

December 7th 2021

RE: Docket #99003

Parcel #36372

County Petition #202024

Respondent: Pamela Rushton - Clallam County Assessor

Appellants: Bruce and Bonnie McCloskey

It is the understanding of the Clallam County Assessor's Office that the Board of Equalization has the authority to rule on the removal or denial of current use application or the value of the property, but only the courts have the authority to rule on taxes paid under protest (See attached Document #1 - How to pay property taxes under protest). We, therefore, request a motion for Docket # 99003 to be dismissed.

We have also attached Document #2, **Property Tax Advisory 4.3.2012** that addresses information in law concerning the minimum acreage required to consider a home site integral to the operation of the farm. See the information below for clarity.

Boards of Equalization are limited to considering only that which is specifically authorized by statute. Boards are given jurisdiction over Assessor determinations to remove parcels from current use classification under **RCW 84.34.108**. Itemized below is the appropriate rule outlining the above statement.

WAC 458-14-015(1)(e):

(1) Boards have jurisdiction to hear all appeals as may be authorized by statute, including the

Following types of appeals:

(e) Current use determinations pursuant to RCW 84.34.035, denial of application for farm and agricultural land, and RCW 84.34.108, **removal from current use classification** and appeal of new assessed valuation upon removal of current use classification.

Statute directs the assessor to remove land classified under RCW 84.34 when the following conditions occur. Additionally, the assessor is obligated to impose additional taxes in certain circumstances. The below statute provides taxpayers with recourse when land is removed from classification under RCW 84.34.

RCW 84.34.108:

(1) When land has once been classified under this chapter, a notation of the classification must be made each year upon the assessment and tax rolls and the land must be valued pursuant to RCW 84.34.060 or 84.34.065 **until removal of all or a portion of the classification by the assessor** upon occurrence of any of the following:

(a) Receipt of notice from the owner to remove all or a portion of the classification;

(b) Sale or transfer to an ownership, except a transfer that resulted from a default in loan payments made to or secured by a governmental agency that intends to or is required by law or regulation to resell the property for the same use as before, making all or a portion of the land exempt from ad valorem taxation;

(c) Sale or transfer of all or a portion of the land to a new owner, unless the new owner has signed a notice of classification continuance, except transfer to an owner who is an heir or devisee of a deceased owner or transfer by a transfer on death deed does not, by itself, result in removal of classification. The notice of continuance must be on a form prepared by the department. If the notice of continuance is not signed by the new owner and attached to the real estate excise tax affidavit, all additional taxes, applicable interest, and penalty calculated pursuant to subsection (4) of this section become due and payable by the seller or transferor at time of sale. The auditor may not accept an instrument of conveyance regarding classified land for filing or recording unless the new owner has signed the notice of continuance or the additional tax, applicable interest, and penalty has been paid, as evidenced by the real estate excise tax stamp affixed thereto by the treasurer. The seller, transferor, or new owner may appeal the new assessed valuation calculated under subsection (4) of this section to the county board of equalization in accordance with the provisions of RCW 84.40.038. Jurisdiction is hereby conferred on the county board of equalization to hear these appeals;

(d)(i) **Determination by the assessor**, after giving the owner written notice and an opportunity to be heard, **that all or a portion of the land no longer meets the criteria for classification under this chapter**. The criteria for classification pursuant to this chapter continue to apply after classification has been granted.

(3) **Within thirty days after the removal** of all or a portion of the land from current use classification under subsection (1) of this section, **the assessor must notify the owner in writing**, setting forth the reasons for the removal. **The seller, transferor, or owner may appeal the removal to the county board of equalization** in accordance with the provisions of RCW 84.40.038. The removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization.

(4) **Unless the removal is reversed on appeal**, the assessor must revalue the affected land with reference to its true and fair value on January 1st of the year of removal from classification. Both the assessed valuation before and after the removal of classification must be listed and taxes must be allocated according to that part of the year to which each assessed valuation applies. Except as provided in subsection (6) of this section, **an additional tax, applicable interest, and penalty must be imposed, which are due and payable to the treasurer thirty days** after the owner is notified of the amount of the additional tax, applicable interest, and penalty. As soon as possible, the assessor must compute the amount of additional tax, applicable interest, and penalty and the treasurer must mail notice to the owner of the amount thereof and the date on which payment is due. The amount of the additional tax, applicable interest, and penalty must be determined as follows:

(6) **The additional tax, applicable interest, and penalty specified in subsection (4) of this section may not be imposed if the removal of classification pursuant to subsection (1) of this section resulted solely from:**

(a) Transfer to a government entity in exchange for other land located within the state of Washington;

(b)(i) A taking through the exercise of the power of eminent domain, or (ii) sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power, said entity having manifested its intent in writing or by other official action;

(c) A natural disaster such as a flood, windstorm, earthquake, wildfire, or other such calamity rather than by virtue of the act of the landowner changing the use of the property;

(d) Official action by an agency of the state of Washington or by the county or city within which the land is located which disallows the present use of the land;

(e) Transfer of land to a church when the land would qualify for exemption pursuant to RCW 84.36.020;

(f) Acquisition of property interests by state agencies or agencies or organizations qualified under RCW 84.34.210 and 64.04.130 for the purposes enumerated in those sections. At such time as these property interests are not used for the purposes enumerated in RCW 84.34.210 and 64.04.130 the additional tax specified in subsection (4) of this section must be imposed;

(g) Removal of land classified as farm and agricultural land under RCW 84.34.020(2)(f);

(h) Removal of land from classification after enactment of a statutory exemption that qualifies the land for exemption and receipt of notice from the owner to remove the land from classification;

(i) The creation, sale, or transfer of forestry riparian easements under RCW 76.13.120;

(j) The creation, sale, or transfer of a conservation easement of private forestlands within unconfined channel migration zones or containing critical habitat for threatened or endangered species under RCW 76.09.040;

(k) The sale or transfer of land within two years after the death of the owner of at least a fifty percent interest in the land if the land has been assessed and valued as classified forestland, designated as forestland under chapter 84.33 RCW, or classified under this chapter continuously since 1993. The date of death shown on a death certificate is the date used for the purposes of this subsection (6)(k); or

(l)(i) **The discovery that the land was classified under this chapter in error through no fault of the owner.** For purposes of this subsection (6)(l), "fault" means a knowingly false or misleading statement, or other act or omission not in good faith, that contributed to the approval of classification under this chapter or the failure of the assessor to remove the land from classification under this chapter.

(ii) For purposes of this subsection (6), the discovery that land was classified under this chapter in error through no fault of the owner is not the sole reason for removal of classification pursuant to subsection (1) of this section **if an independent basis for removal exists**. Examples of an independent basis for removal include the owner changing the use of the land or failing to meet any applicable income criteria required for classification under this chapter.

The jurisdiction of the Board of Tax Appeals includes decisions of local Boards of Equalization. However, nothing in statute expands the authority of the Board of Tax Appeals over that of a Board of Equalization, with respect to a removal from current use classification under RCW 84.34. The matter before the BTA, is the decision of the Clallam BOE to uphold the Clallam County Assessor's removal of a one acre home site. The corrected BOE decision references the available remedy to dispute the imposition of additional taxes, interest, and penalties as paying the taxes under protest and filing suit in superior court.

RCW 84.08.130:

(1) Any taxpayer or taxing unit feeling aggrieved by the action of any county board of equalization may appeal to the board of tax appeals by filing with the board of tax appeals in accordance with RCW 1.12.070 a notice of appeal within thirty days after the mailing of the decision of such board of equalization, which notice shall specify the actions complained of; and in like manner any county assessor may appeal to the board of tax appeals from any action of any county board of equalization. There shall be no fee charged for the filing of an appeal. The board shall transmit a copy of the notice of appeal to all named parties within thirty days of its receipt by the board. Appeals which are not filed as provided in this section shall be dismissed. The board of tax appeals shall require the board appealed from to file a true and correct copy of its decision in such action and all evidence taken in connection therewith, and may receive further evidence, and **shall make such order as in its judgment is just and proper.**

RCW 82.03.130

(1) The board shall have jurisdiction to decide the following types of appeals:

(b) **Appeals from a county board of equalization pursuant to RCW 84.08.130.**

The McCloskey's home site was removed due to a change in use, attached Document #3.

RCW 84.34.080

When land which has been classified under this chapter as **open space land, farm and agricultural land**, or timberland **is applied to some other use**, except through compliance with RCW 84.34.070, or except as a result solely from any one of the conditions listed in RCW 84.34.108(6), the owner shall within sixty days notify the county assessor of such change in use **and additional real property tax shall be imposed upon such land** in an amount equal to the sum of the following:

- (1) The total amount of the additional tax and applicable interest due under RCW 84.34.108; plus
- (2) A penalty amounting to twenty percent of the amount determined in subsection (1) of this section.

