

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

CARLA MCQUILLAN, DIRECTOR of MAIN)	
STREET MONTESSORI ASSN, dba)	
CHILDREN’S CHOICE MONTESSORI,)	
)	
Plaintiff,)	TC-MD 050053C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

The parties have submitted this matter to the court for decision on stipulated facts following the initial case management conference held April 14, 2005. The appeal involves a request for property tax exemption for the subject property, identified in the assessor’s records as Account 0379451, and operated as a child care facility during the 2004-05 tax year. The following facts are either agreed to by the parties, or substantiated by documentary exhibits submitted by the parties.

I. STATEMENT OF FACTS

Plaintiff took possession of the subject property under lease effective July 1, 2004. After moving into the property, Plaintiff applied for certification as a child care center pursuant to ORS 657A.280.¹ Plaintiff received a one year Certificate of Approval effective August 12, 2004. Plaintiff spent the months of July and August 2004 preparing the facility for operation as a child care center, and had staff on salary during those months. Plaintiff began caring for children in September 2004.

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¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

On or about December 27, 2004, Plaintiff filed an application for property tax exemption and paid the statutorily required late filing fee as provided in ORS 307.112(4)(a)(B).² By letter dated January 13, 2005, Defendant denied Plaintiff's exemption application for the 2004-05 tax year because the organization was not certified by the Child Care Division of the Employment Department as of July 1, 2004, as provided in ORS 307.145(3)(a). Plaintiff timely appealed.

II. ANALYSIS

Child care facilities owned or operated by eleemosynary institutions and used for, or in connection with, educational purposes are entitled to exemption from property taxes, provided they meet all the requirements of the statute. *See* ORS 307.145. In order to qualify for exemption, the exempt organization must file a timely application. As a lessee, Plaintiff applied for the ORS 307.145 exemption under ORS 307.112.³ Under ORS 307.112(4)(a), the claim for exemption must generally be filed on or before April 1. However, the statutes recognize that ownership or use may change after April 1. Accordingly, 307.112(4)(a)(A) provides:

“If the lease or lease-purchase agreement is entered into after March 1 but not later than June 30, the claim shall be filed within 30 days after the date the lease or lease-purchase agreement is entered into if exemption is claimed for that year[.]”

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² ORS 307.112(4)(a)(B) provides:

“Notwithstanding that no hardship grounds exist, if a late filing fee is determined, paid and distributed in the manner provided in ORS 307.162 (2), the claim shall be filed on or before December 31 of the tax year for which the exemption is first claimed.”

³ ORS 307.112(1) provides:

“Real or personal property of a taxable owner held under lease or lease-purchase agreement by an institution, organization or public body, other than the State of Oregon, granted exemption or the right to claim exemption for any of its property under ORS 307.090, 307.130, 307.136, 307.140, 307.145 or 307.147, is exempt from taxation if:

“(a) The property is used by the lessee in the manner, if any, required by law for the exemption of property owned or being purchased by it[.]”

When the change in ownership or use takes place after June 30, there is no filing time limit because the property cannot qualify for exemption. *See Christian Life Fellowship, Inc. v. Dept. of Rev.*, 12 OTR 94 (1991) (denying exemption under ORS 307.140 to a religious organization that acquired property in December 1988, under statute (ORS 307.162) with filing requirement similar to ORS 307.112, because the change in ownership occurred after June 30). ORS 311.410(1) provides in relevant part:

“Real property or personal property which is subject to taxation on July 1 shall remain taxable and taxes levied thereon for the ensuing tax year shall become due and payable, notwithstanding any subsequent transfer of the property to an exempt ownership or use.”

Plaintiff’s lease was entered into after June 30. Consequently, Plaintiff was not entitled to the exemption for the 2004-05 tax year.

Because the court has determined that Plaintiff does not qualify for the exemption due to the date of the execution of the lease, it need not decide whether Plaintiff was required to have the child care facility certification required by ORS 307.145(3) by July 1, 2004.⁴

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⁴ ORS 307.145(3)(a) defines “child care facility” as “a child care center certified by the Child Care Division of the Employment Department under ORS 657A.280 to provide educational child care.” The statute further provides:

“(b) Before an exemption for a child care facility is allowed under this section, in addition to any other information required under ORS 307.162, the statement shall:

“* * * * *

“(B) Declare or be accompanied by proof that the division has issued the child care facility a certification to provide educational child care.”

III. CONCLUSION

Plaintiff is not entitled to the ORS 307.145 child care facility exemption because it did not enter into the lease on or before June 30, 2004, as required by ORS 307.112(4)(a)(A). Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's request for exemption is denied.

Dated this _____ day of May 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 May 4, 2005. The Court filed and entered this document May 4, 2005.