

THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

BRUCE AND BONNIE MCCLOSKEY,	)	
	)	
Appellant,	)	Docket No. 99003
	)	
v.	)	
	)	
PAMELA RUSHTON,	)	ORDER DENYING
Clallam County Assessor,	)	RESPONDENT'S
	)	MOTION TO DISMISS
Respondent.	)	
	)	

ISSUE

The issue in this matter is whether the Board of Tax Appeals (Board) has jurisdiction to determine whether the Respondent, Pamela Rushton, Clallam County Assessor (Assessor) is equitably estopped from assessing back taxes, interest, and penalties for the removal of a portion agricultural land to be used as home site when the Appellants, Bruce and Bonnie McCloskey (Owners) do not contest the removal, but argue the County entered into an agreement which allows them to do so.

PROCEDURAL HISTORY

The Assessor assessed a portion of the subject property with back taxes, penalties, and interest following that portion being used as residence and losing its designation as farmland. The Board of Equalization held that the Assessor was estopped from assessing the back taxes, penalties, and interest, because of an agreement between the Assessor and Owners. That Board subsequently issued a corrected order, sustaining the assessment of back taxes, interest, and penalties. The Owners appealed to this Board seeking equitable estoppel.

On November 29, 2021, the Board convened a pre-hearing conference to discuss pre-hearing issues. Specifically, the Board requested the parties submit briefing regarding whether the Board has jurisdiction to hear this appeal. The Board issued a Pre-Hearing Order with the dates for the parties to submit briefing and a date for a hearing to provide oral argument.

Prior to the hearing on jurisdiction, on December 7, 2021, the Assessor, filed a motion to dismiss the appeal for lack of jurisdiction. The Owners filed a response on January 7, 2022, and a reply on January 12, 2022.

The hearing on jurisdiction was held on February 8, 2022.

### STATEMENT OF FACTS

The subject property is approximately 11 acres. Prior to 2020, all 11 acres were classified as agricultural land, pursuant to chapter 84.34 RCW. In 2020, the Owners built a residence on approximately one acre of the subject property.

#### Assessor's Arguments

The Assessor argues that the Board lacks jurisdiction to hear this matter because the Owners are not contesting the removal or classification of the subject's agricultural land designation or the value of the removed portion. The Assessor further argues that the Owners may not seek a refund of the back taxes, penalties, and interest because they did not pay their taxes under protest and file suit for a refund in Superior Court pursuant to RCW 84.68.020.

#### Owners' Arguments

In the Owners' briefing, and at the hearing on jurisdiction, the Owners provided two arguments to support that the Board has jurisdiction to decide their appeal. First, the Owners argue that the Assessor should be barred from collecting back taxes, penalties, and interest under the doctrine of equitable estoppel. The Owners contend, and the Assessor does not refute, that when they purchased the property, the Assessor gave the Owners an agreement which allowed for removal of a portion of the subject to be used as a residence without imposition of back taxes, interest, and penalties; the agreement contained no mention of minimum property size. The Owners further argue that, had they been provided information that they would be subject to back taxes, interest, and penalties, they would not have constructed a residence on the subject.

The Owners do not contest the assessed value of the portion of the subject that is being taxed or the removal from chapter 84.34 of the portion being used as residence.

## APPLICABLE LAW

A taxpayer who feels aggrieved by the action of any county board of equalization may appeal to the board of tax appeals.<sup>1</sup> Taxpayers are entitled to all remedies in title 84 RCW when appealing valuation of land and imposition of taxes.<sup>2</sup>

RCW 84.68.020 and RCW 84.69.020 list the available methods for receiving a refund of taxes paid. Injunctions and restraining orders may not be granted to prevent the collection of tax except where the under which the tax imposed is void, where the property is exempt from taxation, or where the sale of the property is the result of an error made by the county.<sup>3</sup>

RCW 84.36.500 exempts land designated as farm and agricultural land from ad valorem property taxes. Property designated as agricultural land must not be applied to another use for at least ten years.<sup>4</sup> Property that has its agricultural land designation withdrawn prematurely is subject to back taxes, interest, and penalties,<sup>5</sup> but there are exceptions under which back taxes, interest, and penalties may not be imposed.<sup>6</sup> Agricultural land that is greater than 20 acres may use a portion as the principal place of residence for the operator or owner of the land.<sup>7</sup>

## ANALYSIS

The Board has jurisdiction to hear this appeal because the Board is not limited to remedies available at a board of equalization, the Board has the general authority to grant equitable remedies, and the Board has authority to grant equitable estoppel against the county to prevent assessment of taxes.

