

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

MARILYN S. GOLDMAN, )  
 )  
 Plaintiff, ) TC-MD 060713C  
 )  
 v. )  
 )  
 MARION COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

Plaintiff has asked the court to waive the interest imposed by Defendant for late payment of certain real property taxes for the 2005-06 tax year and for a waiver of the \$25 court filing fee. The matter was heard by the court on March 6, 2007. Plaintiff appeared on her own behalf. Defendant was represented by Rex Weisner (Weisner).

I. STATEMENT OF FACTS

The property at issue is an unimproved lot located behind Plaintiff's personal residence, separated by a fence that delineates the boundary between the two parcels. According to the tax statements submitted by Defendant, both parcels are .22 acres. (Def's Answer at 3, 5.) The account number for the unimproved lot, referred to by Plaintiff as the "back lot," is R78579; the account number for the front lot, which includes Plaintiff's home, is R78577. Defendant generates a separate annual tax statement for each parcel. This appeal involves only Account R78579.

Tax statements for the 2005-06 tax year were mailed in October 2005, as provided in ORS 311.250(1).<sup>1</sup> Plaintiff insists she only received the statement for the front lot (Account R78577). Plaintiff paid the taxes on that account, but did not pay the taxes on the back

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<sup>1</sup> Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 2003.

lot (Account R78579). Both tax statements for the 2005-06 tax year reflect Plaintiff's name and address.<sup>2</sup> Plaintiff received a delinquent tax notice for the unpaid taxes on the back lot in May 2006, and then paid the tax. That notice was addressed the same as the tax statements had been addressed. The delinquency billing included interest in the amount of \$50.24. Plaintiff objects to the interest charge. Plaintiff complained to Defendant's office, and was advised by one of Defendant's employees that they had no authority to waive the interest. Plaintiff was told she would have to appeal the interest charges to this court. Plaintiff has done so, requesting waiver of the interest, plus a refund of the \$25 court filing fee made necessary by Defendant's unwillingness to cancel the interest.

## II. ANALYSIS

ORS 311.505 provides in relevant part as follows:

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

Plaintiff was late in paying her property taxes, and Defendant was required to charge interest. *See* ORS 311.505(2). The charge is mandatory, as evidenced by use of the word “shall” in the statute. The issue before the court is whether the interest should be waived.

Plaintiff contends that she did not timely pay the taxes for the back lot because she did not receive a tax statement for that account. Weisner responds that the tax statements for both properties (the front lot with the home and the back lot) would have been mailed in the same envelope. Although Weisner has no personal knowledge of the mailing of the 2005 property tax statements, he testified that the event tracking code in Defendant's records indicates that the tax statements for Plaintiff's properties are part of the “multiple mailings” category. It is

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<sup>2</sup> The statements also include Plaintiff's deceased husband's name, a fact which upset Plaintiff because after his death she had asked that his name be removed.

Defendant's policy to mail tax statements for accounts in that category in one envelope to save on postage. Plaintiff insists that there was only one tax statement in the envelope, and she paid the taxes billed on that statement. Defendant acknowledges that the taxes on the front parcel were timely paid.

Plaintiff has owned the two properties since October 1995. Defendant has issued separate tax statements to Plaintiff for the two properties for 10 years. When asked by the court why she did not realize she was only being billed for one of the two properties she owned, Plaintiff testified that she was not aware that Defendant separately billed the taxes for the back lot. Plaintiff testified that her husband had handled the couple's property tax matters prior to his death in January 2005 and that the couple did not discuss matters such as how many tax statements were received. Tax year 2005-06 was the first year Plaintiff handled the property taxes on her own.

Plaintiff testified that she has had problems with Defendant in the past and believes that Defendant simply neglected to send the tax statement for the back lot. Plaintiff testified that while she was working with Defendant to have her husband's name removed from the account, she had to send Defendant the same information twice because Defendant lost the information she sent the first time. Plaintiff further testified that her husband had similar experiences when he was appealing the value of the back lot some years ago. Plaintiff argues that if Defendant cannot keep track of information sent to that office by taxpayers, then it is not difficult to imagine that Defendant may have misplaced or lost one of the two tax statements claimed to have been sent Plaintiff in 2005.

