

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

SEID KAZ AND SUSAN MOINI,)	
)	
Plaintiffs,)	No. 000728C
)	
v.)	
)	
LINCOLN COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed the real market value of certain personal property identified in the Lincoln County Assessor's records as Account No. P505017 for the 1998-99 tax year. A trial was held October 5, 2000. Mr. Moini appeared for plaintiffs, along with Mr. Joe Ritacco. Mr. Charlie Gross appeared and testified for the defendant.

STATEMENT OF FACTS

Mr. Moini is an engineer. He uses his talents to design and fabricate machines that make candy. He has been doing this since 1981. The business operates under the name of NW Candy Equipment. Plaintiffs also operate a candy store under the name of Pegasus Gourmet Chocolates. Plaintiffs began making and selling candy in 1977. The two businesses are located in one building, and are separated by a dividing wall. Plaintiffs' primary business activities, on a daily basis, appears to be centered around making and selling candy. The equipment Mr. Moini makes sells infrequently because they are expensive and sell to a limited commercial market.

The property at issue is machinery and equipment known as enropers, which are used to put chocolate onto candy. There are three machines involved.

Mr. Moini made the machines as part of his NW Candy Equipment business. They were placed in the candy store (Pegasus Gourmet Chocolates) and offered for sale. Plaintiffs only run these machines when a prospective buyer or a group of tourists is scheduled to come into the candy store. Mr. Moini testified that these machines are turned on and operated, for demonstration purposes, about five hours per week. Two of the three machines had sold by the time of trial.

Pegasus Gourmet Chocolates was acquired by plaintiffs in 1996. The acquisition included all of the equipment used in the business by the previous owners, who originally bought the business from plaintiffs in 1992 after plaintiffs' former business, West Homemade Candy, ceased doing business. Among the items acquired in the purchase of the business by plaintiffs in 1996 was an enroper which plaintiffs continue to use in the day-to-day operations of Pegasus Gourmet Chocolates. The equipment used in that business, exclusive of the machines here at issue, is capable of producing \$600,000 of product annually. Currently the business only produces about \$200,000 of product each year. The business has never operated at full capacity.

The total value of the plaintiffs' personal property for tax year 1998-99 was \$181,660. The County Board of Property Tax Appeals (board) reduced the value of plaintiffs' personal property to \$58,990 for the subsequent tax year (1999-00), based on a recommendation by the assessor's office.

COURT'S ANALYSIS

The property here at issue was held by plaintiffs for sale in the ordinary course of business and as such is exempt from taxation under ORS 307.400(3)(f). The applicable statute provides in relevant part as follows:

"(2) All inventory shall be exempt from ad valorem taxation.

"(3) As used in subsection (2) of this section, 'inventory' means the following tangible personal property:

" * * * * *

"(f) Items of tangible personal property described as materials, supplies, containers, goods in process, finished goods and other personal property owned by or in possession of the taxpayer, that are or will become part of the stock in trade of the taxpayer held for sale in the ordinary course of business."

The evidence shows plaintiffs did not use the equipment in their day-to-day business activities. The equipment was apparently placed in the candy store, as opposed to the fabrication shop, for effect. People on tour of the business, or those in the business contemplating the purchase of a new machine, could see the equipment in an operating store and actually see it perform. Of necessity the machines were turned on and pressed into service, much as one test drives a new car. At the time of trial plaintiffs had sold two of the three machines in dispute. This activity qualifies as non-taxable inventory, "held for sale in the ordinary course of business." ORS 307.400(3)(f). Removal of these items from the taxable account works a reduction in value. The parties agreed that the adjustment ordered by the board for 1999-00 would adequately resolve the value question if the court found that the property was not subject to tax.

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CONCLUSION

The real market value for tax year 1998-99, of the personal property identified in the Lincoln County Assessor's records as Account No. P505017, shall be reduced to \$58,990.

Dated this _____ day of October, 2000.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON OCTOBER 24, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 24, 2000.