

Additional Tax Chapter

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Additional Tax

1. General Information

Special assessment programs are in place to recognize that farm and forest properties are environmentally and economically beneficial to Oregon. When property is specially assessed, the owner pays reduced property taxes if they manage their land under the guidelines of the special assessment program. If a property ceases to meet the qualifications of special assessment, there is a potential “additional tax” on the property. The additional tax laws and procedures are similar on farm and forest properties. This chapter will focus on the provisions as they relate to forestland special assessments. For farm-related procedures, please refer to DOR’s *Farm Use Assessment Procedures* #150-303-422.

Specially assessed homesites generally do not have provisions to collect additional taxes.

Additional tax only applies to the years the land was specially assessed (ORS 308A.703(4)). Any years when the additional tax has already been collected or abated cannot be collected again. Additional tax cannot be collected for any year the land was not specially assessed (exempt or assessed at market value).

1A. Overview of Statutes

Additional tax statutes ORS 308A.700–733 apply to the following special assessments:

- 1) Exclusive Farm Use (EFU)
- 2) Non-exclusive Farm Use (non-EFU; all zones other than EFU)
- 3) Western Oregon Designated Forestland
- 4) Eastern Oregon Designated Forestland
- 5) Wildlife Habitat (WLH)
- 6) Small Tract Forestland (STF Option)

There are five basic scenarios regarding additional tax that will be addressed in this section:

1. The additional tax could be imposed and collectable following disqualification from special assessment. ORS 308A.703 is the statute that addresses the additional tax upon the land’s dis-

qualification from special assessment from 1A 1-5 listed previously.

2. The additional tax could be deferred upon disqualification. This means that the potential additional tax remains on the property, but the tax is not imposed or collectable, and the taxes are deferred. ORS 308A.706 lists circumstances when the additional taxes will be deferred upon disqualification from one the special assessments listed in 1A 1-5.

3. There are situations where the additional tax is not collectable upon disqualification. ORS 308A.709 lists situations when there will be no additional tax upon disqualification of special assessment.

4. Any additional tax that had been deferred under 308A.706 may later become imposed or collectable. ORS 308A.712 explains the situations and process for collecting additional taxes that had previously been deferred under ORS 308A.706.

5. ORS 308A.707 addresses additional taxes when land is disqualified from Small Tract Forestland.

1B. Additional Tax Versus Disqualification

Do not mix “additional tax” definitions and procedures with “disqualification” definitions and procedures. They are separate statutes and separate processes.

First there is a disqualification, and then consider whether or not to collect the additional tax. Not all disqualifications result in an additional tax. Sometimes the additional tax will be collected many years after the disqualification. It is important to keep the “potential additional tax” (PAT) notation on the assessment and tax roll. If in doubt, do not remove the notation from the roll.

It is possible that an entire account be disqualified and only portions require an additional tax computation. The other portions may have no additional tax or the additional tax is deferred. Careful review is needed of all uses, all acres, and reasons for disqualification separately. Some

portions may be affected differently than other portions.

2. Additional Tax Upon Disqualification

ORS 308A.703 addresses imposition of additional taxes upon disqualification from one of the special assessments listed in 1A (1-5). Information regarding the additional taxes for disqualification from STF is found in section 2C of this chapter.

Before deciding to collect, determine whether the additional taxes are collectable. Review the account history to make sure that any prior year's additional taxes have not been previously collected, deferred under ORS 308A.706, or forgiven under ORS 308A.709. If the additional taxes are in a deferred status under ORS 308A.706, you must follow ORS 308A.712 to process the additional tax for those years.

If neither ORS 308A.706 (deferred) or 308A.709 (no additional tax) apply, then the additional taxes are processed under ORS 308A.703.

Following disqualification, the additional tax imposed will be added to the next assessment and tax roll to be collected like other property taxes.

2A. Calculation of Taxes

The additional tax shall equal the difference between the taxes assessed against the land and the taxes that would have otherwise been assessed against the land had the land not been specially assessed. This calculation is performed for each year for the total number of years listed in 2B below.

