

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WILBUR D. CULLISON,)
)
 Plaintiff,) TC-MD 030585F
)
 v.)
)
 DOUGLAS COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

Plaintiff appeals Defendant's disqualification of his land from farm use special assessment for the 2002-03¹ tax year. The property is identified as Douglas County Assessor's Accounts R29803, R29811, and R29819.

This matter is before the court on Defendant's motion to dismiss, filed with its Answer on May 8, 2003, requesting that the Complaint be dismissed. The court discussed Defendant's motion at the case management conference held on June 18, 2003. The court allowed the parties until July 9, 2003, to submit additional information.

I. STATEMENT OF FACTS

The subject property is three parcels of land located in a non-exclusive farm use (non-EFU) zone. The parcels total 86.4 acres. The property contains Plaintiff's home and the farm land at issue. Specifically, the property includes 19 acres of non-irrigated cropland, 36 acres of non-tillable pasture, a 2-acre home site, 26 acres of wasteland, and 2 acres of road right-of-way. Plaintiff has owned and lived on the property for a number of years. The property has been farmed since 1856.

¹ Plaintiff's Complaint addresses "tax year(s) 2001, 2002 and 2003." The subject property received farm use special assessment in tax years through 2001-02. Plaintiff appears to be referring to the potential additional taxes that relate to those tax years. The property was disqualified from farm use special assessment effective tax year 2002-03.

On February 27, 2002, Defendant sent Plaintiff a gross income questionnaire. Based on information in the questionnaire, Defendant disqualified the subject property from farm use special assessment on July 5, 2002. The reason given was that the farm income did not meet the gross income requirements.

On July 10, 2002, Plaintiff signed a farm use abatement request form. The form states "[w]e the undersigned request that the above-described properties be valued at market value instead of farm use value. We will continue to farm this land for five years in order to abate any penalties normally imposed upon removal of special assessment." (Def's June 19, 2003, ltr, attach at 1.)

Plaintiff testified that he spoke with Jim Huntsman and was misinformed of the next step he needed to take to re-qualify his property for farm use special assessment. He also alleged that Defendant "did not follow the rules" when it disqualified his property.

After receiving the property tax statements for the property, Plaintiff timely appealed to the board of property tax appeals (BOPTA). BOPTA sustained the value set by Defendant. Plaintiff timely appealed from the BOPTA orders, appealing only the disqualification of the three parcels from farm use special assessment.

II. ANALYSIS

The Oregon Legislature created a special assessment program for property used for farm purposes. Property located within an exclusive farm use (EFU) zone is entitled to special assessment if the property is being used exclusively for farm use.

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ORS 308A.062.² Farm use is defined at ORS 215.203(2). Land that is in a non-EFU zone must meet additional requirements, including a gross income requirement. See ORS 308A.071(1). The gross income requirement must be met:

"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:

"* * * * *

"(C) If the farm unit consists of 30 acres or more, the gross income from farm use shall be at least \$3,000."

ORS 308A.071(2).

The only issue in this case is whether Defendant should be estopped from disqualifying Plaintiff's property from farm use special assessment. The parties agree that Plaintiff did not meet the gross income requirement in at least three of the last five calendar years. See ORS 308A.071(2). The parties also agree that Plaintiff did not file his appeal within 90 days from the date the land was disqualified.³

Taxpayers have the right to appeal to this court when they are harmed by an assessor's act in disqualifying property from special assessment. See ORS 305.275(1). An appeal must be within 90 days after the act "becomes actually known to the person, but in no event later than one year after the act * * * has occurred."

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

³ Plaintiff's Complaint addresses only the disqualification of the property from farm use special assessment. Attached to the Complaint are BOPTA orders for the three parcels. However, BOPTA's authority is generally limited to issues relating to valuation. See ORS 309.026(2). Thus, Plaintiff's appeal to BOPTA is without consequence in determining whether Plaintiff timely appealed the property's disqualification.

ORS 305.280(1). In the present case, Plaintiff filed his appeal more than nine months after Defendant's disqualification letter. Generally, the above statement would be fatal to Plaintiff's case.

Plaintiff raises a claim of estoppel against Defendant. Estoppel is granted in limited circumstances when certain elements have been met. The Oregon Supreme Court held in *Johnson v. Tax Commission*, 248 Or 460, 463-464, 435 P2d 302 (1967), that:

"The policy of efficient and effective tax collection makes the doctrine of rare application. It could only be applied when there is proof positive that the collector has misinformed the individual taxpayer and that the taxpayer has a particularly valid reason for relying on the misinformation and that it would be inequitable to a high degree to compel the taxpayer to conform to the true requirement."

In order for Plaintiff to successfully prove estoppel, he must show that: 1) Defendant mislead him by its conduct, 2) he had a good faith reliance on the conduct and 3) he was injured by his reliance on Defendant's conduct. *Sayles v. Dept. of Rev.*, 13 OTR 324, 328 (1995). See also *Portland Adventist Hospital v. Dept. of Rev.*, 8 OTR 381, 388 (1980) and *Cascade Manor, Inc. et al v. Dept. of Rev.*, 5 OTR 482, 486-487 (1974).

Estoppel is more difficult to prove where the alleged misleading conduct is oral misinformation. That is because "[t]here are many possibilities for misunderstanding with oral communication." *Mahler v. Dept. of Rev.*, 11 OTR 367, 370 (1990) (cited with approval in *Schellin v. Dept. of Rev.*, 15 OTR 126, 132 (2000)). On the other hand, written information "is given greater weight than mere testimony." *Schellin*, 15 OTR at 132. Finally, "[w]hen written materials containing accurate information and advice are given to taxpayers, taxpayers may not continue to rely on an understanding based on oral representations or discussions which are contrary to the written information." *Smith v. Dept. of Rev.*, 13 OTR 206, 210 (1994).

Plaintiff alleges that he was misled by Defendant's employee. Defendant's notice indicated that Plaintiff had 90 days to appeal the property's disqualification. Additionally, Plaintiff signed a form five days after the disqualification that asked that the property be valued at its market value instead of farm use value. Plaintiff also instituted a value appeal with BOPTA. Both these actions indicate that Plaintiff accepted the disqualification of his property from farm use special assessment.

III. SUMMARY

Plaintiff did not meet the income requirements as required by ORS 308A.071(2). Further, Plaintiff did not appeal the disqualification of his property from farm use special assessment within 90 days as required by ORS 305.280(1). Plaintiff claims he was misled by Defendant's employee and thus estoppel should apply against Defendant. Plaintiff's allegations of being misled were vague. Additionally, Plaintiff's own actions after the disqualification indicate that he accepted the disqualification. Finally, any misleading verbal information given was contrary to the written information provided. Estoppel does not apply. Defendant acted properly. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of September, 2003.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON SEPTEMBER 23, 2003. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 23, 2003.