IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

SABROSO COMPANY,	)	
	)	
Plaintiff,	)	No. 011314D (Control);
	)	020312D
v.	)	
	)	
JACKSON COUNTY ASSESSOR,	)	**DECISION ON CROSS**
	)	**MOTIONS FOR PARTIAL**
Defendant.	)	**SUMMARY JUDGMENT**

Plaintiff appeals Defendant's disqualification of a portion of its property from farm use special assessment. There is no dispute of fact, and the matter has been submitted to the court on the parties' cross motions for partial summary judgment. The parties have raised three issues. First, Plaintiff alleges that Defendant failed to provide proper notice when it disqualified two acres of Plaintiff's 50.24 acres from farm use special assessment. Second, Defendant alleges that Plaintiff's two acres do not qualify for farm use special assessment. And, third, Defendant alleges that the water pollution control facilities constructed on the two acres do not qualify for farm use special assessment. The court has considered the stipulated facts[1] and motions of the parties.

STATEMENT OF FACTS

Plaintiff, Sabroso Company, with its headquarters in Medford, Oregon, has a 38-year history in the Rogue Valley as a farmer and food processor. Plaintiff uses the trademark SABROSO, meaning tasty or delicious in Spanish, in marketing its fruit puree products in Hispanic or Spanish-speaking countries and the United States.

[1] Defendant's Cross Motion for Partial Summary Judgment stated that "the STIPULATED STATEMENT OF FACTS received by the court, was only signed by the plaintiff. If any statement in the Defendant's Cross Motion for Summary Judgement is in conflict the Stipulated Statement of Facts, the court should consider the specific conflict as a non-stipulated fact." (Def's Cross Mot for Summ J at 17.) (Emphasis in original.)

The subject property is located in an exclusive farm use (EFU) zone. During tax year 1998-1999, all 50.24 acres of the subject property were qualified for farm use special assessment. For tax years 1999-2000 and 2000-2001, Plaintiff's property was removed from farm use special assessment. Prior to April 2001, Plaintiff requested Defendant to reinstate farm use special assessment for its property. On May 30, 2001, Defendant wrote to Plaintiff in response to Plaintiff's request. In its letter, Defendant wrote that it had reviewed "the property covered by your application for Farm Land Assessment and have accepted 50.24 acre(s)." (Ptf's Third Am Compl Case No. 011314D Ex 7.) It further stated that the "effective date of this change is as of January 1 of this year." (*Id*.)

At a date prior to October 31, 2001, Plaintiff received a property tax statement, showing only 48.24 acres in farm use special assessment. On October 31, 2001, Plaintiff wrote to Defendant, inquiring whether two acres had been disqualified. (Ptf's Stipulated Statement of Facts at 8.) On November 8, 2001, Defendant notified Plaintiff via telephone that two acres of the subject property were not in farm use special assessment. (*Id*.) On December 11, 2001, Defendant faxed Plaintiff a copy of its computer assisted appraisal record, showing an entry dated May 30, 2001, that stated "48.24 acres for farm use for 2001." (*Id*. at 7.)

On December 31, 2001, Plaintiff filed its Complaint. As a result of subsequent pleadings and telephone conferences, the parties agreed to submit the issues to the court by filing cross motions for partial summary judgment.[2]

COURT'S ANALYSIS

[2] Plaintiff's pleading should have been titled Plaintiff's Motion for Summary Judgment (Motion). If the court grants Plaintiff's Motion, the court's Decision will find for Plaintiff and there will be no remaining issues for the court to decide.

The first issue presented to the court is: Plaintiff alleges that Defendant failed to provide proper notice when it disqualified a portion (two acres) of Plaintiff's property from farm use special assessment. Defendant alleges that only 48.24 acres of the subject property were approved for special assessment and therefore Defendant did not disqualify the remaining two acres.

Farm Use Special Assessment

Plaintiff's property is located in an exclusive farm use (EFU) zone. For property located in an EFU zone, the statutes do not require that the property owner file an application for farm use special assessment. However, because the subject property was not in farm use special assessment for the prior year, Plaintiff made a request to Defendant to place all of its acreage, 50.24 acres, in farm use special assessment. In response to Plaintiff's request, Defendant explained that "as a courtesy, the defendant typically writes, calls, or visits with applicants and keeps them informed." (Def's Cross Mot for Part Summ J at 4.) In this case, Defendant wrote to Plaintiff.

On May 30, 2001, using letterhead bearing the county logo, address and phone numbers, Defendant wrote that it had "reviewed the property covered by your application for Farm Land Assessment and have accepted 50.24 acre(s)." (Ptf's Third Am Compl Case No. 011314D Ex 7.) Defendant wrote that the effective date "of this change is as of January 1 of this year" (2001). (*Id*.) Further, Defendant wrote that Plaintiff had the right to appeal its "decision within 90 days of receipt of this notice." (*Id*.)

