

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Western Oregon Privilege Tax
Forest Products Harvest Tax

LOWELL E. PATTON,)
)
 Plaintiff,) TC-MD 011185E
)
 v.)
)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)
)
 Defendant.) **DECISION**

Plaintiff appeals Defendant's assessment of a Western Oregon Privilege Tax (WOPT) and a Forest Products Harvest Tax (FPHT) for tax year 1999. After filing the appeal, Plaintiff acknowledged his liability for the FPHT. As a result, only the assessment for the WOPT remains at issue. Trial in the matter was held August 21, 2002. Lowell E. Patton appeared on his own behalf. Susan J. Hicks, Auditor, appeared on behalf of Defendant. For ease of reference herein, the parties are referred to as "taxpayer" and "the department."

STATEMENT OF FACTS

On August 5, 1998, taxpayer purchased forestland from Clackamas County. Soon after purchasing the property, taxpayer harvested some of its timber. Taxpayer did not file a WOPT return for 1999 even though he logged the property that year. Taxpayer claims the timber was exempt from the WOPT because the land was part of the Western Oregon Small Tracts Optional Tax (WOSTOT) program.¹ To support his claim, taxpayer explains that the Clackamas County Assessor's office has taxed the property at 100 percent of its

¹ Initially, taxpayer claimed he was exempt from the tax because the timber was harvested from public lands. Subsequently, taxpayer realized he harvested the timber after purchasing the property.

specially assessed value.

The department claims the property is not part of the WOSTOT program because the State Forester has no record of granting certification to the property.

COURT'S ANALYSIS

ORS 321.257 to ORS 321.390 creates a tax program that exempts timber from ad valorem tax but subjects the timber to a privilege tax at the time of harvest.² In addition, the forestland is specially assessed at 20 percent of the forestland's value. The legislature determined that paying an annual property tax on land and timber may discourage private owners from holding timber and that, to encourage conservation, tax on the timber should be delayed until harvest.³ The privilege tax is imposed "to recover the annuitized value of forgone property taxes on forestland." ORS 321.272(3).⁴

The WOSTOT program provides an alternative tax program for forestland owners. Under that program, qualifying forestland is taxed at 100 percent of its specially assessed value. The timber remains exempt from ad valorem taxation and is further exempt from the WOPT upon harvest. ORS 321.267(1)(b). Taxpayer claims the subject property was

² All references to the Oregon Revised Statutes (ORS) are to 1999.

³ ORS 321.259 states:

"The Legislative Assembly finds that:

"(1) Multiple taxation through a yearly ad valorem levy on both trees and forestland managed in sustained yield timber operations discourages conservation, private ownership and investment of capital."

⁴ The Tax Court in *Irwin v. Dept. of Rev.*, 15 OTR 24, 30 (1999) observed:

"[T]he WOPT Act does more than impose a tax on harvesting timber. It also exempts all timber in western Oregon from ad valorem property taxation and provides for special assessment of forestland at 20 percent of its statutorily determined value. That comprehensive approach is intended to motivate landowners to let their timber grow until it is ready to harvest."

classified as WOSTOT property and, therefore, the timber harvested should be exempt from the WOPT.

ORS 321.730(1) requires forestland owners seeking to have their land classified as WOSTOT property to file an application with the State Forester by April 1 of the assessment year classification is desired. If the State Forester determines a property qualifies for the program, the State Forester certifies to the county assessor that the land shall be classified and taxed as WOSTOT property. The statute provides that “[a] copy of such certification shall be sent to the applicant.” ORS 321.730(3).

Taxpayer provided the court with no certificate to support his claim that the property was classified by the State Forester as WOSTOT property. The department contacted the State Forester and was advised that the subject land was not in the WOSTOT program nor had it ever been in the program. (Def’s Ex Q.) Taxpayer admits he did not file a specific application for the subject property. However, he recalls years ago submitting an “open application” and was granted certification for all property he then owned and for all subsequently acquired property. Taxpayer was not able to provide the court with a copy of the alleged certificate.

