

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MICHAEL L. BABCOCK,)
)
 Plaintiff,) TC-MD 060028C (Control)
) 060029C
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

This appeal involves a farm use disqualification for the 2005-06 tax year. The parties agreed to the relevant facts at the April 25, 2006, hearing, and asked the court to determine the legality of the disqualification. Plaintiff appeared on his own behalf. Defendant was represented by David W. Evans (Evans), Farm/Forest Appraiser for the Lane County Department of Assessment and Taxation.

I. STATEMENT OF FACTS

The subject property is a 45.96 acre parcel divided into two property tax accounts (1683737 and 1683729).¹ The property is zoned exclusive farm use (EFU). Plaintiff purchased the land a number of years ago. Plaintiff began a farming operation as a landscape nursery by planting bare root seedlings to be grown for three or four years and then sold to nurseries. Plaintiff later built his home on the land after receiving approval of his application for a special use permit to allow a dwelling in conjunction with his farm use activities. (Ptf's Ex 3.) After the home was completed, Plaintiff refinanced the property. During the loan process, the lender had

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¹ Plaintiff filed a separate appeal for each account number.

Plaintiff sign a form entitled “Request for Computation of Property Taxes from Declassification of Farm/Forest Deferral.” (Def’s Ex A.) The form was created by the Lane County Department of Assessment and Taxation. The form includes the following:

“This request is: _____ for an Estimate only (\$40 minimum charge)
 _____ to Remove deferral (no charge)”

(*Id.*) The line before the words “to Remove deferral (no charge)” is checked on the form, which Plaintiff signed August 17, 2004, thus reflecting a request by Plaintiff to remove the deferral.

Defendant received the form and subsequently removed the subject property from farm use special assessment effective for the 2005-06 tax year. The disqualification significantly increased the assessed value of Plaintiff’s property, which in turn increased Plaintiff’s property taxes. Defendant did not give separate notice of the disqualification (removal of special assessment), arguing that such notice was not required under ORS 308A.718(6)(a).² The form of notice was the 2005-06 property tax statement, which Plaintiff received in late October 2005. Plaintiff timely appealed,³ requesting that the court reinstate the farm use special assessment.

Plaintiff contends that he did not know that the form he signed would take him out of special assessment and insists that it was not his intent to request removal of special assessment.

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² All references to the Oregon Revised Statutes (ORS) are to 2003.

³ There was a question on the timeliness of the appeal, which was filed January 25, 2006. At the court’s request, Defendant investigated the date the tax statements were mailed and notified the court by letter dated April 14, 2006, that the tax statements were mailed October 25, 2005, which was a Tuesday. The statements were mailed to Plaintiff’s business office in Cresswell, where Plaintiff checks his mail weekly. Plaintiff was uncertain as to when he actually saw the tax statements, but assuming they did not arrive for a minimum of two days (October 27), then even if Plaintiff saw them the day they arrived, Plaintiff’s appeal would have been filed on the ninetieth day of his knowledge of Defendant’s act of disqualification. *See* ORS 305.275(1)(a)(C) (providing for an appeal by a taxpayer aggrieved by an act of the assessor) and ORS 305.280(1) (providing that an appeal under ORS 305.275(1) “shall be filed within 90 days after the act * * * becomes actually known to the person * * *” as long as the appeal is filed within one year of the date of the act. The court therefore concluded that the appeal was timely filed.

Plaintiff argues that the form is misleading and, in support of that claim, directs the court to the following statement at the bottom of the form:

“Note: an Exclusive Farm Use (zoned farm) deferral cannot be removed by request only. There must be a written statement that the land is no longer in farm use. (You may write on the back of this form.) There will be no back tax for establishing a farm-related homesite in an EFU zoning.” (Def’s Ex A.) (Emphasis in original.)

Plaintiff did not submit a separate written statement advising the assessor that the land is no longer in farm use or write any words to that effect on the back of the form.

Plaintiff testified that, when he was presented with the form by the lender, he was advised by the lender that the purpose of the form was to declare to the lender that the mortgage payments were not contingent on farm income; he had other income from which to make the payments.

II. ANALYSIS

Under ORS 308A.062(1), “[a]ny land that is within an exclusive farm use zone and that is used exclusively for farm use shall qualify for farm use special assessment * * * unless disqualified * * *.” Plaintiff’s land was being used for farming and was specially assessed.

ORS 308A.113 governs the disqualification of farmland in an EFU zone. Under the statute, there are three instances in which EFU land can (must) be disqualified from special assessment:

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

“(a) Removal of the special assessment by the assessor upon the discovery that the land is no longer being used as farmland;

“(b) Removal of the land from any exclusive farm use zone; or

“(c) Establishing a nonfarm dwelling on the land under ORS 215.236.”

ORS 308A.113(1).

The assessor did not discover that Plaintiff's land was no longer being used as farmland, the land was not removed from EFU zoning, and Plaintiff did not establish a nonfarm dwelling on his land. Defendant acknowledges that "the Assessor's action was predicated solely on the written request of the Plaintiff[.]" (Def's Answer at 3.) The statute, however, does not allow for removal of special assessment (i.e. disqualification) upon the request of the landowner where the property is located in an EFU zone.⁴

Defendant's form, which Plaintiff signed in August 2004, and which Defendant relied upon in disqualifying the property, supports the court's conclusion. The statement at the bottom of the form includes the following language: "an Exclusive Farm Use (zoned farm) deferral cannot be removed by request only. There must be a written statement that the land is no longer in farm use." Upon receipt of such a statement, the assessor could disqualify the property under subsection (1)(a) of ORS 308A.113. Evans testified that the assessor's office did at one time require a written statement from the owner saying that the property was no longer being farmed, but that the policy was changed, and the written statement is no longer required.

Because the court concludes that land in an EFU zone cannot be disqualified solely at the request of the owner, it need not address Plaintiff's contention regarding his knowledge and intent relative to disqualification or his argument that the form is misleading.

III. CONCLUSION

The court concludes that Defendant erred in disqualifying Plaintiff's property from farm use special assessment because the property is zoned EFU, there is no evidence Plaintiff ceased farming the land, and Plaintiff did not establish a nonfarm dwelling on the property.

⁴ Interestingly, farmland not zoned for exclusive farm use can be disqualified upon "[n]otification by the taxpayer to the assessor to remove the special assessment." ORS 308A.116(1)(a). Practically speaking, it is difficult to imagine a situation where a landowner would request removal in an EFU zone and continue farming, and if farming were discontinued, the assessor would remove the special assessment under subsection (1)(a) of the statute.

ORS 308A.113(1), the governing disqualification statute, requires either the cessation of farming, a change in zoning to something other than EFU, or the establishment of a nonfarm dwelling.

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is granted, Defendant's disqualification is overturned, and Plaintiff's property returned to special assessment for the 2005-06 tax year; and

IT IS FURTHER DECIDED that any taxes imposed as a result of the disqualification are canceled.

Dated this _____ day of June 2006.

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 on June 28, 2006. The Court filed and entered this document on June 28, 2006.