

Disqualification Chapter

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Disqualification Chapter

1. Before You Disqualify

Process each disqualification with the understanding that the action can be appealed. It is very important to select the correct statutory reason and to follow the appropriate procedures for disqualification. You will need to be prepared to defend the action in court. Failure to cite the correct statute for disqualification could render the disqualification invalid (See Appendix F, *Smith v. Department of Revenue and Marion County*). The objective is to provide accurate administration of the special assessment programs.

2. Declassification of 'Highest and Best Use' Forestland

Land in eastern and western Oregon that is assessed as 'highest and best use' (H&BU) forestland will be declassified from that assessment when:

1. The 'highest and best use' is no longer forestland, or
2. The owner is granted a tentative approval for a non-farm dwelling and requests the assessor to declassify the land under ORS 215.236.

Lack of acceptable forest use or intent does not cause declassification of 'highest and best use' forestland. Market studies of the trends of like properties in the area will guide an appraiser to a decision on the proper property classification to use on a property. Stocking standards do not apply to 'highest and best use' forestland. If the stocking level of H&BU forestland is less than the minimum level used on designated forestland, this does not cause a declassification action to occur. A court case that addresses H&BU forestland is *Tollefson v. Department of Revenue* 1979. (See Appendix F).

Once the appraisal decision has been made that land no longer meets the criteria of 'highest and best use' forestland, then a declassification action must happen on the property. OAR 150-308.215(1)-(A) directs the appraiser to the definitions for the property classification system. This

lists the options an appraiser can use to place the property into another classification. The classifications are intended to be used on a statewide basis and not vary from county to county. All classifications must be based upon the 'highest and best use' of the land.

ORS 215.236 specifically speaks to removing the special assessment on '...the lot or parcel upon which the dwelling is proposed...' upon declassification of highest and best use (H&BU) forestland due to establishing a non-farm dwelling. Some planning departments create a partition prior to the establishment of the homesite. If this is done, declassify only the H&BU forestland that is on that parcel. Example: if a 40-acre parcel is to have a homesite and the process of creating the homesite does not partition the homesite area, declassify all of the H&BU forestland on the entire 40 acres. If a partition of the homesite occurs, declassify all of the H&BU forestland on the homesite parcel. It could be 1 acre, 2 acres, 5 acres or whatever the size of the partition when determining the number of acres to declassify.

There is no additional tax calculated or posted when highest and best use forestland is declassified. The specially assessed value (SAV) for the property is the real market value for 'highest and best use' forestland.

A notification is required for declassification of 'highest and best use' forestland per ORS 308A.718(2). If the change in assessment results in a value other than 'highest and best use' forestland, the taxpayer may submit an application for designated forestland under ORS 321.358(2) (western Oregon) or ORS 321.839(2) (eastern Oregon) no later than December 15 for the assessment year.

3. Specially Assessed Forestland Disqualification

3A. Disqualification of Designated Forestland

References: Designated Forestland, ORS 321.359 (western Oregon), ORS 321.842 (eastern Oregon).

The primary reason for disqualification of designated forestland involves the land no longer being held or used for the predominant purpose of growing and harvesting trees. It does not matter who manages the land as long as the predominant purpose of growing and harvesting trees is maintained. An owner of land can choose to allow another entity to use or lease the land. The land will still qualify for the special assessment. An owner can engage in incidental non-forest uses as long as the predominant purpose and forest use is not compromised.

A portion of a qualified designated forestland property may remain qualified if the balance of the property meets the criteria for disqualification.

3A1. Reasons for Disqualification

Designated forestland becomes disqualified if:

1. The assessor discovers that the land is no longer forestland:

A. Change to a non-forestland use. This occurs when the predominant purpose of the land is no longer the growing and harvesting trees (See 2B Predominant Purpose in the Qualification chapter).

Designated forestland is disqualified if the use is changed to a use other than a forest use as defined by ORS 321.257 and ORS 321.805. Removing stumps after a harvest of forestland acreage is an indication that a change of use may soon occur. The land may qualify for another special assessment. This qualification to another special assessment (referred to as a 'rollover') is supported by ORS 308A.706(1)(d) and ORS 308A.724(2). See Appendix G for counter questions about 'rollover' discussions with landowners.

