

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

VESTA J. JOHNSON,)
)
 Plaintiff,) No. 020515C
)
 v.)
)
 DESCHUTES COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff, a member of the Warm Springs Indian Tribe, seeks a refund of taxes paid for the 2001-02 tax year on a manufactured home purchased in Deschutes County and moved to the reservation in Jefferson County.

STATEMENT OF FACTS

The parties agreed to the following facts. The subject property is a manufactured home purchased by Plaintiff in early July 2001, for \$15,000. Plaintiff purchased the home from Palm Harbor Homes (Palm Harbor). Palm Harbor apparently obtained title to the property after a previous owner defaulted on the contractual payment obligations.

According to the county tax records, the owner of the property for the three years prior to the sale was Daniel Rubio.

Plaintiff is in the business of acquiring foreclosed manufactured homes and moving them to the reservation for resale to tribal members at a “reasonable price” after the homes are set up, including the installation of appliances. When purchasing this particular home, a representative from Palm Harbor took Plaintiff to Black Hawk Trailer Park in Redmond, Oregon, to view the property. Before moving the home out of Deschutes County and onto the reservation, the county taxing authorities required Plaintiff to pay the property taxes for the 2001-02 tax year, as provided in

ORS 308.865.¹ Taxes were paid in the amount of \$436.07. The home was then moved to the reservation on or about August 17, 2001.

Plaintiff is willing to pay the property taxes for the portion of the tax year in which the property was actually located in Deschutes County but objects to paying taxes for the entire tax year. Plaintiff further argues that as a member of the Warm Springs Indian Tribe she is exempt, under ORS 307.180, from payment of property taxes on property located on an Indian reservation. Defendant responds that under ORS 311.405(2), taxes for the 2001-02 tax year, which began on July 1, 2001, became a lien on the property as of July 1, 2001, and that the subsequent movement of the property out of the county does not entitle Plaintiff to an exemption under ORS 307.180. Moreover, because the jurisdiction to which the home was moved (Warm Springs Indian Reservation) does not impose fees or taxes on the property, the provisions in ORS 308.890 for transferring a portion of the taxes to the jurisdiction to which the property was moved, are inapplicable. Accordingly, Defendant asserts that the taxes for the entire tax year were properly certified and collected.

COURT'S ANALYSIS

In Oregon, manufactured homes are generally titled and licensed by the state Department of Motor Vehicles. Oregon law prohibits a person from moving a manufactured structure from one location to another without paying all property taxes for the current tax year and all outstanding property taxes. ORS 308.865(1)(b).² The

¹ All references to the Oregon Revised Statutes (ORS) are to 1999.

² The statute provides in part:

"(1) A person shall not move a manufactured structure to a new situs within the same county or outside the county until the person has:

"(a) Given notice of the move to the county assessor, county tax collector and the

Department of Transportation is prohibited from issuing the necessary trip permit under ORS 820.560 until the owner provides proof the taxes are paid. ORS 308.865(3).³ In accordance with those requirements, the county insisted Plaintiff pay the property taxes on her newly acquired home before she moved the structure out of Deschutes County and onto the reservation in another county. Plaintiff argues she is exempt from property taxes under ORS 307.180, which provides:

“The real property of all Indians residing upon Indian reservations who have not severed their tribal relations or taken lands in severalty, except lands held by them by purchase or inheritance, and situated on an Indian reservation, is exempt from taxation. However, the lands owned or held by Indians in severalty upon any Indian reservation and the **personal property of such Indians upon reservations shall be exempt from taxation only when so provided by any law of the United States.**”

(Emphasis added.)

Under this statutory scheme, real property (e.g., a stick built home) located on a reservation and owned by a member of an Indian tribe, is exempt from taxation. The property at issue in this case is a manufactured structure, and under ORS 308.875 it is assessed and taxed as personal property because the home and the land upon which the home is situated were not owned by the same person on the assessment date. The statute reads:

Department of Transportation; and

“(b) **Paid all property taxes** and special assessments for the current tax year and all outstanding delinquent property taxes and special assessments for all past tax years.”

ORS 308.865 (emphasis added).

³ The relevant provision reads:

“(3) The Department of Transportation shall not issue a trip permit under ORS 820.560, until the owner furnishes a statement from the county tax collector that all taxes have been paid as required by subsection (1) of this section.”

“If the manufactured structure and the land upon which the manufactured structure is situated are owned by the same person, the assessor shall assess the manufactured structure as real property. If the manufactured structure is owned separately and apart from the land upon which it is located, it shall be assessed and taxed as personal property. Subject to ORS 820.510, classification of a manufactured structure as real property for ad valorem tax purposes shall not change the classification of such structure as personal property with respect to any transactions between the owner and security interest holders or other persons.”

ORS 308.875.

