IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

STEFANIE R. WESEMAN,	)	
	)	
Plaintiff,	)	TC-MD 060723D
	)	
v.	)	
	)	
HOOD RIVER COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION**

Plaintiff appeals Defendant's denial of its application for farm use special assessment. A telephone trial was held Thursday, January 11, 2007. Plaintiff appeared on her own behalf. Sandra Berry (Berry), Director, Department of Records and Assessment, appeared on behalf of Defendant. Kim Haack testified on behalf of Defendant.

Plaintiff's Exhibits 1 through 10 were timely submitted and received without objection.

I. STATEMENT OF FACTS

In May 2003, Plaintiff purchased property located in a non-exclusive farm use zone. In the fall of 2005, Plaintiff personally visited the office of the county assessor to obtain information and an application form to request farm use special assessment for her property. Even though Plaintiff did not recall the name of the individual who assisted her, she testified that the individual took her to a computer terminal to review the location of her property and to review the qualifications of property for special assessment. Plaintiff testified that the person who assisted her "knew that she just moved in" and she was "clear" that Plaintiff was asking about a new application. Plaintiff testified that she was told she could not apply for special assessment until she "lived/farmed 3 full years at this residence (end of May '06)." (Ptf's Ex 1-1.) She was given a form entitled "Gross Income Questionnaire For Hood River

County, Oregon," which she subsequently learned was required to be completed as part of a renewal application. (Ptf's Ex 1-2 to 1-6.) Plaintiff wrote the following note: "Form must show income reg. for past 3 calendar yrs. '03, '04, '05 so the '03 requirements will be from move in date to end of year. (Late fee N/A). Won't accept document until lived there/farmed 3 yrs. (full years)." (Ptf's Ex 1-1.)

In June 2006, Plaintiff took her completed form to the county assessor. At that time, Plaintiff spoke with Kim Haack (Haack) who told Plaintiff that the form she was submitting was not the "correct form" for a first time applicant. According to Plaintiff, Haack further stated that even if Plaintiff submitted the "correct form" the county could not accept the application because the April 1 deadline had passed. Plaintiff testified that she explained to Haack the form was given to her by a county employee and that she could have submitted the "correct form" before the deadline if she knew the application could have been submitted prior to May 2006, even though she had not "lived and farmed for three full years." Plaintiff emphasized that "no other factors prevented her from turning in the application" by the April 1 deadline because she had met the income requirements by January 1, 2006; she was waiting for May 2006 when she had lived on the property for "three full years."

Plaintiff submitted her application on July 11, 2006. Defendant issued a letter dated July 12, 2006, denying Plaintiff's "application for the 2006-07 tax year" because it was filed "after the application deadline." (Ptf's Ex 4-1.)

Plaintiff concluded that the county should be required to accept her application because she was given the "wrong form and wrong instructions." Plaintiff testified that there was no way for her to know that the form was not for use "by a first time applicant" because the form did not "say for renewal only." Further, Plaintiff stated that she relied on the information received from

the county employee and there was every reason for her to think that "this person who gave information knew what she was saying was correct."

Berry, who has been employed by the county for 26 years, testified that when Plaintiff came to the county office in fall 2005, neither she nor Haack spoke with Plaintiff. Berry testified that it is "standard" procedure for the county to give out the information Plaintiff received during a time period outside the January to April application period. She stated that individuals are told to "check back after January 1" to get the current year's application for first time filers. Plaintiff concluded that if it is "common practice to give a renewal form for applicants to review" that procedure is "misleading" and "confusing." She testified that the information she was given led her to believe the application could be submitted after April 1 because her note stated that a "late fee" was not applicable. (Ptf's Ex 1-1.)

Berry testified that she is "not sure how the information and communication got so confused." Plaintiff asked Berry if "the other employee" she spoke to might not have been "as familiar with instructions?" Berry answered that employees are asked to direct all special assessment questions to her or to Haack because they "don't want to give out the wrong form."