The court has no way of knowing whether Plaintiff did or did not receive the disputed tax statement. Plaintiff seemed credible, but it is as likely that Plaintiff somehow overlooked or

misplaced the tax statement as it is Defendant failed to send it. Assuming Plaintiff did not receive the tax statement, and that the non-receipt was due to some error on Defendant's part, the question for the court is whether, under the facts of this case, Plaintiff is entitled to relief. For the reasons set forth below, the court concludes she is not.

ORS 311.250(2) provides generally that “[t]he failure of a taxpayer to receive the [annual tax] statement \* \* \* shall not invalidate any assessment, levy, tax, or proceeding to collect tax.” Notwithstanding that general rule, this court has in the past imposed damages under ORS 311.565 in the form of cancellation of interest when a taxpayer informed the tax collector of the correct address (typically following a move) and the collector failed to update its records as required by ORS 311.560, mailing the tax statement to the wrong address. *See e.g., Leyva v. Lane County Assessor*, TC-MD No 021281E, WL 21277204 (Feb 28, 2003); *Campbell v. Multnomah County Assessor*, TC-MD No 020187C, WL 1611544 (July 19, 2002). That is not the situation in the present case, however, and ORS 311.565 is, therefore, inapplicable. Plaintiff has not directed the court to any other provisions of the law that would afford her the relief requested, and the court is aware of none.

The Oregon Supreme Court has held that every taxpayer is responsible for knowing their property is taxable. In *Hood River County v. Dabney*, the court stated:

“[E]very citizen ‘is presumed to have known that his land was taxable, that in due course it would be assessed, a tax levy extended against it, and it would be placed on the tax rolls, that it was his duty to timely pay his taxes, that if he failed to do so, his land would be offered for sale and resale at a time and place specified in the statutes \* \* \*.’”

*Hood River County v. Dabney*, 246 Or 14, 28, 423 P2d 954 (1967) (citation omitted). In addition to that presumption, Plaintiff was on notice that the tax statement she did receive only covered

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the front lot. The statement specifies in the upper left corner that it concerns .22 acres. Each of Plaintiff's lots is .22 acres.

The Oregon Supreme Court has stated that “the law of taxation places upon property owners the duty to keep themselves informed about the recurrent liability of their property for taxes, and charges them with knowledge that neglect to pay a tax will result in foreclosure proceedings.” *Knapp v. Josephine County et al*, 192 Or 327, 353, 235 P2d 564 (1951). Some years later, the Tax Court emphasized the taxpayer’s obligation in the property tax arena to “audit the government’s property tax records.” *Seifert v. Dept. of Rev.*, 14 OTR 401, 404 (1998) (citation omitted); *see also Running v. Dept. of Rev.*, 10 OTR 42, 43 (1985) (noting the obligation of the taxpayer in the property tax system to “verify, question, test and object to the assessing party’s records[.]”). Had Plaintiff carefully inspected her statement, she would have realized it did not cover the back lot. Plaintiff is presumed to know the size of her property.

If the court were to waive interest every time a taxpayer claimed not to have received a tax statement, the consequences would be extreme. Interest operates as a catalyst to pay on time. It also offsets the county’s loss of the use of the money. It is, therefore, not only an important policing mechanism, but a revenue equalizer.

The final matter is Plaintiff’s request for waiver of the \$25 filing fee. The fee is imposed by ORS 305.490(1)(a) (2005), which provides that Plaintiffs filing a complaint in the magistrate division “shall” pay a \$25 filing fee. There is no specific statutory authority for waiving the fee, and, if there were, the circumstances of this case do not warrant such action.

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### III. CONCLUSION

The court concludes that Plaintiff is not entitled to waiver of the interest Defendant imposed under ORS 311.505(2) because Plaintiff was late in paying her property taxes and there is no legal authority to grant the requested relief. The court further concludes that Plaintiff is not entitled to waiver of the \$25 statutory court filing fee. Now, therefore,

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

Dated this \_\_\_\_\_ day of March 2007.

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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 March 23, 2007.  
The Court filed and entered this document on March 23, 2007.***