

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RONALD W. KINCAID,)	
)	
Plaintiff,)	TC-MD 021078C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the disqualification of his property from farm use special assessment. Trial was held November 27, 2002, by telephone. Plaintiff appeared on his own behalf. Keith Mickel appeared for Defendant.

STATEMENT OF FACTS

The subject property is a 20 acre parcel in a nonexclusive farm use zone purchased by Plaintiff in September 1998. The property is identified as Account R270767. Nineteen of the 20 acres had been under farm use special assessment for many years and continued to be specially assessed after Plaintiff's purchase. Plaintiff is in the business of breeding and selling purebred Arabian horses.

Defendant sent Plaintiff a questionnaire on or about March 2002 requesting information about Plaintiff's farming operation, including income information. Plaintiff responded by letter dated April 25, 2002, but did not provide the requested income information. Accordingly, on June 17, 2002, Defendant disqualified the nineteen acres from farm use special assessment for the 2002-03 tax year. The disqualification affects tax years 1997-98 through 2002-03, inclusive. The potential additional taxes for the years at issue total \$15,818.11. Plaintiff timely appealed the disqualification and has asked the court to reinstate the special assessment.

Plaintiff insisted in the Complaint that he met the income requirement because he had annual income from the sale or lease of horses in excess of \$600 beginning with calendar year 1998.¹

COURT'S ANALYSIS

Under ORS 308A.068(1)² land not within an exclusive farm use zone may qualify for farm use special assessment provided it is being used exclusively for farm use and meets the income requirements set forth in the ORS 308A.071.

ORS 308A.071 provides in relevant part as follows:

“(1) For purposes of ORS 308A.050 to 308A.128, farmland or a farm parcel that is not within an area zoned for exclusive farm use is not used exclusively for farm use unless all of the prerequisites of subsections (2) to (5) of this section are met.

“(2)(a) Except as provided in subsection (6) of this section, in three out of the five full calendar years immediately preceding the assessment date, the farmland or farm parcel was operated as a part of a farm unit that has produced a gross income from farm uses in the following amount for a calendar year:

“* * * * *

“(B) If the farm unit consists of more than six acres but less than 30 acres, the gross income from farm use shall be at least equal to the product of \$100 times the number of acres and any fraction of an acre of land included.”

The disqualification occurred in June 2002 and took affect beginning with the 2002-03 tax year, per ORS 308A.116(6)(a).³ Upon disqualification of land in a nonexclusive

¹ Plaintiff reports an income of \$650 in 1998 as partial payment for the sale of a foal; \$850 in 1999 from the balance of the purchase price for the horse sold in 1998; \$1,400 in 2000 (from the sale of a horse for \$1200 and the lease of a horse for \$200); and \$10,050 in 2001 from the sale of a horse (\$800) and the donated value of five horses given to Washington Family Young Life Ranch (\$9,250).

² All references to the Oregon Revised Statutes (ORS) are to 2001.

³ ORS 308A.116(6)(a) provides:

“Notwithstanding ORS 308.210, 308A.068, 311.405 or 311.410, if disqualification

farm use zone, an additional tax is extended against the property for five years. ORS 308A.703(3)(c)(A). However, when the disqualification is for non-farm use and the land is not being used in a manner incompatible with farming (e.g., industrial, commercial, residential), the tax is not imposed but instead remains a “potential tax liability.” ORS 308A.706(1)(a).

The income requirement for a 19 acre parcel is \$1,900 per year for three out of the five years preceding the assessment date. ORS 308A.071(2)(a)(B). The five year window in this case involves calendar years 1997 through 2001. Income information was provided only back to 1998, and for the four years reported Plaintiff had sufficient income in only one year (2001). Therefore, regardless of the income in 1997, the property could not qualify. Accordingly, the disqualification was appropriate.

Plaintiff asserts he was told he only needed to earn \$600 total. That information was allegedly given over the phone in 1998 by Brett Sheets, a county assessor employee. The implication is that Plaintiff could have earned more income had the correct information been given. The claim invokes application of the doctrine of equitable estoppel. Estoppel requires “proof positive” by the taxpayer. *Johnson v. Tax Commission*, 248 Or 460, 463, 435 P2d 302 (1967). To succeed, “a taxpayer must establish (1) misleading conduct by the state (2) good faith reliance on that conduct, and (3) injury to the party claiming estoppel.” *Schellin v. Dept. of Rev.*, 15 OTR 126, 131 (2000), *citing Society of St. Vincent DePaul v. Dept. of Rev.*, 14 OTR 47, 50 (1996). Plaintiff has alleged misleading conduct but the court is not persuaded. As this court noted in *Schellin*:

occurs as a result of the discovery that the land is no longer in farm use, then, regardless of when during the assessment year discovery is actually made, disqualification by the county assessor shall occur as of the January 1 assessment date of the assessment year in which discovery is made.”

“There are many possibilities for misunderstanding with oral communication.’ *Mahler v. Dept. of Rev.*, 11 OTR 367, 370 (1990). Taxpayers are often unfamiliar with taxation procedures. It is easy for them to become confused even where correct information is given. *Rothenfluch v. Dept. of Rev.*, 11 OTR 322, 325 (1990). Additionally, the court often has no way to know the exact questions that taxpayers may ask when seeking direction from a government official. *Id.* Taxpayers may phrase their questions in a manner which leads a government official to believe they were inquiring about something other than what they intended. *Glancy*, 12 OTR at 120.”

Schellin, 15 OTR at 132.

The court has only Plaintiff’s word that the conversation occurred. The details of the alleged conversation are unknown. The erroneous income information allegedly given to Plaintiff was based on the information Plaintiff provided and the specific questions he asked. The benefits stemming from special assessment are significant and require compliance with a number of statutory preconditions. This case points to the risks inherent in trying to deal with complex tax matters over the telephone. On the facts before it, the Defendant is not estopped from asserting Plaintiff’s lack of income.

CONCLUSION

Plaintiff’s property was disqualified from farm use special assessment for failure to demonstrate compliance with the income requirements. At trial, Plaintiff was unable to prove sufficient income for three of the five years at issue. Plaintiff alleged that he was given misinformation about the income required for farm use special assessment in a nonexclusive zone, but the court did not find the requisite proof for estoppel. Now, therefore,

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IT IS THE DECISION OF THIS COURT that the subject property did not qualify for farm use special assessment for the 2002-03 tax year; that Defendant's disqualification was proper; and, that Plaintiff's requested relief is denied.

Dated this _____ day of March, 2003.

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 MARCH 20, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 20, 2003.