

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

NICKLEBY AND SACHA (DURHAM))
BASHO,)
)
Plaintiffs,) No. 010035E
)
v.)
)
CLACKAMAS COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

On December 29, 2000, plaintiffs filed a Complaint with this court requesting that the court extend the December 15 deadline found in ORS 308A.089(2)(a) for filing an application for farmland requalification. A telephone trial in the matter was held February 21, 2001.¹ Nickleby Basho appeared on behalf of plaintiffs. Tony Hunter, Senior Appraiser, appeared on behalf of defendant (the county).

STATEMENT OF FACTS

The subject property is identified as Account No. 00871809 and, prior to the 2000-01 tax year, received special assessment as unzoned farmland. In early 2000, the prior owners sold the property to two individuals who intended to subdivide the property and develop it. For reasons unknown to the court, these individuals abandoned their plans and sold the property in the spring of 2000 to plaintiffs. Plaintiffs purchased the property with the intention of maintaining the farm use of the property and have, since purchasing it, invested substantial money in mending fences and upgrading the barn and home.

///

In February 2000, the county sent an income questionnaire to the former owners

¹ The court converted the case management conference into a trial based on the representation of the parties they were prepared to present their case at that time.

(the intended subdividers) of the property. Receiving no response, the county followed up with a show cause letter some time after April 15, 2000. Again receiving no response, the county mailed a notice of disqualification on July 5, 2000. Although not specified at trial, the court assumes this notice went to plaintiffs as the current owners of the property. Mr. Basho testified he was in Africa working during the summer and did not return until the fall. When he returned, he discovered the county had disqualified the property. He contacted Mr. Hunter at the county who advised him that plaintiffs could file an application for requalification by December 15 if they believed the property qualified for special assessment. Initially, plaintiffs believed the property had gone into a dormant status. After investigating the matter further, however, plaintiffs discovered that the use of the property had not changed and it continued to produce an income during the previous five years.

Due to Mr. Basho's frequent absences from Oregon and the difficulties of tracking down the income information, plaintiffs did not file their application by the December 15 deadline. They appeal to this court asking that the court extend the deadline for them. The county responds that it has no authority to extend the deadline and leaves it to the court to determine whether the court can extend the deadline.

COURT'S ANALYSIS

ORS 308A.089 allows a taxpayer to apply for farmland requalification during the year the assessor disqualified the property. It provides, in pertinent part:

“(1) Notwithstanding ORS 308A.724, land that was nonexclusive farm use zone farmland and that has been disqualified by the county assessor from farm use special assessment for the reason that the land is no longer in farm use * * * may be requalified for farm use special assessment for the first year in which the disqualification is in effect.

“(2) Disqualified farmland may requalify for special assessment under this section upon compliance with the following:

“(a) The owner **shall** make application for requalification to the county assessor on or before December 15 of the tax year for which the disqualification is first in effect.” ORS 308A.089 (emphasis added).

The statute requires that an owner file the application for requalification by December 15 of the tax year. In this case, plaintiffs were required to file the application by December 15, 2000. Having missed the deadline, they ask the court to grant them additional time and effectively extend the statutory deadline. After reviewing the applicable law, the court finds it has no authority to extend the deadline.

Plaintiffs argue that the property qualifies for farm use special assessment because it generated the requisite income during the previous five years. They further note that the previous owners did not return the income questionnaire to the county because they planned on subdividing the property anyway.

It may be that the property belongs in the farm deferral program. However, the legislature has in place a statutory process for disqualifying property from farm use special assessment and for requalifying property. In this case, plaintiffs could have appealed the initial disqualification to this court within 90 days of notice of the disqualification. They chose not to appeal the notice. Plaintiffs also could have filed an application for requalification by December 15, 2000. Plaintiffs did not do so because they were unable to gather the required information by that date. Their failure to gather the information was due in large part to Mr. Basho’s absences from Oregon. Notwithstanding the various reasons for plaintiffs’ inability to timely file an application, the statute states that the application “shall” be filed by December 15. Use of the word “shall” imposes a mandatory requirement on a taxpayer to file an application by that deadline. No exceptions for extenuating circumstances exist in the statutory scheme and it is beyond the authority of

the court to judicially create an exception.²

CONCLUSION

The court finds it lacks authority to extend the December 15 deadline found in ORS 308A.089. Now, therefore;

IT IS THE DECISION OF THIS COURT that plaintiffs' appeal is denied.

Dated this _____ day of February, 2001.

COYREEN R. WEIDNER
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 97301-2563. 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 COYREEN R. WEIDNER ON FEBRUARY 27, 2001. THE COURT FILED THIS DOCUMENT ON FEBRUARY 27, 2001.

² The only *potential* remedy available to plaintiffs is an appeal to the Oregon Department of Revenue under ORS 306.115. If plaintiffs can provide income information to the county so that the county agrees the property should be requalified, they may consider submitting a joint request for requalification to the Department of Revenue.