

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MARK LEMONS,)
)
 Plaintiff,) TC-MD 030939A
)
 v.)
)
 LINCOLN COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appealed Defendant's decision to disqualify, from special assessment as lands in farm use, property identified by Account R507297 for the 1993-94 through 2002-03 tax years. Plaintiff appeared and made his arguments. Russell Sears, of Defendant's staff, responded.

I. STATEMENT OF FACTS

The land at issue is 3.28 acres in an area zoned for exclusive farm use. It had been a Christmas tree farm, with the Christmas trees cut in 1994 or 1995. In 1998 Plaintiff began removing the stumps and grading the land. While admitting that the land was not being farmed at the time of Defendant's visits, Plaintiff explained that the land was lying fallow so as to establish grasses, and that he was providing care to his ill father. In June 2003, the property was made into pasture which Plaintiff leases. His tenants use the land to support two horses.

Defendant explained that it had been inspecting the property since 2001 in the context of reviewing Plaintiff's construction of a home upon the property. Although Defendant had continuing concerns over the use of the land, Defendant did not disqualify the property until the 2002-03 tax year.

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II. ANALYSIS

Plaintiff reasoned that the land should be allowed to retain special assessment, with one tax year excused due to his father's illness and another for the land lying fallow. Under some circumstances, these reasons may excuse a failure to use the land according to accepted farming practices.

The particular problem here, however, is that this is not an instance where the land was not farmed for a year or two. Instead, this is land whose trees were harvested in 1994 and 1995. Too much time has elapsed since that event for the property to retain its special assessment.

Plaintiff makes the point that as of June 2003 the land had horses grazing on its leased pasture. This is important in that it does much to establish that the property might requalify for special assessment in a subsequent tax year. Moreover, such a use of the land ensures that the potential additional tax which might become due as a consequence of disqualification is not imposed. However, the conclusion of the court is that this event simply occurred too late to permit the property to retain its special assessment. This concern is expressed in *Taylor v. Dept. of Rev.*, 6 OTR 496, 501 (1976), which noted:

"The special farm use assessment results in a diminution of property taxes on certain farm property and this requires additional tax contributions by all taxpayers to meet the property tax levies. Justification is found in the retention of farmland for agricultural production in spite of intense economic competition to divert such land to allegedly 'higher and better' uses. To continue the special farm use in the case of land unused or unusable would defeat the legislative policy."

III. CONCLUSION

There was too long a hiatus in the use of this land according to accepted farming practices. The disqualification stands. The potential additional amounts are not added

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to the roll. This decision does not preclude the property from again qualifying, in a subsequent tax year, for special assessment. Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal is denied.

Dated this _____ day of November, 2003.

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 NOVEMBER 7, 2003. THE COURT FILED THIS DOCUMENT ON NOVEMBER 7, 2003.