In any case, the court questions whether the State Forester would grant such a certificate. ORS 321.730 contains specific application requirements, including that the application describe the land the applicant desires to be classified as WOSTOT property. ORS 321.730(1)(a). Furthermore, not all property is entitled to designation as WOSTOT property. ORS 321.725 sets forth eligibility requirements for the property. Among those are that “[t]he size of timber on the forestland that predominates is not in excess of eight inches in diameter * * * or the average age of timber on the forestland is not in excess of 40 years.” ORS 321.725(1)(b). It is doubtful the State Forester would grant certification to

unknown properties when specific eligibility requirements must be met. In addition, taxpayer testified that the timber on the property was early century timber and that it was not young growth timber. Given his statements, it appears the property would not qualify for the program under the eligibility criteria.

Taxpayer argues that because the county assessor taxed the land at 100 percent of its specially assessed value, it was WOSTOT property. That fact does not mean the property was certified for the WOSTOT program, particularly given the State Forester has no record of certifying the property. Instead, it is possible the county assessor erred in valuing the property as it did. In that case, taxpayer should have appealed the property's value. The county's error, if any, does not entitle taxpayer to an exemption of the WOPT. The statute requires the privilege tax be imposed on harvested timber and taxpayer's timber was not exempt from the privilege tax.

However, even if the property was WOSTOT property, the timber was still subject to the WOPT because taxpayer harvested the timber within five years of when he purchased the property. ORS 321.747(1) states:

“[I]f land is classified or is changed to the classification granted under ORS 321.705 to 321.765 [the WOSTOT program] for ad valorem property tax purposes and if, within five years after July 1 of the first tax year for which classification is granted timber is harvested from the land, ORS 321.257 to 321.390 [the WOPT program] shall apply to the harvest of the timber.”

Under ORS 321.747(1), if timber is harvested on WOSTOT land within five years of certification, the timber is subject to the WOPT. Taxpayer purchased the property in 1998 and harvested it in 1999. Taxpayer did not hold the property for five years and, as a consequence, the timber is not exempt by virtue of its alleged status as WOSTOT property.

Taxpayer argues that the WOPT is imposed as a means of capturing foregone property taxes. Because his land was taxed at 100 percent of its forestland value,

taxpayer claims he did not forego any property taxes and, as a result, it would be inequitable to require him to pay the privilege tax. The court observes, however, that taxpayer harvested the timber a year after purchasing it. As a result, he is not paying a double tax burden because he harvested the timber before he would have recognized any property tax savings. Furthermore, the Tax Court addressed a similar claim in *Irwin v. Dept. of Rev.*, 15 OTR 24 (1999). In that case, the taxpayers' land was not designated as forestland and was not under a special assessment program. Instead, the property was taxed at 100 percent of its real market value.⁵ The taxpayers argued that the timber was not subject to the WOPT because they had not foregone any property taxes. The court denied their claim noting that ORS 321.272 imposes the privilege tax on all timber harvested from "privately owned land * * * ." The court noted that the statute did not exempt from the privilege tax nonforestland or other properties that had not foregone property taxes. *Id.* at 29-30. Similarly, even though taxpayer may have foregone no property taxes on the land, the statute still imposes a privilege tax on the timber he harvested.

CONCLUSION

The court finds that the subject property was not part of the WOSTOT program and, as a consequence, the timber was not entitled to an exemption from the WOPT. The court further finds that, even if the property was under the WOSTOT program, the timber is not entitled to an exemption from the WOPT because taxpayer harvested the timber within five years of purchasing the land. Now, therefore,

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⁵ In contrast, taxpayer's property was taxed at 100 percent of its specially assessed value.

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

Dated this _____ day of March, 2003.

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 MARCH 18, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 18, 2003.