TESTIMONY

HOUSE COMMITTEE ON REVENUE

February 28, 2019

Support for HB 2264

Farmers and ranchers are active in all 36 counties and participate in growing Oregon's 225 commodities, which makes Oregon one of the most bountiful and diverse agricultural states. When producing those commodities, farmers and ranchers rely on a wide gambit of equipment and machinery. On-farm equipment and machinery are utilized to prepare fields and seedbeds, harvesting crops, animal husbandry, and preparing those crops for market.

The intent of HB 2264 is to clarify for county assessors how to properly assess farm equipment and machinery in farm operations. This needed clarification is due to a series of court cases that have altered the traditional interpretation of farm machinery and equipment. HB 2264 provides a transparent understanding for farmers and ranchers on what equipment is assessed and provides clarify to county assessors of what pieces of farm equipment is exempted from ad valorem taxation.

I. Legal Background:

Under ORS 307. 394, farm machinery used primarily for cultivating and harvesting crops, as well as raising livestock, are considered tangible personal property exempt from ad valorem property taxation. This exemption has been a critical component to farmers, and ranchers' business calculations as these pieces of equipment and machinery often require substantial capital investments and a part of the purchasing decision is looking at the long-term cost of operation, including whether the equipment will be taxed. As farming and ranching is inherently a unique business model where prices do not reflect the cost of production, tax exemptions are a tool used to provide farmers and ranchers some economic relief. Subsequently, this exemption in our opinion has been misinterpreted by the courts and has caused some county assessors to tax pieces of equipment that have traditionally been exempted.

A. Movability:

The first issue that HB 2264 seeks to resolve is the strict interpretation of what is considered "tangible" property. *Seven-Up Bottling Co. of Salem, Inc. v. Dept. of Revenue* found that a piece of machinery is considered tangible personal property only if the machinery was freely moveable.[1] Specifically, the Court found that the bottling equipment was not freely movable as it was bolted down and wired into the building. Therefore, the Court determined that the machinery was actually erected upon and affixed to the building, and thus was real property, not tangible personal property. Years later, the principal of movability was taken even further

[1] See *Seven-Up Bottling Co. v. Dep't of Revenue*, 10 Or. Tax 400 (1987)

by *Saunders v. Dept. of Revenue* and *Columbia River Egg Farm v. Dept. of Revenue.* Both cases determined that to be tangible personal property, the machinery or equipment must be moved or movable in the ordinary course of business.[2]

We believe these cases represent the strictest interpretation of tangible personal property and go far beyond what the legislature intended when it delineated between real property and tangible personal property. This line of reasoning is being used by the Department of Revenue and county assessors to tax moveable equipment and machinery as real property because the equipment is lightly bolted or wired into a building.

As an example, a seed cleaner can be moved into a building or yard. That seed cleaner is often lightly bolted to the floor to prevent "walking" during use. Additionally, the seed cleaner does not move around the farm when in use, and one generally wouldn't move it every day in the ordinary course of business. However, the seed cleaner is certainly moveable and could be moved fairly simply by removing the bolts and lifting the cleaner with a forklift. The time it takes to move the seed cleaner would be no different than it would take to secure and move a heavy palette of merchandise or product.

Despite being clearly moveable, county assessors are seeking to tax seed cleaners like the one described above on the grounds that the equipment is real property and not personal property.

B. Processing:

In 1999, the Oregon Supreme Court determined that the processing equipment used to make wine should not be exempt from taxation because fruit processing equipment was not used for the preparation of land, planting, raising, cultivating, irrigating, harvesting or placing in storage of farm crops as required by statute.[3] In its rules, the Department of Revenue defines "processing" as "altering the crop in any way such as washing, icing, sorting, grading, waxing, boxing, slicing, or cutting." (See OAR 150-307-0460(1)(b)). This is a very broad interpretation of the word "processing."

