

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

GARY M. AND CHERYL L. KLEIN,)	
)	
Plaintiffs,)	No. 001001C
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed the act of the Washington County Assessor (county) in disqualifying their property, identified in the county assessor's records as Account No. R738839, from farm use special assessment for the 1999-00 tax year. The case management conference, held on November 30, 2000, was converted to a trial at the request of the parties. The case was submitted to the court on stipulated facts, as set forth below, for the court to resolve the legal issue concerning the propriety of the disqualification and whether the court can reinstate the special assessment. The Complaint was amended at trial to include the 2000-01 tax year.

STATEMENT OF FACTS

The pertinent facts are as follows. Plaintiffs bought the property at issue, which is located on Glencoe Road in Hillsboro, on contract from the previous owner in 1997. The property was under farm use special assessment when plaintiffs bought it and plaintiffs have continued to farm the land. The land is not located within an exclusive farm use zone (non-EFU).

Plaintiffs began looking into conventional financing in October 1998. In January 1999 plaintiffs were advised by a mortgage company representative that the lender could

not finance the property while it was in “tax deferral” (the farm use special assessment program). Towards the end of January 1999 plaintiffs contacted the assessor’s office and asked to have the property removed from special assessment. Shortly thereafter, the mortgage company declined to finance the property. Plaintiffs began working with another mortgage company and were told that they did not have to have the deferral removed in order to qualify for financing. This was in the middle or latter part of February 1999. Shortly thereafter, in March 1999 plaintiffs contacted the assessor’s office to see if they could halt the disqualification process. Mr. Gilmore took that call and advised plaintiffs that it was too late to stop the process of disqualification but that plaintiffs could reapply for special assessment the following year (calendar year 2000). Plaintiffs apparently believed that they had to complete their income tax returns, including the Schedule F, before submitting a new farm use special assessment application in 2000. Plaintiffs completed their tax returns in early July 2000 and upon calling the assessor’s office, were advised that it was too late to submit an application for the 2000-01 tax year.

Plaintiffs request that the farm use special assessment be reinstated and the assessment of back taxes for the five previous years be abated. It is the county’s position that it lacks authority to reinstate farm use special assessment once the taxpayer requests that the property be disqualified from special assessment because the disqualification is mandatory and the taxes immediately become due. Moreover, the county contends that the imposition of back taxes cannot be abated because they are mandatory under the statute, without provision for abatement in these circumstances. Finally, Mr. Gilmore stated that a property owner cannot reapply for farm use special assessment in the same year s/he requests disqualification.

COURT'S ANALYSIS

Property in a non-EFU zone may be removed from farm use special assessment upon notification by the taxpayer to the assessor pursuant to ORS 308A.116(1)(a)¹. ORS 308A.703(2) provides:

“Following a disqualification listed in subsection (1)² of this section, an additional tax shall be added to the tax extended against the land on the next assessment and tax roll, to be collected and distributed in the same manner as other ad valorem property tax moneys. The additional tax shall be equal to the difference between the taxes assessed against the land and the taxes that would otherwise have been assessed against the land, for each of the number of years determined under subsection (3) of this section.”

The additional tax is based on the amount of tax saved because of the special assessment and, in the case of non-EFU farm land, can be calculated for up to five years. ORS 308A.703(2) and (3).

Plaintiffs in this case notified the assessor to remove the property from special assessment in January 1999. Plaintiffs attempted to halt the disqualification process in March 1999, only two months after making the request for disqualification. According to

¹The referenced portion of the statute reads in its entirety:

“(1) Nonexclusive farm use zone farmland qualified for special assessment under ORS 308A.068 shall be disqualified from such special assessment upon:

“(a) Notification by the taxpayer to the assessor to remove the special assessment.”

²Subsection (1) of the statute provides in relevant part:

“This section applies to land upon the land's disqualification from special assessment under any of the following sections:

“(a) Exclusive farm use zone farmland under ORS 308A.113;

“(b) Nonexclusive farm use zone farmland under ORS 308A.116.”

the sworn testimony, plaintiffs had continued their farming activities on the property. Mr. Gilmore advised plaintiffs that the process could not be terminated. The court finds no statutory authority for the county's position.

By statute, the relevant portion of which is set out above, the additional tax was to be added to the 1999-00 assessment and tax roll. ORS 308A.703(2) (referring to the "next" assessment and tax roll). The tax statement for the 1999-00 tax year was issued in October 1999. ORS 311.250(1). The applicable administrative rule, promulgated by the Oregon Department of Revenue, merely requires that the disqualification be completed on or before June 30 and that the assessor mail a notice to that effect by July 7. OAR 150-308.395(1). There is no indication that the process was completed before plaintiffs requested it be terminated and the land continued to be specially assessed. Moreover, assuming the notice was sent, it is not clear the assessor was precluded from undoing the disqualification. The assessor did not lose authority over the tax rolls until September 25, 1999. ORS 308.242. Under ORS 311.405(2) the tax did not become a lien until July 1, 1999, well after the March 1999 request to reinstate the deferral.

The county was unable to cite any authority to support its assertion that the request for removal of disqualification, once made, is immediately binding and irrevocable and the court is unable to find such authority on its own.

Mr. Gilmore asserted at trial that upon a taxpayer request for removal of special assessment the tax must be paid. However, that statement too does not appear to comport with the law. ORS 308A.703(6) provides that "[t]he amount determined to be due under this section may be paid to the tax collector prior to the time of the next general property tax roll, pursuant to the provisions of ORS 311.370." May is not the same as shall.

If it were, the requirement would not appear to operate as a bar to cessation of the disqualification process if it had not been completed and the tax in fact been paid. The evidences shows that a notice of delinquent property taxes for the 1999-00 tax year was sent to plaintiffs by the county on or about June 19, 2000. Presumably the original statement mailed October 1999 included the additional tax.

CONCLUSION

After reviewing the applicable statutes the court concludes that the assessor's office erred in advising the plaintiffs that they could not stop the disqualification process upon plaintiffs' March 1999 request and, more importantly, erred in failing to do so. There is an additional question, equally valid, as to whether the law precludes a taxpayer from seeking to requalify property for special assessment in accordance with ORS 308A.086(1). That question, however, need not be answered because the case is disposed of in plaintiffs' favor on other grounds.

Dated this _____ day of January, 2001.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 JANUARY 5, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 5, 2001.