4, Nov 13, 2006; Ptf’s Exs 6, 7.) Specifically, Dash describes itself as providing “same day pick up and delivery for numerous customers on a daily basis,” and “other types of delivery service[s]” such as packaging shipments for other carriers’ customers with carrier-specific packaging materials. (Ptf’s Ltr at 1, Nov 13, 2006.)

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Under ORS 293.660(2), a private express carrier is a “common carrier that transports small parcels in an expedited manner” and has at least one of the characteristics listed in ORS 293.660(2)(a)-(d). The court finds sufficient evidence in the exhibits and testimony discussed above to conclude that Dash is a common carrier that transports small parcels in an expedited manner. Dash also meets at least three, if not all, of the characteristics listed in ORS 293.660(2)(a)-(d), including same day pickup and delivery, expedited pickup and delivery, and special or unique handling and packaging features designed to meet a special need. Only one of those characteristics is required to meet the definition of private express carrier. *See* ORS 293.660(2). Therefore, the court finds that Dash is a private express carrier under ORS 293.660(2).

Defendant did concede at trial that Dash does, in many instances, meet the definition of private express carrier. At the same time, Defendant argues that the service Dash performed for Plaintiff in connection with this case does not so qualify.

B. *Was Plaintiff’s property tax payment “transmitted” by private express carrier?*

Having determined that Dash meets the definition of “private express carrier” in ORS 293.660(2), the court now turns to whether the payment was “transmitted” by Dash. *See* ORS 305.820(1)(a). Defendant argues that Plaintiff’s property tax payment was transmitted through the USPS and not by private express carrier. (Def’s Ltr at 1, Sept 26, 2006.) The court disagrees.

The word “transmitted” is of common usage, and under the *PGE* analysis may be given its “plain, natural, and ordinary meaning.” 317 Or at 611. The common definition of “transmit” is “to cause to go or be conveyed to another person or place[.]” *Webster’s Third New Int’l Dictionary* 2429 (unabridged ed 2002). It is undisputed that Dash picked up Plaintiff’s mail,

including the property tax payment, from Plaintiff for delivery to the USPS, and that Dash did deliver the mail to the USPS. Dash, therefore, caused the mail to go or be conveyed from Plaintiff to the USPS, which is another person or place. The court finds that Plaintiff's property tax payment was transmitted by Dash.

C. *Is Plaintiff entitled to a determination that the property tax payment was deposited on or before November 15, 2005?*

ORS 305.820(1)(a) provides that a remittance to a county assessor or tax collector, that is transmitted by private express carrier, "shall be deemed filed or received * * * 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." (Emphasis added.) The statute gives the "addressee," here Defendant, discretion to determine what constitutes satisfactory proof of mailing or deposit. *See Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498 (1993) (*Jackson County Tax Collector*). Because this determination is discretionary, it is reviewed by the court under an abuse of discretion standard. *See, e.g., Egusa v. Dept. of Rev.*, 13 OTR 1 (1994); *Jackson County Tax Collector*, 12 OTR at 500.

1. *Did Defendant abuse its discretion in determining that Plaintiff mailed the property tax payment on November 18, 2005?*

In *Jackson County Tax Collector*, this court stated, in regard to satisfactory proof of timely mailing or deposit, that "[i]t would be an abuse of discretion if [the county] refused to consider any evidence other than the post-office cancellation mark stamped upon the envelope. Such a policy would foreclose the exercise of any discretion." 12 OTR at 500.

In this case, Defendant determined that Plaintiff's property tax payment was mailed too late to receive the three percent discount, stating that the received envelopes "clearly have the

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USPS postmark * * * [and] [t]he mailing date is clearly November 18, 2005 * * *.” (Def’s Ltr at 1, Sept 26, 2006; Def’s Exs D, E.) Defendant’s position is that “ORS 305.820 clearly states that a cancellation mark establishes the actual mailing date.” (Def’s Ltr at 1, Sept 26, 2006.) Defendant acknowledged that the “payments were metered by an in-house postage meter on November 11, 2005[;]” however, Defendant did not consider that as the mailing or deposit date for the purpose of determining whether Plaintiff’s payment was timely. (*Id.*)

This court finds that Defendant abused its discretion by not considering any evidence of mailing other than the post-office cancellation mark on Plaintiff’s payment envelope. *See Bengiat v. Lane County Assessor*, TC-MD No 050673E, WL 397916 at * 2 (Jan 30, 2006) (finding that the county abused its discretion by not considering any evidence except the post-office cancellation mark). Therefore, review of this appeal is de novo, meaning the court considers anew whether Plaintiff deposited their property tax payment on or before November 15, 2005. *Id.*

2. *Has Plaintiff submitted satisfactory proof that the property tax payment was deposited on or before November 15, 2005, thereby qualifying for the early payment discount under ORS 311.505(3)(b)?*

The parties do not dispute that on November 11, 2005, Dash picked up outgoing mail containing payment of Plaintiff’s property tax assessment from Plaintiff for delivery to the USPS. The parties do not dispute that the property tax payment envelope was metered by Plaintiff’s postage machine with the date “11/11/2005.” Exhibits submitted by the parties, as well as testimony at trial, support the conclusion that Plaintiff’s property tax payment was deposited with Dash on November 11, 2005. Accordingly, the court finds Plaintiff has submitted satisfactory proof that the property tax payment was deposited on or before November 15, 2005, and under ORS 311.505(3)(b) is entitled to the three percent early payment discount.

III. CONCLUSION

It is the conclusion of the court that Dash is a private express carrier as defined in ORS 293.660(2), and that, under ORS 305.820(1)(a), Plaintiff's property tax payment was transmitted by private express carrier. The court finds Plaintiff has shown satisfactory evidence that its 2005-06 property tax payment was deposited on or before November 15, 2005, and under ORS 305.820(1)(a) the payment shall be deemed filed on November 11, 2005. Plaintiff is, therefore, entitled to the three percent early payment discount under ORS 311.505(3)(b) because the property tax was paid in full on or before November 15, 2005. Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal is granted; and

IT IS FURTHER DECIDED that Defendant shall cancel the delinquency notices issued for Accounts P862908, R1448222, R2113540, and R751332 for the 2005-06 tax year, and refund the excess taxes paid, with applicable interest.

Dated this _____ day of April 2007.

JEFFREY S. 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 Jeffrey S. Mattson on April 5, 2007. The Court filed and entered this document on April 5, 2007.