Haack, who has worked for the county for 17 years, testified that it is common practice to explain the farm use special assessment program using the information given to Plaintiff. She testified that in order to show that she met the income requirements, Plaintiff would need to submit the forms she was given, or Schedule F from her federal income tax returns, in addition to a "first time" application. Haack stated that the April 1 filing deadline for "a new application" was stated on the information given to Plaintiff. (Ptf's Ex 1-5.) Plaintiff commented that she did not read that section of the form because it was entitled "Tenant Farmer" and she owns the property. Haack testified that when explaining the special assessment program it is not

customary for her to use words like "lived" on property. She did concede that the special assessment procedures are "confusing to individuals, especially first time applicants."

II. ANALYSIS

The parties agree that Plaintiff failed to submit an application for farm use special assessment by the required due date of April 1. The question before the court is whether Defendant should be estopped from denying her application.

In the area of taxation, estoppel is granted in rare instances[1] when the following three elements have been proven: (1) Defendant's conduct misled Plaintiff; (2) Plaintiff had a good faith reliance on the conduct; and (3) Plaintiff was injured by her reliance on Defendant's conduct. *See Sayles v. Dept. of Rev*., 13 OTR 324, 328 (1995). With respect to the first element, "taxpayers can claim estoppel against governmental taxing authorities only 'when there is proof positive that the collector has misinformed the individual taxpayer.' " *Webb v. Dept. of Rev*., 18 OTR 381, 384 (2005), quoting *Johnson v. Tax Commission*, 248 Or 460, 463, 435 P2d 302 (1967). This court has concluded that "proof positive" is a "stringent proof requirement." *Id*.

Taxpayers have prevailed when there was proof of "incorrect or misleading documents sent by taxing authorities to the taxpayer," or proof positive of a taxing authority's "misleading course of conduct." *Id.* (citations omitted). However, there is "only one case in which an Oregon court has considered oral communication to constitute a part of 'proof positive.' " *See Pilgrim Turkey Packers v. Dept. of Rev*., 261 Or 305, 310, 493 P2d 1372 (1972) (finding " 'proof positive' of misleading conduct in the ambiguous form alone, but held that the taxpayer's claim of estoppel was made 'even stronger' by the evidence of oral misinformation.") *Webb v. Dept. of Rev*., 19 OTR 20, 25 (2006).

[1] "The policy of efficient and effective tax collection makes the doctrine of rare application." *Johnson v. Tax Commission*, 248 Or 460, 463, 435 P2d 302 (1967).

In this case, Plaintiff relies on what she believes to be a misleading document and oral communication to support her claim. The "misleading document" was a "Gross Income Questionnaire For Hood River County, Oregon." The income information requested in that document is required from all first time applicants. The document, in and of itself, is not misleading. The document is filled with helpful information, listing in bold type the applicable law, ORS 308A.050 -- 308A.128, below the title of the document. At trial, Plaintiff testified that she did not review the applicable law until after she received Defendant's letter denying her application. That is very unfortunate. If Plaintiff had reviewed the law, she would have known when she should have submitted her first application (ORS 308A.068) and the application deadline (ORS 308A.077). Then, it would have been unnecessary for her to rely on the application information verbally provided to her by the county employee.

The court discussed recent cases stating that "the Supreme Court will deny estoppel claims whenever a government agency misstates the law." *Webb,* 18 OTR at 387, citing *Committee in Opposition v. Oregon Emergency Correc*., 309 Or 678, 683-84, 792 P2d 1203 (1990) (*Committee*); and *Dept. of Transportation v. Hewett Professional Group,* 321 Or 118, 895 P2d 755 (1995) (*Hewett*). The court concluded that even though "*Committee* and *Hewett* may indicate a shift in the law that affects taxing authorities as well as other government agencies * * * this court will wait for confirmation before abandoning *Johnson* and *Pilgrim Turkey,* as well as its own precedent * * * and noted that " 'access to the pertinent law was available to the parties in each instance but the court appears to have waived' that element." *Id*. at 387-88, citing *Cascade Manor Inc. et al v. Dept. of Rev*., 5 OTR 482, 488 (1974); *Montessori School of Eugene v. Lane County Assessor,* 16 OTR 198, 204-05 (2000). The *Webb* decision will be followed by this court.

