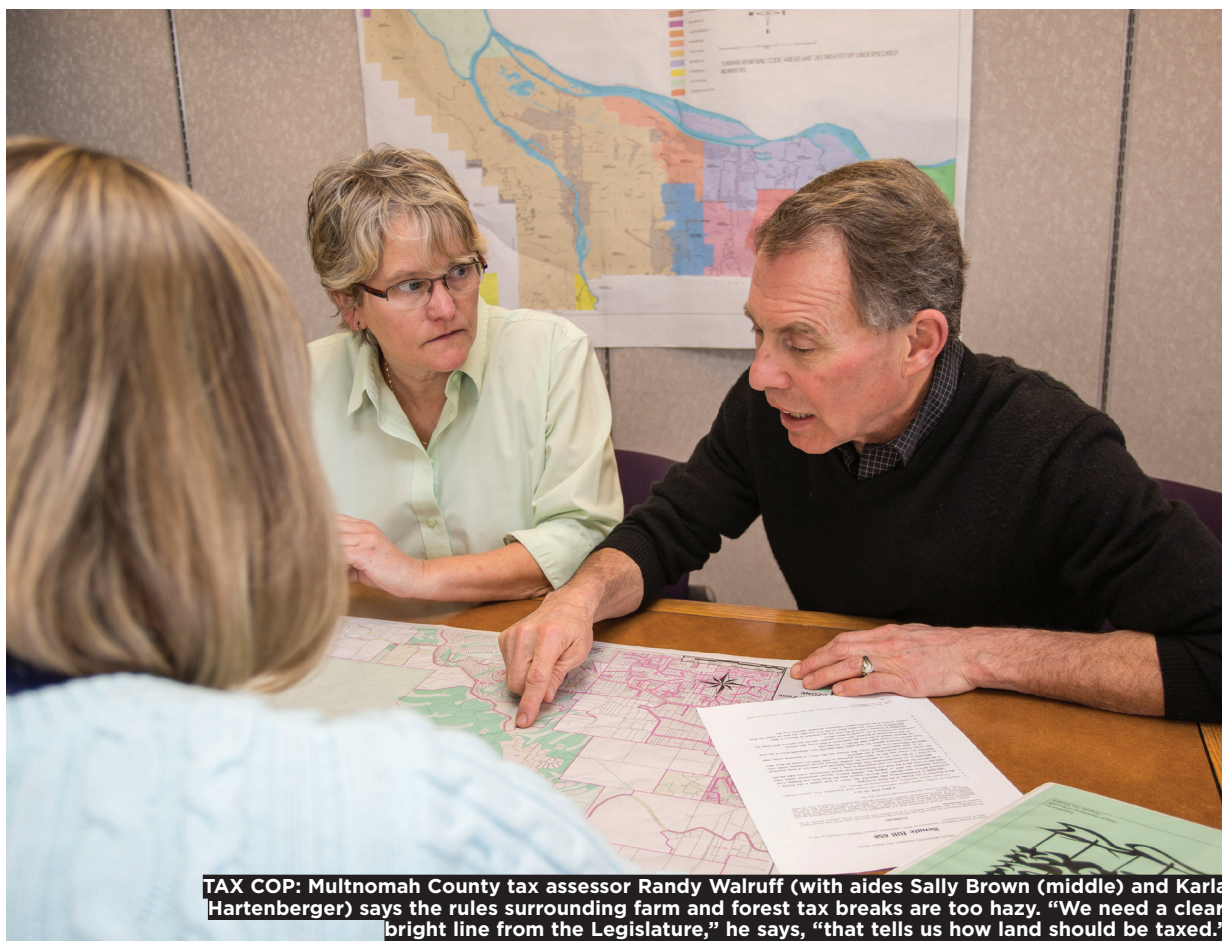


MATT WONG



TAX COP: Multnomah County tax assessor Randy Walruff (with aides Sally Brown (middle) and Karla Hartenberger) says the rules surrounding farm and forest tax breaks are too hazy. “We need a clear, bright line from the Legislature,” he says, “that tells us how land should be taxed.”

Calculations done by the county assessor’s office show the Friedrichs have saved over \$7,000 on their property taxes in the past five years.

Critics of the farm and forest deferrals say the tax breaks often provide a cushion for wealthy Oregonians who like to surround themselves with big pieces of property.

“There’s absolutely no doubt there are people who are doing minimal farming or planting the minimum amount of trees to lower their tax bill,” says Tom Linhares, former supervisor of the Multnomah County Tax Supervising and Conservation Commission and the current Wasco County assessor.

There are few better examples than the nearly 40-acre property on Northwest Saltzman Road that belongs to Dick and Mary Jaffe.

Their farmhouse, an 11,000-square-foot Victorian built in 1996, sits next to a 4,000-square-foot barn and a 1,200-square-foot garage. The Jaffes paid \$3.5 million for their property in 2008. They have no recorded mortgage.

SOME HOMEOWNERS IN EFFECT GET FARMING TAX BREAKS FOR HAVING A GARDEN.

