

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

ROBERT L. ERICKSON and ANNBRIIT M. )  
ERICKSON, )  
 )  
Plaintiffs, ) No. 011251B  
 )  
v. )  
 )  
LANE COUNTY ASSESSOR, )  
 )  
Defendant. ) **DECISION**

Plaintiffs appeal Defendant's addition of value to the tax roll for property identified in the Lane County Assessor's records as Account No. 0478683. A telephone trial was held May 8, 2002. Robert L. Erickson, appeared and testified on behalf of Plaintiffs. Carla Orcutt, Executive Director for Alvord Taylor, Inc., also testified on behalf of Plaintiffs. Joyce Kehoe appeared and testified on behalf of Defendant.

**STATEMENT OF FACTS**

Plaintiffs own a four-plex building in Eugene, Oregon. On June 28, 1989, Plaintiffs entered a 15-year lease agreement<sup>1</sup> with Alvord Taylor Inc., (hereinafter tenant) a charitable organization assisting people with disabilities. The lease permits the tenant to use the property for "residential purposes and office space and for no other purposes." (Def's Ex B at 1.) The lease also requires any property taxes to be paid by the tenant. (*Id.*)

Because the tenant is a charitable organization an application was made for exemption from property tax. On July 28, 1989, tenant filed an application for property tax exemption for leased property claiming the right to the exemption under ORS 307.130(1987). (Def's Ex A.) Tenant received an approval letter from Defendant

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<sup>1</sup>The lease expires on June 30, 2004. (Def's Ex B at 1.)

on October 9, 1989. The approval letter stated that "[i]f the ownership and use of all property included in the application filed with the county assessor remains unchanged, a new application will not be required." (Def's Ex C.) Further, the approval provided that a new application would be required if the tenant renewed the lease. (*Id.*)

On March 17, 1999, Plaintiffs executed an addendum to the lease agreement allowing tenant to sublet the property. (Def's Ex E.) Subsequently, on July 30, 1999, tenant entered into a sublease agreement with Oregon Supported Living Program (hereinafter OSLP), a charitable organization. The terms of the sublease are virtually identical to those of the original lease agreement entered by Plaintiffs and tenant; however, the obligation to pay property taxes remains with tenant. (*Compare* Def's Ex B at 1 *with* Def's Ex F at 1.) When the sublease was entered, neither OSLP nor tenant filed a new application for property tax exemption.

Sometime in July 2001, Defendant learned from tenant of the sublease agreement. On December 10, 2001, Defendant sent a letter advising Plaintiffs of the Defendant's intention to correct the assessment and tax roll for the tax years 1999-2000 and 2000-01 pursuant to ORS 311.205<sup>2</sup>. This letter states that the property became taxable on July 30, 1999, when the tenant subleased the property to OSLP. (Def's Ex G.) Subsequently, on January 14, 2002, Defendant notified Plaintiffs that the value of the property had been added to the roll and an additional tax of \$6,503.11 would be " \* \* \* billed to [Plaintiffs] on the 2002-2003 tax statement as a special assessment." (Def's Ex H.) Plaintiffs filed an appeal in this court on December 26, 2001, arguing that the property is leased to a charitable organization, exempt under ORS 307.130, and that the use of the property has not changed as a result of the sublease between tenant and OSLP.

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<sup>2</sup> All references to the Oregon Revised Statutes are to 1999.  
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Plaintiffs request the court continue the exempt status of the property.

The parties agree that both Plaintiffs' tenant and the sublessee, OSLP, are charitable organizations that qualify under ORS 307.130 for exemption from property taxes. However, Defendant argues under ORS 307.166 a change in use occurred requiring a new application for exemption be filed by OSLP. Because a new application was not filed for the years under appeal, Defendant requests the court uphold the assessment.

### **ISSUE**

Does the execution of a sublease between two charitable organizations constitute a change in use necessitating the filing of a new application for property tax exemption?

### **COURT'S ANALYSIS**

ORS 307.130 is the source of the charitable exemption for ad valorem property taxation:

"(1) Upon compliance with ORS 307.162 [relating to filing an application], the following property owned or being purchased by \* \* \* incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:

"(a) \* \* \* only such real or personal property, or proportion thereof, as is actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institutions."

The property at issue is held by a taxable owner, Plaintiffs, and leased to a charitable organization that qualifies for exemption. ORS 307.112 provides an exemption for property leased under facts such as these. The statute provides in pertinent part:

"(1) Real or personal property of a taxable owner held under lease or lease-purchase agreement by an institution, organization or public body, \* \* \* granted exemption or the right to claim exemption for any of its property under ORS 307.090, 307.130 \* \* \* is exempt from taxation if:

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"(a) The property is used by the lessee in the manner, if any, required by law for the exemption of property owned or being purchased by it; and

"(b) It is expressly agreed within the lease or lease-purchase agreement that the rent payable by the institution, organization or public body has been established to reflect the savings below market rent resulting from the exemption from taxation." ORS 307.112(1).