Plaintiff relied on oral communications. To meet the standard of proof positive, taxpayers who rely on oral communication must provide "detailed memoranda that are written contemporaneously with the communications and that corroborate the taxpayer's recollection of them" or describe "the communications in great detail, including the nature, date, and time of each conversation; the names and relationships to the parties of all those who took part in each conversation; those persons' knowledge of taxpayer's situation and of the relevant law; and the exact statements made as well as their form and intended meaning." *Webb*, 19 OTR at 26. Plaintiff testified about what occurred on the day she visited the county assessor's office. Because no one knew which county employee assisted Plaintiff, that person was not called to testify. In addition to orally reciting the events, Plaintiff submitted what she labeled a "post-it note." (Ptf's Ex 1-1.) The "post-it note" unequivocally states: "Can't apply until lived/farmed 3 full years at this residence (end of May '06)." * * * "won't accept document [application] until lived there/farmed 3 yrs. (full years)." Plaintiff's actions matched her understanding of when she could submit her application; she completed the document she was given and returned to the county to file her application in June 2006. (Ptf's Ex 1-2 to 1-6.) Further, Plaintiff's "post-it note" suggests that the filing deadline (April 15) and the late fee (maximum $250 late fee) which appear on the face of the form were discussed because she wrote "late fee N/A." (*Id*.)

The case before the court is similar to the situation in *Schellin v. Dept. of Rev.*, 15 OTR 126 (2000) (*Schellin*). In *Schellin*, taxpayer testified that "she was orally misled by employees at the assessor's office on two separate occasions." *Id*. at 135. The court held that "such oral evidence insufficient to show 'proof positive' that taxpayer had been misled." *Id*. It went on to state that "[w]ritten materials however, are given greater weight than oral testimony." *Id*. The court concluded that the written notification in the form of the Assessor's Recommendation

which the taxpayer received was "technically correct," but "ambiguous" because it "was capable of producing more than one reasonable interpretation." *Id.* The court held that the taxpayer had shown " 'proof positive' that the assessor misled her" * * * and "it was reasonable for taxpayer to rely upon those representations." *Id.*

In response to an in-person visit to the county assessor's office, Plaintiff was given a form, Gross Income Questionnaire for Hood River County, Oregon, which clearly stated that it was "For Special Assessment of Farmland." (Ptf's Ex 1-2.) The county representative and Plaintiff jointly viewed the characteristics of the subject property using the county's computer. Plaintiff contemporaneously jotted down the filing requirements she verbally received from the person who assisted her. Twice, Plaintiff noted on her "post-it note" that the application could not be submitted until she had "lived/farmed 3 full years." (Ptf's Ex 1-1.) Following the instructions on her "post-it note," Plaintiff returned after fulfilling the "3 full years" time requirement to submit the form she was initially given.

Even though the form given to Plaintiff is "technically correct," it is "capable of producing more than one reasonable interpretation" when viewed in the context of the information given to Plaintiff. *Schellin*, 15 OTR at 135. First time applicants are required to provide income information. Because she was a first time applicant, it was reasonable for Plaintiff to assume that the form she was given was the form she was required to use to report income from farming. It was also reasonable for Plaintiff to rely on the information provided by the county employee who answered her questions while viewing the characteristics of her property using the county's computer, and who apparently advised Plaintiff that the deadline of April 15 and late fee stated on the form were not applicable to her initial application for special assessment. Further, it was reasonable for Plaintiff to assume that if she completed the form

given to her and met the three year requirement, she was fully complying with the application process. Both Berry and Haack testified that they are the primary individuals responsible for assisting first time applicants who frequently find the special assessment program confusing. Unfortunately, the county's normal procedures were not followed because neither individual assisted Plaintiff. Like the holding in *Pilgrim Turkey*, the court concludes that under the facts of this case "it would be inequitable for the taxing authorities to deny plaintiff's claim" *Pilgrim Turkey*, 261 Or at 309.

III. CONCLUSION

After careful consideration of the testimony and evidence, the court concludes that Plaintiff's claim of estoppel succeeds and Defendant shall accept for review Plaintiff's application for farm use special assessment. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant shall accept for review Plaintiff's application for farm use special assessment.

Dated this _____ day of March 2007.

_____
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 <u>mailing</u> to: 1163 State Street, Salem, OR 97301-2563; or by <u>hand delivery</u> to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within <u>60</u> days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Presiding Magistrate Jill A. Tanner on March 2, 2007. The Court filed and entered this document on March 2, 2007.