

Board of Tax Appeals

Docket No. 99003

November 10, 2022

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STATE OF WASHINGTON  
BOARD OF TAX APPEALS

Appellants: Bruce and Bonnie McCloskey

Opening Brief, Exhibit List, Evidence for Board hearing: 1/5/2023

After reviewing the Board of Tax Appeals (BTA) Order denying respondent's motion to dismiss we make the following assumptions going forward with our appeal:

1. The Board does have jurisdiction to hear our appeal of back taxes, interest and penalties related to our property in question.
2. The question of whether the Clallam County Board of Equalization had the authority to agree with our position is not pertinent to this appeal.
3. The issue before us is to provide evidence that documents our position asking for reversing the assessment of back taxes, interest and penalties.

## Synopsis

On November 25, 2013 we signed a document<sup>1</sup> provided by Clallam County as part of the closing and purchase of our property at 5883 Old Olympic Highway, Sequim, Washington 98382. The publication version date in the lower left-hand corner of the form is: 8/21/09. Page 3 of that document, 3 (g)<sup>2</sup> details when "additional tax, interest, and/or penalty shall not be imposed if the withdrawal or removal from classification resulted solely from:

- g. removal of classified farm and agricultural land on which the principal residence of the farm operator or owner or housing for employees;
- l. The discovery that the land was classified in error through no fault of the owner.

Both of these exemptions apply in our case.

We received a letter dated September 30, 2020<sup>3</sup> from the Clallam County Assessor's Department (Jim Podlesny) advising us on the removal of one acre from Farm and Agriculture classification as a result of residential construction and advising of a forthcoming billing statement from the Treasurer's office. Note the publication version date on page 2 of 1/8/2016.<sup>4</sup> I called Jim Podlesny to discuss the letter. As part of that conversation he advised that we could appeal this decision to the County BOE, but we should pay the billing statement

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<sup>1</sup> See A1

<sup>2</sup> See A1-3,(3)(g),(l)

<sup>3</sup> See A2

<sup>4</sup> See A2-2

to avoid accruing additional interest/penalties for non-payment. We received the billing statement<sup>5</sup> on October 15, 2020 with instructions to make payment by October 31, which we did on October 27, 2020.

Our appeal was based on the information we received from the County signed at closing for purchasing the property. We understood the language exempting “additional tax, interest, and/or penalty” for “removal of classified farm and agricultural land on which the principal residence of the farm operator or owner or housing for employees”<sup>6</sup>. We also understood the additional form<sup>7</sup> we signed at closing asking for the anticipated annual income from the property was part of insuring we met the definition of “farm and agriculture land” on page 2 of the county form<sup>8</sup>. It all fit together and building our home would not be an issue. We are not appealing the increase in property value as a result of the construction of our home, but rather only the back taxes, interest and penalties.

The Clallam BOE initially agreed with our appeal<sup>9</sup> only to be over-ruled by the Washington Department of Revenue (DOR) advising that they did not have the authority to reverse the back taxes, interest and penalties<sup>10</sup>.

We followed the only appeal process available to us since we had already paid the back taxes, interest and penalties (as directed by the County): appeal to BTA. We have followed the appeal process and feel strongly we were at the very least “mislead” and put into a corner with

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<sup>5</sup> See A3-1.2

<sup>6</sup> See A1-3,(3)(g),(l)

<sup>7</sup> See A4

<sup>8</sup> See A1-2 (2)(b)

<sup>9</sup> See A5

<sup>10</sup> See A6

no other options. In our minds we knew the rules as presented in the paperwork we signed when purchasing the property. That paperwork evidently was incorrect or not accurate.

As mentioned above, the date in the lower left-hand corner of the document we signed<sup>11</sup> is (8/21/09). We assume this is date of publication of the form, as is normal practice. The identical form included with the Notice of removal letter from the County Assessor's office<sup>12</sup> has (1/8/2016) in the lower left-hand corner. We found an online copy of the same form with (05/20/2020) in the lower left-hand corner and on page 4, 4(c)(g) at the top of page, clear language regarding the issue at hand<sup>13</sup>. We assume these changes in the form have occurred in an attempt to clarify or reflect changes in the laws and rules since 2009 or hopefully to be clearer and more understandable for the general public. County Assessor Rushton acknowledged the form we signed in 2013 "could have explained things a lot better".<sup>14</sup> We point out these modifications to acknowledge what we hope are improvements and more clear guidance for the public. Notwithstanding, however, we should only be held accountable to the version of the agreement we signed in 2013.

We feel strongly the issue of equitably estoppel applies in our case. We signed an agreement with language we understood would allow us to build our home with no negative consequences other than the expected increase in annual taxes from a new home. As long as

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<sup>11</sup> See A1

<sup>12</sup> See A2-2

<sup>13</sup> See A9

<sup>14</sup> See A10-3

the remainder of the 11 acres (10.04 acres) remained in agriculture there would be no issues. That was our intention since the day we purchased the property. We made no effort to hide that activity. We have increased the number of acres in active cultivation, employ 2 fulltime and 8 part time employees (in 2022), and intend to continue to maintain and operate our farm indefinitely. We are not protesting the additional taxes imposed with the construction of our home. If legislative intent (with regards to this issue) was not intended to apply to properties less than 20 acres, careful attention needed to be given to the paperwork provided for unknowing purchasers of applicable property. To change the rules after the fact is not right.