Thus, pursuant to ORS 307.130 and ORS 307.112, Defendant granted an exemption from property tax which was to continue until the end of the lease in 2004 unless the ownership or use of the property changed. (Def's Ex C.)

Because Plaintiffs' tenant, a charitable organization, subleased the property to another charitable organization, OSLP, the court turns to ORS 307.166 which applies to property leased from one charitable organization to another charitable organization. The statute provides in pertinent part:

"(1) If property is owned or being purchased by an institution, organization or public body, and if the institution, organization or public body is one granted exemption or the right to claim exemption for any of its property under a provision of law contained in this chapter, and such institution, organization or public body leases or otherwise grants the use and possession of such property to another institution, organization or public body likewise granted exemption or the right to claim exemption for any of its property under a provision of law contained in this chapter, such property is exempt from taxation if used by the lessee or possessor in the manner, if any, required by law for the exemption of property owned or being purchased by the lessee or possessor and the rent payable under the lease or other grant of use and possession of the property has been established to reflect the savings below market rent resulting from the exemption from taxation. Likewise, if the property is sublet or otherwise the use and possession of the property is granted to another institution, organization or public body of the kind described in this subsection, such property is exempt if the property is used by the sublessee or possessor in the manner, if any, required by law for the exemption of property owned or being purchased by the sublessee or possessor and the rent payable under the sublease or other grant of use and possession of the property has been established to reflect the savings below market rent resulting from the exemption from taxation.

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"(2) The lessee or entity in possession shall file a claim for exemption

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"(3)(b) The exemption first shall apply for the tax year beginning July 1 of the year for which the claim is filed. The 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 either the ownership or use changes, a new claim shall be filed as provided in this section. 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 (emphasis added).

The purpose of ORS 307.166 was discussed by the Tax Court in *Woman's Convalescent Home v. Dept. of Rev.*, 9 OTR 190, 193 (1982), which states:

"[t]his section [ORS 307.166] was enacted in 1977, in direct response to an Oregon Supreme Court decision which held that ORS 307.130 could not be read to include property leased by one exempt corporation to another exempt person, including a municipality. *Albany Gen. Hospital v. Dept. of Rev.*, 277 Or 727, 561 P2d 1029 (1977). The section does not create a separate exemption for leased property. It merely preserves the exemption already established by ORS 307.130. However, one intending to qualify under its provisions must satisfy the separate application and filing requirements contained therein. The section requires, among other things, that '[i]f either the ownership or use [of the property] changes, a new application shall be filed.'" (Emphasis added.)

The property at issue in *Woman's Convalescent Home* was owned by the Woman's Convalescent Home Association, "a charitable corporation entitled to claim property tax exemption under ORS 307.130." *Id.* at 191. In January 1977, the property was leased to another charitable entity, Alcoholism Counseling and Recovery Program, Inc., which abandoned the property in February 1979, before the term of the lease expired. In November 1979, the property was sold to another charitable entity. The court held that each of these events constituted a change in "use" of the property.

"There was a change of use when the property was leased by the Alcoholism Counseling and Recovery Program, Inc., but this apparently went unnoticed by all the interested parties at the time. When Alcoholism Counseling and Recovery Program, Inc., left the premises in February 1979, this again constituted a change of 'use' within the meaning of ORS 307.166(3)." *Id.* at 193.

Similarly, in this case Plaintiffs' tenant is a charitable organization and is entitled to property tax exemption under ORS 307.130. The exemption was granted by Defendant with the condition that "the ownership and use of all property included in the application \* \*  
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remains unchanged." (Def's Ex C.) Plaintiffs argue that because both its tenant and OSLP are charitable entities that qualify for exemption under ORS 307.130 there has been no change in use requiring a new application. However, ORS 307.130 exempts property only "[u]pon compliance with ORS 307.162 \* \* \*," which also requires a new application upon a change of use.

The court finds that a change in use of the property occurred when Plaintiffs' tenant entered into the sublease agreement with OSLP. Upon execution of the sublease, OSLP occupied the building. Subsection (2) of ORS 307.166 requires the "lessee or entity in possession" to file the claim for exemption with the county assessor. A new application for property tax exemption must be filed by OSLP as provided in ORS 307.166 for the exempt status of the property to continue.

### **CONCLUSION**

The court finds that the execution of a sublease agreement between Plaintiffs' tenant, Alvord Taylor, Inc., and Oregon Supported Living Program constitutes a change in use within the meaning of ORS 307.166(3)(b). As required by ORS 307.166 a new claim

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for exemption must be filed for the property to remain exempt. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's addition of value to the

roll for tax years 1999-2000 and 2000-01 is affirmed.  
June, 2002.

Dated this \_\_\_\_\_ day of

JEFF MATTSON  
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 JEFF MATTSON ON JUNE 21, 2002. THE COURT FILED THIS DOCUMENT ON JUNE 21, 2002.**