

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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|----------------------------|---|-----------------|
| ROBERT D. WENGERT |) | |
| and OLIVIA A. WENGERT, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 031131D |
| |) | |
| v. |) | |
| |) | |
| CLACKAMAS COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiffs appeal Defendant’s disqualification of their property from special assessment as forestland.

A case management conference was held on Tuesday, February 5, 2004. Robert Wengert (Wengert) appeared on behalf of Plaintiffs. Tony Hunter, Senior Appraiser, appeared on behalf of Defendant.

At the conclusion of the conference, the court asked Defendant to review the contents of its letter of disqualification and respond in writing to the court. On February 12, 2004, the court received Defendant’s response.

I. STATEMENT OF FACTS

Plaintiffs own 1.11 acres of land that were being specially assessed as forestland. Finding the property no longer qualified for special assessment as forestland, Defendant sent Plaintiffs a letter on April 4, 2003, removing the property from special assessment effective the 2003-04 tax year. In its letter, Defendant concluded that Plaintiffs’ land did not meet the minimum acreage requirement for forestland deferral, citing ORS 321.359.

In its letter to the court dated February 10, 2004, Defendant acknowledged that the notice of disqualification failed to advise Plaintiffs that they could have filed an

application for special assessment in another program.

During the case management conference, Plaintiffs informed the court that after receiving the letter of disqualification from Defendant, they had two or three conversations with employees of the county assessor's office. Wengert stated that if Defendant had informed them of the option to apply for farm use special assessment they would have qualified.

After receiving their property tax statement for tax year 2003-04, Plaintiffs filed an appeal with the court, received December 19, 2003.

II. ANALYSIS

The issue before the court is whether a notice of disqualification is invalid if it fails to include the statutory requirements set forth in ORS 308A.718(5)(a).¹

When land is removed from a special assessment program, ORS 308A.703 requires an additional tax to be imposed. However, if the land qualifies for special assessment under another program, ORS 308A.706(1)(d) allows a property owner to defer the imposition of the additional tax. To take advantage of the deferral provided under ORS 308A.706(1)(d), a property owner must file a claim or application within a designated period of time. See ORS 308A.724.

In notifying an owner that his property is being removed from a special assessment program, the law requires a letter of notification to include specific information. ORS 308A.718(5) states, in pertinent part:

"(5)(a) When any land has been granted special assessment under any of the special assessment laws listed in subsection (1) of this section and the land is disqualified from such special assessment, the county assessor **shall** furnish the owner with a written explanation summarizing:

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

“(A) ORS 308A.706 (1)(d) (relating to change in special assessment);

“ * * *

“(C) The administrative act necessary under ORS 308A.724 to change the property to another classification described in this paragraph[.]”

ORS 308A.718 (emphasis added). The statutory requirement is supplemented by the Oregon Administrative Rule (OAR) 150-308A.718(2), setting forth the required elements of a notice of disqualification, in relevant part:

“(2) The notice to the person claiming special assessment **must** state:

“ * * *

“(d) Provisions for special assessment change under ORS 308A.724[.]”

OAR 150-308A.718(2) (emphasis added).

As set forth above, both the statute and administrative rule require that a letter of disqualification include “a written explanation summarizing” the process of filing “an application or claim for classification under another special assessment law.”

ORS 308A.718(5)(a) and 308A.724(1)(a). Defendant’s notice failed to include the information required by statute. In a notice situation similar to this case, the Oregon Supreme Court held that the failure to include items required by the applicable statute results in the notice being invalid. *See Preble v. Dept. of Rev.*, 331 OR 320, 326, 14 P3d 613 (2000).

III. CONCLUSION

Defendant’s notice of disqualification, dated April 4, 2003, did not contain a statement summarily explaining how to file an application or a claim for a change of classification under another special assessment as required by ORS 308A.718(5). Having failed to comply with the statutory requirements, the notice is invalid.

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During the case management conference, the court advised the parties that it would schedule another conference in April. However, after receiving Defendant's letter and concluding that the notice is invalid, the court will not schedule another case management conference. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's notice of disqualification, dated April 4, 2003, is invalid.

IT IS FURTHER DECIDED that Plaintiffs' property identified as Clackamas County Assessor's Account 00815773 shall remain in special assessment as forestland.

Dated this _____ day of February, 2004.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON FEBRUARY 27, 2004. THE COURT FILED THIS DOCUMENT ON FEBRUARY 27, 2004.