

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CECIL ZERBA and MARILYN ZERBA,)
)
 Plaintiffs,) TC-MD 021348E
)
 v.)
)
 UMATILLA COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiffs appeal Defendant's assessment of the personal property identified in Account 155857.¹ Plaintiffs claim the property should be exempt as farm machinery and equipment for the 2002-03 tax year. A telephone trial in the matter was held April 23, 2003. Cecil Zerba (Zerba) appeared and testified on behalf of Plaintiffs. Paul Chalmers (Chalmers), Director of Assessment and Taxation, and Shirley Winburn (Winburn), Assessment Manager, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiffs own four acres of land used to grow plants, flowers, pumpkins, and other nursery products. The four acres is zoned for exclusive farm use (EFU). Located next to the four acres is a 1.8-acre parcel used by Plaintiffs for a retail operation. That parcel is zoned for commercial use. The retail operation has a large building used to sell Plaintiffs' products. The store is open from early spring through late fall.

Defendant determined that the personal property used by Plaintiffs was for retail purposes and, therefore, was not exempt as farm machinery and equipment. The property includes such items as light fixtures, telephones, fax machines, cash registers, ladders, red

¹ Plaintiffs' Complaint states they are appealing Account 113780, yet they attached the tax statement for Account 155857. During the pretrial conference held April 2, 2003, Plaintiffs confirmed they intended to appeal the personal property in Account 155857.

wagons for customers to carry their products, a walk-in cooler, pallets, a wood stove, ladders, scales, first aid kits, a rototiller, a tractor, and eight greenhouses. Winburn testified that the personal property is all associated with the commercial account, with the exception of the eight greenhouses which are located on the four-acre parcel zoned EFU. Plaintiffs maintain they are entitled to sell their farm products and that it is all part of one operation. As a consequence, they claim the personal property is all farm machinery and equipment.

II. ANALYSIS

ORS 307.394 provides a property tax exemption for farm machinery and equipment.² The statute states, in pertinent part:

"(1) The following tangible personal property is exempt from ad valorem property taxation:

"(a) Farm machinery and equipment used primarily in the preparation of land, planting, raising, cultivating, irrigating, harvesting or placing in storage of farm crops;

"(b) Farm machinery and equipment used primarily for the purpose of feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or bees or for dairying and the sale of dairy products; or

"(c) Farm machinery and equipment used primarily in any other agricultural or horticultural use or animal husbandry or any combination of these activities."

ORS 307.394(1).

Plaintiffs claim the personal property used in the retail portion of their business qualifies for exemption under ORS 307.394(1)(a), (b), and (c). The court disagrees.

Under subparagraph (1)(a), the statute provides an exemption for equipment that is used "primarily in preparation of land, planting, raising, cultivating, irrigating, harvesting or

² All references to the Oregon Revised Statutes (ORS) are to 2001.

placing in storage of farm crops[.]” The personal property in the store does not qualify under this definition. Light fixtures and cash registers are not used in the field nor are they used to place the crops in storage. The statute envisions exempting that equipment used primarily in the field. As a result, the court concludes personal property primarily associated with the retail operation does not qualify for exemption.

Plaintiffs argue that subparagraph (1)(b) applies to the property because it allows an exemption for property used for the "sale of" the crop. However, a closer reading of the statute reveals that the "sale of" only applies to the sale of "livestock, poultry, fur-bearing animals or bees." Plants and vegetables are not included. As a result, the personal property related to the retail portion of Plaintiffs' activities cannot qualify under subparagraph (1)(b) of the statute.

Plaintiffs further argue that the personal property qualifies for exemption under subparagraph (1)(c), which allows an exemption for "[f]arm machinery and equipment used primarily in any other agricultural or horticultural use." The equipment at issue, however, is not used in another agricultural or horticultural use. It is used for a commercial use, *i.e.*, the sale of nursery stock. The court finds the property does not qualify for exemption under this portion of the statute either.

Plaintiffs fail to recognize the distinction between the agricultural portion of their activities and the commercial portion of their activities. Although Plaintiffs may view their activities as one operation, the legislature only intended to exempt that property used primarily for farming and not equipment used for commercial purposes. It is an important distinction that Plaintiffs must accept. Commercial operations, such as grocery stores and retail nurseries, are not exempt from taxes and a farmer cannot change that fact by owning the store. Therefore, except as discussed below, the personal property identified in

Account 155857 is not exempt from taxation.

