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BEFORE THE BOARD OF EQUALIZATION
FOR THURSTON COUNTY

CONFEDERATED TRIBES OF THE
CHEHALIS RESERVATION; CTGW,
LLC,

Petitioners,

v.

THURSTON COUNTY ASSESSOR,

Respondent.

Parcel Nos. 99740331400; 99002085874
All Assessment Years

BRIEF IN SUPPORT OF
JURISDICTION RE: PARCEL NO.
99740331400

I. INTRODUCTION

On August 15, 2014, the Board wrote to the Parties: “The board would like to hear from CTGW and the Assessor whether you believe the board has jurisdiction to hear the real property petitions at issue.” In response, CTGW and the Tribe answer that question in the affirmative.

II. LAW AND ARGUMENT

The Board has jurisdiction to “consider any taxpayer appeals from the decision of the assessor thereon to determine . . . if the taxpayer is entitled to an exemption” Wash. Rev. Code § 84.48.010; *see also* Wash. Admin. Code § 458-14-015(1)(m) (the Board has jurisdiction to hear an “[a]ppel from a decision of the assessor relative to a claim for either

1 real or personal property tax exemption, pursuant to RCW 84.48.010”); *Draper Mach. Works,*
2 *Inc. v. Ruthe Ridder, King Cnty. Assessor*, No. 38368, 1991 WL 227535, at *2 (Wash. Bd. Tax.
3 App.1991) (“The County Board has jurisdiction to review exemption determinations made by
4 the Assessor.”); *see also e.g. J&M Smokehouse, Inc. v. State of Washington*, No. 45331, 1996
5 WL 390850 (Wash. Bd. Tax. App. 1996); *C.D. Stimson v. Ruthe Ridder, King Cnty. Assessor*,
6 Nos. 38505, 38506, 1991 WL 332094 (Wash. Bd. Tax. App. 1991).

7
8 Wash. Rev. Code § 84.40.038 dictates that the owner or person responsible for payment
9 of taxes on any property has standing to bring a petition like that before the Board. *See Royal*
10 *Skies Investors Ltd. Partnership v. Schwab*, 1996 WL 509547, at *5 (Wash. Ct. App. 1996)
11 (“[P]ersons with a financial interest in a given parcel of property may challenge the tax
12 assessment of that property”); *State ex rel. Weyerhaeuser Timber Co. v. State Tax Com'n*,
13 189 Wash. 56, 58 (1937) (a “grievance must relate to an interest that is direct and of immediate
14 pecuniary kind in the subject matter”).

15
16 Here, Petitioners are entities with a profound, immediate and direct pecuniary interest
17 in Parcel No. 99740331400. The Tribe owns the land to which the Lodge is permanently
18 attached and the Tribe’s business owns the Lodge permanently attached to the Tribe’s land.

19
20 Should the Assessor wish to “moot” the issues surrounding Parcel No. 99740331400, it
21 should consent to entry of a judgment or order by the BOE in connection with Petitioners’
22 Appeal on Parcel No. 99740331400. The Petitioners are entitled to a formal recognition by the
23 BOE, of the U.S. Court of Appeals for the Ninth Circuit’s decision in connection with Parcel
24 No. 99740331400.

1 The Assessor's word is simply inadequate and provides Petitioners zero assurance. The
2 Assessor has previously ignored binding direction from the Department of Revenue on this
3 very topic. See Attachment 1. The Assessor has instead taken the formal position in
4 deposition that the office is not bound by any authority, beyond the courts. See Attachment 2,
5 pp. 178-79 ("Q: Who has the . . . overall authority with respect to assessment matters[?] A: I
6 do."; "Q: You did not take into consideration the issue of who else might have had the
7 authority with respect to the decisions that you were making?" A: "No, it was taken into
8 consideration that it was my authority. If somebody wanted to challenge that authority, I don't
9 know where they'd go, but . . . it was my authority . . .")

11 A top deputy in the office even testified that the Assessor is the only party in Thurston
12 County Government with the authority to make property tax determinations in the jurisdiction.
13 See Attachment 3, p. 72:14-18.

14 To ensure that future taxpayers have the ability to rely on even and legal application of
15 tax laws in Thurston County, the Board should ensure that the County Assessor has clear
16 guidance.
17

18 III. CONCLUSION

19 Petitioners answer the question posed by the Board in the affirmative. The Board
20 possesses jurisdiction pursuant to, at least, Wash. Rev. Code § 84.48.010 and Wash. Admin.
21 Code § 458-14-015(1)(m). Petitioners are willing to stipulate with the Assessor in an judgment
22 or order before the Board adopting the ruling of the Ninth Circuit, or the Board can simply
23 adopt and enter the court's ruling *sua sponte*. But dismissal is inappropriate. The Board has
24
25

1 jurisdiction and Petitioners are entitled to action from the Board that will bind this and future
2 Assessors under state law.

