

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

FRANK TACKETT and LINDA TACKETT, )  
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 Plaintiffs, ) TC-MD 070165C  
 )  
 v. )  
 )  
 MARION COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION OF DISMISSAL**

Plaintiffs appeal the value Defendant added to the assessment and tax rolls in 2001 for Account R93510 for a structure on their property improperly classified as a 520 square foot garage rather than a 384 square foot storage shed. The value was added to the tax year 2001-02 maximum assessed value (MAV) under ORS 308.153<sup>1</sup> as an exception to the statutory limit of three percent annual increases in MAV generally imposed by ORS 308.146(1). A hearing on the matter was held by telephone on June 6, 2007. Frank Tackett (Tackett) appeared for Plaintiffs. County appraiser Jeff Procter (Procter) represented Defendant.

An overview of Oregon's property tax system provides a helpful framework for an understanding of this case. In May 1997, the Oregon voters approved a referendum that radically altered Oregon's property tax system. Measure 50 established a new method for calculating assessed value (AV) through the concept of MAV, which in 1997 was 90 percent of the property's 1995 real market value (RMV) on the rolls. *See Or Const, Art XI, § 11(1)(a); Ellis v. Lorati*, 14 OTR 525, 532 (1999) (noting the history of the adoption of Measure 50). Measure 50 is codified in ORS 308.146 to ORS 308.166. AV became the lesser of the

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<sup>1</sup> References to the Oregon Revised Statutes (ORS) are to 2005. However, the current statutes in this Decision contain the same general provisions as the 1999 and 2001 versions of the law, when the value was added and appeal rights attached.

property's MAV or RMV. ORS 308.146(2). By way of example, a property with a 1995 RMV of \$100,000 and a 1997 RMV of \$130,000 had an MAV in 1997 of \$90,000 (100,000 x 0.9). Because \$90,000 (1997 MAV) is less than \$130,000 (1997 RMV), the AV in 1997 (1997-98 tax year) would be \$90,000.

A significant part of Measure 50 is that it capped the annual increase in MAV to no more than three percent. Or Const, Art XI, § 11(1)(b); ORS 308.146(1). However, an exception was established for situations where there is a significant change to the property such as a major remodel or the addition of a new building. ORS 308.153. The increase in value stemming from major changes, defined in ORS 308.146(3)(a) and ORS 308.149(5)(b) as "new property or new improvements" to property, is added to the previous year's MAV<sup>2</sup> as a percentage of the increase in market value generated by the new improvements. ORS 308.153(1) and (2).

A further limitation, and one of particular significance to this case, is that changes to a property with a value of less than \$10,000 are not added to the MAV. ORS 308.149(6). Although it is somewhat of an over generalization, it is fair to say that, in most cases, a property owner's AV increases annually at a predictable rate of three percent unless the owner makes changes to the property in a single year with a value of more than \$10,000. Plaintiffs' MAV for the 2001-02 tax year was increased by more than the standard three percent because of the addition to the tax rolls of a 520 square foot garage that the appraiser at the time valued at \$15,500. As explained above, Plaintiffs actually added a 384 square foot storage shed with a wooden floor and no electricity.

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<sup>2</sup> The previous year's MAV is increased by 103 percent, and the taxable value of the "new property [or] new improvements to property" is added to that amount. ORS 308.153.

Procter acknowledges the errors in classification, size, and value. Procter recalculated the 2001 exception RMV to be \$4,750 rather than \$15,500. That amount is below the statutory threshold of \$10,000 found in ORS 308.149(6),<sup>3</sup> which means MAV would not have been increased by the addition of the outbuilding, if the correct information, including the lower value of \$4,750, had been determined back in 2001. The question is whether the court has the authority to correct that error now, based on a Complaint filed with the court in March 2007. For the reasons set forth below, the court concludes that it cannot correct the error.