Example: A property was under special assessment in 2005, and the property tax was \$2,000 for the year. It would have otherwise been taxed at \$10,000. The taxpayer gets credit for the \$2,000 and will have the "potential" to pay an additional tax of \$8,000 for that year to make up the difference.

2B. Maximum Years

The number of years for which the additional taxes are calculated shall be the lesser of the number of years the land was under the special assessment, or:

Five years in the case of:

- a) Non EFU farmland
- b) Western Oregon designated forestland
- c) Eastern Oregon designated forestland
- d) EFU farmland where land remains inside an urban growth boundary
- e) Wildlife habitat where land remains inside an urban growth boundary

Ten years in the case of:

- a) EFU farmland where land remains outside an urban growth boundary
- b) Wildlife habitat where land remains outside an urban growth boundary
- c) Small Tract Forestland (see 2C below)

If a property was not in special assessment long enough to reach the maximum years, you can only collect the tax for the number of years the property was in special assessment.

See Appendix I for "Additional Tax Diagram."

2C. STF Additional Tax

If the disqualification is due to sale or transfer of STF property, the land automatically qualifies as designated forestland, unless the assessor determines the land is not forestland (ORS 321.716(3)(b)). In this situation, additional taxes are imposed under ORS 308A.707(2)(a). If the land remains specially assessed under one of the special assessments listed in section 1A 1-5 of this chapter, use ORS 308A.707(2) for computation.

1. Compute the difference between the taxes assessed under STF, and the taxes that would have been assessed as forestland under ORS 321.257-390 for western Oregon, or 321.805-855 for eastern Oregon. This calculation is done each year the land had been assessed as Small Tract Forestland, up to a maximum of 10 years.

If, after disqualification, the land is not specially assessed under one of the five listed programs, the additional tax shall be the sum of:

- A. Step 1 listed above, and
- B. The difference between the taxes that would have been assessed against the land as forestland and the taxes that would have

Table 4
Calculation of Additional Tax for Disqualified STF Properties

Tax Year	2014/2015	2013/2014	2012/2013	2011/2012	2010/2011	2009/2010	2008/2009	2007/2008	2006/2007	2005/2006
Tax at STF	\$35	\$35	\$32	\$32	\$30	\$30	\$28	\$28	\$25	\$25
Tax at Forestland	\$150	\$145	\$140	\$135	\$130	\$125	\$120	\$115	\$110	\$100
Tax as otherwise assessed (no special assessment)	\$1,900	\$1,800	\$1,700	\$1,600	\$1,500	\$1,400	\$1,300	\$1,200	\$1,100	\$1,000
Difference STF/FL	\$115	\$110	\$108	\$103	\$100	\$95	\$92	\$87	\$85	\$75
Difference FL/As otherwise assessed	\$1,750	\$1,655	\$1,560	\$1,465	\$1,370	n/a	n/a	n/a	n/a	n/a

been imposed had the land not been specially assessed. This calculation is done for each year the land was forestland, up to a maximum of five years.

Example: Land was disqualified from STF, and did not qualify for another special assessment. Land was in STF for 10 years prior to disqualification. The table above shows the taxes for the last 10 years.

Step 1: Calculate the difference between STF taxes and tax as Forestland. Add the amounts together for the last 10 years.

$$\$115 + \$110 + \$108 + \$103 + \$100 + \$95 + \$92 + \$87 + \$85 + \$75 = \$970$$

Step 2: Calculate the difference between the tax as Forestland and tax at RMV. Add the amounts together for the last five years.

$$\$1750 + \$1655 + \$1560 + \$1465 + \$1370 = \$7,800$$

Step 3: Compute total additional tax by adding amounts from Step 1 and Step 2 together.

$$\$970 + \$7800 = \$8,770 \text{ total additional tax}$$

2D. Owner Request

ORS 308A.715 allows the owner of land that is disqualified from special assessment to request to pay the additional taxes, even if the taxes may be deferred under ORS 308A.706. This generally

happens when an owner does not want the land to be encumbered, or they are in a loan transaction and either the lender or buyer wants to clear the title of the property.

The owner must make written request to the assessor to request to pay the additional taxes. If the request is made prior to August 15 of the assessment year, the additional taxes are added to the current tax roll. If the request is made on or after August 15, the taxes will be added to the next year's roll.