3 Signed this 8th day of September, 2014.

4
5 

6
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18 Attorneys for Petitioners Confederated Tribes of
19 the Chehalis Reservation and CTGW, LLC
20
21
22
23
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25

1 **CERTIFICATE OF SERVICE**

2 I, Molly A. Jones, say:

3 1. I am now, and at all times herein mentioned, a citizen of the United
4 States, a resident of the State of Washington, over the age of 18 years, not a party to or
5 interested in the above-entitled action, and competent to be a witness herein.

6 2. On September 5, 2014, I delivered a copy of the foregoing documents,
7 via email and U.S. Mail to:

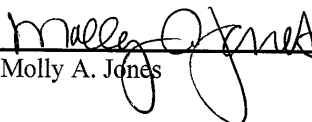
8 Ruth Elder
9 2000 Lakeridge Drive SW
10 Olympia, WA 98502-6045
11 elder@co.thurston.wa.us

12 and via email to:

13 Jane Futtermann
14 Futterj@co.thurston.wa.us

15 Scott C. Cushing
16 cushins@co.thurston.wa.us

17 DATED this 5th day of September, 2014.

18 
19 Molly A. Jones



STATE OF WASHINGTON

DEPARTMENT OF REVENUE

March 16, 2009

The Honorable Patricia Costello
Thurston County Assessor
2000 Lakeridge Drive SW
Olympia, Washington 98502-6045

Property Taxation of Great Wolf Lodge

Dear Patricia:

In a March 12, 2009 e-mail you asked if the Department of Revenue would provide you with a letter confirming whether Revenue's correspondence to you dated August 28, 2008, regarding "property taxation of Great Wolf Lodge" is to be considered a mandated order or direction under RCW 84.08.010.

Under RCW 84.08.010, the Department of Revenue has the authority to exercise general supervision and control over county officials relating to property tax. This authority includes the ability to perform any act or give any order or direction to any county officer regarding any matter relating to the administration of the assessment and taxation laws of the state to the end that all property in this state is listed, valued, and assessed according to the "provisions of law."

The August 28, 2008 letter memorializes Revenue's opinion as to whether the improvements located at the Great Wolf Lodge in Grand Mound, Washington, are subject to property taxation. The opinion was requested by Thurston County. Revenue did not conduct a fact-finding hearing. Rather, the opinion offered in the letter was the result of Revenue's analysis based solely on information provided and representations made by the Tribe to Revenue. In the August letter, we noted the situation presented a "matter of 'first impression,'" and we concluded:

Although the relevant facts are still not as clear as we would like, and although a legitimate argument could be made either for federal preemption or for state taxation, it appears that the balance of the federal, state, and tribal interests tilt in favor of federal preemption for this property.

The opinions offered in the letter are Revenue's assessment of the law based solely upon facts presented. Revenue did not consider the letter to be an order under RCW 84.08.010 or any other statute in Title 84 RCW.

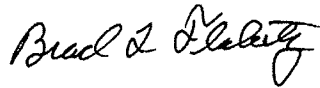
Property Tax Division

P O Box 47471 ♦ Olympia, Washington 98504-7471 ♦ (360) 570-5900 ♦ Fax (360) 586-7602

The Honorable Patricia Costello
March 16, 2009
Page 2

Please contact me at (360) 570-5860 or BradF@dor.wa.gov if I can answer any additional questions or provide other assistance.

Sincerely,



Brad Flaherty
Assistant Director
Property Tax Division

BF:slc

cc: Cindi Holmstrom, Director
Leslie Cushman, Deputy Director

Page 178

1 A. Yes.
 2 Q. If you had discovered, hypothetically, that the
 3 Department of Revenue had in its possession when it
 4 formulated the letter of August 28th, Exhibit-No.-6, they
 5 had more documents in their possession than you had seen --
 6 A. Uh-huh.
 7 Q. -- would that have changed your opinion about
 8 the efficacy of the decision contained in the August 28th
 9 letter?
 10 A. No, not unless I saw them, too. I had copies,
 11 also.
 12 Q. And why would that be?
 13 A. So that my prosecuting attorneys could determine
 14 whether or not they were like accord, like decision, like
 15 solution. They weren't given that documents. If there was
 16 any documents, I didn't get any copies of them.
 17 Q. Who has the authority with respect -- the
 18 overall authority with respect to assessment matters, as
 19 you understand it?
 20 A. I do.
 21 Q. Do you believe that there's any limitation on
 22 your authority with respect to assessment matters?
 23 A. I think that there are probably the courts that
 24 you could go through if somebody challenged my decision,
 25 yes.

