

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

THE BENSON APARTMENTS LLC,)	
)	
Plaintiff,)	TC-MD 040518C (Control)
)	
v.)	
)	
DOUGLAS COUNTY ASSESSOR,)	
)	
Defendant.)	
<hr style="width: 40%; margin-left: 0;"/>		
)	
ROSEWOOD APARTMENTS)	
c/o CRYSTAL LAKE RENTALS LLC,)	
)	
Plaintiff,)	TC-MD 040519C
)	
v.)	
)	
DOUGLAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

I. INTRODUCTION

Plaintiffs appeal from orders issued by the Douglas County Board of Property Tax Appeals dated March 2, 2004, upholding Defendant's tax assessments for tax year 2003-2004. A case management conference was held by telephone August 20, 2004. James Fox (Fox) appeared for Plaintiffs. Ali Vincent-Lough, Deputy Assessor, appeared for Defendant. Following the submission of additional materials, the record closed January 21, 2005.

The parties seek a legal ruling under ORS 308.250¹ on the taxability of certain personal property. There is no dispute as to any material facts, and the parties submitted the case to the

///

¹ Except as otherwise provided, reference to the Oregon Revised Statutes (ORS) is to the 2001 laws.

court for the determination of the legal issue presented. The issue is whether, for purposes of ORS 308.250(2), the “taxpayer” is an individual LLC, or whether a member of the LLC can be the taxpayer for purposes of the ad valorem property tax.

II. STATEMENT OF FACTS

The subject property consists of appliances (refrigerators and stoves) used in connection with the operation of two distinct apartment complexes (the Benson Apartments and the Rosewood Apartments) that are owned by separate limited liability companies (LLCs). The account numbers are P73959 and P77591, respectively. The tax year at issue is 2003-04.

Fox is the sole member of the LLC that owns the Rosewood Apartments. Fox and another individual formed the LLC that owns the Benson Apartments, and both remain members of that entity. Fox lives in Douglas County, but the other individual does not. Fox formed other LLCs that own additional real and personal property in Douglas County. That property includes four delicatessens owned by a single LLC and a laundromat owned by another LLC. Fox also has an assumed business name, “Fox’s Restaurants,” with a checking account that Fox used to pay the personal property taxes on the two accounts under appeal.

The assessor assigned a separate account number to the personal property at each real property location. Thus, there are seven personal property accounts in all, one for each of the two apartment complexes, one for each of the four delicatessens, and one for the laundromat. Only the personal property at the Benson Apartments and the Rosewood Apartments is at issue.

Collectively, the value of all the personal property owned by entities of which Fox is a member exceeds \$13,000. The value of the personal property for the two accounts under appeal

///

///

///

is less than \$13,000, individually or collectively. Specifically, the personal property at the Benson Apartments has a tax roll value of \$2,510 and the property at the Rosewood Apartments has a tax roll value of \$7,039. Defendant taxed the property associated with each account, even though the value of that property is below the \$13,000 threshold provided in ORS 308.250(2) and (4), because the combined value of all the property owned by LLCs of which Fox is a member exceeds the \$13,000 statutory threshold.

III. ANALYSIS

The personal property at issue in this appeal is generally subject to tax because it is used for business purposes. *See generally* ORS 308.105(1), ORS 308.290(1), and ORS 308.250(1). Under ORS 308.290(1)(a), an annual personal property return must be filed by the person or managing agent or officer of a firm, corporation, or association owning or having possession or control of taxable personal property.

ORS 308.250 provides for cancellation of assessment where the value of all of the taxpayer's property in the county is below the statutory threshold. ORS 308.250 provides, in relevant part:

“(2) If the total assessed value of all taxable personal property required to be reported under ORS 308.290 in any county of any *taxpayer* is less than \$12,500 in any assessment year, the county assessor shall cancel the ad valorem tax assessment for that year.” (Emphasis added.)

Under ORS 308.250(4), the value limitation is indexed and, for the 2003-2004 tax year, the threshold was \$13,000.

The property associated with the two accounts at issue is owned by two separate LLCs. The primary dispute is the determination of the correct “taxpayer” under ORS 308.250(2). Factually, it would seem as though the appropriate “taxpayer” would be the individual LLC. However, Defendant contends Fox is the “taxpayer” for purposes of ORS 308.250(2).

Defendant's rationale is that Fox, as a member of both LLCs, is the owner of the property under ORS 63.001 and that "[t]here is nothing to suggest that the form of ownership changes the status of the plaintiff as a taxpayer." (Def's Reply at 2.) Defendant presumably is referring to the definition of an LLC "member," which is defined in ORS 63.001(21) as "a person or persons with both an ownership interest in a limited liability company and all the rights and obligations of a member specified under this chapter." Fox argues that the LLC is the appropriate taxpayer under the statute, and that the tax on the subject property should be cancelled pursuant to ORS 308.250(2) because the value of each account is well below \$13,000.

