

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CHRISTIAN MEETING PLACE,)
)
 Plaintiff,) TC-MD 021173C
)
 v.)
)
 WASHINGTON COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff has appealed from an action of the county assessor adding a portion of the previously exempt property to the tax roll for the 2002-03 tax year.

I. STATEMENT OF FACTS

The subject property is a single tax lot 1.89 acres in size with a 2-story residential structure and a detached garage. The property is used for religious purposes and there are plans to build a meeting hall pending final approval of the permit applications. The property was granted exemption under ORS 307.140 (1999) for the 2001-02 tax year following an inspection by a residential property section supervisor. After a second inspection on July 11, 2002, one acre of the previously exempt 1.89 acres was determined to be nonexempt because it was unused and overgrown by bushes and trees. The change from exempt to nonexempt was effective for the 2002-03 tax year. Plaintiff was notified of the change by letter dated July 19, 2002. Plaintiff timely appealed to the Magistrate Division of the Oregon Tax Court on October 14, 2002. Defendant subsequently reinspected the property on January 24, 2003, and determined that the unused portion was only 0.79 acres, leaving 1.10 acres entitled to exemption.

Betty O'Rourke (O'Rourke), a Senior Administrative Specialist, testified for Defendant. Her testimony was uncontroverted and the court found her credible. O'Rourke

stated that she walked the entire property and that it was difficult to traverse portions of the disputed area because of the thick underbrush. Moreover, O'Rourke saw no signs that the wooded area had been put to any use, a point conceded by Plaintiff. Photographs of the area show tall trees and thick underbrush.

Plaintiff contends that the entire 1.89 acres of property should be exempt under ORS 307.140 because there is no statutory authority allowing for a partial exemption where all of the land comprises a single tax lot. Alternatively, Plaintiff contends that the disputed area is landscaping and is merely underutilized. Finally, Plaintiff asserts that the disputed area will be fully developed and used for qualifying religious purposes in the summer of 2003. Defendant contends that 0.79 acres is nonexempt because it was not being used for religious purposes as required by the statute. Defendant argues for strict but reasonable construction, noting that in the case of doubt, the request is to be denied.

II. ANALYSIS

ORS 307.140¹ exempts from taxation certain property owned by religious organizations. The statute provides in relevant part:

“Upon compliance with ORS 307.162, the following property owned or being purchased by religious organizations shall be exempt from taxation:

“(1) All houses of public worship and other additional buildings and property used solely for administration, education, literary, benevolent, charitable, entertainment and recreational purposes by religious organizations, the lots on which they are situated, and the pews, slips and furniture therein. However, any part of any house of public worship or other additional buildings or property which is kept or used as a store or shop or for any purpose other than those stated in this section shall be assessed and taxed the same as other taxable property.”

ORS 307.140.

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

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A. *Partial Exemptions*

The first issue is whether there is legal authority for granting only a partial exemption for land where the property comprises a single tax lot. A straightforward reading of the statute would appear to support Plaintiff's assertion that the entire lot must be either exempt or taxable, but existing case precedent dictates a different result. The argument for an all-or-nothing proposition for "lots" is that, although the statute does appear to provide for partial exemption for certain property, primarily buildings,² the relevant language does not appear to apply to "the lots on which they are situated."³ ORS 307.140(1). Thus, it could be argued that once a determination is made that the building qualifies, the entire lot on which it is situated is also exempt. Of course OAR 150-307.140(2) (2002) does provide that "[p]roperty may be in part taxable and exempt," but that could be a reference to "houses of public worship and other additional buildings and property," as provided by the statute, or lots where only part of the building qualifies. That may be Plaintiff's point, although articulated less precisely.

Although this may be a fair reading of the statute, the Oregon Supreme Court has held otherwise, stating that "[t]o qualify the entire parcel for exemption under

² Reference is made to "buildings" because two of the three categories of property first set out in the statute (houses of public worship, other additional buildings, and property) are buildings. The third category (property) presumably encompasses playground equipment and outdoor amphitheaters, etc.

