

THIS DECISION WAS SIGNED BY JUDGE CARL N. BYERS ON SEPTEMBER 19, 2000, AND FILE STAMPED ON SEPTEMBER 19, 2000. THIS DECISION IS A NONPUBLISHED DECISION.

IN THE OREGON TAX COURT  
REGULAR DIVISION  
Local Budget Law

LINN-BENTON COMMUNITY COLLEGE, )  
an Oregon municipal corporation,) )  
 ) **Case No. 4486**  
Plaintiff, ) )  
 ) **DECLARATORY JUDGMENT**  
v. ) )  
 ) )  
DEPARTMENT OF REVENUE, ) )  
State of Oregon, ) )  
 ) )  
Defendant. ) )

Plaintiff Linn-Benton Community College (the college) seeks a declaratory judgment that Defendant Department of Revenue (the department) has miscalculated the amount of excess taxes to be refunded under Oregon Laws 1999, chapter 186, section 3(1). Inasmuch as this matter must be resolved prior to September 25, 2000, the court has given it priority and established an accelerated briefing schedule. See ORS 294.520. Jurisdiction of this matter is found under ORS 294.515.<sup>1</sup> The parties do not

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<sup>1</sup> All references to the Oregon Revised Statutes are to 1997.

ORS 294.515 provides:

"Any municipal corporation aggrieved by and directly affected by an order of the Department of Revenue relating to the preparation of budgets or the extension of any tax levy may appeal to the Oregon Tax Court in the manner provided by ORS 305.404 to 305.560."

disagree as to the facts, but only to the interpretation of the statute. The matter has been submitted to the court on briefs and oral argument.

### **FACTS**

The college is an Oregon municipal corporation authorized to levy property taxes within the counties of Linn and Benton. It levied property taxes for the tax years 1997-98, 1998-99, and 1999-00. In each year, the college's tax rate was certified pursuant to ORS 310.060.

The 1999 legislature enacted Oregon Laws 1999, chapter 186 addressing the property tax rates for taxing districts. Section 1 of that chapter sets forth criteria to identify certain taxing districts whose permanent tax rate must be recalculated. The department is charged with the responsibility of recalculating the tax rates for such districts. The college is one of the taxing districts whose permanent tax rate was recalculated.

Section 3(1) of the Act provides for "further" reduction of the recalculated tax rate for the 2000-01 tax year in order to achieve a refund of any "excess taxes" collected for the 1997-98, 1998-99, and 1999-00 tax years. That provision requires the department to determine the amount of excess taxes to be refunded. The department determined that the college should refund \$201,895. The college complains that the correct amount

is not more than \$99,653.

### ISSUE

What is the correct measure for reduction in the college's 2000-01 tax rate?

### ANALYSIS

The relevant portion of chapter 186, section 3 reads as follows:

"(1) For the tax year beginning July 1, 2000, the operating tax rate of a taxing district described in section 1(3) of this 1999 Act shall be further reduced to a rate that will achieve a refund of excess taxes collected for tax years beginning July 1, 1997, July 1, 1998, and July 1, 1999.

"(2) As used in this section, 'excess taxes' means the amount by which a taxing district's operating taxes, as defined in ORS 310.055 (1997 Edition), that were imposed for tax years beginning July 1, 1997, July 1, 1998, and July 1, 1999, exceed the amount of operating taxes that would have been imposed for those tax years if the statutory rate limit determined under section 1 of this 1999 Act had been in effect. 'Excess taxes' does not include any amount attributable to interest." (Emphasis added.)

In applying the statute, the department must first determine if the college imposed any excess taxes.<sup>2</sup> To do that, the department compares the amounts of operating taxes imposed for each of the three tax years with the amount that would have been imposed for each of those years if the college's operating tax

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<sup>2</sup> The court construes the word "imposed" to mean the amount of taxes certified by the taxing district under ORS 310.060.

rate had been determined under section 1 of the 1999 Act. That construction may be inferred from the text of section 3(1), which specifically refers to the operating tax rate of the taxing district described in section 1(3) of the Act.

The second step under the statute is to determine whether any excess taxes were actually collected. It is the word "collected" that creates the problem in this case. It is the college's position that the word collected requires the department to do more than simply calculate excess taxes. That is because not all taxes imposed by the taxing districts are in fact collected. The college points out that if the taxes imposed on a particular property exceed the Measure 5 limits, those taxes will be compressed to stay within those limits. Consequently, the amount of tax actually shown on the tax statements and collected may be less than the amount imposed by the taxing district.

