

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

PACIFIC SURIMI JOINT VENTURE,

Plaintiff,

v.

CLATSOP COUNTY ASSESSOR,

Defendant,

and

DEPARTMENT OF REVENUE,
STATE OF OREGON,

Intervenor.

Nos. 970714 (Control)
981264; 990431A

PACIFIC COAST SEAFOODS CO.,

Plaintiff,

v.

CLATSOP COUNTY ASSESSOR,

Defendant,

and

DEPARTMENT OF REVENUE,
STATE OF OREGON,

Intervenor.

No. 990483C

PACIFIC COAST SEAFOODS CO.,
DECISION

No. 990870C

Plaintiff,)
)
 v.)
)
 CLATSOP COUNTY ASSESSOR, and)
 DEPARTMENT OF REVENUE,)
 STATE OF OREGON,)

DECISION

Defendants.

Pacific Surimi Joint Venture and Pacific Coast Seafoods Co. have appealed the assessed values of properties located at 450 NE Skipanon Dr. in Clatsop County. Their counsel was W.S. Phinney.

The Department of Revenue either intervened, or was a named defendant. Marilyn Harbur, of the Department of Justice, presented its case.

The 1995-96 through 1998-99 tax years are at issue. The particulars of the appeals are set out below.¹

STATEMENT OF FACTS

The dispute in this appeal is as to the value of machinery and equipment used to convert fish to food along the Columbia River waterfront, at the Skipanon

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<u>Appeal</u>	<u>Tax Year</u>	<u>Account No.</u>	<u>Asserted Value</u>	<u>Roll Value</u>
970714	1995-96	3004 81022BB 00400A4	\$1,300,000	\$2,657,900
	1996-97		\$1,200,000	\$2,475,670
981264	1997-98	3004 81022BB 00400A4 (71994A4; 28534)	\$1,350,000	\$2,520,850
990431A	1998-99	3004 81022BB 00400A4 (71994A4)	\$1,110,000	\$2,694,220
990483C	1998-99	3004 81022BB 00400(28534)	Unasserted	\$2,029,890
990870C	1998-99	3004 81022BB 00400(71993)	\$1,215,000	\$2,025,280 (less an adjustment for economic obsolescence of \$614,490, applied to buildings and structures and machinery and equipment)

Waterway in Warrenton.² Two distinct operations, and entities, are involved in this facility. One is the more or less traditional fish,³ crab,⁴ and shrimp⁵ lines, operated by Pacific Coast Seafoods Co. The other, owned by Pacific Surimi Joint Venture, is the surimi line, which consists of tanks, fillet machines, mincers, screens, presses, mixers, decanters, piping, and pumps which turn Pacific whiting into surimi.⁶ The fish, crab, and shrimp lines have operated on this site, in one form or another, for more than half a century. The surimi line was added in 1995.

In calculating the value to be placed on the roll the department used a trended investment cost method based on a 1996 plant inspection and audit. Using a fifteen year life for the depreciable assets, arrested at 20% for those items still in service after the close of this period, the agency made no allowance for functional obsolescence. Economic obsolescence, however, was calculated for the salmon and groundfish harvests.

A poor 1995 local salmon stock, combined with excellent Alaskan harvests and successful salmon ranching, led the department to apply a 12% adjustment for economic obsolescence to all fish processing equipment, except that devoted to surimi, for the 1995-96 tax year. A 7% adjustment for economic obsolescence was applied by the department for the 1996-97 tax year, on the reasoning that salmon processing was now at

²Plaintiffs are not contesting the procedure by which omitted property (Appeal No. 970714) was added to the roll. Plaintiffs are not contesting the land, buildings, or structures.

³Fish other than the Pacific whiting are processed by hand along a 32 station fillet line.

⁴There are two crab lines, one an overhead craneway lowering baskets into cookers and washers, the other a continuous crab line.

⁵The shrimp is processed using older cookers, peelers, separators, cleaners, and a hydrasieve.