The taxpayers are arguing that they were misled to understand RCW 84.34.020(2)(d) (should be 84.34.020(2)(f)) and that this rule applied to their "home site". However, this rule specifies that in order to allow the land under the principal residence to be classified as farm or agricultural land, the parcel must equal twenty or more acres.

WAC 458-30-317(3):

(3) **Requirements for classification.** The land on which the principal residence of a farm operator or the owner of land is situated and the housing for farm or agricultural employees is situated may be classified as farm and agricultural land if it meets the following conditions:

- (a) The **land on which the residence or housing stands is twenty or more acres** or multiple parcels that are contiguous and total twenty or more acres; and
 - (i) Primarily used to produce livestock or agricultural products for commercial purposes; or
 - (ii) Enrolled in the federal Conservation Reserve Program or its successor administered by the United States Department of Agriculture; and
- (b) The use of the residence or housing is integral to the use of the classified land for commercial agricultural purposes.

Sincerely,



Pamela Rushton

Clallam County Assessor

Paying Your Property Taxes Under Protest ^{#1}

SEPTEMBER 2012

There are two ways to appeal your property tax valuation

- File a petition contesting your valuation with the County Board of Equalization.
- File a written protest at the time you pay your tax and then file an action in superior or federal court. If you are filing in superior or federal court, you must take action on your own. You can get more information about filing with the Board of Equalization from your local County Board of Equalization or assessor's office.

Filing a written protest when you pay property tax.

You are required to take the following actions:

- Present a written protest to the county treasurer at the time of payment of the tax.
- List in writing all the reasons why you feel the tax is unfair.

Filing your protest at the time you pay the property tax will allow you to appeal to superior court. You must take further action to file a claim in court on your own.

The county treasurer cannot provide you with any form of legal advice. The responsibilities of the treasurer are limited to accepting protests and notifying the taxing districts. This allows the taxing districts to make informed decisions when facing possible refunds for taxes already paid.

You may want to consult an attorney before submitting your letter of protest. The law has very strict requirements and you may jeopardize your case if the letter of protest is incomplete.

The following copy of the **Washington Administrative Code 458-18-215** explains the protest procedure.

1) Introduction

This rule explains and implements the procedures to be followed to comply with RCW 84.68.020. This statute imposes the requirement that property taxes be paid under protest in order to preserve the taxpayer's right to bring an action in court for a refund. The intent of the rule is to clarify the rights and responsibilities of taxpayers with respect to paying taxes under protest. This rule does not explain nor apply to the provisions of chapter 84.69 RCW, which describe alternative procedures for obtaining property tax refunds in factual circumstances that do not require the tax to be paid under protest.

2) What constitutes a valid protest

In order to preserve a right to bring an action in court for refund of any property tax paid, a taxpayer must at the time of payment of the tax, submit to the county treasurer a written protest setting forth all the grounds upon which the tax, or any portion of the tax, is claimed to be unlawful or excessive. When the taxpayer pays the tax in two installments, the right to bring an action in court for refund of any



WAC 458-18-215 Refunds—Payment under protest requirements

property tax paid is preserved if a written protest, as provided in this section, accompanies the first installment payment and indicates that the protest is a continuing protest with respect to the taxes payable for the entire year. No protest accompanying a tax payment shall be deemed to include protest of taxes due in succeeding years. A statement on a check or money order that the tax is being paid under protest is not sufficient to preserve the right to seek a refund in court. Any tax paid without a written protest, as provided in this section, is considered to be voluntarily paid and nonrefundable.

3) Sufficiency of protest

The written protest is intended to provide the taxing authorities with notice that the taxpayer is disputing the right to collect the tax and also to provide notice to the taxing authorities of the grounds upon which the taxpayer bases the protest. Any written protest which clearly states that the taxpayer disputes liability for the tax or a part thereof, and states all the reasons for the dispute constitutes a sufficient notice and a sufficient protest for the purposes of this section. When the taxpayer submits a written protest as provided in this section, the taxpayer is thereafter prohibited from raising other or additional grounds as the basis for the dispute.

