

IN THE OREGON TAX COURT
REGULAR DIVISION
Property Tax

DIRECTV, INC.,)
)
Plaintiff,) **TC 4939 (Control); 5004; 5049; 5141**
v.)
)
DEPARTMENT OF REVENUE,)
State of Oregon,)
)
Defendant.)
_____)
)
DIRECTV, LLC,)
)
Plaintiff,) **TC 5202; 5238; 5266**
v.)
)
)
DEPARTMENT OF REVENUE,)
State of Oregon,)
) **ORDER ON REMAND REGARDING**
Defendant.) **MEASURE 50**

I. INTRODUCTION

This consolidated case is on remand from the Oregon Supreme Court.¹ That Court held that property owned and used by DirecTV, Inc. (taxpayer) to provide satellite-based entertainment is subject to central assessment. *DIRECTV, Inc. v. Dept. of Rev.*, 360 Or 21, 377 P3d 568 (2016).

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¹ Tax years 2009-10 through 2012-13 are on remand from the Supreme Court. Tax years 2013-14, 2014-15, and 2015-16 are before this court on special designation.

This order follows in the wake of, and is controlled by, this court's order in *Comcast Corporation v. Dept. of Rev.*, __OTR__ (Sept 15, 2016) WL 4961875 (Order on New Property Exception to Measure 50) (*Comcast Corp. II*). In that order, this court held that Defendant Department of Revenue (the department) could not apply the new property exception to property previously subject to, but not subjected to, central assessment. Absent some distinguishing feature with respect to taxpayer in this case, the outcome must be the same.

This order only addresses the validity of the department's use of the new property exception. There are other issues pending before the court not addressed in this order.²

II. FACTS AND PROCEDURAL HISTORY

Taxpayer provides satellite-based entertainment for its customers in Oregon. It is stipulated that taxpayer's properties were subjected to local assessment in Oregon since 1994. (Stip Facts at 5). However, the Oregon Supreme Court determined that this line of business is a "communications" business, and taxpayer's property is subject to central assessment by the department under ORS 308.515(1)(h).³

The department first *subjected* taxpayer to central assessment in tax year 2009-10. It does not appear that either party has argued, nor does the record appear to support an inference, that the substance of taxpayer's operations changed significantly between assessment year 2008 and assessment year 2009.⁴ Accordingly, there appears to be no basis upon which the court

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² When this court previously ruled that taxpayer was not subject to central assessment, it did not address taxpayer's other claims because they were moot under this court's prior ruling. The Supreme Court's reversal of this court's prior decision "reopen[ed] those arguments for further consideration." *DIRECTV, Inc. v. Dept. of Rev.*, 360 Or 21, 25 n 1, 377 P3d 568 (2016).

³ Unless otherwise noted, the court's references to the Oregon Revised Statutes (ORS) are to 2009.

⁴ That is not to say that the size of those operations did not change. It is stipulated that the number of active subscribers in Oregon increased from 110,862 in 2008 to 151,606 in 2009. (Stip Facts at 2).

could determine that taxpayer became *subject to* central assessment for the first time as of tax year 2009-10.⁵

In tax year 2008-09, the last year that taxpayer was subjected to local assessment by the respective counties, the assessed value (AV) and real market value (RMV) of taxpayer's properties totaled approximately \$13,000,000. The maximum assessed value (MAV) of taxpayer's properties totaled approximately \$16,000,000.⁶

In tax year 2009-10, the department subjected all of taxpayer's properties to central assessment as one unit. Initially, the department asserted that the RMV for taxpayer's properties was equal to \$232,000,000. However, after a Director's conference was held, the department reduced its proposed RMV to \$40,000,000. (Ptf's Compl at 2.)

On the basis that subjecting taxpayer's properties to central assessment for the first time is an exception to Measure 50, codified in Article XI, section 11 of the Oregon Constitution, the department treated all of taxpayer's properties as new property. It then determined that the MAV (and AV) of taxpayer's properties was equal to the product of the RMV of \$40,000,000 multiplied by a changed property ratio (CPR) of 1.00.⁷ See ORS 308.153. The department's

⁵ However, the parties are invited to request to make a further record on this point.

⁶ Precise values of AV, MAV, and RMV for the tax year 2008-09 are not in the record before the court. Precise values will be required to determine the correct AV and MAV for tax year 2009-10.

⁷ At oral argument, the department made an assertion that taxpayer was assessed in tax year 2009-10 on RMV, not MAV. The assertion is apparently based on the fact that taxpayer's MAV was initially determined on the basis of the proposed \$232,000,000 assessment by the department. However, as provided by ORS 308.153, the MAV for new property is determined based upon the RMV multiplied by the CPR (which the department asserts is 1.00). Accordingly, if the RMV associated with taxpayer's property was reduced to \$40,000,000, then the MAV (and AV) must necessarily have also been reduced to \$40,000,000.

The department provided no authority at the hearing or in its briefing on how the MAV could be anything else. In fact, the department, in its briefing, states,

“Thus, for the first year the property was on the central assessment roll, the companies' real property values became the maximum assessed values (MAV).”

(Def's Cross-Mot for Part Summ J at 2.) If the department intends to prove that the RMV and MAV differ in tax

determination of the MAV for tax year 2009-10 represents an approximate increase of 150 percent from the total MAV for taxpayer's properties in tax year 2008-09.

III. ISSUE

The issue in this proceeding is the proper construction and application of the "new property" exception to Measure 50.

