IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

PACIFIC COAST RESTAURANTS, INC., Plaintiff,	)	TC-MD 050014B
v.	)	
MULTNOMAH COUNTY ASSESSOR, Defendant.	)	**DECISION**

Plaintiff appeals Defendant's disqualification of property[1] from tax-exempt status for tax year 2004-05. The matter is before the court on cross motions for summary judgment. Oral argument was held February 14, 2006. W. Scott Phinney, Attorney at Law, represented Plaintiff. Defendant was represented by John S. Thomas, county counsel. The record is now closed and the matter is ready for decision.

I. STATEMENT OF FACTS

The parties have stipulated to the following facts:

"(1) At all relevant times, the subject property was owned by the Port of Portland.
"(2) As of January 1, 2004, the subject property was tax exempt.
"(3) A lease was signed between the Port of Portland and Plaintiff with an effective date of March 1, 2004.
"(4) As of the effective date of the lease and on July 1, 2004, Plaintiff had the right to access the leased premises for purposes of planning for its restaurant operation and preparing construction plans and drawings.
"(5) As of July 1, 2004, no construction had commenced on the property.
"(6) As of July 1, 2004, Plaintiff had no right to commence construction on the property.
"(7) As of July 1, 2004, there had been no change in the use of the property from January 1, 2004.
"(8) The Assessor assigned a taxable value to the property for the 2004-05 tax year.

[1] The property is identified in Defendant's records as Account R554456.

"(9) The Final Plans were approved by the Port on December 23, 2004.
"(10) Plaintiff had no liquor license for the property as of June 15, 2005.
"(11) As of July 1, 2005, the facility was not open.
"(12) The assessment date for the 2004-05 tax year was January 1, 2004."

(Stip Facts at 1.)

The question presented for summary judgment is whether the property of a port leased by a taxable entity in March of an assessment year is taxable during the corresponding tax year.

II. ANALYSIS

Generally, all property located within the state is taxable. *See* ORS 307.030.[2] That general rule is subject to an exception in ORS 307.090, which states that "all property of the state and all public or corporate property used or intended for corporate purposes of the * * * ports * * * in this state, is exempt from taxation." ORS 307.110(1), however, provides that:

> "[A]ll real and personal property of this state or any institution or department thereof or of any county or city, town or other municipal corporation or political subdivision of this state, *held under a lease* * * * by any person whose real property, if any, is taxable * * * shall be subject to assessment and taxation for the assessed * * * value thereof uniformly with real property of nonexempt ownerships."

ORS 307.110(1) (emphasis added).

Further, ORS 307.110(2) states that if such leased premises are "located on property used as an airport and owned by and serving a * * * port shall be separately assessed and taxed." Finally, "[t]he provisions of law for * * * the payment and collection of taxes levied against real property

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[2] All references to the Oregon Revised Statutes (ORS) are to 2003.

of nonexempt ownerships shall apply to all real property subject to the provisions of this section." ORS 307.110(5).

The county assessor is to assess "the value of all taxable property within the county" as of January 1 of each year. ORS 308.210(1). As of January 1, there was no lease, so the property was not taxable and, thus, was not then assessed.

The analysis does not end there, however; the assessor may change the assessment roll after January 1 to reflect "divisions, transfers or other recorded changes."[3] ORS 308.210(2). A definite property interest was transferred to Plaintiff when the premises were leased. Unless an exception applies, the point in time at which the property became taxable was the date that the lease became effective. The parties have stipulated that Plaintiff signed a lease with an effective date of March 1, 2004. There is no dispute that Plaintiff is a taxable entity. Accordingly, under ORS 307.110(1), the property became "subject to assessment and taxation" on March 1, 2004.

Plaintiff claims that ORS 311.410(3), which states that "property is exempt if it is transferred or changed from a taxable to an exempt ownership or use at any time before July 1 of any year," supports its position. (*See* Ptf's Mot for Summ J at 6-7.) Plaintiff argues that the lack of a reciprocal provision addressing transfers of property from exempt to taxable status before July 1 of each year indicates that the legislature intended such property remain exempt. (*Id.*) The court disagrees. To the extent that ORS 311.410 applies at all, the lack of a provision addressing exempt to taxable transfers, coupled with the provision providing that the taxable status of property does not change after July 1 of each year, indicates that the taxable status can and does change prior to July 1. *See* ORS 311.410(1).

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[3] The exempt or taxable status of property cannot change after July 1 under ORS 311.410(1). *See also Perkins v. Dept. of Rev.*, 15 OTR 381, 383 (2001) (holding that property exempt on July 1 remains exempt for the rest of the tax year).

Plaintiff also argues that ORS 308.156 sets out the "timing and procedure" for taxing a property that changes from an exempt to taxable status. (Ptf's Mot for Summ J at 4.) Though the court agrees that the statute applies to property being disqualified from exempt status, the court disagrees that it sets out the "timing and procedure" for taxing such a property. Rather, the statute sets out the method by which to calculate a property's maximum assessed value under that section.

Finally, Plaintiff makes a tenuous argument related to the property's use. It contends that, even though the lease was effective on March 1, 2004, it did not a have sufficient possessory interest in the property to constitute a lease at any time before July 1, 2004. It claims, therefore, that the property was still in the effective possession of the tax-exempt entity for the 2004-05 tax year. (Ptf's Mot for Summ J at 7.) That argument lacks merit, as Plaintiff has clearly stipulated to the existence of a lease as of March 1, 2004.

III. CONCLUSION

Property that is exempt from taxation under ORS 307.090 becomes subject to assessment and taxation when leased to a taxable entity under ORS 307.110. Accordingly, Plaintiff's property became subject to taxation as of the effective date of its lease to a taxable entity, which was March 1, 2004, and the subject property is taxable to Plaintiff for the 2004-05 tax year. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Motion for Summary Judgment is denied.

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IT IS FURTHER DECIDED that Defendant's Cross Motion for Summary Judgment is granted.

Dated this _____ day of May 2006.

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JEFFREY S. MATTSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by <u>mailing</u> to: 1163 State Street, Salem, OR 97301-2563; or by <u>hand delivery</u> to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within <u>60</u> days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Jeffrey S. Mattson on May 18, 2006. The Court filed and entered this document on May 18, 2006.