

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Small Claims

Property Tax

EILEEN TEEL BROCKWAY,

Plaintiff,

v.

MARION COUNTY ASSESSOR,

Defendant.

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No. 000408B

DECISION AND JUDGMENT

A case management conference was scheduled on May 16, 2000. Mary Harker, plaintiff's daughter and trustee, appeared on behalf of plaintiff. Jeff Procter, Appraiser, represented defendant.

That proceeding was converted to a trial; sworn testimony was offered and arguments were presented. Defendant provided supporting legal citations by letter filed on May 31, 2000. Plaintiff responded on June 9, 2000.

STATEMENT OF FACTS

This appeal concerns defendant's denial of an application for a war veteran's property tax exemption for plaintiff's property, Account No. R73675, located in Salem. Plaintiff is the widow of a World War II veteran. Among other ailments that come with aging, she suffers from Alzheimer's disease and dementia, for which she requires constant care. Ms. Harker has commendably accepted the cumbersome responsibilities of tending to her mother's needs.

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Ms. Harker stated that plaintiff is not financially capable of paying nursing facility rates. She also stated, and the appraiser agreed, that plaintiff is most likely better cared for by her family members than by strangers at a facility. Plaintiff's family is making arrangements to sell the home. In the meantime, Ms. Harker states that plaintiff cannot afford to pay her full property taxes. Plaintiff applied to the county for a partial property tax exemption under ORS 307.250 as the surviving spouse of a veteran of the second world war.

Because Ms. Harker has her own family who need her, she has taken plaintiff into her home in Idaho. It is upon this basis that the county denied plaintiff's application.

COURT'S ANALYSIS

As a part of giving recognition to meritorious service during war, ORS 307.250¹ provides a limited property tax exemption for war veterans, surviving spouses, and dependent children. See *Lewis v. Dept. of Rev.*, 9 OTR 85, 90 (1981). Application of the exemption is made first to the homestead, then to the personal property. See ORS 307.270(1).

The term "homestead" is not defined in chapter 307. A general definition is provided in chapter 311 as "the owner occupied principal dwelling, either real or personal property, owned by the taxpayer and the tax lot upon which it is located * * *." ORS 311.666(2). The county denied plaintiff's application because she is living at her daughter's house and not in the house for which the exemption was applied.

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¹All references to Oregon Revised Statutes are to 1997.
DECISION AND JUDGMENT

The Department of Revenue's administrative rules provide an exception to the owner occupied element. "The right to the war veteran's property tax exemption shall not be lost if the owner is temporarily absent from the property, or is confined to a nursing home, or other long-term care facility * * *." OAR 150-307.270(3). While plaintiff's placement with her daughter may have originally been a temporary solution causing her absence from her Oregon property, plaintiff's address has now been changed to Idaho. The defendant correctly states that "other long-term care facility"² refers to nursing facilities, assisted living facilities, resident care facilities, and adult foster homes. See ORS 442.015. From this, defendant concludes that Ms. Harker's home does not qualify under this exception.³ The court agrees.

The court recognizes that this is an unfortunate and possibly unintended result. It appears that the department may have overlooked this health care possibility in its exception provision of OAR 150-307.207(3).⁴ However, it is the function and prerogative of the legislature to make and change the law to serve the purposes of the state of Oregon and its people. See *Dept. of Rev. v. Glass*, 15 OTR __, __ (Case No. 4383 Mar. 24, 2000). "The court's function is not to correct the statutes, but to construe them." *Id.* at __.

CONCLUSION

²This definition is used for the purposes of patient qualification for health services and for regulating facilities that receive state funding.

³Defendant concedes that a more liberal interpretation of the Department's definition would be appropriate in this case. (Def's Post-Trial Letter, filed May 31, 2000.)

⁴It is informative to note that both ORS 311.672(1) (deferral of homestead tax) and 311.706(c) (deferral of special assessment) provide a general exception to the "owner occupied" requirement for the taxpayer who is "required to be absent from the homestead by reason of health."

IT IS HEREBY ADJUDGED AND DECREED that the appeal is denied.

Dated this _____ day of October, 2000.

JEFF MATTSON
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE JEFF MATTSON ON OCTOBER 5, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 5, 2000.