³ The operative language of the statute requires "houses of public worship and other additional buildings and property [to be] used solely" for one of the purposes specified in the statute (administration, education, literary, benevolent, charitable, etc.), and further provides that "any part of any house of public worship or other additional buildings or property * * * used * * * for any purpose other than those stated" is subject to taxation. ORS 307.140(1). That suggests partial exemption for those categories of property (houses of public worship and other additional buildings and property) was contemplated by the legislature. However, after listing what appears to be the primary category of property to which exemption applies (houses of public worship and other additional buildings and property), followed by the qualifier that the property be "used solely" for one of the specified purposes, exemption is allowed for "the lots on which **they** are situated," the reference to "they" being houses of public worship, etc. *Id.* (emphasis added).

ORS 307.140, the taxpayer must actually use the entire parcel primarily for qualifying activities.” *Golden Writ of God v. Dept. of Rev.*, 300 Or 479, 484, 713 P2d 605 (1986).

The court stated further that “where the evidence does not demonstrate which portion of the entire parcel is devoted to exempt activities, or reasonably necessary to allow those activities, **no partial exemption** on that account **should be allowed.**” *Id.* (emphasis added). Thus, the Supreme Court explicitly recognizes partial exemptions in certain situations, although it does not appear the question of an all-or-nothing exemption for lots was argued by the parties.⁴ And this court has, on at least one occasion, considered whether a complete or only partial exemption was appropriate for land (i.e., a lot) under ORS 307.140. See *Church of the Brethren v. Coos County Assessor*, OTC-MD No 990512D, WL 33117384 (Dec 17, 1999) (granting exemption under ORS 307.140 for all, as opposed to a portion, of the plaintiffs’ 159 acres).

B. Property Qualification

The court turns to the question of whether the 0.79 acre portion of Plaintiff’s property qualifies for exemption under the statute. Plaintiff has the burden of proving its entitlement to the exemption. ORS 305.427; *Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 301 Or 423, 426-27, 723 P2d 320 (1986). In deciding the question, the court notes that taxation is the rule and exemption the exception. *Dove Lewis*, 301 Or at 426-27. The Oregon Supreme Court once declared as “a canon of universal recognition that tax exemption statutes should be strictly construed in favor of the state and against the taxpayer. *Mult. School of Bible v. Mult. Co.*, 218 Or 19, 27, 343 P2d 893 (1959) (citations

⁴ The taxpayer sought exemption on all of its land and buildings and the Department of Revenue asserted the taxpayer was not entitled to any exemption. It is not clear from the decision why the court considered a partial exemption for the land.

omitted). The rule of strict construction, however, “does not foreclose the application of a reasonable construction in order to [achieve] * * * the legislative intent.” *SW Oregon Pub. Def. Services v. Dept. of Rev.*, 312 Or 82, 89, 817 P2d 1292 (1991) (citation omitted).

This court recently explained the strict but reasonable construction approach as follows:

“Strict but reasonable construction does not require the court to give the narrowest possible meaning to an exemption statute. Rather, it requires an exemption statute be construed reasonably, giving due consideration to the ordinary meaning of the words of the statute and the legislative intent.” *North Harbour Corp. v. Dept. of Rev.*, 16 OTR 91, 95 (2002). In resolving the dispute, the court turns to the generally recognized exemption requirements found in the governing regulation and case law.