⁶ Surimi is a paste-like product produced by mincing Pacific whiting into a pulp which is washed, dried, and reconstituted into a gelatin which is then frozen into blocks. This concentrated protein base is sold to secondary processors who in turn use it to produce such foods as ersatz crab.

18% of its historical levels, and that salmon then accounted for 8% of total fish production. No economic obsolescence for salmon was proposed for the 1997-98 or 1998-99 tax years, on the thinking that at this point salmon no longer plays an important part in the economics of Oregon fish processors. However, observing that in 1998 the Pacific Fishery Management Council imposed restrictions on groundfish that may reduce harvests by as much as 25%, and that groundfish account for some 35% of production, the department applied a total economic obsolescence adjustment for all fish processing equipment other than surimi during the 1998-99 tax year of 20%.

The agency proposed no adjustment for economic obsolescence to the surimi machinery and equipment for any year at issue. Concluding that the typical “break even” price for surimi is between \$.72 and \$.75 per pound, the agency looked to average wholesale prices in 1995 between \$.82 and \$1.20, and in 1997 of over \$1, to decide no adjustment for economic obsolescence was necessary, although the industry was distressed in 1996 by the small size of Pacific whiting and in 1998 by the decline of the Asian economies that account for half of its market.

Plaintiffs argued for a much higher adjustment for economic obsolescence, especially as to surimi.⁷ Pointing to the fact that, while the surimi line was hurriedly constructed in 1995 to take advantage of a price of \$1.09 per pound, 1997 was, at \$1.044, its only profitable year. At respective prices per pound of \$.857 in 1996, and \$.498 in 1998, economic obsolescence, defendant asserted, must be present, and proposed to capture it by recognizing an “inutility penalty”. This “inutility penalty” was computed by

⁷Other, by comparison minor, differences are present between the two appraisals. Plaintiffs typically used a marginally shorter useful life, 14.5 years, for the assets, and a negative 2% adjustment for functional obsolescence due to excessive costs to construct the surimi line. Comparison of the parties’ conclusions under the cost approach is also made more difficult by plaintiffs’ failure to include assets removed from assessment as properties within an enterprise zone.

comparing the surimi line's actual operating capacity to its hypothetical level of production, with a scale factor to account for the price per pound, according to the following formula:

$$\text{Inutility} = \left[1 - \frac{(\text{number of months of actual production})}{12} \right]^8 \times 100$$

From this plaintiffs calculated respective adjustments for economic obsolescence for the 1995 through 1998 tax years of 63%, 56%, 42%, and 65%.

Plaintiffs also made reference to sales. Conversations with Sorenson's USA Equipment Sales, a dealer in used equipment; 1999 sales of surimi lines new in 1988 and 1989; and conversations with Permacold and Carnetech, manufacturers of components of the subject property, were related to the end that the surimi line would have little resale value. Plaintiffs also told of a whole plant sale in which Astoria Seafoods Co. sold, in March of 1997, a 101,600 sf. building, and its fillet line, crab line, and freeze tunnel, for \$750,000.

The department testified in rebuttal that the used surimi equipment identified by plaintiffs were more likely to be used to produce secondary products for retail sale and were not of the character of the subject property. Testimony was also given that the whole plant sale was of an inferior character to the facility at issue here, that surimi lines have a high relative cost to assemble into an operating unit, and that an explanation for manufacturer's opinions that used surimi equipment is of little value would be that each surimi line is, with the exception of the filleting machines, idiosyncratic in character, as each line is built around a rated capacity.

COURT'S ANALYSIS

⁸"n" is a scale factor, presented by plaintiff as a price per pound.

