

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

JAMES H. BEAN,	)	
	)	
Plaintiff,	)	TC-MD 040038C
	)	
v.	)	
	)	
CLACKAMAS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

At issue is Plaintiff's entitlement to exemption for the 2003-04 tax year for commercial facilities under construction. This matter is before the court on cross-motions for summary judgment.<sup>1</sup>

I. STATEMENT OF FACTS

The parties have agreed to the following stipulated facts. On June 10, 2002, Plaintiff entered into a contract calling for the construction of a 14-unit commercial rental duplex in Milwaukie, Oregon. Under the contract, construction was to begin on June 20, 2002, and be completed 270 days later, on March 24, 2003. Construction actually began on or about June 27, 2002. On July 19, 2002, Plaintiff and the contractor established a revised completion date of May 31, 2003. The May 31, 2003, projected completion date was indicated on each draw request submitted to the lender from July 19, 2002 through May 17, 2003. Due to delays in construction, the project was not completed until September 25, 2003. Final approval by the county building department was given on October 1, 2003, and the first tenants moved in on October 13, 2003.

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<sup>1</sup> Plaintiff filed a Memo for Property Tax Appeal (Memo) with his Complaint, setting out his arguments for entitlement to exemption. The court granted Defendant's oral request to treat the memo as a summary judgment motion.

On November 17, 2003, Plaintiff applied for cancellation of assessment for the 2003-04 tax year under the provisions of ORS 307.330.<sup>2</sup> Defendant denied Plaintiff's application because it was not made on or before April 1, 2003. Plaintiff timely appealed that decision to this court.

## II. ANALYSIS

Plaintiff seeks exemption under the provisions of ORS 307.330. That statute exempts from taxation a building or structure that "is \* \* \* to be first used or occupied not less than one year from the time construction commences." ORS 307.330(1)(e). Moreover, a prerequisite to cancellation of assessment is "receipt of sufficient documentary proof that the property meets all of the conditions contained in ORS 307.330 [and] [s]uch proof shall be filed with the assessor on or before April 1 of such year." ORS 307.340(1).

As indicated above, Plaintiff's application was denied because it was filed after April 1, 2003. Plaintiff asks the court to grant the exemption because the statute does not require an application, the assessor had documentary proof that all but one of the statutory requirements had been met, and, under the unique facts of this case, it was not possible for Plaintiff to make application by April 1, 2003. Defendant argues that there is only one issue in this case – does the assessor have the legal authority to cancel an assessment under ORS 307.330 if the application is filed after April 1?

### A. *The Necessity of an Application*

It is clear from ORS 307.340(1) that a property owner seeking exemption under ORS 307.330 must file with the assessor enough information to demonstrate that the requirements of ORS 307.330 are satisfied, and that the information must be submitted by April 1. It is the assessor's task to either approve or deny the request. The statute specifies that

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

the assessment is to be canceled “upon receipt of sufficient documentary proof,” that “[s]uch proof shall be filed with the assessor on or before April 1,” and that there will be “[n]o cancellation of assessment \* \* \* unless the required proof is filed within the time prescribed by this section.” ORS 307.340(1). The Department of Revenue (department), the state administrative agency charged with “general supervision and control over [Oregon’s] system of property taxation,” has developed a form to be used by taxpayers seeking exemption under the applicable statute. *See* ORS 306.115(1). (*See also* Def’s Ex A.) Plaintiff completed the department’s exemption application form and submitted it to Defendant, but the application was untimely.

This court has previously rejected the contention that a taxpayer is entitled to cancellation of assessment under ORS 307.330 without the need to file an application. *See Urban Office & Parking v. Dept. of Rev.*, 4 OTR 523 (1971). The taxpayer in *Urban Office* did not file any information with the assessor, but claimed entitlement to assessment cancellation (exemption) because the assessor’s office was aware of the new construction and allegedly had the information necessary to prove that the property qualified for exemption under the statute. *Id.* at 524. The court rejected the taxpayer’s contention that ORS 307.340 is distinguishable from other exemption statutes that more clearly require a taxpayer to file a statement constituting an application claiming the exemption. *Id.* at 526-27. Noting that the statute requires “receipt” of proof, and that the proof must be “filed” with the assessor, the court concluded that “the legislature contemplated the filing of an application with the assessor, as required by [ORS 307.330 and ORS 307.340].” *Id.* at 527, 530.

Plaintiff argues that an application was unnecessary because the assessor had proof from its own appraisal, done before April 1, 2003, that all but one of the statutory requirements for exemption had been met. Two observations are in order. First, as the court noted in *Urban*

*Office*, the statute requires that the information be filed with and received by the assessor and “[a]n assessor does not ‘receive’ documentary proof from himself. The assessor does not ‘file’ his own work papers, when the word ‘filed’ is given the connotation normally attributed to it in connection with the activities of governmental offices” *Id.* at 528. Thus, it is the taxpayer’s responsibility to file the documentary proof with the assessor sufficient to establish that the requirements of ORS 307.330 are satisfied.

