

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

TIMOTHY McMAHEN	)	
	)	
Plaintiff,	)	TC-MD 050765C
	)	
v.	)	
	)	
LANE COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s assessment of property taxes following disqualification of his property from farm use special assessment; the taxes cover years prior to Plaintiff’s acquisition of the property. The parties asked the court to rule on the matter after the October 18, 2005, case management conference, based on the pleadings and testimony received at that proceeding.<sup>1</sup>

I. STATEMENT OF FACTS

On May 5, 2003, Plaintiff purchased 20 acres of undeveloped land in Fall Creek, Oregon. The property was part of the larger tract of land that was subdivided by the previous owner. As part of the subdivision approval, the previous owner had the zoning changed from “Exclusive Farm Use” to “Marginal Lands.” That zoning change was made on March 13, 2002, by Ordinance PA 1169. The planning department did not notify the assessor’s office of the zone change. Defendant “stumbled upon” that information some three years later, in calendar year 2005.

After his purchase, Plaintiff constructed a home on the property, which he occupied in March 2005. Plaintiff subsequently received a notice of disqualification on July 11, 2005, removing the property from farm use special assessment because of the zoning change. That

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<sup>1</sup> The pleadings include the notice of disqualification.

notice informed Plaintiff additional taxes in the amount of \$3,133.98 would be extended to the tax rolls for the 2005-06 tax year. The additional taxes were intended to recapture the difference between the taxes imposed under the historical special farm use value and market value for a period of five years.

Plaintiff objects to the imposition of back taxes prior to the time that he owned the property. Plaintiff contends he should only be paying back taxes for two years, not five, with the tax assessment retrospective to May 5, 2003. Defendant responds that the imposition of the back taxes is governed by statute, and that the liability runs with the land, rather than the owner thereof.

## II. ISSUE

Is there any limit on the county assessor's ability to impose back taxes under ORS 308A.703(3)<sup>2</sup> on a subsequent purchaser who buys property after the previous owner's successful zoning change requiring disqualification, where the taxes cover years prior to current owner's acquisition of property?

## III. ANALYSIS

ORS 308A.113 requires disqualification from special assessment when land within an exclusive farm use zone is removed from exclusive farm use zone, including removal by rezoning.<sup>3</sup> ORS 308A.703(2) provides that when exclusive farm use (EFU) land is disqualified

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

<sup>3</sup> ORS 308A.113 provides:

“(1) Land within and exclusive farm use zone shall be disqualified from special assessment under ORS 308A.062 by:

“ \* \* \* \* \*

“(b) Removal of the land from any exclusive farm use zone[.]”

from special assessment under ORS 308A.113,

“an additional tax shall be added to the tax extended against the land \* \* \* equal to the difference between the taxes assessed against the land and the taxes that would otherwise have been assessed against the land, for each of the number of years determined under subsection (3).”

ORS 308A.703(3) provides that:

“[t]he number of years for which additional taxes shall be calculated shall equal the lesser of the number of consecutive years the land had qualified for the special assessment program for which disqualification has occurred or:

\* \* \* \* \*

“(c) Five years, in the case of:

\* \* \* \* \*

“(E) Exclusive farm use zone farmland that is not described in paragraph (a)<sup>4</sup> of this subsection[.]”

Plaintiff does not challenge Defendant’s legal authority to impose additional taxes. Nor does Plaintiff challenge Defendant’s computation of the tax, except with regard to the number of years for which the tax was calculated. Plaintiff’s contention is that he should only be liable for taxes for the two years he owned the property.

The tax court addressed a similar question in *Mark v. Department of Revenue*. In that case, the plaintiff purchased EFU land that was subsequently disqualified by the county assessor, who then imposed back taxes. *Mark v. Dept. of Rev.*, 12 OTR 369 (1993), *rev’d on other grounds*, *Mark v. Dept. of Rev.*, 14 OTR 467 (1998). As in the case before the court, those back taxes were based on years when the plaintiff did not own the property and the plaintiff argued that the taxes should be paid by the previous owner. The court responded by stating that “taxes on real property are assessed against property, not against the owner. It does not matter who owns the property. If the land is disqualified, the additional taxes are a lien upon the property.”

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<sup>4</sup> Paragraph (a) of subsection (1) provides for a ten year roll back tax where the land remains outside an urban growth boundary immediately following disqualification.

*Id.* at 370-371. Accordingly, the county has the power to require the current owner to pay the tax, even if that person did not own the property for some or all of the tax years at issue. *See also Andrews v. Multnomah County*, TC-MD No 021093A (Dec 16, 2002) (“the benefit, and the burden, of special assessment runs with the land.”).

Under ORS 311.235, however, a subsequent bona fide purchaser (BFP) may be protected from such a lien. That statute provides that:

“[n]o ad valorem taxes imposed on real property \* \* \* purchased by a bona fide purchaser shall be a lien on the real property \* \* \* unless at the time of purchase the taxes were a matter of public record. \* \* \* A bona fide purchaser is an individual purchaser of a fee simple interest in a single property, who acquires the property in good faith, in an arm’s-length transaction and for fair market value and adequate consideration.”

The plaintiff in *Mark* argued that he was a bona fide purchaser, but the court pointed out that “[t]his argument ignores the fact that the assessment and tax roll expressly warned of the potential additional tax liability” and that “the deed \* \* \* expressly warned of the potential for additional taxes [on disqualification].” *Mark*, 12 OTR at 371. That plaintiff also argued that “he could reasonably assume the additional back tax had been \* \* \* paid,” but the court stated that “[a] simple inquiry of the assessor’s office \* \* \* would have disclosed the error of plaintiff’s assumption.” *Id.* The situation is similar here. There was a notation on the tax roll for potential additional taxes that would have appeared on the preliminary title report received by Plaintiff at the time of purchase.<sup>5</sup> Moreover, Plaintiff testified that he was aware of the “Marginal Lands” zoning, and that there was some mention of the zoning and the potential taxes by the title company during closing. Plaintiff should have looked into the matter rather than ignoring the

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<sup>5</sup> If the tax roll was not yet prepared for the tax year at issue, the BFP statute provides that “taxes levied or to be levied for the tax year of purchase are taxes which are a matter of public record.” ORS 311.235.

situation and hoping things would work out.<sup>6</sup> *See also Wright v. Douglas County Assessor*, TC-MD No 031050C (Apr 12, 2004) (concluding the plaintiff was responsible for the back taxes covering a period of time prior to her purchase and was not entitled to BFP protection, because the potential for additional taxes was noted on the roll and taxpayer was aware that roughly 20 percent of the property covered an abandoned mine and was not being farmed).

#### IV. CONCLUSION

Based on the foregoing, the court concludes that Plaintiff is responsible for the entire recapture tax, including years prior to Plaintiff's purchase, because the liability is a lien on the property that runs with the land. Moreover, the notation on the assessment and tax rolls of potential additional taxes precludes BFP relief under ORS 311.235. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this \_\_\_\_\_ day of December 2005.

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DAN ROBINSON  
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 Dan Robinson December 12, 2005. The Court filed and entered this document December 12, 2005.***

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<sup>6</sup> Plaintiff could have prompted disqualification and resolved the recapture taxes with the seller during closing.