Additionally, taxpayers can receive a discount of three percent of their tax bill if they pay their taxes in full by November 15. Also, some taxpayers do not pay their taxes until the next year or subsequent years and some taxes may be unpaid forever. When taxes are collected, they are placed in a segregated-tax account. Amounts are distributed out of the segregated account to the taxing districts in proportion to the amount of taxes imposed by those districts. ORS 311.390. Those

and other facts and administrative procedures make it extremely

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difficult to determine the amount of taxes actually collected for a particular tax year.

Faced with this daunting task, the department does not believe the word collected here has its usual and ordinary meaning. The department asserts that collected here is used only to help identify a particular tax year. The court cannot accept that position.

In construing statutes, the court looks first to the text and context of the statute, giving words their "plain, natural and ordinary meaning." PGE v. Bureau of Labor and Industries, 317 Or 606, 611, 859 P2d 1143 (1993). The word "collected" has a common and ordinary meaning. In this context it means the taxes collected by the tax collector. The court cannot accept that the legislature intended collected to mean taxes imposed. It would have been too easy to write the statute to say that the rate was to be reduced to "achieve a reduction equal to the excess taxes imposed." The parties acknowledge that the legislature spent a good amount of time drafting the 1999 Act. Consequently, the court cannot find that the legislature used the word collected in error or without understanding its meaning.

The college acknowledges the difficulty of calculating or ascertaining the amount of taxes actually collected and therefore

is willing to settle for "half a loaf." Clearly, taxes that were not placed on a property-tax statement due to Measure 5 compression would not be collected. Therefore, the college asserts that, at the least, the amount of taxes imposed by the district should be reduced to the extent of the Measure 5 compression.

The department contends that methodology here is the primary issue. The department expresses concern that the methodology adopted must be useable for a number of taxing districts, and that it is extremely difficult if not impossible to trace every dollar collected. The court acknowledges those difficulties. However, to make the statute effective and accomplish its legislative purpose, some method must be devised.

Every county keeps records that show the amounts actually collected from the tax statements for each year. The total tax collections are distributed from the segregated-tax account in proportion to the amount certified by each taxing district. If the department ascertains the total amount of operating taxes collected for each tax year from the county tax collector and the proportion of the taxes imposed by each taxing district, the department could calculate a reasonably accurate amount of taxes collected for that district for that year.

However, because the statute is concerned with only operating taxes, the methodology must exclude local option taxes

and taxes for gap bonds and bonded indebtedness. The department suggests that these amounts can be ascertained from each taxing district's form 4A. The department recommends using the "Total to be Received" and the "Permanent Inside M5 Limit" from 4A forms to make the calculation for 1998-99 and 1999-00 tax years. For the 1997-98 tax year, the department would use the amount listed on the 1997-98 form 4A at the conjunction of the row labeled "Total Amount to be Received" and the Inside Limit" column, less the amounts attributable to local option levies or gap bonds as reported on supplemental 4A forms. The court approves that proposed method of making the calculations.

The court concludes that the legislature intended to "refund" taxes only to the extent that the amount actually collected exceeded the theoretical possible amount that could be collected using the rate provided in section 1 of the Act. The college agrees that the department has correctly calculated its section 1 tax rate. To determine whether any "excess taxes" were collected, the department applies that rate to the taxable assessed value. That calculation will produce a maximum amount of tax that could have been raised if the college had used the "correct" rate for the years in question. That amount of potential tax for each of the three years in question is to be totaled. That total amount is then compared to the total of all the operating taxes actually collected during the three years.

If the amount actually collected exceeds the amount that theoretically could have been collected using the section 1 rate, the excess will be used to compute the further reduction necessary to achieve the "refund". If the amount actually collected does not exceed the amount that should have been collected, there will be no further reduction in the rate.

As indicated above, some taxes are paid in years following the year the tax was imposed. The court recognizes that some taxes for the 1999-00 tax year may be paid after June 30, 2000. However, because the statute requires the calculation of excess taxes collected for the purpose of adjusting the tax rate for the 2000-01 tax year, of necessity, the cutoff date for determining the amount of tax collected will be June 30, 2000. Now therefore,

IT IS ADJUDGED and DECREED that the total amount of the operating taxes actually collected are to be used in determining if any excess taxes were collected in applying Oregon Laws 1999, chapter 186, section 3(1), and the department shall calculate the amount by which the rate is to be further reduced consistent with this judgment.

Dated this \_\_\_\_ day of September, 2000.

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Carl N. Byers  
Judge