

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

VINEYARD CHRISTIAN FELLOWSHIP)
WESTSIDE,)
)
Plaintiff,) No. 011227C
)
v.)
)
WASHINGTON COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiff seeks a refund of a \$200 late filing fee it paid to retain its religious organization exemption on certain real and personal property it leases from another qualifying organization. The tax year at issue is 2001-02.

A trial was held by telephone on March 18, 2002. Mr. Israel Askew, Business Manager for Vineyard Christian Fellowship, argued the cause for Plaintiff. Mr. Larry Strong, Appraisal Division Manager, Washington County Department of Assessment & Taxation, and Ms. Betty O'Rourke, Senior Administrative Specialist, Washington County Department of Assessment & Taxation, argued the cause for Defendant.

STATEMENT OF FACTS

Plaintiff began leasing certain real and personal property from Korean Mission Evangelical Church in February 1999. Plaintiff applied for and was granted an exemption on the leased property for the 1999-2000 tax year after timely filing an application in March 1999. The exemption was granted under ORS 307.140¹ (granting exemption for property of a religious organization) and ORS 307.166 (granting exemption on property leased by qualifying organization from qualifying organization) and covered both real and personal property. The exemption continued for tax year

¹ All references to the Oregon Revised Statutes are to 1999.
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2000-01. The exemption was then terminated for the 2001-02 tax year because the lease agreement expired January 31, 2001. The lease was renewed and effective as of February 1, 2001, but that fact was not known by Defendant at the time it terminated the exemption.

A letter informing Plaintiff the property would be returned to the tax roll was sent by Defendant on October 31, 2001. (Ptf's Complaint at 5.) The explanation for the termination was that "[the assessor's] office has not received [a] lease renewal and exemption application for the tax year 2001/02." The letter further provided:

"[s]hould you wish to continue the exemption for the 2001/02 tax year, you must file a new application and lease by December 31, 2001 and pay a late-filing fee of \$200.00." (*Id.*)

On November 13, 2001, Plaintiff submitted a new exemption application along with the new lease agreement and a \$200 late filing fee. The application was approved by letter dated November 23, 2001. Thus, the property is exempt for the tax year at issue (2001-02). Plaintiff requests the court refund the \$200 filing fee.

According to the testimony, Plaintiff's business manager, Mr. Askew, understood the exemption would continue until Plaintiff moved from the building, provided the use did not change. This understanding came from a telephone conversation Mr. Askew had with an unknown individual at the assessor's office in February 1999 when Mr. Askew phoned to inquire about the exemption. Mr. Askew made a note of the telephone conversation but did not take down the name of the person with whom he spoke. Mr. Askew argues his understanding of the continuation of the exemption is supported by wording in Defendant's letter of approval Plaintiff received at the time of the initial application in 1999. That letter, dated May 21, 1999, includes the following language:

"Under the provisions of ORS 307.166, the exemption shall continue so

long as the ownership and use of the property remain unchanged during the period of the lease.

“A renewal application must be submitted at the expiration of the lease. Please notify this office when you terminate your occupancy.”
(Emphasis in original.)

It is Plaintiff’s position that the application would have been timely filed in 2001 had Plaintiff not been misinformed during the telephone conversation that took place in February 1999. Plaintiff further argues Defendant’s exemption approval notification letters are sufficiently confusing so as to convey the impression that the exemption continues until the applicant moves from the building.

COURT'S ANALYSIS

The parties agree Plaintiff’s leased property qualifies for tax exemption. Moreover, Plaintiff does not challenge the general legality of the late filing fee. Rather, Plaintiff contends that the peculiar facts of this case justify a refund of that fee.

The court begins by noting that once an exemption is granted on leased property the exemption continues until the happening of one of several specified events. The statute provides in relevant part:

“* * * [t]he exemption shall continue so long as the ownership and use of the property remain unchanged and during the period of the lease or agreement. * * * If the lease or agreement expires before July 1 of any year, the exemption shall terminate as of January 1 of the same year.
ORS 307.166(3)(b).

Because Plaintiff’s lease expired January 31, 2001, the exemption terminated as of January 1, 2001, which caused the property to become subject to tax for the upcoming tax year (2001-02). When, as in this case, another lease is entered into, a new application must be filed. The filing requirements are as follows:

“(3)(a) The claim shall be filed on or before April 1, except as follows:

“(A) If the lease or other agreement is entered into after March 1 but not later than June 30, the claim shall be filed within 30 days after the date the lease or agreement is entered into if exemption is claimed for the assessment year beginning on that January 1; or

“(B) Notwithstanding that no hardship grounds exist, if a late filing fee is determined, paid and distributed in the manner provided in ORS 307.162 (2), the claim shall be filed on or before December 31 of the assessment year for which exemption is first claimed.