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A. *Tractor*

Zerba testified that Plaintiffs own a tractor that is used both for the farming and retail operation. ORS 307.394(1)(a) allows an exemption for equipment that is used "primarily" in the farming end of an operation - from cultivating the soil to placing the product in storage. Defendant denied the exemption based on its opinion that the tractor is used primarily for retail purposes. Chalmers testified that the tractor is used for moving and loading bark for customers as well as for moving pallets of plants around in the store. Zerba testified the tractor is also used in the field to cultivate the soil, pull a sprayer, and to pull equipment around to haul the plants. When questioned as to what percent the tractor is used in the field versus the store, Zerba testified it is used 90 percent of the time for the farming operation and 10 percent to "move bark." However, Zerba blurred the line between the farming and retail operation because his testimony relating to the 90 percent included using the tractor to move the products around in the store, which at that point becomes a nonfarm use.

Chalmers testified that the tractor is stored in the store's lot and that he and members of his staff have rarely seen it in the field. Where the tractor is parked, however, does not relate to where the tractor is primarily used.

When reviewing the testimony, it is difficult for the court to say whether the tractor is used "primarily" in the field or in the store. The court certainly would have benefitted from more detailed testimony from Zerba regarding the usage of the tractor. For example, a more detailed description regarding the planting and harvesting seasons of the products and the daily use required of the tractor would have been helpful. However, Zerba did

provide testimony as to the tractor's actual use in the field and Defendant provided no evidence or testimony to contradict that testimony. When considering the nature of the operation, the court is persuaded that the tractor is used for significant periods of time in the field and that it is quite likely used "primarily" in the field. Plaintiffs bear the burden of proof. Although their proof is weak, the court is persuaded the tractor qualifies for exemption, notwithstanding the mixed use.

B. *Walk-In Cooler*

Plaintiffs claim the walk-in cooler in the store should be classified as real property rather than personal property. Chalmers testified that, although it is bolted to the floor, it could easily be dismantled and moved to another location. Zerba testified that it could not be relocated. The court is presented with two conflicting opinions as to the ease of moving the cooler. The court has no basis from which to accept one person's testimony over the other. Without more substantive testimony or evidence, the court finds Plaintiffs have failed to satisfy their burden of proof. If Plaintiffs had wanted to demonstrate their position with more clarity, pictures of the cooler would have given the court a better sense of its nature as would have testimony related to its construction, weight, and size.

C. *Greenhouses*

Eight greenhouses are located on the portion of the property zoned EFU. ORS 307.397 provides an exemption for certain greenhouses. The statute states, in pertinent part:

"The following items of real property machinery and equipment or tangible personal property are exempt from ad valorem property taxation:

"(1) Frost control systems used in agricultural or horticultural activities carried on by the farmer[.]"

ORS 307.397(1).

The Oregon Department of Revenue adopted an administrative rule to further define which frost control systems qualify for the exemption. The rule states:

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"(1) Frost control systems include structures used to protect plants from extreme cold and use passive solar gain as their heat source.

"(2) An example of a qualifying structure is a hoop house which:

"(a) has polyethylene sheeting and arched pipe rafters and wind bracing; and

"(b) has no heating system other than solar gain; and

"(c) is used for frost control; and which may

"(d) use a sprinkling system to assist frost control.

"(3) An example of a structure that would not qualify as a frost control system is a hoop house which:

"(a) has polyethylene sheeting and arched pipe rafters and wind bracing; and

"(b) has a permanent heat source or climate control system."

OAR 150-307.397.³

Five of the houses have frost control systems and three have permanent heat sources. Under the rule, the three houses with heat sources cannot qualify for exemption. The other five would qualify for exemption. Defendant questions whether they qualify, however, because they are used to store plants for the retail portion of the operation. Zerba testified that plants and stock are grown in the houses throughout the year and that they are used as part of the farming operation. The houses are also located on property that is zoned for exclusive farm use. The court is persuaded that the use qualifies the five

³ OAR 150-307.397 was previously numbered 150-307.400(5)(a). It was renumbered effective July 29, 2002. Because the new number corresponds with the statutory cite and because the substance was not changed, the court will refer to the new citation for the rule.

houses with frost control systems for exemption under the statute.

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III. CONCLUSION

It is the court's conclusion that the personal property used primarily in the retail portion of Plaintiffs' operation does not qualify for exemption as farm machinery and equipment. The court further finds that the tractor used for both the farming and retail operation is used primarily for farming and, therefore, qualifies for exemption. The court further finds that Plaintiffs failed to satisfy their burden of proving the walk-in cooler should be classified as real property rather than personal property. Finally, the court concludes that the five greenhouses with frost control systems qualify for property tax exemption.

Now, therefore,

IT IS THE DECISION OF THIS COURT that the tractor is exempt as farm machinery and equipment;

IT IS FURTHER DECIDED that the walk-in cooler shall remain taxable as personal property;

IT IS FURTHER DECIDED that the five greenhouses with frost control systems qualify for property tax exemption; and

IT IS FURTHER DECIDED that the remaining personal property is taxable and not exempt as farm machinery and equipment.

Dated this _____ day of October, 2003.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON OCTOBER 7, 2003. THE COURT FILED THIS DOCUMENT ON OCTOBER 7, 2003.