Page 179

1 Q. Other than the courts, or other than
 2 administrative boards or the courts, is there any
 3 governmental entity that has authority over your actions as
 4 an assessor?
 5 A. You mean subject to the RCWs, to the laws as
 6 written?
 7 Q. Sure.
 8 A. And interpretation?
 9 Q. Sure.
 10 A. I have no idea. It's never come up. I would
 11 have to research that.
 12 Q. Okay. So, you did not take into consideration
 13 that issue when making your decisions?
 14 A. I don't --
 15 Q. You did not take into consideration the issue of
 16 who else might have had the authority with respect to the
 17 decisions that you were making?
 18 A. No, it was taken into consideration that it was
 19 my authority. If somebody wanted to challenge that
 20 authority, I don't know where they'd go, but it was
 21 taken -- it was my authority, yes.
 22 Q. And no one else -- and no other governmental
 23 entity's authority?
 24 A. Not that I was aware of.
 25 Q. Not the court or anything else?

Page 180

1 A. Not that I was aware of, huh-uh, huh-uh.
 2 Q. Okay. Let's keep going.
 3 Do you know what the federal statute 25 U.S.
 4 code section 415 relates to?
 5 A. No, sir.
 6 Q. Okay. Do you know that the lease, which is an
 7 exhibit to this deposition, Exhibit-No.-7, do you know that
 8 that's federally regulated?
 9 A. No. No, sir.
 10 Q. Okay. When you were making your decision on the
 11 assessment of the buildings at the tribal property, did you
 12 and the assessor's office consider the reversionary
 13 interest belonging to the Tribe in those buildings?
 14 A. Not that I'm aware of.
 15 Q. If I were to ask you to consider that
 16 reversionary interest hypothetically, would that make a
 17 difference to your analysis?
 18 A. I wouldn't know. I would have to speak to Gene
 19 Widmer to find out what the appraisal process would be.
 20 Q. So, to the extent that that would impact it, it
 21 would be Mr. Widmer's -- the discussion with Mr. Widmer?
 22 A. It would be his counsel that I would take into
 23 consideration, yes.
 24 Q. Looking at paragraph 18, did you know that the
 25 improvements were not removable, that is that they are

Page 181

1 permanently affixed to the property?
 2 A. I would imagine that was taken into
 3 consideration, yes, to the best of my knowledge, yes.
 4 Q. Okay. Looking at paragraph 19, paragraph 19 you
 5 indicate that you lack sufficient knowledge with respect to
 6 the truth of the allegations relating to the secretary's
 7 determination that these matters are an integral part of an
 8 overall economic development joint venture that furthers
 9 the Tribe's for economic diversification.
 10 Did you see that language in the lease, which is
 11 Exhibit-7?
 12 A. Not that I recollect, huh-uh.
 13 Q. So, when you were skimming it, you didn't run
 14 across that language?
 15 A. No, sir.
 16 Q. Okay. Paragraph 20 says you were without
 17 knowledge about whether CTGW carries on business in the
 18 state of Washington. Since the date of answering, do you
 19 know whether or not CTGW carries on business in the state
 20 of Washington?
 21 A. No, sir.
 22 Q. Do you have an opinion as to whether it does?
 23 A. No, sir.
 24 Q. Okay. Did you consider -- strike that.
 25 Do you have any opinion as to why the Chehalis

1 counsel to get guidance on that.

2 Q. Who would the assessor seek counsel from?

3 A. From legal counsel.

4 Q. Is it your position that legal counsel
5 determines whether a tax is preempted under the Bracker
6 analysis?

7 A. No, it's my position that the elected official
8 would seek counsel to get direction on interpreting a
9 particular court case if that was -- had some application.

10 Q. Okay. Is there any other party in Thurston
11 County government who would be responsible for applying the
12 Bracker analysis, if it were appropriate under federal law?

13 A. Within the county --

14 Q. Yes, sir.

15 A. -- was that the caveat?

16 Q. Yes, sir.

17 A. Probably not if we're talking limiting it to
18 property tax.

19 Q. Who else would be responsible?

20 A. I don't know. I'm saying probably not.

21 Q. Can you --

22 A. No.

23 Q. -- identify --

24 A. I don't know anybody else.

25 Q. So, it's your understanding the assessor's the

1 only party who would be responsible for --

2 A. I believe that they would be the only party.

3 Q. Okay. The County commissioners would not be
4 involved in determining whether a tax was preempted under
5 federal law?

6 A. Probably not.

7 Q. The taxing authority itself would not be
8 involved in determining whether a tax was preempted under
9 federal law?

10 A. Probably not.

11 Q. The treasurer would not be involved in
12 determining whether a tax was preempted under federal law?

13 A. No.

14 Q. So, it's accurate to say that the assessor, in
15 consultation with her legal counsel, would be the only
16 party determining whether or not a specific property tax
17 was preempted under federal law?

18 A. Yes.

19 Q. There are page numbers at the top of this
20 document on the right-hand corner. Can you please turn to
21 page 5.

22 A. Actually, can I look at the document first?

23 Q. Actually, you can just turn to page 5. I think
24 you'll be familiar with page 5.

25 A. (Complying.)