IV. ANALYSIS

As previously stated, this order follows in the wake of *Comcast Corp. II*. Indeed, many of the arguments made by the department are the same ones rejected by this court in *Comcast Corp. II*. (See Def's Cross-Mot for Part Summ J at 13) (stating it "treated all of the property as a new unit of property and, in effect, 'net additions,' same as it did for Comcast"). This court will not recreate that analysis. There are only two additional arguments that warrant discussion before applying this court's decision in *Comcast Corp. II* to this case.

A. *The Department's Additional Arguments*

First, at oral argument, the department stressed a difference in the scope of the definition of property as between local and central assessment. The department argued that unit valuation takes into account the "use" of property for inclusion in the unit, whereas "use" of property is not included in the definition of property for local assessment. The department seeks to use this difference in valuation methodology to invoke an exception to Measure 50.

However, as explained in *Comcast Corp. II*, methods of *valuation* pertain to the determination RMV of property --not the determination of whether an exception to Measure 50 exists. See *Comcast Corp. II*, __ OTR __ (Sept 15, 2016) (slip op at 22-24) WL 4961875 at *13.

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year 2009-10, it will have to introduce supporting evidence.

Absent some exception to Measure 50, the MAV cannot increase more than three percent.

Change to unit valuation in central assessment is not an exception to Measure 50.

Second, at oral argument, the department argued that the terms “not subject to” assessment and “exempt” from taxation are synonymous and used interchangeably by the legislature. According to the department, intangible property is “exempt” from taxation in local assessment, but not in central assessment. The court is uncertain of what point the department is trying to make. Just as in *Comcast Corp. II*, the department confirmed during oral argument that it is not pursuing determination of the MAV under the exception for disqualification from exemption. Accordingly, it is irrelevant for purposes of the new property exception whether intangible property is or is not “exempt” in local assessment.⁸

The department cannot use the new property exception for all of taxpayer’s properties.

B. *Application of Comcast Corp. II*

The legal arguments of the department are rejected. All that remains is consideration of any relevant factual differences between taxpayer here and the taxpayer in *Comcast Corp. II*.

Although there are several tax years at issue, the relevant tax year for purposes of this decision is tax year 2009-10, which is the first year in which the department subjected the properties of taxpayer to central assessment. This is because the MAV determined by the department in all subsequent years is based at least in part upon the MAV determined for tax year 2009-10. It is that MAV, and accordingly the MAV for all subsequent years, that taxpayer challenges.⁹

⁸ It is worth noting, however, that this court’s analysis in *Comcast Corp. II* relied on the distinction between being *subject to* assessment and being *subjected to* assessment. The former concerns whether the property *can be* assessed. The latter concerns whether property *was* assessed.

⁹ Taxpayer also challenges the RMV as to tax years 2009-10 through 2015-16. That challenge, however, and the arguments regarding that challenge, is not the subject of this order.

There is one distinction worth noting between this case and *Comcast Corp. II*. In *Comcast Corp. II*, some properties of that taxpayer were subjected to central assessment in tax years prior to tax year 2009-10, the first year in which the department subjected all of that taxpayer's properties to central assessment. However, in this case, none of taxpayer's properties were subjected to central assessment before tax year 2009-10. This distinction, although noteworthy, is inconsequential.¹⁰

The fact that some properties of the taxpayer in *Comcast Corp. II* were subjected to central assessment before tax year 2009-10 never entered this court's analysis.¹¹ Moreover, this court held in *Comcast Corp. II* that being *subjected to* central assessment for the first time is not an exception provided for by Measure 50.¹² Nor is it a suitable basis, in and of itself, for relying upon the new property exception. See Or Const, Art XI, § 11(1)(c)(A); ORS 308.149; ORS 308.153.

For the reasons expressed by this court here and in *Comcast Corp. II*, the department cannot rely on the new property exception as to property previously subject to, but not subjected to, central assessment.

The court notes that taxpayer has not introduced precise values as to the AV and MAV of the subject property for tax year 2008-09. Nor have the parties stipulated to any. Moreover, the department has not introduced any evidence as to whether, despite the principles announced in this order and in *Comcast Corp. II*, there is new property. Accordingly, determination of the AV

¹⁰ In fact, both parties asserted so at oral argument.

¹¹ It did not enter into the department's analysis in that case either. The department treated all of taxpayer's properties as new property, even though some of the properties were previously subjected to central assessment. See *Comcast Corp. II*, __OTR__ (Sept 15, 2016)(slip op at 7).

¹² The court expresses no opinion on whether the analysis would change in the first year a taxpayer becomes *subject to* central assessment.

and MAV for tax year 2009-10, as well as any possible application of the new property exception for tax year 2009-10, must await evidentiary support. The parties are to confer regarding any matters arising from this order or otherwise, including issues arising with respect to tax years 2010-11 through 2015-16.

V. CONCLUSION

Property existing and subject to central assessment before the assessment date for tax year 2008-09 is not new property when it is first subjected to central assessment in tax year 2009-10. At this time, the court cannot determine a specific MAV for taxpayer's property. The parties are directed to confer regarding further discovery resulting from this order, and other matters still pending. Now, therefore,

IT IS ORDERED that the parties are to continue pursuant to this order and the rules of the court.

Dated this ___ day of September, 2016.

THIS DOCUMENT WAS SIGNED BY JUDGE HENRY C. BREITHAUP ON SEPTEMBER 28, 2016, AND FILED THE SAME DAY. THIS IS A PUBLISHED DOCUMENT.