#### Addressing Assessor's Arguments

1. We should have paid our taxes under protest and filed a suit with Superior Court

We received the Corrected Property Tax Statement 10/15/2020 with "Pay or Postmark by October 31" instructions<sup>15</sup>. The BOE letter to us acknowledging our appeal petition advises us to pay our taxes on time regardless of the appeal timeline<sup>16</sup>. We are advised in the Corrected Decision BOE letter dated 4/14/2021 that we might consider paying under protest<sup>17</sup>. How is that possible almost 6 months after they have been paid? The 2-page document dated September 2012<sup>18</sup>

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<sup>15</sup> See A3

<sup>16</sup> See A7

<sup>17</sup> See A6

<sup>18</sup> See A8

that we were provided with : "Paying Your Property Taxes Under Protest" states there are 2 ways to appeal your property tax valuation

- File a petition contesting your valuation with the BOE
- Written protest / file action in Superior or Federal Court.

We chose the first option and have met the deadlines and followed the steps as we understand them.

RCW 84.08.130 details how any taxpayer feeling aggrieved by the action of any BOE may appeal to the BTA. WAC 458-14-170 details how any taxpayer feeling aggrieved by the action of a board may appeal to the BTA.

#### Analysis

Assuming the process we followed is legal and appropriate, which is true in our minds, we ask the overall question: What went wrong here? We don't question the RCW's or their intention. The County feels they must follow them, as written, which we understand. The problem lies in what we were provided by the County at the time of purchasing the property. We understood those were "the rules" as provided in 2013. Here 9 years later the county argues that even though what they provided was not clear, we must play by different rules, the rules we meant to provide you 9 years ago and failed to do so. We understand that is what equitable estoppel is all about and should apply in our case. We understand a potential concern over precedent, should we prevail in our appeal, but that should not preclude doing what is right.

## Summary

As per the county-provided documents we signed at the time of purchasing our property, we understood the ramifications of building our home on the property to be an increase in taxes, but exempt from back taxes, interest and penalties. We accepted those conditions. When assessed back taxes, interest and penalties (\$10,062.46) we promptly paid them as directed by the county, then promptly appealed to the BOE, as directed by the County. The BOE initially agreed with our appeal, then issued a revised decision after DOR advised them the BOE did not have the authority to agree with our appeal. Thankfully, the BTA has concluded the BTA does have the authority to hear our appeal. The basis of our appeal is we had a written agreement with the county, acknowledged by the BOE, with a DOR-driven authority question raised and the county believes they have no other choice but to assess the back taxes, interest and penalties, consistent with DOR direction. Washington laws anticipate circumstances may arise that deserve reconsideration through an appeal process. Those laws also provide for granting the relief we are requesting.

## Unresolved Issue

This appeal process has raised a much larger issue: the authority (or lack of) of the BOE and the BTA with regards to reversing back taxes, interest and penalties. A letter from the DOR in fact asserts that lack of authority has been a long-standing practice with DOR<sup>19</sup>. We would hope the question of whether a county BOE has the authority to grant equitable estoppel would be addressed. Although not specifically addressed in our appeal, it is a critical point. If in

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<sup>19</sup> See A11

fact the BOE did have that authority, there would have been no need for us to appeal. Or put another way, can a BOE reverse an Assessor's decision to assess back taxes, interest and penalties to a property owner (assuming justification)? From our reading, WAC -14-015(1)(e) and RCW 84.34.108(4) and (6) indicate that may be the case. Either way, it is an important question that should be resolved. We raise that question in this appeal, with the hope it can be resolved from a legal standpoint, given DOR's long-standing practice and interpretation. It could have saved many hours of time and money for ourselves, the Assessor's office and BTA staff.

#### Legal References

##### RCW

84.03.130 (1)(b)	Jurisdiction of BTA to hear any taxpayer aggrieved by BOE
84.08.130	Appeals from BOE to BTA
84.34.020	Definition of Farm and Agriculture land
84.34.108 (4)	With a successful appeal, back taxes, interest and penalties not imposed
84.34.108 (6)(l) & (i)	Additional tax, interest and penalty may not be imposed...
84.34.111	All remedies available
84.40.038	Reasons to petition BOE for a change in valuation
84.69.020	Obtaining property tax refunds that do not require the tax to be paid under protest; grounds for refunds if ordered by BTA



WAC

- 458-18-215(1) Payment under protest does not apply to 84.69 RCW
- 458-14-015(1)(e) Jurisdiction of BOE includes RCW 84.34.108
- 458-14-170 Similar to RCW 84.08.130; any taxpayer aggrieved by a board may appeal to BTA

Relief Sought

We request a refund of our \$10,062.46 paid for back taxes, interest and penalties, plus interest from the time of payment until the refund is made.

Exhibit List

- A-1 11/25/2013 Notice of Continuance signed at closing for purchase of property
- A-2 9/30/2020 Letter from County Assessor's Department notifying removal and forthcoming compensating tax and billing statement
- A-3 10/15/2020 Corrected Property Tax Statement
- A-4 11/25/2013 Assessor's Office: Farm Management Information Sheet
- A-5 3/22/2021 BOE original Order (later modified)
- A-6 4/14/2021 BOE Order as modified

- A-7 10/19/2020 BOE letter advising to pay taxes when due
- A-8 4/14/2021 Attachment to BOE Order advising 2 ways to appeal
- A-9 11/9/2022 Blank Notice of Continuance version dated 05/20/2020 (current?)
- A-10 9/24/2021 Email with Assessor Rushton
- A-11 1/10/2022 Letter from DOR regarding jurisdiction and authority of BOE

NOTE:

We are unsure of what evidence is included in the county board record, but we assume that evidence is available to the BTA as part of this appeal.

Submitted by:

Bonnie D McCloskey

Bonnie D McCloskey