

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

PAUL ALLEN,)
)
 Plaintiff,) No. 011168C
)
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff has asked the court to waive all or a portion of the tax imposed by Defendant upon disqualification by Defendant of the subject property from a forestland special assessment. The case management conference scheduled for February 4, 2002, was converted to a trial at the request of the parties. Plaintiff appeared on his own behalf. Defendant appeared through Mr. David Evans, an employee working for the Lane County Assessor. The case is converted from small claims to standard because the issue is not one that can be heard as a small claims case under ORS 305.514. The court is waiving the additional \$15 filing fee.

STATEMENT OF FACTS

The parties are not in dispute as to the material facts. The subject property is a 5 acre¹ tract of land in the Eugene area and identified for the 2001-02 tax year as Lane County Assessor's Account Number 1010808 (Map #18-04-35-0-0 00901). The property has historically been assessed as designated forestland.

In 1999 the prior owner, Shilo Forestry (hereinafter Shilo), harvested the timber. In February 2000, Defendant discovered that the property had been logged and sent a letter to Shilo advising it to replant the property if it desired to have the forestland designation continue. Shilo did not respond to that letter. On July 7, 2000, Defendant

¹Plaintiff indicated he bought 5.08 acres, the tax statement shows 4.79 acres.
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sent Shilo a notice of intent to disqualify. Shilo responded to that notice on July 31, 2000, indicating an intent to replant the property in January or February 2001. Based on that assurance, Defendant decided to not disqualify the property. A field inspection by Defendant in April 2001 revealed that no replanting had occurred.

Meanwhile, Plaintiff acquired the subject property in January 2001, the very time Shilo was to replant. Shilo allegedly did not disclose to Plaintiff the notices it received from Defendant or its assurance to Defendant that the land would be replanted. It was and is Plaintiff's intent to construct a home on the property and replant at least two of the roughly five acres with qualifying timber. Due to the timing of the acquisition and the need to determine the best location for the home, Plaintiff did not plant any trees in 2001. The parties agree that the best time in which to plant such trees is in the first few months of the calendar year. At the time of trial in February 2002, Plaintiff had replanted approximately two acres.

Based on the April 2001 field inspection by Defendant, a notice of disqualification was mailed by the assessor's office on June 12, 2001. The notice was mailed to the Plaintiff, as the county had by that time discovered the sale and purchase of the property. The June 12, 2001, notice from the assessor's office reads in part as follows:

"Under the guidelines of ORS 321.359(C) [sic], your property described above has been declassified from Forest Deferral as the land was logged and not replanted within the required amount of time. This disqualification requires a return to market value and the collection of the five year difference in the tax that would have been charged at market value and the tax that was charged at forest value on the land disqualified. Market value has been used in lieu of the forestland value beginning with the 2001-02 Assessment and Tax Roll.

"As provided by ORS 321.272(1) the **one time only additional tax** has been extended against the land and will appear as a forest declass on your November 2001 tax statement. If the land is in a qualifying farm use a change to farm deferral may be requested by filing an application postmarked by August 1st."

The notice also sets forth Plaintiff's appeal rights to the Magistrate Division of the Oregon Tax Court, including the appeal period, which is 90 days from actual knowledge of the act. ORS 305.275² and 305.280(1). The appeal was not filed within 90 days of the notice (which is not actual knowledge), but the timeliness issue was not raised by Defendant.

ISSUE

Can the court waive or reduce the tax imposed by Defendant following a harvest of the timber and lack of restocking where the new owner plans to restock the land but misses the planting season due to alleged extenuating circumstances? The court has concluded it cannot.

COURT'S ANALYSIS

The forestland designation was originally obtained by application made by the former owner Shilo pursuant to ORS 321.358. To qualify for forestland designation the land must be "held or used for the predominant purpose of growing and harvesting trees of marketable species" and meet minimum stocking requirements. ORS 321.358(4)(a). The designation, once approved, continues until disqualified upon the occurrence of one of the events enumerated in ORS 321.359. The triggering event in this case was "[d]iscovery by the assessor that the land is no longer forestland; * * *." ORS 321.359(1)(b)(C). That determination was based on the failure to replant the property following Shilo's harvest in 1999, which was discovered by Defendant in February 2000. The disqualification was threatened in July 2000, but postponed based on Shilo's assurance the land would be replanted in early 2001. It was not. Shilo sold to Plaintiff, who was unaware of the promise by Shilo to restock. The land was

² All references to the Oregon Revised Statutes are to 1999.

restocked by Plaintiff in early 2002, roughly three years after the harvest.