“(b) The exemption first shall apply for the tax year beginning July 1 of the year for which the claim is filed.” ORS 307.166.

Plaintiff’s lease was entered into before March 1 so the application was due on or before April 1. Plaintiff filed its application in November 2001, under the provisions of paragraph (B) of subsection (3)(a) of the above statute. Accordingly, a late filing fee was required. The fee provision is set forth in ORS 307.162(2). That statute provides, in relevant part:

“Notwithstanding subsection (1) of this section² [setting forth the need to file a claim on or before April 1], a statement may be filed under this section on or before December 31 of the assessment year for which exemption is first desired. However, any statement filed after the time for filing the statement specified in subsection (1) of this section must be accompanied by a late filing fee of the greater of \$200, or one-tenth of one percent of the real market value of the property to which the statement pertains, as determined for the assessment year by the assessor for this purpose. If the statement is not accompanied by the late filing fee or if the late filing fee is not otherwise paid, no exemption shall be allowed for the tax year based upon a statement filed pursuant to this subsection.” ORS 307.162(2). (Emphasis added.)

The late filing fee is mandatory, as evidenced by the use of the word “must” in the statute. The fee was determined to be \$200. The question Plaintiff presents is whether it is entitled to a refund of the \$200 fee it paid because it was misled into believing no application was required unless and until Plaintiff moved from the property. Plaintiff’s claim raises the issue of estoppel.

² The reference to “this section” is to ORS 307.162, which provides the filing requirements for most exemptions claimed by property owners. ORS 307.166 pertains to lessees.

There are three elements to a claim of estoppel: (1) misleading conduct by the state (2) good faith reliance on that conduct, and (3) injury to the party claiming estoppel. *Society of St. Vincent DePaul v. Dept. of Rev.*, 14 OTR 47, 50 (1996). It is the first element that draws the court's attention. In that regard, the level of proof is quite high in a tax case and Plaintiff has the burden of proof. ORS 305.427. A taxpayer claiming estoppel against the state must show "proof positive" that they were misled by the state. *Johnson v. Tax Commission*, 248 Or 460, 463, 435 P2d 302 (1967). Plaintiff argues it was unclear about the rules as to when an exemption terminated and a new application was required. Plaintiff believed the exemption would continue until it moved out of the building. However, the information set out in Defendant's original May 1999 exemption approval letter clearly stated that "[a] renewal application must be submitted at the expiration of the lease."

Mr. Askew insists he was given contrary information by someone in the assessor's office when he spoke with them in February 1999 before applying for the exemption. That may be true, but in view of the facts as a whole, such circumstances are not sufficient to constitute estoppel. This is so for several reasons. First, the written information was given after the verbal. The written information correctly states expiration of the lease requires a new application. The language is not ambiguous. This court has previously stated that "[w]hen written materials containing accurate information and advice are given to taxpayers, taxpayers may not continue to rely on an understanding based on oral representations or discussions which are contrary to the written information." *Smith v. Dept. of Rev.*, 13 OTR 206, 210 (1994). Second, the evidence as to the information given over the phone falls short of the "proof positive" standard announced in *Johnson*. Mr. Askew has a note of a phone call in 1999 but he does not know to whom he spoke. The details of that conversation are not known, or at

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least, they are not in evidence. In *Schellin v. Dept. of Rev.*, 15 OTR 126, 132 (2000), this court stated:

“There are many possibilities for misunderstanding with oral communication.’ *Mahler v. Dept. of Rev.*, 11 OTR 367, 370 (1990). Taxpayers are often unfamiliar with taxation procedures. It is easy for them to become confused even where correct information is given. [citation omitted.]”

It is for this reason that the court has found that “[w]ritten evidence of being misled is given greater weight than mere testimony.” *Schellin*, 15 OTR at 132. The court can review written evidence. There is no written evidence Plaintiff was misled. And, the written evidence in the form of Defendant’s 1999 exemption approval letter clearly and correctly states the need to file a new application when the lease terminates.

For the reasons set forth above, the court concludes the county should not be estopped from raising the untimeliness of the application. The court has independent authority to waive the late filing fee required by the statute.

CONCLUSION

After considering Plaintiff’s request, the court concludes the late filing fee of \$200 charged by Defendant when Plaintiff filed its exemption application cannot be waived. The fee is mandatory under the statute and any verbal information given to Plaintiff by unknown government employees suggesting no application was required is insufficient to satisfy the elements of estoppel. Accordingly, the fee must stand. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s request for a refund of the \$200 late filing fee is denied.

Dated this _____ day of March, 2002.

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 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 DAN ROBINSON ON MARCH 29, 2002. THE COURT FILED THIS DOCUMENT ON MARCH 29, 2002.