Defendant characterizes its letter as "simply notice to the plaintiff of the defendant's intent, at that moment in time, to approve all 50.24 acres * * *." (Def's Cross Mot for Part Summ J at 5.) The court does not agree that Defendant's actions show an "intent, at that moment in time, * * *." (*Id*.) To the contrary, Defendant wrote

that after completing a review of Plaintiff's property, Defendant changed the status of 50.24 acres to farm use special assessment as of January 1, 2001. With a retroactive effective date, it is incorrect to characterize Defendant's actions as merely a momentary intent. Defendant further wrote that if Plaintiff disagreed with its actions Plaintiff must appeal to the court. By informing Plaintiff that the only way to challenge Defendant's decision was to file an appeal in the court, Defendant stated that its action moved beyond an intent to act.

Defendant argues that the change in status of Plaintiff's property did not occur until the property tax roll was certified. "Because the special farm use assessment, for the property under appeal, must be certified for the 2001/2002 tax roll, it logically follows that the approval process must be finished by certification deadline which is October 25th." (*Id.* at 4 -5.) "Certification" referenced by Defendant is a statutory requirement found in ORS 311.105.[3] The assessor is required to "make a certificate", setting forth the "total amount of taxes on property levied or imposed on property within the county by each district, **the total amount of each special assessment** * * *." ORS 311.105(1)(a) (emphasis added). In order for the assessor to include the amount of each special assessment, the status of the property must be determined before the certificate is prepared.

Defendant's letter told Plaintiff that as of the date of the letter (May 30, 2001) it determined the status of Plaintiff's property. By including appeal rights, Defendant clearly told Plaintiff that if Plaintiff did not agree with Defendant's determination there was a limited time to file an appeal with the court. During the 90-day period, Defendant did not notify Plaintiff that it was changing its determination of the status of Plaintiff's

[3] All references to the Oregon Revised Statutes (ORS) are to 1999.

property. Absent Defendant's notification to Plaintiff, Defendant's determination was final pending an appeal or termination of the 90-day appeal period. Plaintiff did not appeal because Plaintiff's request was granted as filed. After the 90-day appeal period, Defendant's determination was final. The court concludes that Defendant's determination changed the status of Plaintiff's property (50.24 acres), effective January 1, 2001, to farm use special assessment.

Disqualification

After May 30, 2001, following Plaintiff's filing of its 2001 Real Property Return, Defendant made a further investigation of Plaintiff's property.[4] (Def's Cross Mot for Part Summ J at 5.) Defendant concluded that only 48.24 acres of Plaintiff's property was in farm use and qualified for special assessment. Defendant did not contact Plaintiff to discuss the findings of its further investigation. Plaintiff's first knowledge that Defendant placed only 48.24 acres in special assessment came when Plaintiff reviewed its property tax billing statement in October 2001.

Because the court has concluded that the status of Plaintiff's property changed as of January 1, 2001, Defendant's subsequent decision to revise the number of acres in special assessment was a disqualification. The disqualification of land within an exclusive farm use zone requires that a notice of disqualification be mailed by "the county assessor prior to August 15 of the tax year for which the disqualification of the land is asserted." ORS 308A.113(3)(b). The notice of disqualification must be mailed "[w]ithin 30 days after the date that land is disqualified." ORS 308A.718(3). The notice must be in writing and include the reason for the disqualification. *Id*.

[4] This statement appears to conflict with Plaintiff's statement concerning the information contained in the computer assisted appraisal record faxed to Plaintiff in December 2001. For purposes of the disqualification discussion, the court accepts the information submitted in Defendant's Cross Motion for Partial Summary Judgment.

In this case, it is unclear when Defendant determined that a portion of Plaintiff's property did not qualify for special assessment. Defendant stated that Plaintiff's filing of its 2001 Real Property Return prompted "further investigation". (Def's Cross Mot for Part Summ J at 5.) Because Plaintiff's filing was made on June 27, 2001, Defendant's determination must have been made after that date. Plaintiff and Defendant agree that after writing its letter dated May 30, 2001, Defendant did not contact or write to Plaintiff prior to Plaintiff's receipt of its property tax statement in October 2001. Defendant cannot rely on Plaintiff's receipt of its property tax statement as notification of the disqualification. Mere issuance of a tax statement does not constitute notice of a disqualification because it does not meet the statutory requirements, including a statement of the reason(s) for the disqualification. *See Perkins v. Dept of Rev*., 15 Or 381, 387 (2001).

Defendant's second and third issues raised in its Cross Motion for Partial Summary Judgment state that two acres of Plaintiff's property do not qualify for farm use special assessment and the water pollution control facilities constructed on the two acres does not qualify for farm use special assessment. Even though Defendant may be correct in its determination that two acres of Plaintiff's property does not qualify for farm use special assessment, Defendant's failure to follow the statutory procedures for disqualification prevents the court from considering these two issues.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Motion for Partial Summary Judgment is granted.

IT IS FURTHER DECIDED that Defendant's Cross Motion for Partial Summary Judgment is denied.

IT IS FURTHER DECIDED that Plaintiff's property, 50.24 acres, was qualified for farm use special assessment as of January 1, 2001.

Dated this _____ day of November, 2002.

_____
JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON NOVEMBER 26, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 26, 2002.