While ORS 63.001(21) defines a member as a person with an ownership interest in an LLC, ORS 63.239 provides that "[a] member is not a co-owner of and has no interest in specific limited liability company *property*." (Emphasis added.) Thus, while a member has an ownership interest in the entity, he does not own the property of that entity.

An LLC is a separate legal entity. *See* ORS 63.001(9) (providing that an "entity" includes a limited liability company) and ORS 63.001(17) (defining a limited liability company as a "an entity that is an unincorporated association having one or more members.") Among other privileges, an LLC is entitled to own real and personal property and to operate independently in contracts with other business entities, and may sue or be sued in its own name. ORS 63.077(2). The property held by an LLC may be sold or disposed of only with the consent of a majority of its members. ORS 63.130(4)(d). Therefore, the personal property at issue is formally the property of each LLC. Fox has no title to the property and could not dispose of it without the consent of the membership.²

² While it is true that Fox is the sole member of one of the LLCs, and therefore could be presumed to have practical control of the property, the court notes that ORS 63.044 specifically provides for single member LLCs, and that the statutes make no distinction between single and multiple member LLCs for the purposes of liability and ownership.

Additionally, members of an LLC are protected from the liabilities and obligations of the entity. ORS 63.165(1) provides:

“The debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or *otherwise*, are solely the debts, obligations and liabilities of the limited liability company. A member or manager is not personally liable for a debt, obligation or liability * * *.” (Emphasis added.)

The primary purpose of an LLC is to limit the liability of members similar to shareholders of corporations, while providing members with the tax benefits and active management privileges of a partnership.³

Taken together, it is clear that the legislature intended to distinguish between the entity and the members thereof, and to protect members from the company’s liabilities. Where, as here, numerous provisions exist, interpretation should “be adopted as will give effect to all.”

ORS 174.010; *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993).

The court does not believe that the legislature intended to “subject” Fox to property taxes for property owned by the LLC under ORS 308.250. Yet, that is essentially what Defendant is doing by aggregating the value of the property owned by the various LLCs with which Fox is associated. Thus, for purposes of ORS 308.250(2), where personal property otherwise subject to tax is owned by an LLC, the LLC is the “taxpayer.”

The court’s determination is consistent with the ordinary meaning of “taxpayer.” Webster’s dictionary defines “taxpayer” as “one that pays or is liable to pay tax.” *Webster’s Third New Int’l Dictionary* 2345 (unabridged ed 2002). Oregon’s assessment and tax statutes

///

³ The court notes that while partners may be liable for property tax under ORS 308.250 for property held by their partnerships, ORS 63.002(3) specifically shields LLC members from similar tax liability by limiting the application of statutes concerning partners to only those that “appl[y] to both ‘partners’ and ‘shareholders.’”

impose the personal property tax on the owner or person in possession or control. *See* ORS 308.105(2) (providing that “personal property may be assessed in the name of the owner or of any person having possession or control thereof”); ORS 308.215(2)(a) (requiring the assessor to set down on the assessment roll the name of the owner of the property); ORS 311.250(1) (requiring the tax collector to mail tax statements to the “person * * * shown on the tax roll as an owner of real or personal property * * * ”); ORS 311.605 (defining “person” broadly to include individuals and organizations); ORS 311.455(1) (providing that taxes levied on personal property are “a debt due and owing from the owner of the personal property”). Here the LLCs own the property and have possession and control thereof.

Having decided that the LLC is the appropriate “taxpayer,” Defendant cannot aggregate the personal property assets of the separate entities for purposes of reaching the \$13,000 threshold in ORS 308.250. That statute explicitly contemplates a single taxpayer by using the language “any taxpayer” in the singular. Accordingly, each individual LLC must have personal property with an assessed value of at least \$13,000 in order to be subject to the property tax in ORS 308.250 for the 2003-2004 tax year. Because neither LLC alone meets the statutory threshold for taxation under ORS 308.250(2), the Plaintiffs are not subject to personal property tax under ORS 308.250(1).

IV. CONCLUSION

The court concludes that an LLC owning personal property is the taxpayer for purposes of ORS 308.250(2), and that the assessor must cancel the ad valorem tax assessment for such property unless all of the personal property of the taxpayer or LLC in any county exceeds the statutory threshold in ORS 308.250(2), as indexed by ORS 308.250(4). Neither Plaintiff in this case meets the threshold, and therefore the assessment of each must be canceled under ORS 308.250.

IT IS THE DECISION OF THE COURT that Defendant must cancel the tax year 2003-04 ad valorem tax assessment for each of the Plaintiffs in this consolidated appeal under ORS 308.250 because neither meets the \$13,000 statutory threshold.

Dated this _____ day of July 2005.

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 July 27, 2005. The Court filed and entered this document July 27, 2005.