

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RONALD M. TRUEHERZ,)
)
 Plaintiff,) TC-MD 070552B
)
 v.)
)
 CLACKAMAS COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals Defendant’s imposition of charges for the late payment of certain 2006-07 property taxes on real property identified as Account 05010249.

A trial was convened November 8, 2007. Ronald M. Trueherz testified on his own behalf; Linda Dunn (Dunn) participated for Defendant. Subsequently, written arguments were filed. The record closed December 7, 2007.

I. STATEMENT OF FACTS

Plaintiff testified he is aware of the importance of timely mailing property tax payments. He testified that before the filing deadline of November 15, 2006, his spouse wrote check number 3791 to pay the amount due and placed the property tax payment in the official envelope provided by Defendant.

They intended to timely place it in a receptacle for the United States Postal Service (USPS). Sufficient postage was attached; it was correctly addressed. He has followed the same pattern in prior years. The personal check was dated November 15, 2006.

At trial, Plaintiff testified in a candid and straight-forward manner. He does not recall if he or his spouse mailed the envelope, or whether it was mailed on November 14 or 15. If he had mailed the check, most likely he took it into his business office, put it in an internal “Out-Box”

which is taken daily to a nearby USPS postal box outside the office. That actual deposit is done by an office staff person, not Plaintiff. If his spouse was responsible, she most likely took the envelope to the Lake Branch of the USPS and placed it in an official receptacle. Plaintiff was unsure which alternative may have actually occurred here; he declined to sign an affidavit as to “Verification of Mailing”¹ attesting to one scenario or the other.

When Defendant received the payment, it noted that the cancellation mark on the envelope was November 17, 2006. As a result, the county sent Plaintiffs a notice that the county was charging them interest and disallowing a discount for the late payment of those property taxes. Plaintiffs now seek a refund of \$583.33 for those additional fees.

Defendant’s representative testified that the initial information they considered was the official postmark on the envelope. Later, in the course of this appeal, Defendant considered remarks made by Plaintiff, the proposed affidavit, and the sworn testimony provided at trial.

II. ANALYSIS

ORS 311.505(1)² provides that the first one-third of all property taxes due from a taxpayer “shall be paid on or before November 15[.]” ORS 311.505(2) provides that “[i]nterest shall be charged and collected on any taxes on property * * * not paid when due[.]” When a payment is mailed through the United States mail, the cancellation mark on the envelope is generally considered the date payment is received. ORS 305.820(1)(a). When a cancellation mark is after the due date, but the taxpayers contend they actually mailed the document on or

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¹ Provided by Defendant on July 9, 2007, for consideration in this case. The form is routinely used in similar cases, according to Dunn.

² All references to the Oregon Revised Statutes (ORS) are to 2005.

before the due date, the taxpayers must establish that they in fact mailed the document on the earlier date. ORS 305.820(1)(a) states:

“(1) Any writing or remittance required by law to be filed with or made to the * * * county * * * tax collector (designated in this section as the ‘addressee’) which is:

“(a) Transmitted through the United States mail * * * shall be deemed filed or received on the date shown by the cancellation mark * * * *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.*” (Emphases added).

The legislature recognized that circumstances may exist where actual mailing occurs on a date prior to the date shown by the cancellation mark. To use an earlier date as the date of mailing, the taxpayer must submit “proof satisfactory to the addressee” that the taxpayer mailed the remittance earlier. *Id.* The county is the “addressee” in this case, so it has the initial statutory authority to determine whether Plaintiffs have sufficiently demonstrated they actually mailed the payment on November 15, 2006. The county concluded Plaintiffs had not made such a demonstration. The court is now in a position of reviewing the county’s initial determination.

This court has held that review of the county’s determination under ORS 305.820(1)(a) is limited to whether the county *abused its discretion*. *Jackson County Tax Collector v. Dept. of Rev.*, 12 OTR 498, 500 (1993). As a consequence, this court is not now evaluating *de novo* (or “anew”) whether Plaintiffs have submitted satisfactory evidence that it timely mailed the payment.

In *Jackson County Tax Collector*, the court considered facts similar to those presented here. In that case, the taxpayer claimed to have deposited her payment in the U.S. postal deposit box on the morning of November 15, 1991. When the county received the payment, the envelope contained a cancellation mark of November 18, 1991. The taxpayer had no independent corroborating evidence to support her assertion she mailed the payment November 15. Jackson County had a policy that postmark dates are the *preferred* method of proving mailing dates. Its

policy allowed taxpayers to demonstrate an earlier mailing date by providing corroborating evidence. The policy stated in part:

“Taxpayer may support a claim of timely mailing by presenting a postal receipt, letter from the post office or parcel delivery service, or other credible corroborating evidence. A taxpayer’s uncorroborated assertion of timely mailing is not satisfactory proof of mailing.” *Jackson County Tax Collector*, 12 OTR at 499.

The court found the county had not abused its discretion in finding taxpayer had failed to demonstrate she mailed the payment on an earlier date. The court concluded:

“The court finds it is not unreasonable for the [county] to require corroborating evidence. The policy, as stated, does not require written proof. The corroborating evidence could be the testimony of an individual who witnessed the mailing or of a postal employee who explains why the mail was not postmarked in a timely fashion. Requiring some corroborating evidence is not an abuse of discretion. *It 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.*” *Id.* at 500. (Emphasis added)

Upon review, the county in this case did consider other factors. It made allowances for the submission and review of a proposed affidavit. All of that would allow for corroborating evidence to support a claim of earlier mailing. Here, there is no corroborating proof.

Under the specific facts of this case, the court finds the county did not abuse its discretion in determining that Plaintiff failed to offer satisfactory proof of timely mailing.

III. CONCLUSION

It is the conclusion of the court that the county did not abuse its discretion in determining Plaintiff failed to prove timely mailing of his 2006-07 property tax payment. Now, therefore;

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IT IS THE DECISION OF THE COURT that the county's imposition of interest for the late payment of property taxes is upheld; the appeal is denied.

Dated this _____ day of December 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 December 17, 2007. The Court filed and entered this document on December 17, 2007