The administrative rule provides that “[t]he property for which a religious organization claims an exemption must be reasonably necessary to accomplish the religious objectives of that organization.” OAR 150-307.140(1)(b). Reasonable necessity is one of two requirements enunciated by the Court in *German Apost. Christ. Church v. Dept. of Rev.*, 279 Or 637, 641-42, 569 P2d 596 (1977), and subsequently articulated by that court as follows: “The taxpayer must demonstrate that the property claimed to be exempt is reasonably necessary and actually used in the manner required by [the statute] to qualify for an exemption.” *Golden Writ*, 300 Or at 483.⁵ Where the entire parcel is not actually used for qualifying activities, “those portions not actually used [must be] reasonably necessary to accommodate the actual qualifying uses that occur on the remainder of the

⁵ The two-prong test announced in *German Apost.*, pertained to ORS 307.130 exemptions, but the court then observed that ORS 307.140 can be similarly analyzed, so the test has come to apply to both statutes.

parcel.” *Id.* at 484.⁶

In the instant case, Plaintiff claims exemption for its entire property. Only qualifying religious activities take place on the property. Plaintiff uses both of its buildings and over one-half of the roughly two acre yard for its religious endeavors. There is no inconsistent use of any portion of Plaintiff’s property. The disputed portion of the land is simply unused because of the trees, which Plaintiff regards as landscaping and which undoubtedly provides a buffer from the adjoining property that appears to be a large commercial operation. Moreover, that land does not readily lend itself to other uses. And, a close examination of the map and photographs suggests that the 0.79 acre portion could not easily be carved out and sold to a third-party due to its irregular shape and likely access issues. In limiting the exemption, the statute provides that “any part of any house of public worship or other additional buildings or property which is kept or used as a store or shop or for any purpose other than those stated in this section shall be [taxable].” ORS 307.140(1). Here Plaintiff is not using its land for purposes other than those stated in the statute. Some land is necessary to accommodate Plaintiff’s buildings and, on the evidence presented, the court finds Plaintiff’s use of its land is in accord with the statute. Courts are “hesitant to substitute [their] judgment for that of the [organization’s] officials * * * as to how much property is necessary for its purposes.” *Multnomah Co. v. Dept. of Rev.*, (Vedanta Society of Portland, Oregon, Intervenor), 6 OTR 325, 331-32 (1976).

⁶ In addressing the use requirement, the court in *Golden Writ* stated:

“To qualify the entire parcel for exemption under ORS 307.140, the taxpayer must actually use the entire parcel primarily for qualifying activities. The criterion is met when the entire parcel is actually used primarily for qualifying activities or when those portions not actually used are reasonably necessary to accommodate the actual qualifying uses that occur on the remainder of the parcel.”

300 Or at 483-84 (emphasis added).

It is important to note that partial exemptions are typically granted under ORS 307.130 and ORS 307.140 in situations where the land or building(s) are used for a mixture of qualifying and nonqualifying activities. For example, in *German Apostolic* the court allowed an exemption under ORS 307.140 for portions of a housing facility owned by a religious organization and used as an office for the Administering Elder, and on the six apartments used for low income elderly church members, but denied exemption for the living space used by that elder and his wife. 279 Or at 642. And, in *Found. of Human Understanding v. Dept. of Rev.*, 301 Or 254, 722 P2d 1 (1986), the court exempted land and portions of buildings at two separate locations and entirely denied exemption on a third location. The first property was a church building and a caretaker's residence on 3.70 acres. *Found.*, 301 Or at 256. The court allowed the exemption on all of the land and the church building, exclusive of the book store, but denied exemption for the caretaker's residence. *Id.* at 267. The other property granted a partial exemption consisted of a 370.65-acre ranch on two tax lots used as a retreat for paying guests that was comprised of two homes and several outbuildings. *Id.* at 257. The bulk of the ranch, 327.45 acres, was specially assessed forest land. *Id.* at 264. The court allowed the exemption on all of the land not specially assessed for forest use (43.2 acres) and all of the buildings except the part used for the sale of merchandise. *Id.* at 267. The rationale for denying exemption on the forested acreage was that the application for special assessment requires a declaration that the land "is being held or used for the predominant purpose of growing and harvesting trees of marketable species," a use incompatible with actual and exclusive use of the property for charitable work. *Id.* at 264-65 (quoting ORS 321.358(2)(c)). In granting the partial exemption for the ranch, the court observed that

“[t]here is evidence that the portion of the ranch not specially assessed for forest uses, 45.20 acres, is used in **some** capacity in the Foundation's religious activities, which include work therapy, counseling, individual spiritual examination and meditation.” *Id.* at 266 (emphasis added). The third parcel, for which no exemption was allowed, consisted of a 6-plus acre property with residential structures, and it was denied because the use of that property as a staff retreat was not a qualifying use under the statute. *Id.* at 263-64.