B. The land no longer meets stocking and species requirements. By the end of the sixth full

calendar year after harvesting, the landowner must have established 'free-to-grow' trees that meet or exceed the minimum stocking level established by OAR 629-610-0020 (Oregon Forest Practice Rules). The reference for this time period is OAR 629-610-0040. For lands that have not had a recent harvest, there is specific language that addresses how to handle properties identified with stocking levels below minimum. In western Oregon, the statute reference is ORS 321.367. The time allowed for advising a landowner of their responsibility and expecting implementation of a reforestation plan is one year. If there is no compliance after that time, the statute states that upon receiving written notice from the State Forestry Department, the county assessor should proceed with a disqualification action. Because the statutes lack this specific language for eastern Oregon, it is recommended to use the same time frame to expect the landowner to implement a reforestation plan upon discovery of under-stocked designated forestland. See OAR 150-321.358(4) for western Oregon and OAR 150-321.839(4) for eastern Oregon.

If forestland acreage qualified for the designated forestland program due to a reforestation plan, it is important to monitor the activity on the land for compliance with the administrative rules stated above. A minimum of 20 percent of the area, but not less than 2 acres, must be planted by December 31 of the first assessment year. Each additional year after the first year, at least 20 percent of the area must be planted. At the end of the fifth year, 100 percent of the area must be planted. If the county assessor discovers that the landowner did not complete the plan to plant as scheduled, the assessor may disqualify all of the acres that are below stocking minimums. The rule does state that the assessor may grant extensions to fulfill planting requirements if the loss of planted stock occurs due to conditions beyond the control of the landowner.

2. The owner notifies the assessor to remove the special assessment. An owner may request to remove the designated forestland special assessment even if the land continues to qualify for the program. An example is when an owner is refinancing their property and the lender requires removal of the special assessment. Another example is when the owner applies for a non-farm dwelling under ORS 215.236. It is required

under this statute that the special assessment not be in place before approval would be granted for the home site. See ORS 321.359(1)(b)(A) (western Oregon) and ORS 321.842(1)(b)(A) (eastern Oregon) for the disqualification action due to owner request regarding designated forestland.

3. The land is sold or transferred to an owner making it exempt from property taxes. The reference for designated forestland is ORS 321.359(1)(b)(B) (western Oregon) and ORS 321.842(1)(b)(B) (eastern Oregon). Examples of owners that are exempt from property taxes are United States, state, counties, cities, school districts, ports and other municipal corporations. A state highway right-of-way may expand and acquire forestland for a road improvement project. A county may acquire forestland adjacent to an existing county forest to improve management efficiency or access.

4. A subdivision plat is recorded under ORS chapter 92. This disqualification action is supported by ORS 321.359(1)(b)(D) for western Oregon and ORS 321.842(1)(b)(D) for eastern Oregon. This action divides the land into four or more parcels within a calendar year, and the plat is recorded. Once land has been platted, disqualified, and additional taxes paid, any new account may re-qualify for designated forestland by application.

5. Land that is specially assessed as forestland in Oregon may qualify for the Riparian Habitat Exemption program upon application and approval of the application per ORS 308A.356 and ORS 308A.359. This action would result in the disqualification of western Oregon designated forestland and eastern Oregon designated forestland. The reference for this program is ORS 308A.350 through ORS 308A.383.

3A2. Timing of Disqualification

Disqualification “occurs” when the change is made to the assessment roll (See Appendix F for August 26, 2002 Attorney General Opinion and Oregon Tax Court case *Meeks v. DOR*).

Disqualifications that occur between January 1 and June 30 become effective as of January 1 of the current assessment year and therefore for the tax year beginning that July 1.

Disqualifications that occur between July 1 and December 31 become effective as of January 1 of the next assessment year, and therefore for the tax year beginning the following July 1.

However, if the disqualification is due to the land no longer being in forest use, the disqualification can occur at any time, but is effective only if the notice of disqualification is mailed on or before August 14 of the tax year for which the disqualification is asserted. (ORS 321.366, 321.845)

The status of specially assessed property for each tax year is effective as of July 1 of each year. The assessor must disqualify designated forestland with changes to the assessment roll on or before June 30 prior to the beginning of the tax year. The assessor must notify the taxpayer in writing within 30 days of the disqualification and state the reason for the disqualification (ORS 308A.718(3)). See section 3A(1) for disqualification reasons. The notice shall also include information about the option to place the land into another special assessment (ORS 308A.718(5)(a)(C)). If the owner wishes to move the land to another special assessment, then the owner must submit an application within 30 days of the date of the notice of disqualification (ORS 308A.724(3)).

