

THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON

BRUCE AND BONNIE MCCLOSKEY,	)	
	)	
Appellant,	)	Docket No. 99003
	)	
v.	)	
	)	ORDER REQUESTING BRIEF OF AMICUS
PAMELA RUSHTON,	)	
Clallam County Assessor,	)	CURIAE FROM WASHINGTON STATE
	)	
Respondent.	)	DEPARTMENT OF REVENUE
	)	
_____	)	

FACTS

In 2013, Bruce and Bonnie McCloskey (the McCloskeys) purchased 11 acres of farm and agricultural land. The McCloskeys signed a Notice of Classification Continuance that stated, in pertinent part, that: “The additional tax, interest and/or penalty shall not be imposed if the withdrawal or removal from classification resulted solely from removal of classified farm and agriculture land on which the principal residence for the farm operator or owner or housing for employees.” Subsequently, the McCloskeys built a residence on a portion of the 11 acres.

PROCEDURAL HISTORY

The Clallam County Assessor (Assessor) removed the portion of the property being used as a residence from the classification of farm and agricultural land effective September 30, 2020. The McCloskeys petitioned the Clallam County Board of Equalization (County Board) contesting the back taxes and penalties, but not the removal. The McCloskeys argued that they relied upon the language in the Notice of Classification Continuance, which did not state that the farm had to be more than 20 acres for the classification to continue to apply to the entire property.

The County Board issued an Order on March 1, 2021 that upheld the Assessor’s removal of the portion of the land being used as a residence from the classification, but reversing the assessment of back taxes, penalties, and interest. The County Board held that the assessment of

back taxes, penalties, and interest contradicted the language in the Notice of Classification Continuation.

On April 12, 2021, the County Board issued a Revised Order rescinding the portion of the original Order that reversed the Assessor's imposition of the back taxes, penalties, and interest. The Order stated that the Department of Revenue (DOR), had contacted the County Board and informed them that it "lack[s] the jurisdiction and authority to make determinations related to taxes, penalties, or interest." The McCloskeys appealed to the Board of Tax Appeals (BTA). In their appeal, the McCloskeys do not contest whether the removal was proper, but do contest the imposition of back taxes, penalties, and interest.

The BTA held a pre-hearing conference on November 29, establishing a briefing schedule. At that hearing, the presiding Tax Referee informed the parties of the BTA's intent to request amicus curiae participation from DOR and allowed the parties the opportunity to object. Neither party objected.

#### AUTHORITY

The appellate court may ask for an amicus brief at any stage of review.<sup>1</sup> While no rule expressly permits trial courts to accept amicus participation, no rule expressly forbids it, and trial judges should have the discretion to permit such participation if it may be helpful.<sup>2</sup> "The Purpose of an amicus brief is to help the court with points of law."<sup>3</sup> The BTA may, on its own motion, request a brief of amicus curiae.<sup>4</sup> Attorneys and laypersons alike may submit amicus curiae briefs.<sup>5</sup>

#### ORDER

The BTA requests DOR submit an amicus curiae brief on or before January 10, 2022, on the issue of jurisdiction. Specifically, whether the BTA has the authority to grant the McCloskeys relief from the imposition of back taxes, penalties, and interest on the portion of the land being

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<sup>1</sup> RAP 10.6.

<sup>2</sup> *Parsons v. State, Dep't of Soc. & Health Servs.*, 129 Wn. App. 293, 302, (2005).

<sup>3</sup> *Ochoa Ag Unlimited, L.L.C. v. Delanoy*, 128 Wn. App. 165, 172 (2005).

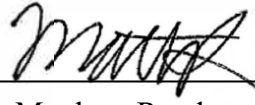
<sup>4</sup> WAC 456-10-507.

<sup>5</sup> *Young Americans For Freedom v. Gorton*, 91 Wn. 2d 204, 208, (1978).

used as a residence, even though the McCloskeys are not contesting the Assessor's removal of that portion of land.

ISSUED December 8, 2021.

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

Matthew Randazzo, Tax Referee