

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

TIM MARCOTTE)	
and LISA MARCOTTE,)	
)	
Plaintiffs,)	TC-MD 060519C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs’ appeal from Defendant’s denial of the statutory discount for timely payment in full of the property taxes on their home for the 2005-06 tax year. The July 27, 2006, case management conference was converted to a trial at the request of the parties. Tim Marcotte represented Plaintiffs. Gloria Rogers (Rogers) represented Defendant. For ease of reference, Plaintiffs will be referred to collectively as taxpayers, and individually as Tim and Lisa. Defendant will be referred to as the county.¹

I. STATEMENT OF FACTS

According to the sworn testimony, taxpayers mailed their property tax payment for Account 1288172 on November 15, 2005, the last day for timely payment of the taxes. See ORS 311.505(1)² (requiring payment of at least one-third of all taxes due by November 15). Tim testified that he stressed upon Lisa the importance of mailing the payment that day because of the potential for loss of the discount if the payment was late. Tim further testified that Lisa

///

¹ It is customary for the court to use either the status of the parties (*i.e.*, Plaintiff) or the last name. However, in this case, the court’s Decision references two individuals with the same last name. To avoid confusion, the court will use the taxpayers’ first names.

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

had a clear recollection of mailing the payment from the U.S. Postal Service drop box in the Sheldon Shopping Center on November 15, prior to 3 p.m. Lisa did not testify.

The cancellation mark on the envelope containing taxpayers' payment, however, is November 21, 2005, six days after the date that remittance was said to have been mailed. (Def's Answer at 1.) The county deemed the payment late and denied the discount of \$195.48 and imposed interest of \$2.61. The parties agree that taxpayers have paid their taxes on time for at least the last four years, making trimester payments as authorized by ORS 311.505(1). Taxpayers promptly paid their remaining balance for the 2005-06 tax year after they received the county's supplemental billing in May 2006.

II. ANALYSIS

The issue in this case is whether taxpayers timely paid their taxes so as to be entitled to the three percent discount provided in ORS 311.505(3)(b). The due date for the payment was November 15, 2005. *See* ORS 311.505(1). Although taxpayers' payment was postmarked November 21, 2005, taxpayers claim they mailed the payment on November 15, 2005.

ORS 305.820 discusses when a tax payment is deemed received by the tax collector's office. That statute provides, in pertinent part:

“(1) Any writing or remittance required by law to be filed with or made to the * * * county assessor or tax collector (designated in 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 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 determination of whether a taxpayer has submitted satisfactory proof is left to the discretion of the addressee, which in this case would be the county. The court's review of that

///

determination is limited to whether the county abused its discretion. *See Bengiat v. Lane County Assessor*, TC-MD No 050673E at 3 (Jan 30, 2006), *citing Wiebe v. Marion County Assessor*, TC-MD No 010830D at 3 (Jan 25, 2002). As in *Bengiat*, the county's representative Rogers testified that her office uses the post-office cancellation mark in cases where the taxpayer claims to have timely mailed a payment. They apparently did not consider any other information. This court has previously ruled that the county's refusal "to consider any evidence other than the post-office cancellation mark stamped upon the envelope" is an abuse of discretion. *Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498, 500 (1993). Following that ruling, the court concludes that the county abused its discretion by not considering any evidence of mailing other than the post-office cancellation mark on the taxpayers' envelope. The court's review of the appeal is therefore *de novo*, which means it will consider the evidence presented and determine whether it believes taxpayers timely mailed their payment. Taxpayers have the burden of proof which, by statute, can be sustained by a preponderance of the evidence. *See* ORS 305.427.

Tim testified unequivocally that the payment was mailed on November 15, 2005. He discussed the matter with Lisa and formulated a plan, stressing to Lisa the importance of getting the payment mailed that day, because it was the last day on which payment could be made without losing the discount. Taxpayers decided that it would be safer and more reliable to mail the payment from the U.S. Postal Service mail receptacle at the Sheldon Shopping Center than from their rural home mailbox. Tim testified that Lisa confirmed mailing the payment that day (November 15, 2005) from the Sheldon Shopping Center before 3 p.m. The county confirmed that taxpayers have a history of timely paying their property taxes. Tim argued he would have only made a one-third payment, as taxpayers have done in the past, if, as the postmark suggests, they were really six days late in sending their payment.

///

The Department of Revenue has promulgated an administrative rule that provides that a payment postmarked after the due date “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.” OAR 150-305.820(1)(D). In *Bengiat*, this court ruled that the taxpayers’ sworn testimony satisfied the “sworn affidavit” requirement in the rule. *Bengiat*, TC-MD No 050673E at 4. The court will follow that ruling in the instant appeal. And, having considered all the evidence, the court concludes that taxpayers have provided “satisfactory proof” that they mailed their payment for the 2005-06 tax year on November 15, 2005. Consequently, taxpayers are entitled to the three percent discount provided in ORS 311.505, as well as a cancellation of the interest imposed by the county.

III. CONCLUSION

The court concludes taxpayers have provided satisfactory proof that they mailed their property tax payment for the 2005-06 tax year on the November 15, 2005, due date. Now, therefore,

IT IS THE DECISION OF THIS COURT that taxpayers are entitled to the statutory discount of three percent. The county shall cancel its delinquency notice for the 2005-06 tax year for assessor’s Account 1288172, as well as the interest imposed on that account; and

///

///

///

///

///

///

IT IS FURTHER DECIDED that any excess taxes paid shall be refunded with statutory interest.

Dated this _____ day of August 2006.

DAN ROBINSON
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 Dan Robinson on August 14, 2006. The Court filed and entered this document on August 14, 2006.