

first attempt along those lines was to present the telecommunications portion of the account as property which had not been included in the roll.

Notice of Defendant's intent to change the roll so as to add the value represented by the telecommunications property was given to Plaintiffs in a letter headed NOTICE OF VALUE CHANGE and dated July 24, 2001. The amount to be added to the roll as additional tax was set out as \$42,592.58. Plaintiffs promptly began discussions with Defendant to challenge that act. As a result of that dialogue, Defendant chose to abandon any omitted property assessment. The roll was not changed so as to add any additional tax amounts. Instead, Defendant chose to remove the telecommunications portion of the property from special assessment as lands in farm use.

Notice of that decision was given to Plaintiffs on July 19, 2002. The notice is untitled. It specifically stated that two acres of the 321-acre parcel were being removed from farm use assessment. There is no reference to ORS 308.149¹, or any statement that those two acres would now be assigned new assessed values according to the procedures set out in ORS 308.149 to 308.166. The consequences of the disqualification are set out as an additional tax in the amount of \$123.58. A period during which that act might be appealed was given.

The records provided to the court are obscure as to when the roll was changed to show the disqualification of the property. A handwritten notation upon a print of the computer records for this account states the two acres were disqualified on June 26, 2002. More definitive proof appears in a 2002 Tax Roll Override Form, which bears the date of August 19, 2002. The calculations set out in that form led to the revised assessment of the land for the 2002-03 tax year.

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
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Plaintiffs subsequently received the tax statement for that account for the 2002-03 tax year. Finding that the total real market value and assessed value for the property had respectively climbed from \$280,100 and \$3,850 to \$1,283,600 and \$820,120, Plaintiffs appealed to the board of property tax appeals. The board lowered the total real market and assessed values to \$922,110 and \$529,240. Plaintiffs then appealed to this court.

Plaintiffs testified that, until they received their tax statement, they were unaware of the full consequences of the disqualification of a portion of their lands from special assessment. Plaintiffs specifically stated that they were not aware that the assessed value assigned to their property would increase so dramatically. Plaintiffs swore that they believed the net change in their tax burden as a result of Defendant's disqualification of their two acres would be \$123.58 in additional taxes due. As proof, Plaintiffs point to the fact that no appeal was taken from this disqualification. Plaintiffs went on to argue that their property was incorrectly valued, that its assessed value was determined contrary to the limitations of the constitutional and statutory measures created by Measure 50,² and that their assessment violates the uniformity provisions of the Oregon Constitution.

II. ANALYSIS

ORS 308A.718 sets out the manner in which farm use properties can be disqualified from special assessment. The Department of Revenue has promulgated an administrative rule explaining how that statute is to be implemented. The relevant part of OAR 150-308A.718 reads:

“(1) Notice of Disqualification:

² Article XI, section 11 of the Oregon Constitution and Oregon Revised Statutes 308.142 to 308.166

- (a) A notation must be made on the assessment and tax roll on or before June 30 to indicate a disqualification of farmland, forestland or a homesite as listed in ORS 308A.718 has taken place. Following the disqualification, the assessor must mail notice to the owner or person claiming special assessment within 30 days after the date that land is disqualified.
- (b) If the disqualification occurs because the land is no longer in farm or forest use as described under ORS 308A.113(1)(a) (Exclusive Farm Use), 308A.116(1)(c) (Non-Exclusive Farm Use), 321.364(1) (Western Oregon designated forestland) or 321.822(1) (Eastern Oregon designated forestland) as of July 1, the disqualification is effective only if the notice of disqualification is mailed on or before August 14.
- (2) The notice to the person claiming special assessment **must** state:
- (a) That the subject property has been disqualified from special assessment;
- (b) **The property will be assessed under ORS 308.149;**
- (c) The additional tax liability that will be imposed, or if the land is not used for another use, the amount of the potential additional tax liability (ORS 308A.706(1));
- (d) Provisions for special assessment change under ORS 308A.724; and
- (e) Appeal rights.”

(Emphasis added.)

When Defendant's acts are examined in the context of OAR 150-308A.718, it is obvious that some of its dictates have been complied with. The notice of disqualification, for example, was mailed before August 14th. Other proofs that the requirements of the rule were met are more equivocal. For example, whether or not Defendant's June 26, 2002, handwritten notes on the print of the computer records of the account might serve as a pre-June 30th notation on the assessment and tax roll for purposes of OAR 150-308A.718(1)(a) is controversial. However, there is no doubt in the court's mind that it must, in the end, strike Defendant's attempt to disqualify the property from special assessment for failing to comply with the Department of Revenue's rule.

OAR 150-308A.718(2)(b) sets out that the notice must state that the property will be assessed under ORS 308.149. Nowhere in the notice to Plaintiffs is there a reference to this statute, or an equivalent description as to what the result of implementing the statute would be. This is not a trivial requirement. As the facts of this case indicate, the real

consequence to removing the property from special assessment was not the additional tax due of \$123.58. The actual import was the revision to assessed value, which rose by a multiplier of more than 200. The Department of Revenue, in drafting the rule, decided that it is important that taxpayers have notice of that factor at the time they are examining the consequences of an assessor's act. The court agrees. The disqualification of the two acres of this account from special assessment as lands in farm use for the 2002-03 tax year is void, on the reasoning that the July 19, 2002 notice did not comply with the requirements of ORS 308A.718.

The court does not see as important that Plaintiffs did not appeal from the July 19, 2003 disqualification notice. It would be anomalous to reason that a disqualification notice that does not set out the consequences to a property owner and is therefore inadequate nonetheless triggers a period of limitations. The court also does not see any limitation imposed by the fact that this matter came in the context of an appeal from the board of property tax appeals. The important point is that the case did come to the Tax Court, without limitation as to the court's authority to review the definitive issue of this appeal.

What does give the court pause is the fact that its decision does not reach the other questions of interest to the parties. Presumably, Defendant will issue, for a succeeding tax year, a notice complying with OAR 150-308A.718. Plaintiffs will presumably appeal. Those same parties will be back in this court, arguing, as presented in this appeal, matters of constitutional and statutory interpretation as to how those same two acres should be assessed following their disqualification from special assessment. There is a natural inclination to address those matters now, in recognition of the energies so far expended in arguing those points.

However, the court will resist that temptation. The court has solved the problem

before it today. Tomorrow's controversies will be resolved according to their own merits, as shaped by the facts as they emerge, and not according to the situation the court imagines might occur. The court will go no further other than to declare the notice void for the 2002-03 tax year, and as a consequence order the property returned to special assessment as lands in farm use.

III. CONCLUSION

Defendant's notice of disqualification from special assessment as lands in farm use did not meet the requirements of OAR 150-308A.718. As a result, there is no foundation for Defendant's subsequent changes to the roll. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is granted, and the property is returned to special assessment for the 2002-03 tax year.

Dated this _____ day of January, 2004.

SCOT A. SIDERAS
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 SCOT A. SIDERAS ON JANUARY 28, 2004. THE COURT FILED THIS DOCUMENT ON JANUARY 28, 2004.