4) Notice to taxpayers of protest requirements

A prominent notice of the written protest requirement shall be included as part of, or enclosed with, property tax statements.

Example one: To preserve your right to seek a court ordered refund, you must submit a separate written statement to the county treasurer at the time you pay the tax stating (1) you are paying the tax or a portion of the tax under protest and (2) all of the reasons why you believe the tax paid is unlawful or excessive.

Example two: To preserve your right to seek a court ordered refund, you must comply with requirements of the law (RCW 84.68.020 and WAC 458-18-215). Copies are available from the county treasurer.

5) Effective date

This rule is effective for taxes due in 1994 and thereafter.

For more information, please call the Property Tax Division at (360) 534-1400
<http://dor.wa.gov>

To inquire about the availability of this publication in an alternate format for the visually impaired, please call (360) 705-6715.

Teletype (TTY) users please call (360) 705-6718.



This material is intended for general information purposes and does not alter or supersede any administrative regulations or rulings issued by the Department of Revenue.

Property Tax Advisory

#2

Property Tax Advisories are interpretive statements authorized by RCW 34.05.230.

NUMBER: PTA 4.3.2012

ISSUE DATE: 3/19/2012

Specific Question Pertaining to the Administration and Qualification of the Land on Which a Residence is Sited for Property Classified as Farm and Agricultural Land Under Chapter 84.34 RCW

Question: When a residence located on land classified as farm and agricultural land under RCW 84.34.020(2)(f) is not occupied by a farm owner or operator and is not used in connection with the farm operation, does that land qualify to be included within the total parcel classified as farm and agricultural land classification under RCW 84.34.020(2)?

Answer: The Department of Revenue's answer is no. The correct administration for a parcel of land on which a residence is sited that does not qualify under RCW 84.34.020(2)(f) is to segregate the unqualified area from classification and value that portion at its true and fair market value. The following analysis supports the Department of Revenue's answer.

The process for the listing and assessment of property for purposes of ad valorem taxation is delineated under chapter 84.40 RCW. Specifically, RCW 84.40.030 sets forth the basis for the valuation of real property and states, in pertinent part, that "all real property shall be appraised at one hundred percent of its true and fair value in money...unless specifically provided otherwise by law."

Implicit in determining true and fair value is the principle of highest and best use. That principle is identified in WAC 458-07-030(3) which states, in pertinent part, that "unless specifically provided otherwise by statute, all property shall be valued on the basis of its highest and best use for assessment purposes. Highest and best use is the most profitable, likely use to which a property can be put. It is the use which will yield the highest return on the owner's investment."

Because property is valued on the basis of its highest and best use, the Legislature recognized it was in the state's best interest to promote the preservation of open space lands, timber lands, and farm and agricultural lands. Therefore, the Legislature enacted the Open Space Taxation Act, creating the Current Use Program under chapter 84.34 RCW. The enactment of this program allows for some property owners to have their land assessed and valued on the basis of its "current use," rather than its "highest and best use," usually resulting in lower assessed values. In order for the land to be classified in the program, property owners must meet specific requirements as to the use of the land.

To inquire about the availability of this document in an alternate format for the blind or those with vision loss, please call (360) 705-6715. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY) users.

Please direct comments to:
Department of Revenue
Property Tax Division
P O Box 47471
Olympia, Washington 98504-7471
(360) 534-1400

The Legislature also understood that land classified in the current use program resulted in a tax-shift because of the reduced valuation. Consequently, they implemented a means of collecting back taxes in the event that the requirements for the use of the land were not adhered to by the land owner.

Under RCW 84.34.020 (2), farm and agricultural land is defined, in part, to mean:

- (a) Any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres:
 - (i) Devoted primarily to the production of livestock or agricultural commodities for commercial purposes;
 - (ii) Enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture; or
 - (iii) Other similar commercial activities as may be established by rule;
- (f) The land on which housing for employees and the principal place of residence of the farm operator or owner of land classified pursuant to (a) of this subsection is sited if: The housing or residence is on or contiguous to the classified parcel; and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes.

This statute stipulates that the land must be devoted primarily to the production of livestock or agricultural commodities for commercial purposes. It also stipulates that the land on which a residence is located *may* be classified as farm and agricultural land *if* the land is 20 acres or more and the land is the principal place of residence of the farm operator or owner and the housing is integral to the use of the classified land for agricultural purposes. The land is not eligible for classification if it does not meet these criteria. In fact, prior to 1992, RCW 84.34.020(2)(f) did not exist.

