

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SHANE Z. CRUNCHIE)
and AMY G. CRUNCHIE,)
)
Plaintiffs,) TC-MD 080271B
)
v.)
)
MULTNOMAH COUNTY ASSESSOR)
and DEPARTMENT OF REVENUE,)
State of Oregon,)
)
Defendants.) **DECISION OF DISMISSAL**

This matter is before the court on Defendant's verbal motion to dismiss made during a case management conference held June 2, 2008. Shane Z. Crunchie appeared on behalf of Plaintiffs. Ken Collmer and Dave Babcock appeared on behalf of Defendant. Subsequently, written information was received; the record closed August 6, 2008.

I. STATEMENT OF FACTS

Plaintiffs appeal the assessed value of the property identified in Defendant's records as Account R159565 for the 2006-07 and 2007-08 tax years.

For the 2006-07 tax year, Defendant reviewed changes made to the subject property pursuant to a building permit issued by local officials. Among the changes noted was classifying the attic as in a finished condition. That was an error. For that, and other appropriate value additions, Defendant added a total exception value of \$50,390. Plaintiff did not appeal those additions to the 2006-07 Multnomah County Board of Property Tax Appeals (BOPTA).

For tax year 2007-08, Defendant assigned the property a real market value (RMV) of \$320,340 and a maximum assessed value (MAV) of \$135,220. Upon appeal to BOPTA, the RMV was reduced to \$303,640; the MAV was not changed.

Plaintiffs do not contest the RMV of the property for the 2007-08 tax year. Instead, Plaintiffs decided to challenge the MAV and AV of the property, requesting that the values be reduced to account for the unfinished condition of the attic and the changes Defendant noted as occurring in 2005. Defendant claims the appeal should be dismissed because Plaintiffs are challenging the MAV and the court cannot adjust the MAV for an earlier year.

II. ANALYSIS

In May 1997, Oregon voters passed by referendum Measure 50 (M50), which substantially modified the property tax system in the State of Oregon. Prior to M50, a property was taxed at its RMV. Due to increasing values, Oregon voters chose to limit the growth of assessed values. In doing so, M50 created the concept of MAV. For the 1997-98 tax year, which was the implementation year for M50, the MAV was calculated by taking the property's 1995-96 RMV and subtracting 10 percent. Or Const, Art XI, § 11(1)(a). M50 provides that, for each successive year, the MAV will generally increase no more than three percent a year. Or Const, Art XI, § 11(1)(b); *see also* ORS 308.146(1).¹ The measure also requires counties to maintain a record of the property's RMV because a property is to be taxed at the lesser of its MAV or its RMV. Or Const, Art XI, § 11(1)(f); *see also* ORS 308.146(2).

Exceptions to the general three percent increase in a property's MAV exist. ORS 308.146(3) provides that, when major improvements are made to property, the MAV may increase by more than the allowable three percent. In that instance, the MAV is calculated by adding together the MAV of the property prior to the improvements to the RMV of the new improvements "multiplied by the ratio * * * of the average maximum assessed value over the average real market value for the assessment year." ORS 308.153(1).

¹ All references to the Oregon Revised Statutes (ORS) are to 2005.

In 2005, Plaintiffs completed modifications to their home. Defendant captured that “exception value” for the 2006-07 tax year. From that value, the MAV increased the allowable three percent to \$135,220 for the 2007-08 tax year. Because the MAV is less than the property’s RMV, it is the property’s AV for tax year 2007-08. The court finds that Defendant calculated the 2006-07 MAV properly with the information available at that time and there is no basis for changing it during a later tax year. The mistake as to the 2005 exception value is clearly an error in judgment. That is not correctable as a clerical error. ORS 311.205. *Costa v. Josephine County Assessor*, TC-MD No 070644E (Oct 29, 2007).

The court discussed with Plaintiff that a challenge to the MAV may have been appropriate for the 2006-07 tax year when the “exception value” was first added. The concept of MAV is an artificial statutory creation. In *Taylor v. Clackamas County Assessor (I)*, the Tax Court held:

“It is important to point out that maximum assessed value is an arbitrary limit. It is possible that section 11 will, over time, result in nonuniform property taxation. The drafters of Measure 50 recognized that because they expressly provided that Article I, section 32, and Article IX, section 1, of the Oregon Constitution, both of which address the issue of uniformity in taxation, do not apply to section 11. Or Const, Art XI, § 11(18).) If the voting public approved a scheme that may result in nonuniform taxation, then they implicitly accepted the notion of some degree of ‘unfairness.’ That is, by providing for taxation of property at the lesser of maximum assessed value or real market value, they accepted all of the potential inconsistencies and lack of uniformity in between.”

14 OTR 504, 511 (1999) (Decision withdrawn on other grounds.)

The court reiterated its holding in *Ellis v. Lorati*, stating:

“The court recognizes that in one sense MAV is somewhat artificial or arbitrary. That is inherent in the overall scheme of [Measure 50]. The concept may, over time, result in various degrees of nonuniformity in the property tax system. Section 11(18) [of the Oregon Constitution] contemplates this and excuses itself from complying with other constitutional provisions requiring uniformity * * * .”

14 OTR 525, 535 (1999).

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The court finds, therefore, that it is without authority to adjust the MAV for a prior tax year based on Plaintiffs' allegations.

III. CONCLUSION

The court concludes that Defendant calculated the 2006-07 MAV properly and, as a result, the court is without authority to modify the AV of the property during a later tax year. Consequently, the court finds Defendant's motion to dismiss must be granted. Now, therefore,

IT IS THE DECISION OF THE COURT that the above-entitled matter be dismissed.

Dated this _____ day of September 2008.

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 September 5, 2008. The Court filed and entered this document on September 5, 2008.