

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

MARC L. MICHEL and KASIE A. MICHEL,	)	
	)	
Plaintiffs,	)	TC-MD 070674C
	)	
v.	)	
	)	
JACKSON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal certain rollback taxes imposed by Defendant covering tax years 2002-03 through 2006-07, following the disqualification of four acres of their property from special assessment as designated forestland. The matter was heard September 19, 2007, followed by the submission of additional materials by the parties and another proceeding on October 26, 2007. Plaintiffs appeared pro se. Defendant was represented by John Cacka (Cacka).

I. STATEMENT OF FACTS

The parties agree to the following facts. Plaintiffs purchased the subject property, identified as assessor's Account 10472991, on August 31, 2004. The property is a 5.01 acre parcel. Four acres had been specially assessed based on the approval of an application by the previous owner filed in July 1998. The property was originally assessed under the Small Tract Forestland Program, but, in November 2005, was changed to the Western Oregon designated forestland program because the property was not large enough to meet the minimum acreage requirements (10 acres) for the small tract program. Both programs provide for a reduced assessment of ad valorem property taxes on the land.

The previous owner's forestland application was accompanied by a forest management plan calling for the planting of young trees. According to Plaintiffs, there were no young trees on

the property at the time of their purchase. Plaintiffs have planted some small trees, but since the time of their purchase, they have had no plans to continue the property in the forestland special assessment program. The decision to not continue with special assessment was due, at least in part, to the fact that Plaintiffs do not have a sufficient water supply to grow the number of trees required per acre.

Defendant disqualified the four acres from special assessment on July 27, 2007, because the property did not meet the minimum stocking requirements for special assessment. As part of the disqualification, Defendant imposed a rollback tax for a five-year period from 2002 through 2006. The additional taxes are intended to recapture the difference between the taxes imposed under the special assessment program and the taxes that would have been imposed each year if the property had not been specially assessed.

Plaintiffs do not dispute the disqualification, but object to the imposition of back taxes, especially for the period of time prior to their acquisition of the property. In their Complaint, Plaintiffs ask the court to abate the taxes for tax years 2002-03, 2003-04, and a portion of 2004-05, up to the time of their purchase in August 2004. If successful, Plaintiffs would only be responsible for taxes for a portion of the 2004-05 tax year, plus those assessed for tax years 2005-06 and 2006-07. Defendant responds that the tax is mandatory, and requests that the court uphold the entire assessment.

## II. ANALYSIS

A portion (4 acres) of the subject property was being specially assessed under the Western Oregon Forestland program, as provided in ORS 321.257 to ORS 321.390.<sup>1</sup> The property was previously assessed under the Small Tract Forestland Program, as provided in

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2005.

ORS 321.700 to ORS 321.754. Under both programs, the land is valued and taxed at a lower, specially assessed value, and the timber is exempt from ad valorem property taxation. *See* ORS 321.262(1) (providing for special assessment for forest lands in western Oregon); ORS 321.272 (exempting timber in western Oregon from ad valorem property tax); ORS 321.703(1)(g) (providing that timber under the small tract program is not taxed as real property); ORS 321.703(2)(a) (providing that taxes on forestland under the small tract program are specially assessed).

Defendant discovered that the four acres no longer qualified as forestland because the minimum number of trees was not present. Accordingly, pursuant to ORS 321.359(1)(b)(C), Defendant removed the forestland designation and mailed Plaintiffs the statutorily required notice. *See* ORS 308A.718(3) (requiring notice of removal from the program). Plaintiffs do not dispute the disqualification or the notice. Rather, Plaintiffs challenge the scope of the tax Defendant imposed, arguing that it should not extend to years prior to their purchase of the property. Ideally, from Plaintiffs' perspective, the tax would be prospective only. Unfortunately, the law provides otherwise.

When land previously assessed under forestland special assessment is removed (disqualified) from that program, ORS 308A.703(2) provides that "an additional tax shall be added to the tax extended against the land on the next assessment and tax roll." Use of the word "shall" makes clear that the addition of the taxes is mandatory. Moreover, the additional tax is extended against the *land*, making ownership, per se, irrelevant. It is the lack of the required use of the land that triggers the disqualification and the imposition of the tax, not the ownership of the property.

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The statute further provides for the calculation of the tax. “The additional tax shall be 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) of this section.*” ORS 308A 703(2) (emphasis added). Subsection (3) of that section, in turn, provides:

“The 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 the disqualification has occurred or:

“\* \* \* \* \*

“(c) *Five years*, in the case of:

“\* \* \* \* \*

“(B) Western Oregon designated forestland [.]”

ORS 308A.703(3) (emphasis added).

Under the statute, the number of years for which back taxes are to be imposed is the lesser of the number of years the property was specially assessed, or five years. Plaintiffs’ property was under special assessment for nine years. Thus, the calculation and imposition of the tax is for five years.

Plaintiffs argue that the statute lacks the specificity required for the assessor to impose a tax against them prior to the time of their ownership. Plaintiffs believe that there should be a provision specifically applicable to a situation involving a change in ownership during the rollback period. The court disagrees. The statute is clear. Upon disqualification, ORS 308A.703(2) requires that “an additional tax shall be added to the tax extended against the land[.]” Under subsection (3) of that statute, the tax is the lesser of the number of years the property was under special assessment, or five years.