Of their property, 31 acres get a farmland tax deferral, some for trees and some for rangeland for alpacas that Mary Jaffe raises. Her company, Skyline Alpacas, breeds and sells the woolly animals. A website offers financing for buyers and volume discounts on pregnant females. “Brighten up your January with some NEW alpacas,” Mary Jaffe’s website says. “Due to our commitment to quality care, and the fact that we have run out of room, we have reduced our prices on most animals.”

Part of the reason she can afford to be generous may be the property tax savings she and her husband enjoy—more than \$30,000 over the past five years.

A tax deferral is remarkably easy to obtain for small farmers.

State law requires that for farmers to qualify, they have to gross \$100 an acre. If they farm less than 6.5 acres, they must earn \$650 in gross—not net—income in three out of every five years.

That threshold has not changed in decades and would be more than \$3,500 today if adjusted for inflation.

The \$650 threshold doesn’t require that small farmers actually sell that much product. Under state law, they can consume 49 percent of the food or other products they grow or raise to meet the requirement. That means people who grow tomatoes, herbs or flowers in effect get a tax break to have a garden.

Tax Fairness Oregon’s Wisner pointed out to lawmakers at a 2011 hearing on farm deferrals that she could obtain a farm deferral by harvesting the trillium that grows wild on her land and selling it at farmers markets.

Wisner also says the farm deferral’s cost is even greater because it also allows hobby farmers to write off their vehicles and other equipment.

“We’re subsidizing people having trucks who don’t need trucks,” she says.

Walruff, the Multnomah County tax assessor, is an intense fellow who speaks in staccato bursts. After more than 30 years working for the county, he looks like he could still compete with the Clackamas High School cross-country runners he coaches in his spare time.

In 2011, Walruff got an increase in staff and a better computer system. One of the first things he did was start cracking down on deferrals he considered questionable.

Walruff noticed there was a conflict between city conservation zoning overlays and forest deferrals. In June 2011, he canceled the deferrals on more than 50 properties in environmental zones, reasoning that the zoning made it virtually impossible to cut trees and therefore illogical to grant forest deferrals.

“When we look at exemptions or deferrals, we ask, ‘Do they meet the intent of the law?’” Walruff says. “If you’re in doubt, you cancel. That’s the advice we’ve gotten from our lawyers.”

Most of the 2011 cancellation notices went to property owners in Northwest Portland adjacent to or near Forest

Park.

Robert Hodel, who lives on a heavily wooded 10.15-acre parcel next to Forest Park, received one of those cancellation notices. You’d need a helicopter to find Hodel’s 2,885-square-foot home.

When the county canceled Hodel’s forest deferral, he immediately applied for a farm deferral.

A representative of the county assessor’s office visited Hodel’s property and “found no evidence of commercial farming activity.” The county rejected Hodel’s application and asked him for five years of back taxes.

Hodel took the county to Oregon Tax Court in 2012, however, and won—because the judge ruled that under Oregon law, he has five years to establish himself as a farmer. (Hodel declined to comment.)

The tax court ruling saved Hodel nearly \$18,000 over five years.

Walruff says the court’s decision was hard to accept. “I wasn’t very happy,” he says. “I just don’t believe those types of uses meet the intent of the law.”

Joe Angel fared even better than Hodel.

Walruff also canceled Angel’s forest tax deferral in June 2011, and Angel also went to tax court. In Angel’s initial case, the magistrate judge upheld the county’s cancellation, noting that Angel had twice filed documents indicating interest in developing his land. The judge also bought the county’s argument that Angel was unable to harvest his timber because of the city’s conservation overlay.

“Plaintiff’s overt actions reveal an intention to hold and use the property in the manner that generates the greatest financial gain,” Magistrate Dan Robinson ruled Aug. 20, 2012. “Coupled with the conservation overlay, plaintiff’s actions suggest that the subject property was not being held or used for the predominant purpose of growing and harvesting trees.”

But in 2014, Angel appealed his initial loss to the higher level of the Oregon Tax Court—and won.

Angel acknowledged he had done little in the way of



FOREST SAVERS: Loran and Erena Friedrich get a tax break on 3 their 4 acres on Northwest Elliott Road.

planting or harvesting trees or eliminating invasive species. Nor had he filed a forest-management plan. Instead, he told the court, he’d “informally sought management advice from social acquaintances involved in the timber industry.”

And the judge rejected the county’s claim that the conservation easement blocked Angel from someday cutting trees.

“Taxpayer’s ‘predominant purpose’ for holding the subject property is a question of the taxpayer’s state of mind,” wrote Tax Court Judge Henry Breithaupt on July 24, 2014.

In other words, if Angel thought he deserved a tax deferral, he deserved a tax deferral.

Angel declined to answer questions about the specifics of his case. He does acknowledge it might be time for the Legislature to review the deferral program.

“The question on the forest and farm tax deferral programs is, ‘Have the public policies worked?’” Angel says. “If they’ve gotten out of whack, let’s have a debate about that.” **WU**