Under Oregon's property tax system, values are determined on an annual basis, with property tax statements issued each year by October 25. ORS 308.210 (requiring the assessor to assess all taxable property each year); ORS 311.250(1) (requiring the tax collector to mail tax statements on or before October 25 each year). Taxpayers can appeal those values to the county board of property tax appeals (board) as provided under ORS 309.026 by filing a petition after the tax statement arrives in October, and before December 31 of that same year. ORS 309.100(2). The board's order resolving the petition can be appealed to the Magistrate Division of the Oregon Tax Court within 30 days of the date the order is mailed. ORS 309.110(7) (authorizing appeal of board order to Magistrate Division); ORS 305.275(3) (providing that a taxpayer aggrieved by a board order can appeal to the court); ORS 305.280(4) (imposing the 30-day appeal deadline).

The error in this case occurred in 2001 and was reflected on Plaintiffs' tax statement for the 2001-02 tax year, which they received in October 2001. Tackett was busy at the time caring for his ill wife, a situation that occupied the majority of his time for four years. As a result, he  
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<sup>3</sup> That threshold existed in 2001 and continues to the present.

simply paid the tax without scrutinizing the underlying values upon which the tax was based. Nonetheless, the time to appeal was in 2001, by filing a petition with the board before the December 31, 2001, statutory deadline.

Tackett did not become aware of the error until sometime in 2006 when he learned his daughter had purchased a more expensive home with lower taxes. Plaintiffs began reviewing their tax statements and discovered an unusual increase in value in 2001. They then contacted the assessor's office and eventually discovered that their storage shed had been incorrectly added as a garage and valued at three times the proper amount. As explained above, Plaintiffs' MAV and AV would have increased only three percent if the storage shed had been valued at \$4,750 rather than \$15,500 because of the \$10,000 statutory threshold for adding value to MAV. Moreover, that error has been carried forward to the present, with the result that Plaintiffs have paid additional taxes for six years. They will continue to do so because the additional value has become part of the recalculated AV from 2001, and will forever be included in that number, increased annually by three percent.

That fact no doubt seems harsh, particularly when Plaintiffs' delay in acting was due to a family illness. However, two things must be kept in mind. First, Tackett had a responsibility to analyze his tax statement before paying the bill or suffer the consequences stemming from the passage of time and the finality of the tax roll. This court in *Seifert v. Dept. of Rev.*, 14 OTR 401, 404-405 (1998), citing *Taft Church v. Dept. of Rev.*, 14 OTR 119, 122 (1997), noted the respective roles of the property owner and the government in income and property tax cases. Unlike the income tax system, where the taxpayer calculates and reports the tax and the government audits the return for accuracy, in the property tax arena the government determines the tax and the property owner must audit the tax statement for accuracy and correctness. *Id.* Both systems impose time limits for challenging the tax reported. Second, the

conduct of governmental affairs requires some finality to the state's system of tax collection, and state legislatures, recognizing that need, pass statutes of limitation to insure some stability.

Although the court is not unsympathetic to Plaintiffs' situation, it must be kept in mind that the system generally works both ways. Taxpayers would no doubt be unhappy if the government could forever return to them to correct any errors it finds.

There are statutes that allow the assessor to make changes to the assessment and tax rolls for prior years. The assessor can go back for six years to add value previously omitted or make clerical error corrections, but those statutes do not apply in this case. ORS 311.205 to ORS 311.234. A clerical error correction cannot be made because valuation judgment was necessary to correct the error. ORS 311.205(1)(a) (defining clerical errors as, among other things, arithmetic and copying errors); ORS 311.205(1)(b) (precluding corrections involving an error in valuation judgment). And the omitted property statutes are not helpful because they only allow increases in value (by addition of property previously omitted).<sup>4</sup>

In some instances, the court can reduce the value for a prior year regardless of whether the taxpayer first petitioned the board, but the scope of the court's authority is limited to the current and two prior tax years. ORS 305.288(1) and (3). There are no other statutes that authorize the court to address Plaintiffs' situation. Now, therefore,

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<sup>4</sup> The court briefly considered whether the rolls could be corrected by removing the "garage" and then adding the storage shed as omitted property. However, there are no statutes authorizing the court to go back and remove a building added in 2001.

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal must be dismissed because the court has no statutory authority to correct the assessment and tax rolls for the 2001-02 tax year based on a Complaint filed in March 2007.

Dated this \_\_\_\_\_ day of June 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 June 20, 2007. The Court filed and entered this document on June 20, 2007.***