

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

|                            |   |                 |
|----------------------------|---|-----------------|
| LEONARD R. HOLLAND         | ) |                 |
| and CYNTHIA K. HOLLAND,    | ) |                 |
|                            | ) |                 |
| Plaintiffs,                | ) | TC-MD 050653B   |
|                            | ) |                 |
| v.                         | ) |                 |
|                            | ) |                 |
| JOSEPHINE COUNTY ASSESSOR, | ) |                 |
|                            | ) |                 |
| Defendant.                 | ) | <b>DECISION</b> |

Plaintiffs appealed the 2004-05 disqualification of property from special assessment as Small Tract Forestland. A telephone trial was held April 20, 2006. Leonard R. Holland (Leonard) represented Plaintiffs.<sup>1</sup> Michael L. Schneyder, Josephine County Assessor, and Connie Roach, Assessment Section Manager, participated on behalf of Defendant. The record closed May 4, 2006.

I. STATEMENT OF FACTS

Plaintiffs purchased the subject property<sup>2</sup> from Curt E. Riegel, Jr. on January 13, 2003, as “Husband and Wife as Tenants by the Entirety.” (Ptf’s Ex 1-1.) At the time of the purchase, the subject property qualified as Small Tract Forestland. (*Id.*) Plaintiffs later applied for and received Defendant’s approval to keep the subject property in the Small Tract Forestland program. (Ptf’s Exs 8, 9.)

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<sup>1</sup> When referring to a party in a written decision, it is customary for the court to use the last name. However, in this case, the court’s Decision recites facts and references four individuals with the same last name, Holland. To avoid confusion, the court will use the first name of the Holland being referenced.

<sup>2</sup> Accounts R322295 (Tax Lot 200) and R322296 (Tax Lot 300).

On December 24, 2004, Plaintiffs executed two documents each entitled “Bargain and Sale Deed” in which they jointly conveyed Tax Lot 200 to Leonard and Tax Lot 300 to Cynthia Holland (Cynthia). (Ptf’s Exs 4, 5.) On March 7, 2005, Defendant sent a letter to Leonard indicating that Tax Lot 200’s special assessment as Small Tract Forestland was removed due to “[s]ale or transfer” of the property, and that “[a]pplication for continued qualification \* \* \* was not received within 30 days of the recorded date of the sale or transfer.” A corresponding letter for Tax Lot 300 was sent to Cynthia. (Ptf’s Compl at 2, 3.) The letters stated the additional tax resulting from the disqualification, specifically \$342.75 for Tax Lot 200 and \$166.37 for Tax Lot 300. (*See id.*) Plaintiffs appealed to this court on June 6, 2005.

About that same time, Cynthia conveyed Tax Lot 300 to “Jerold L. Holland and Belinda B. Holland” (Jerold and Belinda); Jerold and Belinda then applied for Tax Lot 300 to be assessed as Small Tract Forestland.<sup>3</sup> (Def’s Ltr at 3, 4, Apr 20, 2006.) Defendant subsequently denied the application because “[t]he property was disqualified from small tract forestland during the preceding five-years.” (*Id.* at 2.)

The following table summarizes the subject property and Plaintiffs’ requested relief:

| <u>Accout</u> | <u>Tax Lot</u> | <u>Acres</u> | <u>Transfers</u> | <u>Plaintiffs’ Requested Relief</u>          |
|---------------|----------------|--------------|------------------|--|
| R322295       | 200            | 80.75        | One              | Refund of \$200 late filing fee <sup>4</sup> |
| R322296       | 300            | 40.78        | Two              | Reinstate to Small Tract Forestland          |

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<sup>3</sup> Tax Lot 300 was conveyed on June 2, 2005, and the assessment applied for on June 6, 2005.

<sup>4</sup> *See* discussion at Part II. C.

## II. ANALYSIS

### A. *Statutory Framework and Interpretation*

Under ORS 321.716,<sup>5</sup> “[t]he county assessor shall disqualify land as small tract forestland upon [] sale or transfer of the small tract forestland.” ORS 321.716(1)(a). Following a “sale or transfer,” the purchaser or transferee may apply under ORS 321.719 for continued qualification of the small tract forestland “[w]ithin 30 days after the date the county assessor issues the notice of intent to disqualify under ORS 321.716 \* \* \*.” ORS 321.719(1)(a).

When “interpreting a statute, the court’s task is to discern the intent of the legislature.” *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). That requires examination of “both the text and context of the statute.” *Id.* In examining the text of the statute, “words of common usage typically should be given their plain, natural, and ordinary meaning.” *Id.* at 611. “As part of the text and context, the court includes consideration of its own prior interpretations of the statute.” *Davis v. O’Brien*, 320 Or 729, 741, 891 P2d 1307 (1995). If the legislative intent is clear from the text and context, then under *PGE*, “further inquiry [into legislative history] is unnecessary.” *PGE*, 317 Or at 611.