The Assessor's argument that the Clallam County Board of Equalization (County Board) lacks the authority to apply equitable estoppel is not persuasive because hearings before this Board are de novo, and parties are not bound by the evidence or arguments presented to the County Board.<sup>8</sup> We do not address whether the County Board has the authority to grant equitable estoppel because it is not necessary to determine whether this Board has the authority to do so.

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<sup>1</sup> RCW 84.34.111.

<sup>2</sup> RCW 84.08.130.

<sup>3</sup> RCW 84.68.010.

<sup>4</sup> RCW 84.34.070.

<sup>5</sup> RCW 84.34.080.

<sup>6</sup> RCW 84.34.108(6).

<sup>7</sup> RCW 84.34.020(1)(a),(f).

<sup>8</sup> *Ridder v. McGinnis*, BTA Docket No. 33754, at 4 (1988) (citing AGO 1986 No. 3, at 8-9); RCW 84.08.130(1).

The Board has the general authority to grant equitable remedies. The Supreme Court of Washington State has applied the doctrine of equitable estoppel in an appeal originating from the Board.<sup>9</sup> In *Harbor Air Service, Inc., v. Washington State Department of Revenue*, the State Supreme Court held that the Superior Court correctly reversed the Board's denial of equitable estoppel against the Washington State Department of Revenue.<sup>10</sup> If equitable remedies, such as equitable estoppel, are not available in appeals to the Board, the State Supreme Court would not have overturned the Board's decision declining to apply equitable estoppel. If the Board does not have the authority to hear arguments for, and grant, equitable remedies, then the Court in *Harbor Air Service* would not have held that the Superior Court erred in reversing the Board's *denial of equitable estoppel*.

The Board has previously heard and issued decisions on the issue of equitable estoppel.<sup>11</sup> In *Barton Industrial Park LLC*, the Board held it had jurisdiction to grant equitable estoppel as a remedy where the Snohomish County Assessor sought to correct tax rolls that erroneously exempted the Owner's property.<sup>12</sup> While the Board ultimately declined to grant equitable estoppel on the merits, the Board determined that RCW 84.40.038 allowed for the Board to hear appeals for "any other reason specifically authorized by statute."<sup>13</sup> The Board held that RCW 84.48.065(1) met this provision.<sup>14</sup>

Like in *Barton*, there is specific statutory authority that allows for the relief the Owners are asking for. RCW 84.34.108(6) mandates that back taxes, penalties, and interest may not be imposed under certain circumstances, even when the taxpayer is not appealing the removal of the designation.

While "courts should be most reluctant to find the State equitably estopped when public revenues are involved,"<sup>15</sup> the Board has jurisdiction to hear and determine that.

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<sup>9</sup> *Harbor Air Serv., Inc. v. State Dep't of Revenue*, 88 Wn.2d 359, 366, 560, P.2d 1145 (1977).

<sup>10</sup> *Id.*

<sup>11</sup> *See Barton Industrial Park, LLC, v. Gail S. Rauch*, BTA Docket No. 58437 (2003) at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

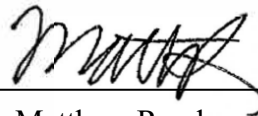
<sup>15</sup> *Harbor Air Serv.*, 88 Wn.2d 359 at 367.

### ORDER DENYING MOTION

For the aforementioned reasons, the Board denies the Respondent's Motion to Dismiss, and the Board will issue a further pre-hearing order, including the deadlines for, and date of, an evidentiary hearing.

ISSUED August 18, 2022.

BOARD OF TAX APPEALS

A handwritten signature in black ink, appearing to read 'Matthew Randazzo', is written over a horizontal line.

Matthew Randazzo, Tax Referee