Once an owner makes the request and pays the taxes, they cannot "change their mind" and request a refund. However, land may re-qualify for special assessment with a timely application. See Appendix F Hout v. Department of Revenue.

3. Additional Tax Deferred

3A. Statutes

There are circumstances where the additional tax upon disqualification is deferred. ORS 308A.706 lists the circumstances, and ORS 308A.712 explains how to determine the amount of deferred additional taxes once they become due for each scenario. The table on the next page shows the circumstance and corresponding additional tax statute for forestland special assessments.

Table 5
Additional Tax Statutes

Reason For Deferral	Statute	Additional Taxes	Statute
Governmental exchange of land of approximate equal value.	308A.706(1)(b)	Calculate additional tax on taxable owner’s original land. Transfer the tax amount to the account of the acquired land.	308A.712(3)
Land acquired & used for natural heritage purposes.	308A.706(1)(c)	Additional taxes imposed at time land no longer used as natural heritage per ORS 308A.706(1)(c)	308A.712(4)
Land qualifies for another special assessment.	308A.706(1)(d)	Additional tax may be imposed at time of disqualification from special assessment, if collectable.	308A.712(5)

3B. Change to Other Special Assessment

The most common reason for deferring the additional taxes upon disqualification of forestland is that land qualifies for another special assessment under ORS 308A.706(1)(d). This statute is commonly referred to as the “roll over” statute because it allows an owner to defer or “roll over” the additional taxes when they go to another special assessment.

It is important to maintain the “potential additional tax” notation on the assessment roll in this circumstance.

Land that is disqualified from STF that subsequently goes into another special assessment cannot be processed under this statute. Part of the additional taxes that are imposed on STF lands do not continue to be deferred if the land goes under another special assessment. The additional tax based on the differences between tax as forestland, and tax as otherwise assessed may continue to be different. See section 2C STF Additional Tax of this chapter for more information.

3C. Government Exchange

Under ORS 308A.730, a taxable owner with land under farm or forestland special assessment may exchange the land for land owned by a governmental agency if land is “of approximately equal value.”

In this situation, the additional taxes on the land that was specially assessed is transferred to the land acquired by the taxable owner. These additional taxes are deferred on the taxable owner’s acquired land. However, upon any future disqualification, the additional taxes will begin with the last year the land was under special assessment, up to the maximum number of years allowed, as listed in 2B of this section. To reach the maximum number of years, you may need to include some of the years the owner’s original land was under special assessment.

See Special Provisions Chapter.

3D. Additional Taxes Following Deferral

If the potential additional taxes were deferred following disqualification under ORS 308A.706, and later become collectable, the additional taxes, and maximum years of collection are determined under ORS 308A.712.

3D1. Maximum Years

The number of years of additional tax computation shall be the total number of continuous tax years that forestland special assessment was in effect for the land, not to exceed:

- a) Five years, or
- b) Ten years if the property had been previously disqualified from farm use or wildlife habi-

located in an EFU zone outside the urban growth boundary within the last 10 years.

b. If yes, the number of years you calculate the tax on is the lesser of the number of years in special assessment or 10 years.

3D2. Calculating the Tax

To identify the number of years to collect, determine the following:

1. Total number of years land was under special assessment.
2. If the land been previously disqualified from either farm use or wildlife habitat on land that is outside the urban growth boundary and in an EFU zone.
 - a. If no, the number of years you calculate the tax on is the lesser of the number of years in special assessment or five years.

For the special assessments listed below, the number of years that may be taken into consideration for the purposes of the additional tax calculation is five years.

- Farm Use in EFU inside UGB (ORS 308A.062)
- Farm Use in Non-EFU (ORS 308A.068)
- Designated Forestland western Oregon (ORS 321.358)
- Designated Forestland eastern Oregon (ORS 321.839)
- Wildlife Habitat (ORS 308A.424)

Example 1: Land was under designated forestland special assessment from 1996 to 2004. In 2005, the owner rolled the land over to wildlife habitat special assessment. In 2006, land was disqualified from special assessment for change of use. The maximum number of years for additional tax calculation is five years. Calculate the difference between the tax paid under special assessment and the tax that would have otherwise have been paid for each tax year 2001-02 through 2005-06.