The court begins its reasoning with the conclusion that defendant's determination of replacement cost new of the taxable assets, less physical depreciation, is more reliable than plaintiffs'. The court reaches this conclusion because defendant's list included all assets subject to tax, unlike plaintiffs' omission of those assets no longer specially assessed by virtue of the status afforded to an enterprise zone.⁹ Defendant's decision to not depreciate below 20% those assets still in service at ages beyond their anticipated useful life is also persuasive. That there may or may not be a ready market for an old machine does not change the conclusion that, if the machine is of value to plaintiff (as presumably it must be if it has not yet been scrapped), plaintiff must pay the corresponding tax. ORS 308.205(2)(c).

This reasoning, however, begins, rather than resolves, the appeal. The greatest difference between the parties, and it is a dramatic one, is as to the matter of economic obsolescence. Defendant has argued that in its calculation of the roll it has accounted for this factor. Plaintiffs have asserted that economic obsolescence is present to such an extent that this court must cut the roll in half so as to achieve an accurate assessment. In balancing these arguments the court has turned to plaintiffs' formula for calculating economic obsolescence-

$$\text{Inutility} = \left[1 - \frac{(\text{number of months of actual production})^n}{12} \right] \times 100$$

and found it an unreliable tool in the context of this particular appeal.

The court bases this conclusion on the observation that, in 1995, the market for surimi was such as to call plaintiffs, experienced operators made even more expert by their association in a joint venture, to build a surimi line. Plaintiffs negotiated with

⁹See ORS Ch. 285B.

manufacturers and installers to build this new addition to their facility. It would seem that the price paid in 1995 for a line built in 1995 should reflect the value of the assets in 1995. However, plaintiffs' formula would have the court discard as an indicator this price fixed by the market. Instead, plaintiffs' formula reduces the value of the plant more than half.¹⁰ Such a result, at least in the unique circumstances of this particular case, overstates the effect of economic obsolescence.¹¹

This conclusion that plaintiffs' formula is an imperfect measure of economic obsolescence does not, however, mean that no economic obsolescence is present. The agency's point that fishing is inherently cyclical has been demonstrated by the profitable season for surimi in 1995, slim or no profits in 1996, followed by a profitable season in 1997. However, plaintiffs' contention as to the 1998 decline in the Japanese and Korean economies is also a strong point. Plaintiffs have credibly presented themselves as only able to sell its surimi at \$.498 per pound; the department's own calculations show this is a third short of the break-even point for surimi producers.

However, the court will not pursue this particular question further, for even if economic obsolescence is present for the 1998-99 tax year, the court does not have at its disposal any alternative to plaintiffs' formula to measure its effect. Such information might be available on the used equipment market. While plaintiffs did mention the used equipment market, the court is uncertain as to whether the items presented were in fact equipment used to produce surimi, or instead were machines used in the secondary

¹⁰63%.

¹¹The court will not debate the nuances of plaintiffs' algebraic formula. It is enough that plaintiffs, at the time they acquired the assets, knew they were purchasing an item that could only be used to generate income during a specific season, and negotiated a price accordingly. That price is a potent indicator of the value at which they are to be taxed, especially for the tax year at or about the time the transaction occurred.

process of converting surimi into an item for retail sale. Certainly the equipment was older than that at issue here. The court is also not satisfied that plaintiffs adequately reflected in their "freight and installation" numbers all the costs of transforming isolated pieces of equipment into a functioning plant, especially as to a product as complicated as surimi.

The court is left with the conclusion that, while plaintiffs are believable when they say they would not now repeat their investment, were they given the opportunity to change their decision, they have not demonstrated the property is worth half its value on the roll. The court has carefully examined the evidence, and concluded that while the roll accurately captures the value at which plaintiffs are to be taxed for the earlier years at issue, less confidence attaches to the 1998-99 tax year. However, on the basis of the record built at this proceeding, the court has no basis on which to demonstrate a value any more reliable. These appeals are denied.

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CONCLUSION

IT IS THE DECISION OF THIS COURT that plaintiffs' appeals must be denied.

Dated this _____ day of July, 2000.

SCOT A. SIDERAS
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 SCOT SIDERAS ON JULY 21, 2000. THE COURT FILED THIS DOCUMENT ON JULY 21, 2000.