

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

BANK OF THE WEST, )  
 )  
 Plaintiff, ) No. 011206A  
 )  
 v. )  
 )  
 YAMHILL COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

Bank of the West seeks a refund of property taxes paid for the 1998-99, 1999-2000, and 2000-01 tax years. Bank of the West was represented by Michael Smith, of its staff. Yamhill County appeared through its employee, Susan DeBolt.

**STATEMENT OF FACTS**

Bank of the West filed personal property returns, and paid the taxes subsequently calculated, upon property it leased to Robinson's Nursery. Yamhill County agrees that these acts were in error, that the property was in fact exempt under ORS 307.400,<sup>1</sup> and is prepared to issue refunds for the 1999-2000, 2000-01, and 2001-02 tax years. However, as to the 1998-99 tax year, Yamhill County is not willing to issue a refund, as the item at issue is a forklift. Bank of the West in turn points out that the forklift was used exclusively in the business of Robinson's Nursery.

**COURT'S ANALYSIS**

The court is very conscious of the fact that it has before it parties who have an all but complete consensus as to how to solve their problem. The great predicament of the court is that, instead of facilitating the solution, the court finds itself blocking it.

The particular obstacle here is that a personal property return, in one very significant respect, is not at all like an income tax return. When a taxpayer completes

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<sup>1</sup>All references to the Oregon Revised Statutes are to 2001.

an income tax return, and makes an error, the taxpayer may subsequently file an amended return, correcting the mistake and recalculating the liability. However, when a taxpayer completes a personal property return, the information on that return is used to calculate a value that is subsequently placed on the assessment roll, and from which a tax is subsequently derived. This roll value, and the consequent tax, may only be changed under certain limited conditions.

One of these is through a timely appeal to the board of property tax appeals sitting in its annual session. This did not occur. The court has sifted the statutes carefully for some alternative, such as the provisions of ORS 311.205(1)(b) that permit an officer to correct some errors on the roll without an order from the court. However, the nature of this particular error, specifically the failure to assert an exemption, is not found among the listed reasons. A temptation to otherwise extend the law so as to accommodate the will of the participants is precluded by the holding of such cases as *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998) (a failure to challenge the assessment within the time limit will result in a loss).

This is not to say that there may not be some alternative means to accomplish the end requested by Bank of the West and Yamhill County. The Department of Revenue has its own powers, independent of the court's, to correct the roll as to prior tax years. It may be that this is an instance where the agency would choose to exercise its ability. However, for its part the court must dismiss the appeal now before it, as it simply does not have the ability to order the result that the participants request.

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### **CONCLUSION**

IT IS THE DECISION OF THIS COURT that the appeal is dismissed.

Dated this \_\_\_\_\_ day of June, 2002

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SCOT A. SIDERAS  
PRESIDING 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 97301-2563. 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 SCOT A. SIDERAS ON JUNE 18, 2002. THE COURT FILED THIS DOCUMENT ON JUNE 18, 2002.**