There is a statute that addresses situations where there is an intervening sale and back taxes imposed on the buyer. The law is the bona fide purchaser statute, found in ORS 311.235.

That statute provides:

“No 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.*”

ORS 311.235 (emphasis added).

The question, then, is whether the taxes were a matter of public record. ORS 321.362 requires that the *tax roll* include a notation “Forest Land-Potential Additional Tax Liability.”

According to the evidence, there was a notation of potential additional taxes on the assessment and tax rolls. Defendant submitted an electronic (*i.e.*, computerized) printout of Plaintiffs’ account records from 2005, which reveals that the property was under special assessment and subject to “potential additional tax liability.” The assessor’s records are public records. Plaintiffs submitted their tax statement from the 2004-05 tax year. That statement also reflects the potential additional tax liability.

This is not the first time that the court has addressed the question of whether taxes can lawfully be imposed on a subsequent purchaser following a special assessment disqualification. In *Mark v. Dept. of Rev.*, 12 OTR 369 (1993), *rev’d* on other grounds, *Mark v. Dept. of Rev.*, 14 OTR 467 (1998), the taxpayer purchased property that was under farm use special assessment. Prior to that purchase, the previous owner had obtained a conditional use permit to construct a home, said permit contingent upon the then-owner’s request that the parcel be disqualified from “farm tax deferral.” *Mark*, 12 OTR at 370. That person never had the property disqualified from special assessment and, when the taxpayer obtained a permit to place a mobile home on the property after his purchase, the assessor became aware that the property no longer qualified for

special assessment. The property was disqualified, and the assessor imposed back taxes. The court rejected the taxpayer's argument that he was a bona fide purchaser who should not be liable for the taxes attributable to years prior to his purchase, stating that taxpayer's argument "ignores the fact that the assessment and tax roll expressly warned of the potential additional tax liability." *Id.* at 371.

More recently, the plaintiff in *McMahan v. Lane County Assessor*, TC-MD No 050765C WL 3369848 (2005), asserted bona fide purchaser status when assessed back taxes for years prior to his purchase, following disqualification of his property from farm use special assessment. The disqualification was triggered by the subdivision of the property by the previous owner, which required a change in zoning in conflict with special assessment. It took several years for the assessor to become aware of the change in zoning, and the plaintiff, who now owned the property, was assessed for all of the taxes. The court upheld the taxes.

Here, as in *McMahan*, Plaintiffs were aware that the property was under special assessment. Plaintiffs, in this case, acknowledge that the property was listed as a "woodlot resource," and that they had no intention of "keep[ing] the property as a woodlot resource." (Ptf's Ltr, Aug 1, 2007.) Plaintiffs deny that there was any discussion about the meaning of "woodlot resource" at the time of their purchase. Nonetheless, that designation should have been sufficient to prompt further inquiry.

The rollback tax is designed as a disincentive against removing property from special assessment. Had Plaintiffs investigated the matter at the time of their purchase, they would have discovered that the property was subject to potential additional taxes, taxes that would be imposed if the property ceased to qualify as forestland. According to Plaintiffs, the property did not qualify as forestland at the time of their purchase. That being the case, Plaintiffs presumably

could have shifted the tax burden to the sellers by demanding that the sellers request that the assessor remove the forestland designation prior to the sale, and pay the tax. ORS 321.359 (1)(b)(A) (requiring the assessor to remove forestland designation upon notification by the taxpayer).

Plaintiffs correctly note that neither the notation on their tax statements nor the information in the assessor's records regarding their account specifically mentioned that the tax was retroactive, and that it could be imposed for years before they bought the property. However, that information does appear in the statutes. Plaintiffs have repeatedly stated that they are not attorneys, and that they are unfamiliar with the laws, which they view as complicated. The court acknowledges that all of that may be true. However, if lack of knowledge were a sufficient justification for the avoidance of taxes, the consequences to state and local governments would be extreme. It is for that reason that courts in Oregon have stated: "[i]t is axiomatic that persons are presumed to know the law." *Seattle-First National Bank v. Umatilla County*, 77 Or App 283, 294, 713 P2d 33 (1986) (citing *Hood River County v. Dabney*, 264 Or 14, 28, 423 P2d 954 (1967)).

### III. CONCLUSION

Plaintiffs' property was properly disqualified from special assessment as designated forestland and the rollback taxes imposed by Defendant were statutorily required by ORS 308A.703(3), notwithstanding the fact that Plaintiffs only owned the property for roughly half of the five-year rollback period. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal, requesting that they only be financially responsible for taxes after their purchase, is denied; and

IT IS FURTHER DECIDED that the imposition by Defendant of taxes for tax years 2002-03 through 2006-07, inclusive, following disqualification of the subject property from special assessment as designated forestland stands.

Dated this \_\_\_\_\_ day of November 2007.

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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 on November 19, 2007. The Court filed and entered this document on November 19, 2007.***