Second, to be “sufficient,” the proof must show that **all** of the conditions in the statute are met. Plaintiff concedes that the assessor lacked proof that one of the statutory prerequisites of ORS 307.330(1) had been met – that the property “is \* \* \* to be first used or occupied not less than one year from the time construction commences.” (Ptf’s Memo at 1.) Therefore, even if an application were not required, Plaintiff would not be entitled to exemption.

B. *Practical Inability to File Application*

Defendant denied Plaintiff’s application because it was not filed timely. Plaintiff argues that it was not possible to file an application before the April 1, 2003, deadline because both the statute and the application form require that the property currently meets all of the conditions in ORS 307.330, and Plaintiff could not represent as of April 1, 2003, that the buildings would first be used or occupied not less than one year from commencement of construction. Plaintiff argues that “ORS 307.340 requires ‘documentary proof’ that the property **‘meets’**- not that it will someday in the future finally meet - the ORS 307.330 conditions[,]” and that the state’s application form requires the applicant to declare, under statutory penalties for false swearing, that the property has met those requirements. (Ptf’s Memo at 1 (emphasis in original)); (*see also* Ptf’s Reply to Def’s Resp and Cross-Mot at 1.)

Read together, ORS 307.330 and ORS 307.340 do not require that all the conditions for exemption set forth in ORS 307.330 be met at the time the application is filed. Although

ORS 307.340(1) does require that the property currently meets the requirements in ORS 307.330, ORS 307.330(1)(e) requires that the building, structure or addition “[i]s \* \* \* **to be** first used or occupied not less than one year from the time construction commences.” (Emphasis added.) Thus the substantive one-year requirement is anticipatory in nature. The filing requirements are satisfied, and the property qualifies for exemption, as long as the application is timely filed and it reasonably appears that the property is to be first used or occupied one year or more from the time construction commences.<sup>3</sup>

Plaintiff argues that it is not appropriate for a taxpayer to file an application “[i]f a taxpayer reasonably anticipates that use or occupancy of an otherwise qualified project will first occur less than one year after commencement of construction.” (Ptf’s Reply to Def’s Resp and Cross-Mot at 3.) The court agrees. However, the facts of this case suggest that Plaintiff could have timely filed the application because it would have been reasonable on April 1, 2003, to anticipate, and so declare on the application form, that use or occupancy would not occur within the prohibited one-year period. On April 1, 2003, and in the months prior to that date, Plaintiff anticipated completion of construction on May 31, 2003. That was just 27 days before the one-year construction anniversary date. It is not uncommon for construction projects to take longer than anticipated, and it was probably reasonable to assume that it would take at least one or two weeks to get the first tenant into the building.<sup>4</sup>

Moreover, if it turned out that the project was completed on time or ahead of schedule and that the first tenant occupied the property less than one year from the time construction

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<sup>3</sup> Assuming, of course, that the other conditions in ORS 307.330(1) are satisfied.

<sup>4</sup> In fact, construction took nearly six months longer than originally anticipated (September 25 versus March 24) and it was 18 days from the time construction was ultimately completed before the first tenant occupied the building.

commenced, the abatement provision in ORS 307.340 would enable the assessor's office to reverse its decision to cancel the assessment. The statute provides in relevant part:

“Any cancellation of assessment will be abated as to any nonmanufacturing property that is used or occupied within one year from the time construction commences and the assessor shall proceed to correct the assessment and tax roll or rolls from which the property was omitted from taxation in the manner provided in ORS 311.216 to 311.232.”

ORS 307.340(1). That provision operates as a check on the applicant's claim and the assessor's review and approval of the application, and thereby relieves any burden either may feel in addressing the property's qualification for exemption prior to the passage of a year's time.

The court acknowledges that the application form is not a model of clarity because it asks the owner/applicant to affirm that the facility “**is** first used or occupied not less than one year from the time construction begins \* \* \*,” whereas the statute provides that the facility “**is \* \* \* to be**” first so used. (*See* Def's Ex A) (emphasis added); *see also* ORS 307.330(1)(e) (emphasis added). However, Plaintiff has not alleged estoppel, which requires good faith reliance on misleading information. *See Sayles v. Dept. of Rev.*, 13 OTR 324, 328 (1995).

### III. CONCLUSION

The court concludes that Plaintiff's request for exemption under ORS 307.330 must be denied because an application is required under ORS 307.340, and the application must be timely filed. Plaintiff missed the April 1, 2003, deadline. It is not sufficient that the assessor's office has information enabling it to determine that the exemption requirements are satisfied; the owner must file that information with the assessor's office. Here, the information known to the assessor did not even show that all of the requirements for exemption were satisfied. Finally, the statute does not require that all of the conditions for exemption be met at the time the application is filed. Specifically, the provision in ORS 307.330(1)(e) requiring that the property not be used or occupied for at least one year from the time construction begins, is satisfied if the owner

reasonably anticipates that use or occupancy will not occur within the prohibited one-year period. Because Plaintiff did not anticipate construction to be completed until 27 days before the one-year anniversary, Plaintiff could have timely filed the exemption application if he reasonably anticipated that the first tenant would occupy the premises for at least 26 days. Now, therefore,

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

Dated this \_\_\_\_\_ day of March 2005.

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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 March 14, 2005. The court filed and entered this document March 14, 2005.***