A commonly accepted definition of a “transfer” is “the conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process.” *Webster’s Third New Int’l Dictionary* 2427 (unabridged ed 2002). The issue of what constitutes a “transfer” in the context of ORS 321.716 and ORS 321.719 arose in a recent case where a special assessment as Small Tract Forestland was received while plaintiff and her spouse

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<sup>5</sup> Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2005. The 2005 Oregon Legislature made applicable retroactive amendments to ORS 321.716 and ORS 321.719. *See* Or Laws 2005, ch 400, §§ 1-2, 6.

jointly owned the property at issue. *See Moseley v. Lane County Assessor*, TC-MD No 050047A, WL 1421137 (Jun 10, 2005). Plaintiff's spouse later paid off the mortgage and transferred the deed to plaintiff incident to their divorce. *See id.* at \* 1. The court found that the "property was the subject of a transfer" for the purpose of disqualification under ORS 321.716(1)(a)<sup>6</sup> because it went from being jointly owned by plaintiff and her husband to solely owned by plaintiff. *See id.*

The definition of the word "transfer," coupled with the court's prior interpretation of the word in *Moseley*, make the legislative intent clear; further inquiry into legislative intent is unnecessary.

B. *Application of ORS 321.716 and ORS 321.719*

Plaintiffs' situation here is very similar to *Moseley*. The subject property qualified for special assessment as Small Tract Forestland when it was owned by Plaintiffs jointly. As a result of the December 24, 2004 deeds, Leonard came to exclusively own Tax Lot 200 and Cynthia to exclusively own Tax Lot 300. (Ptf's Exs 4, 5.) The deeds effectuated two transfers under ORS 321.716(1)(a) because they conveyed title to real property from one person to another. Specifically, Leonard conveyed his interest in Tax Lot 300 to Cynthia, and she conveyed her interest in Tax Lot 200 to Leonard. Those transfers triggered the automatic disqualification from Small Tract Forestland assessment under ORS 321.716(1) and the requirement to reapply for continued qualification under ORS 321.719(1).

Plaintiffs assert they were "forced" by the county to re-title the property and that the general information sheet "does not mention disqualification for such transfer." (Ptf's Compl at 1.) The court in *Moseley* acknowledged an understanding of plaintiff's confusion, stating "[a]fter all, she was an owner of the property before the divorce, and she was its owner

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<sup>6</sup> *Moseley* was decided under the 2003 ORS.

afterwards. From her perspective, nothing much had changed.” *Moseley*, TC-MD No 050047A WL 1421137, at \* 1. This court notes the similarity of *Moseley* to the present case, and reiterates that “the benefit of special assessment comes with the burden of being knowledgeable about the conditions that attach to the property. Lack of knowledge cannot excuse the failure to timely reapply.” *Id.*; *see also Weathers v. Lane County Assessor*, TC-MD No 050625B, WL 3159293 (Nov 21, 2005); *see also Bonady v. Lane County Assessor*, TC-MD No 050096B, WL 2709622 (Oct 18, 2005).

C. *Impact of Statutory Amendments*

The 2005 Oregon Legislature made retroactive amendments to both ORS 321.716 and 321.719. *See* House Bill 2868; *see* Or Laws 2005, ch 400, §§ 1-2, 6. The amendments added a provision allowing a purchaser or transferee to apply for continued qualification *after* the 30-day deadline in ORS 321.719(1)(a), provided that both an application is filed and a \$200 late filing fee paid “on or before December 15 of the first tax year for which the forestland would otherwise be disqualified \* \* \*.” ORS 321.719(8); Or Laws 2005, ch 400, § 2. Defendant informed Plaintiffs of this provision and its affect on the subject property. (Def’s Ltr at 2, 3, Nov 10, 2005.<sup>7</sup>) An application was filed and a \$200 fee paid for Tax Lot 200.

Defendant claims that, while Tax Lot 200 is eligible for reinstatement under the late filing provision in ORS 321.719(8), the transfer of Tax Lot 300 by Cynthia to Jerold and Belinda prevents application of ORS 321.719(8) to that tax lot. (*See id.*) The court agrees.

The special assessment for both tax lots was removed under ORS 321.716(1)(a) upon the first transfer from Leonard and Cynthia jointly to Leonard and Cynthia separately. Plaintiffs then

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<sup>7</sup> Defendant’s November 10, 2005, letter was addressed to the court. Attached to that letter were copies of its letters to Plaintiffs, dated November 9, 2005.

failed to timely apply for continued qualification for either tax lot under ORS 321.719(1). Following the 2005 legislative amendments, Tax Lot 200 became eligible for continued qualification because ORS 321.719(8) applies retroactively to “small tract forestland assessment disqualifications occurring on or after January 1, 2005.” Or Laws 2005, ch 400, § 6. The statutory amendments set the mandatory \$200 late filing fee with no provision for waiver under circumstances such as these.

Tax Lot 300 is not similarly eligible for continued qualification. Cynthia’s transfer to Jerold and Belinda occurred *after* the property was disqualified from special assessment as Small Tract Forestland and *before* reinstatement was accomplished. Had Tax Lot 300 not been transferred that second time, ORS 321.719(8) would have been applicable. Now, therefore,

### III. CONCLUSION

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

Dated this \_\_\_\_\_ day of October 2006.

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JEFFREY S. MATTSO  
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 Jeffrey S. Mattson on October 26, 2006. The Court filed and entered this document on October 26, 2006.***