Upon disqualification, an additional tax is imposed as provided in ORS 308A.703. The relevant portions of the statute provide:

“(1) This section applies to land upon the land’s disqualification from special assessment under any of the following sections:

“* * * * *

“(c) Western Oregon designated forestland under ORS 321.359;

“* * * * *

“(2) Following a disqualification listed in subsection (1) 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.” ORS 308A.703 (emphasis added).

The use of the term “shall” in the statute above establishes a mandatory obligation on the assessor to impose the tax. In this case the assessor imposed the tax for the full five-year period as provided by ORS 308A.703(3).³ Plaintiff requests the back taxes be waived or reduced because he missed the planting season when he first acquired the property in January 2001.

The Department of Revenue has promulgated an administrative rule covering forestland designation. The rule provides in relevant part:

“To qualify, the land must have growing upon it at least the number of established trees per acre according to OAR 629-610-020 established by the State Forester. Also, for the land to qualify, the established trees must be of a marketable species acceptable to the State Forester as established in OAR 629-610-050.” OAR 150-321.358(2)(2).

OAR 629-610-0020 provides for a varying number of trees per acre depending

³ Under subsection (3) the number of years “shall equal the lesser of the number of consecutive years the land had qualified for the special assessment program” or “[f]ive years, in the case of * * * Western Oregon designated forestland.” ORS 308A.703(3)(c)(B).

upon soil class. Plaintiff does not assert that the land continued to have the minimum number of trees required per acre following Shilo's harvest. The court therefore assumes minimum stocking requirements were not met. Accordingly, disqualification was appropriate.

Defendant argues that the Forest Practices Reforestation Rules require restocking following harvest within twelve months, citing OAR 629-610-0040. The court agrees. The relevant administrative rule provides in part:

“(1) The time period for compliance with the reforestation rules begins at the completion of the operation or 12 months after tree stocking has been reduced, whichever comes first.

“(2) The landowner shall begin reforestation, including any necessary site preparation, within 12 months when reforestation is required.

“(3) The landowner shall complete planting or seeding within 24 months unless a written plan for natural reforestation has been approved by the State Forester.”

The land in this case was without trees for roughly three years. There was a sale during that period, and Plaintiff ultimately replanted in 2002, one year after he acquired the property. However, the restocking clearly did not begin within one year of the harvest, as required by the forestry rules set out above.

The department's administrative rule does contain an exception to the minimum stocking requirements where the property owner submits a written plan to the assessor outlining the owner's plan to achieve minimum stocking requirements. See OAR 150-321.358(3). Assuming that provision, which governs forestland special assessment application, is applicable in the case of disqualification, the rule states “[a]t least one-fifth (20 percent), but not less than two acres, of the area in the plan shall be planted by December 31 of the first assessment year that the land is designated as forest land.” OAR 150-321.358(3)(d). While there is no indication any such plan was submitted, if

Shilo's July 31, 2000, letter to Defendant declaring an intent to replant the property in early 2001 were viewed as a valid plan under the rule, then replanting of at least two acres was required no later than December 31, 2001, and probably no later than December 31, 2000. It is difficult to apply the rule in this case because the two-acre minimum planting requirement must be satisfied "by December 31 of the first assessment year that the land is designated as forest land" and there was no forestland designation, but rather a disqualification. *Id.* In any event, if the rule applies, and if Shilo's letter constitutes a "plan," the required replanting did not occur in time.

The court concludes Defendant acted appropriately in disqualifying the subject property from forestland special assessment based on the harvesting of the trees by the previous owner and the failure to replant within the time specified by Forestry rules. Accordingly, the tax imposed by Defendant was mandatory. There is no statutory provision allowing the court to waive or reduce the roll-back taxes under circumstances Plaintiff characterizes as extenuating. Where disqualification is appropriate, the tax is mandatory. Therefore, the tax will remain undisturbed.

CONCLUSION

The court cannot grant Plaintiff's request to have the tax imposed by Defendant waived or reduced because Defendant properly disqualified the property, the imposition of the roll-back tax is mandatory, and there is no statute providing for compromise of the tax. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's requested relief must be denied.

Dated this _____ day of April, 2002.

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 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 DAN ROBINSON ON APRIL 26, 2002. THE COURT FILED THIS DOCUMENT ON APRIL 26, 2002.