

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JAMES E. MCDONALD,)
)
 Plaintiff,) TC-MD 060607C
)
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff requests a waiver of the interest charged for the late payment of property taxes for the 2005-06 tax year on property identified as Account 1735966. The November 2, 2006, case management conference was converted to a trial at the request of the parties. Plaintiff appeared on his own behalf. Defendant was represented by Gloria Rogers (Rogers), an employee of the Lane County Department of Assessment and Taxation.

I. STATEMENT OF FACTS

Plaintiff lives at 570 Crest Drive, in Eugene. The dispute involves the taxes on that property. Plaintiff used to live next door, at 560 Crest Drive, in a home he bought in 1996. In 2001, Plaintiff moved to Boulder, Colorado, but he retained ownership of the home at 560 Crest Drive. Plaintiff did not notify the county assessor or tax collector of his new address. Plaintiff moved from Boulder back to Eugene in June 2003. Again, Plaintiff did not notify the county tax authorities of his change of address.

Shortly before returning to Eugene in June 2003, Plaintiff began the process of partitioning the land at 560 Crest Drive into two tax lots. The partition process was completed

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by early 2004. Plaintiff then began constructing a home on the newly created lot, which has a street address of 570 Crest Drive. Plaintiff was living in the home at 560 Crest Drive while the new home was being built. Plaintiff moved into the new home at 570 Crest Drive in February 2005. Plaintiff sold the home at 560 Crest Drive about one year later, in March 2006.

Plaintiff's 2002-03 property tax statement for the home at 560 Crest Drive, which was mailed to that address in October 2002, was returned to the tax collector with a forwarding address for Plaintiff in Boulder, Colorado. On or about October 30, 2002, Defendant re-sent the 2002-03 tax statement to the new address in Boulder, and updated its records to reflect a change of address for Plaintiff. The property tax statements for the 2003-04 and 2004-05 tax years were also mailed to the Colorado address, even though Plaintiff returned to Eugene from Boulder in June 2003. The property tax statement for the 2004-05 tax year was returned to Defendant by the post office with a forwarding address of 560 Crest Drive.

When Defendant became aware of the partition of the property into two tax lots, it canceled the original account for 560 Crest Drive and set up two new accounts, one for the property at 560 Crest Drive, and another for the new home at 570 Crest Drive. The new accounts were first recognized for the 2005-06 tax year. According to Rogers, Defendant began the process of creating the two new accounts in December 2003 (when the partition was completed), and completed the process on January 14, 2005 (when Plaintiff's new home at 570 Crest Drive was completed).

Defendant used Plaintiff's Boulder, Colorado, address as the address of record for both of the new accounts. Shortly thereafter, on January 18, 2005, Defendant updated its records for the account associated with the property at 560 Crest Drive, changing the address from Boulder, Colorado, to 560 Crest Drive, in Eugene. That change was made because the property tax

statement for the 2004-05 tax year, for the home at 560 Crest Drive, was returned to Defendant by the post office with a forwarding address of 560 Crest Drive.¹ Defendant did not change the record address for Plaintiff's new home at 570 Crest Drive. The tax statement for that property (Plaintiff's current home) was mailed to Plaintiff's former address in Boulder, Colorado, in October 2005. Plaintiff did not receive that statement and did not timely pay his taxes.

Plaintiff first became aware that the property tax payment on his new home at 570 Crest Drive was delinquent on July 23, 2006, when he opened a notification from his lender dated July 14, 2006. The lender's notice stated that a recent search of the tax records revealed that Plaintiff's property taxes were delinquent. The notice further stated that "[t]his loan is not escrowed for the payment of taxes, therefore, it is your responsibility to pay them." (Ptf's Compl at 3.) Plaintiff went to the assessor's office the next day, July 15, and paid his taxes in full. Plaintiff's tax liability included an interest charge of \$328.14, because the payment was late. Plaintiff challenges the imposition of interest.

II. ANALYSIS

The tax collector is statutorily required to mail property tax statements each year on or before October 25 to all owners of real or personal property in the county. *See* ORS 311.250(1).² The tax collector uses the address it has on record for each property owner. Payment of at least one-third of the taxes must be made by November 15, and the final trimester payment is due on or before May 15 of the following year. *See* ORS 311.505(1). Plaintiff's payment was late.

