IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

THE YOUNG MENS CHRISTIAN ASSOCIATION OF COLUMBIA-WILLAMETTE,	)	
Plaintiff,	)	TC-MD 020920B
v.	)	
CLACKAMAS COUNTY ASSESSOR,	)	
Defendant.	)	**DECISION**

Oral argument was held on February 18, 2003. Participating for Plaintiff were Bob Hall, Rhonda McDowall and Jennifer Cameron. Linda Dunn represented Defendant.

Subsequently, written arguments were received from the parties. The record closed on March 11, 2003.

STATEMENT OF FACTS

This case involves the claimed exemption as to real property for the 2001-02 tax year. The subject property is identified as Account 00493969. The Complaint alleges entitlement to exemption pursuant to ORS 307.112(1) and 307.130(1).[1]

Plaintiff Young Mens Christian Association of Columbia-Willamette (YMCA) is an exempt organization under Internal Revenue Code section 501(C)(3). On June 15, 2001, YMCA entered into a 10-year lease with a non-exempt landlord for a building in which YMCA planned to operate a child development center. YMCA then applied to Defendant Clackamas County Assessor's Office (assessor) for exemption from property tax under ORS 307.112(1), which allows a property tax exemption to a taxable owner if the subject

[1] All references to the Oregon Revised Statutes (ORS) are to 2001.

property at issue is leased to an exempt organization. However, certain statutory provisions must be met before exemption is granted.

Defendant rejected the application for several reasons, and YMCA appealed to this court. Only one question is still at issue: whether the lease met the requirements of ORS 307.112(1)(b) as to the terms that "[i]t is expressly agreed within the lease * * * 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." Before filing this appeal, Plaintiff originally responded to assessor's rejection by signing a lease amendment (amendment), "effective June 27, 2002." The amendment reads in relevant part as follows:

"RECITALS

"* * * * *

"(B) While not expressly set forth in the Lease, the parties at all times understood that Tenant's rent under the Lease was established to reflect the savings below market rent resulting from Tenant's exemption from taxation.

"(C) The parties desire to amend the terms of the Lease for clarification of the above and compliance with ORS 307.112(1)(b).

"AGREEMENT

"(2) The parties hereby agree that Tenant's rent payable under the Lease has been established to reflect the savings below market rent resulting from Tenant's exemption from taxation."

That amendment raises two subsidiary questions: (a) can a lease amendment have retroactive effect for the purpose of meeting the requirements of ORS 307.112(b); and if so, (b) does this particular amendment serve to bring the original lease within the requirements of ORS 307.112(1)(b)?

Both questions were addressed during the telephone proceeding before this court

on February 18, 2003. Representative Dunn, for the assessor, answered the first question in the affirmative, indicating that she would have accepted the amendment as effectively relating back to the signing date of the original lease if only the amendment had been worded a little differently.[2]

The assessor accepts that a lease amendment could have retroactive impact, but contends that this particular amendment did not have such effect, because the retroactivity was not sufficiently explicit.

ANALYSIS

This presents a very close question as to the underlying exemption claim.

The intent of the amendment is clear from the circumstances; but the language of the amendment is somewhat ambiguous, and perhaps contradictory. The admission in recital B that the required statement was "not expressly set forth in the Lease" is a peculiar one to make in an amendment whose sole purpose is retroactively to make that same statement more explicit. On the other hand, that same sentence goes on to state that "the parties at all times understood" that the tax savings accrued to YMCA.

This court finds that, on balance, the amendment does effectively indicate an intent as to retroactivity. The agreement section in particular is conclusive. In that section, the amendment states that the "rent payable under the Lease **has been** established to reflect the savings below market rent resulting from Tenant's exemption from taxation."

---

[2] Magistrate: "If there was something, Ms. Dunn, say there was a recital and it said the parties further desire that this amendment relates back to the initial June 15, 2001, date and it was the intent of the parties that this relation back was the case?"