Tax Year	2006-07	2005-06	2004-05	2003-04	2002-03	2001-02	2000-01	1999-00	1998-99	1997-98	1996-97
Special Assessment Program		WLH	<----- DFL ----->								
Years to Compute Add Tax		x	x	x	x	x					

Example 2: Land was under EFU assessment from 1996 through 2000 and land was outside the urban growth boundary. The owner decided to roll over into designated forestland (DFL) in 2001-02 and remained under DFL through 2005-06. Because land was disqualified from EFU outside the urban growth boundary within the last 10 years, there is a 10-year look back. Additional tax is computed on each tax year from 1996-1997 through 2005-2006.

Tax Year	2006-07	2005-06	2004-05	2003-04	2002-03	2001-02	2000-01	1999-00	1998-99	1997-98	1996-97
Special Assessment Program		<----- DFL ----->					<----- EFU ----->				
Years to Compute Add Tax		x	x	x	x	x	x	x	x	x	x

Example 3: Assume same scenario as Example 2, only land was under EFU from 1996 to 1998 and under DFL from 1999 through 2005. Because land was disqualified from EFU outside the urban growth boundary within the last 10 years, there is a 10-year “look back,” which means you look back to tax year 1996-97. Per ORS 308A.712(5)(b)(B), the additional tax for the DFL is limited to five years. Calculate the DFL additional tax for years 2001 through 2005, then compute the years under EFU (1996-1998). Because DFL additional tax is limited to five years, the additional tax cannot be assessed for 1999 or 2000.

Tax Year	2006-07	2005-06	2004-05	2003-04	2002-03	2001-02	2000-01	1999-00	1998-99	1997-98	1996-97
Special Assessment Program		<----- DFL ----->					<- EFU ->				
Years to Compute Add Tax		x	x	x	x	x			x	x	x

In the above example, the land must have been continuously subject to special assessment for 10 years, otherwise calculate five years additional tax (ORS 308A.712(b)(A)).

4. No Additional Tax

4A. Statute (ORS 308A.709)

ORS 308A.709 addresses circumstances when there is no additional tax following disqualification. In these situations, the “potential additional tax” notation may be removed from the roll and no additional taxes are imposed or collected.

4B. Circumstances

The circumstances include when land is:

4B1. Acquired by Governmental Agency (Eminent Domain)

Eminent domain is the power of a government agency to condemn or take property from private ownership for public benefit provided there is just compensation to the owner (i.e. the government agency adequately compensates the owner for the value of the property).

ORS 308A.709(1) specifies the acquisition by the government entity requires the “lawful exercise of the power of eminent domain.” An eminent domain acquisition may be by force, but many times government agencies acquire the property through negotiation with a willing owner. For an acquisition to qualify under ORS 308A.709, the courts have ruled the government agency only

has to have the power to condemn the property in question. The agency must also be able to demonstrate the reason it acquired the property was for a purpose that would have allowed condemnation had the owner not been willing to sell.

4B2. Acquired by Government Agency (Parks and Recreation)

The land becomes exempt from property taxation.

These acquisitions are covered under ORS 308A.709(2), (3) and (4).

4B3. Leased Public Property

ORS 308A.709(5) addresses public property leased by a taxable owner under a crop share agreement. This statute only applies to farm special assessment. See *Farm Use Assessment Procedures* (#150-303-422) for more information.

4B4. EFU Change (Not Owner-Initiated)

ORS 308A.709(6) only applies to farm special assessment.

4B5. Forestland Acquired by Government Agency

ORS 308A.709(7) states that if a government agency acquires the forestland, it is not taxable and no additional tax is imposed.

Do not confuse this statute with 308A.703(5), which states that if the disqualification is a result of the land being acquired by an ownership making the land exempt, the lien for additional taxes shall attach as of the day preceding the sale or transfer. ORS 308A.703(5) is addressing those exempt owners other than government agencies who have become exempt as a result of an approved application (e.g. a church or other charitable organization).

4B6. Highest and Best Use Forestland Declassified

There is no additional tax for land declassified from Highest and Best Use Forestland.