Furthermore, RCW 84.34.065, which provides a method of valuation for property classified as farm and agricultural land, was revised in 1992 to include a method for valuing land that qualifies under RCW 84.34.020(2)(f). Likewise, revisions to WAC 458-30-260, effective November 1995, reflected valuation procedures addressing land that does not qualify under RCW 84.34.020(2)(f). Specifically, WAC 458-30-260(8) states in pertinent part that “if the residence or housing for employees does not meet all the requirements for classification [under RCW 84.34.020(2)(f)], the land may not be classified as farm and agricultural land and it must be valued at its true and fair value.” [Emphasis added.]

When land fails to qualify, or no longer continues to qualify, under RCW 84.34.020(2)(f), then the land attributable to the residence – typically referred to as a homesite – is removed from classification and is valued at its true and fair value under RCW 84.40.030. The typical homesite area used by most assessors is one acre. Despite the fact that no statutory basis exists for a one-acre homesite, the Washington Board of Tax Appeals in Garlinger v. Rausch, BTA Docket No. 51609 (1998) made “official notice” of a one-acre homesite. The Board stated in their *ANALYSIS AND CONCLUSIONS* that “based on numerous hearings before this board, we [BTA] take official notice of the fact that one acre is the generally accepted standard used by assessors in valuing homesites located on land which falls under the various open space classifications.”

#2 cont

Two different scenarios exist that must be considered as a result of the answer to the initial question, for correct administration of related land. Those scenarios are:

- (a) An initial application is made for a 20-acre parcel (or multiple parcels totaling 20 acres), but the land on which the residence (homesite) is sited does not meet the requirements under RCW 84.34.020(2)(f);
- (b) A 20-acre parcel (or multiple parcels totaling 20 acres) that was previously classified as farm and agricultural land, but the land on which the residence (homesite) is sited no longer meets the requirements under RCW 84.34.020(2)(f).

If one acre is used for a homesite area, then – in the scenarios noted – the Department would interpret that, upon removal of the one-acre homesite from the 20-acre parcel, a 19-acre parcel of *classified* land remains. Consequently, those 19 acres are subject to the minimum income or investment requirements outlined in RCW 84.34.020(2)(b) or (d), as applicable.

Likewise, in the event that a one-acre homesite is removed from classification because the residence no longer qualifies under RCW 84.34.020(2)(f), the residual 19 acres remain the *classified* farm and agricultural land. Those 19 acres then become subject to the minimum income or investment requirements outlined in RCW 84.34.020(2)(b) or (d), as applicable.

In summary, land that does not meet the requirements or criteria for the current use program under chapter 84.34 RCW may not be classified. The Department contends that no provision exists for a homesite to be classified or valued as farm and agricultural land when it does not meet the criteria under RCW 84.34.020(2)(f).

#3

COPY

When Recorded Return to:

Clallam County Assessor's Office
223 East 4th Street, Suite 2
Port Angeles, WA 98362

Attn: Current Use

**NOTICE OF REMOVAL OF CURRENT USE CLASSIFICATION
AND ADDITIONAL TAX CALCULATIONS
Chapter 84.34 RCW
CLALLAM COUNTY**

Grantor(s): CLALLAM COUNTY
Grantee(s): BRUCE AND BONNIE MCCLOSKEY
Mailing Address: 5883 OLD OLYMPIC HWY
SEQUIM, WA 98331
Legal Description: LOT 4 ANGEL PLAT V 14 P36, RECORDS OF CLALLAM COUNTY
11.04 ACRES

Assessor's Property Tax Parcel or Account Number: 043010-520040 (PID 36372)
Reference Numbers of Documents Assigned or Released: n/a

You are hereby notified that the current use classification for the above described property which has been classified as:

☐ Open Space Land ☒ Farm and Agricultural Land

is being removed for the following reason:

☐ Owner's request
☐ Property no longer qualifies under Chapter 84.34 RCW
☒ Change in use under RCW 84.34.080

☐ Sale/transfer to government entity

☐ Notice of Continuance not signed

☒ Other SFD CONSTRUCTION UNDER PERMIT BPT2019-222 CAUSES
REMOVAL OF ONE ACRE HOME SITE FROM CLASSIFICATION