Assessor (Dunn): "If it said something to the effect that this addendum is added to the lease which was effective June 15 and um is inclusive and all other items remain the same, then yeah something to that effect directly relating back to that start date of June 15, there would be no question. But we don't feel that language is apparent in the addendum."

YMCA (Hall): "We thought recital B did this."

(Emphasis added). It does not state that this is hereby established, or is established in the future by the amendment; it states that the rent **has been** thus earlier established. This may be taken two ways. It could mean that the original lease already established this (discussed below), or it could mean that this amendment makes it so that the rent **has been** so established; in other words, the amendment acts retroactively upon the original lease.

The court accepts the quoted language of the agreement section for two reasons. First, in an ambiguous or contradictory writing, it is appropriate to take into account the context in which the writing was signed. *Anderson v. Jensen Racing, Inc*., 324 Or 570, 575, 931 P2d 763 (1997) ("in deciding whether the terms of a contract are ambiguous and in deciding what those terms mean, the court must consider the context in which they appear.") (citation omitted). *See also* ORS 42.240 ("In the construction of an instrument, the intention of the parties is to be pursued if possible[.]") That is especially so where, as here, the context and intent of the amendment were clear to both sides. Second, in an ambiguous or contradictory amendment, courts give more weight to the "agreements" than to the "recitals." *Miller v. Miller*, 276 Or 639, 555 P2d 1246 (1976) (when the intent of the parties cannot be determined, and the recitals contradict the agreements, the agreements prevail).

The evidence also preponderates for YMCA on an independent ground. The **original** lease had already established what the amendment claims it had recited. In other words, it is not clear that the amendment was even necessary nor required. A requirement to be explicit is not a commandment to parrot the exact statutory words. Although quoting the exact language of ORS 307.112(1)(b) directly into the lease is the easiest and a most

certain way of meeting the statutory requirement of express agreement, it is not the only method.

The lease herein allocated all property tax responsibilities to YMCA. This explicitly includes both the responsibility to pay the tax (Lease provision 4.2(a)) and the right to contest the tax (Lease provision 4.2(e)). These lease provisions constitute an express agreement that the rent was established to reflect whatever property tax savings YMCA might obtain. Because YMCA was responsible for paying the taxes, and had the right to apply for an exemption, YMCA would be, under the explicit terms of the lease, the beneficiary of below market rent resulting from tax savings flowing from property tax exemption.

The court therefore finds for YMCA on two grounds. First, the assessor allowed that a lease amendment may have retroactive effect; the court finds that the language of the amendment is sufficient to show the parties' intent to create such retroactive effect. Second, by placing all responsibility for paying and for appealing the property tax squarely on YMCA, the original lease did expressly indicate that the rent payable would reflect any savings from property tax exemption, as required by ORS 307.112(b).

Finally, as an addendum, the court acknowledges receiving letters from both YMCA (dated Feb 25, 2003) and the assessor (Letters dated Feb 18, 2003, and March 7, 2003) regarding a disagreement over the YMCA filing for the prospective 2002-2003 tax year. Only tax year 2001-2002 is currently before the court, and no findings or recommendations regarding the 2002-2003 tax year are herein specifically made, but the court acknowledges a continuing dispute.

/ / /

/ / /

/ / /

/ / /

/ / /

CONCLUSION

In such an appeal to the Oregon Tax Court, a preponderance of the evidence is required to sustain the burden of proof. That burden of proof shall fall upon the party seeking affirmative relief. ORS 305.427. YMCA has clearly met that statutory requirement in this record.

IT IS THE DECISION OF THIS COURT that for the 2001-02 tax year, Account 00493969 is entitled to ad valorem exemption pursuant to ORS 307.112(1) and ORS 307.130(1).

Dated this ___ day of July, 2003.

_____
JEFF MATTSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, 1163 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 JULY 10, 2003. THE COURT FILED THIS DOCUMENT ON JULY 10, 2003.