Under ORS 307.180, the property at issue, being personal property, is exempt from taxation “only when so provided by any law of the United States.” Plaintiff did not direct the court to any federal legislation providing for the exemption under the facts in this case. States are preempted from taxing lands occupied by Indians and the income they earn on Indian lands because the federal government has plenary and exclusive power to deal with Indian tribes and Indian tribes by treaty or through notions of inherent sovereignty retain significant powers of self-governance over internal affairs. *See McClanahan v. Arizona State Tax Comm’n*, 411 US 164, 172, 93 S Ct 1257, 36 L Ed 2d 129 (1973). The same prohibition extends to personal property mobile homes located on Indian reservations or trust lands. *Bryan v. Itasca County*, 426 US 373, 96 S Ct 2102, 48 L Ed 2d 710 (1976). However, to say the state’s power to tax is limited is not to preclude taxation in all cases.

Plaintiff’s primary problem is timing. Under ORS 308.007 and ORS 308.210(1), January 1, 2001, was the assessment date for determination of the value and taxability (*i.e.*, taxable or exempt). At that time, the property was located in Deschutes County, was not on an Indian reservation, and was not owned by a member of an Indian tribe. The sale took place after July 1, which was the date the statutory lien attached to the

structure. ORS 311.405(3).⁴ Plaintiff's subsequent purchase does not extinguish or alter that lien. Under ORS 311.410, property subject to tax on July 1 remains taxable for the upcoming tax year despite any transfer to an exempt ownership or use after that date. The statute reads in relevant part:

“(1) Real property or personal property which is subject to taxation on July 1 shall remain taxable and taxes levied thereon for the ensuing tax year shall become due and payable, **notwithstanding any subsequent transfer of the property to an exempt ownership or use.**

“(2) No sale or transfer of personal property or any part thereof shall affect the lien under ORS 311.405 (3)(a)(A).

“(3) Real or personal property is exempt if it is transferred or changed from a taxable to an exempt ownership or use at any time before July 1 of any year.”

ORS 311.410 (emphasis added).

This court has previously noted that “ORS 311.410 governs the taxable status of property.” *Christian Life Fellowship, Inc. v. Dept. of Rev.*, 12 OTR 94, 96 (1991). That statute allows for status changes between the assessment date (January 1) and the commencement of the tax year (July 1). However, July 1 is the cutoff date and any subsequent changes in ownership or use are irrelevant for the immediate ensuing tax year.

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Pursuant to the statutory provisions discussed above, the property was subject to

⁴ ORS 311.405(3)(a) provides that taxes on personal property are a lien both on the personal property assessed and on any personal property owned, possessed, or controlled by the person assessed. The statute reads in relevant part:

“(a) Taxes on personal property shall be a lien:

“(A) On any and all of the particular personal property assessed and on any and all of the personal property assessed as the same category * * * ; and

“(B) For purposes of distraint, on any and all of the taxable personal property owned by or in the possession or control of the person assessed.”

the tax lien at the time Plaintiff acquired the manufactured home. Removal of the property to a reservation, where it ultimately becomes exempt, does not eliminate the tax burden that arose prior to possession and transfer. By analogy, the sale of cigarettes by native Americans to native Americans, on a reservation, is exempt from state sales taxes, but the off-reservation purchase by a native American who then takes the cigarettes to the reservation does not entitle that individual to a refund of the tax validly imposed and already paid.

Plaintiff asks the court to at least prorate the taxes based on the amount of time the manufactured home was in Deschutes County during the 2001-02 tax year, which would considerably reduce the tax liability. There is no statutory authority in Oregon for prorating taxes where property is transferred from taxable to exempt ownership and use after July 1. ORS 308.890 provides for a tax refund when a manufactured structure is moved to another **state** that imposes a tax that overlaps the tax paid to Oregon for the tax year; the intent being to avoid double taxation. However, the property at issue was not moved to another state and, even if the statute does apply where the property is moved to a reservation within the state, neither the county assessor nor the reservation imposed a tax on the manufactured home after it was moved.

CONCLUSION

Plaintiff's request for a refund, in whole or in part, of property taxes paid for the 2001-02 tax year on a manufactured structure purchased after July 1, 2001, and moved to the Warm Springs Indian Reservation on or about August 17, 2001, is denied because the property was in Deschutes County on the January 1, 2001, assessment date, and was not moved out of the county until after the July 1, 2001, lien date. The lien attached to the property on July 1, 2001, and Oregon law requires payment of the taxes due for the

upcoming tax year before a manufactured home can be removed from the county. Federal preemption law as it relates to the regulation and taxation of Indians is not applicable because of the timing of the acquisition and transfer. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of January, 2003.

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 JANUARY 31, 2003. THE COURT FILED THIS DOCUMENT ON JANUARY 31, 2003.