After receiving the notice, the taxpayer may appeal the assessor’s action to the Magistrate Division of the Oregon Tax Court within 90 days (ORS 308A.718(4)).

3B. Disqualification of Small Tract Forestland (STF)

3B1. Reasons for Disqualification

1. The county assessor shall disqualify Small Tract Forestland for the following reasons per ORS 321.716:

(a) Sale or transfer of Small Tract Forestland,

(b) Discovery by the assessor that the land is no longer forestland. Predominant purpose of growing and harvesting trees of a marketable species is a central issue of the definition of forestland in the Small Tract Forestland program. If the predominant purpose changes, this could be a reason to conclude that the land is no longer

forestland. (See 2B Predominant Purpose in the Qualification chapter).

(c) The owner of STF property owns or holds in common ownership more than 5,000 acres of Oregon forestland,

(d) The owner of STF property owns or holds in common ownership less than 10 acres of Oregon forestland,

(e) The county assessor receives written notice from the State Forestry Department that the land no longer meets the stocking and species requirements applicable to STF under rules adopted by the Department of Revenue,

(f) The land qualifies for another special assessment listed in ORS 308A.706(1)d A, B, or F; **or**

(g) The recording of a subdivision plat under chapter 92 that subdivides the land

2. The assessor may disqualify land from STF if the owner did not supply written notification as required by ORS 321.712(3) when the owner acquires, either directly or through common ownership, one or more tax lots that are contiguous to the STF owned or held in common ownership by the owner.

3. Small Tract Forestland is disqualified when the land qualifies for the Riparian Habitat Exemption program. The reference for this program is ORS 308A.350 through ORS 308A.383.

4. An STF owner notifies the assessor to remove the special assessment. The only situation when an STF owner can request removal of the special assessment is when the owner applies for a non-farm dwelling under ORS 215.236. Before approval is granted for the home site, the land must be disqualified from special assessment.

3B2. Timing of Disqualification

The assessor has 15 months to discover a sale or transfer of STF property. The assessor must send the owner a letter stating the intent to disqualify and give the owner 30 days to respond. The disqualified land will automatically be placed in the designated forestland special assessment if

the land qualifies. The statute reference is ORS 321.716(3).

The timing discussed in section 3A2 of this chapter is the same for the Small Tract Forestland program.

4. Other Forest Related Disqualifications

4A. Exchanges of Specially Assessed Forestland with Governmental Entities ORS 308A.730

When forestland is exchanged with a government entity, a disqualification action is initiated. If the land acquired by a government agency or body is specially valued under farm statutes (ORS 308A.062 or 308A.068), forest statutes (western, ORS 321.257 to 321.390; eastern ORS 321.805 to 321.855; or small tract, ORS 321.700 to 321.754) and the land acquired from the government is not farmland in an EFU zone or 'highest and best use' forestland, the owner shall make application for special valuation as farm or forest. See the Special Provisions chapter for more information on this topic.

5. Notification of Disqualification

There are specific statutory requirements regarding the information that must be sent to a landowner when land is disqualified from special assessment. See Appendix H for Disqualification Notification Procedures. This appendix addresses disqualification from both farm and forest special assessment and includes sample letters that show the statutory required and suggested language to use in the notification process.

6. Appeals

Reference ORS 321.359(2) for western Oregon forestland, ORS 321.842(2) for eastern Oregon forestland, and ORS 321.706(7) for Small Tract Forestland Option.

These statute references describe the process that a landowner uses to appeal the denial of all or part of an application.

Appeals are to the Oregon Tax Court in the time and manner provided by ORS 305.404 to 305.560

ORS 305.275 states that any person may appeal to the magistrate division of the Oregon Tax Court if the person is aggrieved by and affected by an act, omission, order, or determination of:

- a. The Department of Revenue
- b. County board of property tax appeals
- c. A county assessor (including, but not limited to the denial of a special assessment),
- d. A tax collector

The appeal must be filed with:

Oregon Tax Court,
Magistrate Division
1163 State Street
Salem, OR 97301

The appeal must be filed within 90 days after the act, omission, or determination becomes known to the person. This means the person must file within 90 days after the notification of denial/removal of special assessment from one of the programs listed above.

A complaint or petition filed in the Magistrate Division requires a filing fee of \$25.