Using the logic of *King Estate* and the Department's definition of processing, subsequent courts have attempted to fully tax farm equipment and machinery that would have traditionally been exempted. For example, in *Peter Dinsdale v. Marion County Assessor*, the court determined that a machine used to sort out bad blueberries and place quality blueberries into boxes for storage was considered machinery used for fruit processing and therefore not exempt.[4] Additionally, in *Pollock & Sons v. Inc. v. Umatilla County Assessor*, a watermelon farmer sought to have a conveyor belt, a piece of equipment that brushed and removed dirt from the melons, a scale, and a series of cardboard totes that the melons were placed in, exempted as personal property. However, the court decided that the subject property was used

[2] See *Saunders v. Dep't of Revenue*, 300 Or. 384, 711 P.2d 961 (1985); *Columbia River Egg Farm v. Dep't of Revenue*, 12 Or. Tax 418 (1993)
[3] See *King Estate Winery, Inc. v. Dep't of Revenue*, 329 Or. 414, 988 P.2d 369 (1999)
[4] See *Dinsdale v. Marion Cnty. Assessor*, No. TC-MD 110891N, 2012 Ore. Tax LEXIS 129 (T.C. Apr. 13, 2012)

to brush, weigh, label, and pack watermelons and that it was therefore used to "process" the watermelons, rather than merely place them into storage.[5]

We believe this incredibly broad interpretation of the term processing goes against the legislative intent of the original statute and seeks to capture pieces of equipment used to prepare crops for storage as processing equipment and therefore not exempted under ORS 307.394.

II. HB 2246 as introduced clarifies the legislative for counties on how farm machinery and equipment is to be assessed:

- Section 1 amends ORS 307.010. The original understanding was that these changes were required to prevent inconsistencies in Chapter 307 and the definitions within 307.010 would need amending. Our -1 amendment deletes Section 1 of HB 2264 entirely.

- Section 2 amends ORS 307.394 titled: Farm machinery and equipment, personal property used in farm operations. The language of the bill clarifies the statute as it is limited to equipment used in farm operations, that machinery and equipment used to preparing farm crops for storage or shipping are tangible personal property used on a farm operation. This would narrow the interpretation of the term processing and clarify the legislative intent that equipment used to prepare farm crops for the first sale is exempt from ad valorem property taxation.

- Section 3 amends ORS 307.020. The original understanding was to address the strict interpretation of movability farm machinery and equipment needed to be decoupled from the movable subsection. Our -1 amendment deletes Section 3 of HB 2264 entirely.

III. Our -1 amendment:

HB 2264 has been flagged by interested parties that it would expand the tangible personal property exception to food processing and processing cannabis. This is not the intent of HB 2264, and our -1 amendment limits and clarifies the scope to amend only ORS 307.394.

- Adding "Any equipment used for processing by an establishment or individual licensed under ORS 616.706 or ORS 475B.090 is not exempt from ad valorem property taxation under this section" alleviates the processing issue. ORS 616.706 is the statute which the Oregon State Department of Agriculture (ODA) has authority to license food processors.

  We believe by adding this language it reconciles the concerns we have heard with this section. The ODA and commonly understood industry definition of processing lies in OAR 603-025-010 "(11) "Food Processing" means the cooking, baking, heating, drying,

[5] *Pollock & Sons, Inc. v. Umatilla Cnty. Assessor*, No. TC-MD 120842N, 2013 Ore. Tax LEXIS 124 (T.C. July 18, 2013)

mixing, grinding, churning, separating, extracting, cutting, freezing or otherwise manufacturing a food or changing the physical characteristics of a food, and the packaging, canning or otherwise enclosing of such food in a container, but does not mean the sorting, cleaning or water-rinsing of a food."

The practice of preparing a farm crop for storage or prepare for shipping is merely the act of preparation for the first sale. Equipment and machinery used outside an ODA food processor license that prepares a farm crop for the first sale is not considered food processing equipment.

- Adding "regardless of whether the property is moveable in the ordinary course of business" alleviates the movable question. This is very clear language amends ORS 307.394 to the use of the farm machinery and equipment and removes the ambiguity of whether lightly bolting, plumbing, or wiring changes tangible personal property to real property.

Our -1 amendment to HB 2264 is carefully crafted to clarify and simplify HB 2264 as introduced to focus on the use and purpose of farm equipment and machinery as the determining means for exemption from ad valorem property tax. Our -1 amendment narrows the scope and we believe addresses the concerns we have heard on the bill.

We support HB 2264 with the -1 amendment. HB 2264 provides clarity, uniformity, and consistency across the state for our county assessors and farmers and ranchers. HB 2264 is broad with intent not to be exclusive. Oregon's farmers and ranchers are innovative and use equipment and machinery in creative ways across all 36 counties and 225+ crops. HB 2264 includes all of Oregon agriculture from today and into the future.

Thank you for your time and consideration on HB 2264, we urge the committee to schedule a work session and unanimously adopt the -1 amendment. For more information, please contact:

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