Finally, the Oregon Supreme Court considered a partial exemption in *Golden Writ*, where roughly 20 members of a nonprofit corporation living communally on a 230-acre farm sought exemption on the entire parcel based on the claim that the land “constituted a long-sought-after ‘tabernacle’ and all the acreage was necessary to accomplish the religious objectives of the organization.” 300 Or at 481. In denying the exemption, the lower court concluded that the plaintiff did not need the entire 230 acres to accomplish its religious or charitable objectives. *Golden Writ of God v. Dept. of Rev.*, 9 OTR 475, 478 (1984). The Tax Court observed that “[i]f the entire acreage is reasonably necessary for meditation and ‘returning * * * people to the spiritual pathway of God,’ then the same could be said for 1,000 or 5,000 acres.” *Id.* On appeal, the Supreme Court affirmed the decision of the Tax Court, finding that, although there was some religious use of the property, “the property was also used for communal living pursuits unnecessary to attain charitable or religious goals.” *Golden Writ*, 300 Or at 487. In other words, there was a mixed use of the property and, although the court did not explicitly say so, it appears it found the predominant use of the property, both the land and buildings, was for other than religious or charitable purposes. The court did make such a finding with regard to the

house. *Id.* at 486.⁷

Golden Writ was decided while *Foundation of Human Understanding* was under advisement by the Supreme Court, and none of the extremely narrow language of the former case appeared in the latter, which suggests that the compelling nature of the facts in *Golden Writ* bore heavily on the court's legal analysis.⁸

Again, in the instant case only qualifying activities take place on the property, although admittedly portions of the land may be underutilized. The result would likely be otherwise if Plaintiff had 100 acres of trees behind its structures or if one or more church members were living on the property, or the religious activity was questionable, but on the facts presented it seems contrary to the statute to exempt only portions of Plaintiff's yard.

III. CONCLUSION

After carefully considering the matter, the court concludes that under a reasonable

⁷ The court stated:

"The farmland with a house and a barn were just that: farmland, a house and a barn. The property was no different from the farms and homes in which millions of Oregonians have meditated and prayed since this state was founded in 1859. **The house was primarily used for living quarters** for the persons who lived there. Unlike the nuns in the case of *House of Good Shepherd v. Dept. of Rev.*, 300 Or 340, 710 P2d 778 (1985), this organization did not require a semi-cloistered residence for the organization's members as tenet of the order."

Golden Writ, 300 Or at 486-87. (Emphasis added.)

⁸ For example, the court in *Golden Writ* stated:

"[i]t is not enough that the taxpayer owns the entire property and conducts activities on portions of the property that would qualify those portions for an exemption."

"* * * *"

"Where a taxpayer claims an exemption from *ad valorem* property taxation for a parcel of property, the taxpayer must present facts that prove the actual qualifying use of each and every portion of the property claimed to be exempt before such portions are entitled to exemption."

300 Or at 483-84.

construction of the statute, as informed by controlling case precedent, Plaintiff has met its burden of demonstrating it is entitled to property tax exemption under ORS 307.140 on its entire parcel, consisting of 1.89 acres because the majority of its property is put to a qualifying use and the disputed portion of the yard is “reasonably necessary to accommodate the actual qualifying uses that occur on the remainder of the parcel.” *Golden Writ*, 300 Or at 484. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s requested relief is granted.

Dated this _____ day of August, 2003.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 AUGUST 29, 2003. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 2, 2003.