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¹ According to sworn testimony, the note in Defendant's computerized record system states that the change was made "per November 2004 postal forwarding, change mailing for McDonald to 560 Crest Drive."

² Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 2003.

The tax collector is required to charge interest on late payments pursuant to ORS 311.505(2), which provides in relevant part:

“Interest shall be charged and collected on any taxes on property, * * * or installment thereof not paid when due, at a rate of one and one-third percent per month, or fraction of a month until paid.”

Plaintiff contends that he should not have to pay the interest because he did not receive the property tax statement. According to his testimony, Plaintiff was aware that he did not receive a property tax statement for the new home in October 2005, but assumed that the home was not subject to tax until he had lived in it for a year, or that there was some similar explanation for the lack of a property tax billing.

Plaintiff misunderstood the law. ORS 308.210(1) requires the assessor to value all property in existence each year on January 1. The statute provides in relevant part that the assessor “shall proceed each year to assess the value of all taxable property within the county,” and “maintain a full and complete record of the assessment of the taxable property for each year as of January 1, at 1 a.m. of the assessment year[.]” Plaintiff’s home was in existence and completed as of January 1, 2005, and was, therefore, taxable for the tax year commencing on July 1, 2005, with a tax statement issued on or before October 25, 2005. Plaintiff did not receive his property tax statement because he did not notify the tax collector or assessor of his new address after moving into his new home at 570 Crest Drive.

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Property owners are required by ORS 311.555³ to keep the tax collector informed of their “true and correct address” and, under ORS 308.212,⁴ to notify the assessor of any change of address within 30 days of the date of the change. The tax collector then has an obligation to “note upon the tax roll * * * the true and correct address of each person * * * owning real or personal property in this state, as furnished under ORS 311.555 or as otherwise ascertained by the tax collector.” ORS 311.560.

Plaintiff moved three times without notifying the assessor of his change of address: first to Boulder, Colorado, in 2001; then back to Eugene in June 2003; and, finally in February 2005, when Plaintiff moved into his new home at 570 Crest Drive. The tax collector became aware of Plaintiff’s move to Boulder and updated its records accordingly, as authorized under ORS 311.560, set forth above. The collector also updated its records for the property located at 560 Crest Drive in January 2005. Both of those changes were made because the post office notified the county that Plaintiff had moved and provided a forwarding address. Plaintiff

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³ ORS 311.555 provides in relevant part:

“Each person, firm or corporation owning real or personal property within the state * * * shall keep the tax collector of the county where such real or personal property is situate informed of the true and correct address of the person, firm or corporation.”

⁴ ORS 308.212 provides in relevant part:

“(1) Any person who owns real property located in any county shall notify the county assessor for the county where the property is located of that owner’s current address and, within 30 days of the change, shall notify the assessor of any change of address.

“ * * * * *

“(3) The county assessor of each county shall maintain records showing the information required to be submitted to the assessor under this section. The assessor shall note any property owner’s change of address on the tax rolls.”

acknowledged on cross-examination that he did not notify the tax collector or assessor of any of his address changes. Plaintiff's receipt of the tax statements on his prior residence was not as critical because the taxes for that property were paid by the mortgagee through escrow. However, Plaintiff did not have such an arrangement with the lender for his new home at 570 Crest Drive.

ORS 311.250(2) provides that "[t]he failure of a taxpayer to receive the [tax] statement described in this section shall not invalidate any assessment, levy, tax, or proceeding to collect tax." Plaintiff should have known that there was a problem with the county's records when he did not receive his tax statement, particularly with all the moves that he had made. *See generally Gordon v. Dept. of Rev.*, 12 OTR 288, 290 (1992) (noting that it is not the county's obligation to institute a search for a taxpayer's correct address but it is the taxpayer's responsibility to keep the county informed of the taxpayer's correct address).

III. CONCLUSION

Plaintiff's request for waiver of the interest charged for the late payment of his property taxes for the 2005-06 tax year, on property identified as Account 1735966, is denied. The payment was not made because Plaintiff failed to notify the tax collector or assessor of his new address as required by law, and the consequent failure to receive the tax statement is not grounds for invalidation of the tax. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied for the reasons set forth above.

Dated this _____ day of December 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 December 21, 2006. The Court filed and entered this document on December 21, 2006.