

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JOSEPH GALL,)	
)	
Plaintiff,)	TC-MD 060207C
)	
v.)	
)	
YAMHILL COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This appeal involves the taxation of Plaintiff’s manufactured home identified as Account 508939. The tax year at issue is 2005-06. The parties asked the court to render a decision based on the pleadings and statements made at the April 20, 2006, court proceeding. Plaintiff appeared on his own behalf and Defendant was represented by Susan Debolt, Appraisal Analyst 3.

I. STATEMENT OF FACTS

Plaintiff purchased the subject property, a manufactured home, in November 2001 for approximately \$43,000. The home is located in a manufactured home park, on land not owned by Plaintiff. The real market value for the 2002-03 tax year, which had a January 1, 2002, assessment date, was reduced from \$69,742 to \$43,000, based on the purchase price and Plaintiff’s appeal to the board of property tax appeals (board). The maximum assessed value that year was \$55,036, up three percent from the previous year’s maximum assessed value of \$53,433. *See* ORS 308.146(1).¹ The board did not change Plaintiff’s 2002-03 maximum assessed value. The assessed value, which by statute is the lesser of the property’s maximum assessed value or real market value, was reduced from \$55,036 to \$43,000, in accordance with

¹ Court’s references to the Oregon Revised Statutes (ORS) are to 2003, the year which applies to Plaintiff’s appeal. Plaintiff appears to have taken his quotations of the ORS from the 2005 version.

ORS 308.146(2).² The maximum assessed value remained unchanged at \$55,036 for the next three tax years (2003-04, 2004-05, and 2005-06). The real market value and assessed value were reduced to \$32,680 in tax year 2003-04, reduced again to \$28,105 for the 2004-05 tax year, and then increased approximately eight percent to \$30,353 for the 2005-06 tax year, the year under appeal.

II. PARTIES' POSITIONS

Plaintiff asserts that Defendant has no statutory authority to tax his home, and that, if the authority does exist, such taxation violates the equal protection clause of the United States Constitution. Plaintiff contends that the only legal tax on his property is a \$6 assessment under ORS 446.525. Additionally, Plaintiff contends that Defendant violated ORS 308.146 by increasing his assessed value by more than three percent. Plaintiff also has concerns over the alleged illegal actions of various county and state officials over a four-year period in connection with the taxation of his property, and complains that Defendant has imposed value increases as high as 85 percent on other county residents.

Plaintiff has requested the following relief: 1) a cease and desist order prohibiting the taxation of personal property manufactured homes; 2) an order directing the Director of the Oregon Department of Revenue to act under ORS 305.110 and ORS 305.120; 3) indictments against those facilitating the collection of the tax; 4) a double six-year tax refund pursuant to ORS 311.806, ORS 306.255, and other statutory provisions; 5) an award refunding amounts

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² Assessed value had originally been set at \$55,036 because that number was less than the original real market value established by Defendant.

Plaintiff was previously ordered by this court to pay in a prior appeal, TC No 4639; and 6) punitive damages in the amount of \$10 million³ “to deter other egregious government acts that violate their responsibilities that are ‘clearly inherent in the nature of office’ (ORS 162.415).” (Ptf’s Compl at 8, 9.)

Defendant asserts that the property is taxable personal property and requests that the court affirm the values. Defendant also asks that the court address Plaintiff’s assertion that the only valid assessment is the \$6 assessment provided in ORS 446.525.

III. ANALYSIS

A. *Ad Valorem Taxation of Manufactured Structures*

Plaintiff asserts that Defendant is prohibited from establishing a value for his personal property manufactured structure because ORS 308.875 provides that “[m]anufactured structures need not be returned under ORS 308.290.” Plaintiff further outlined his position as follows:

“This implies that the assessor shall not establish a value factor, (dollar amount) as required under ORS 308.290(2)(a). ‘If the manufactured structure and the land upon which the manufactured structure is situated are owned by the same person, the assessor shall assess the manufactured structure as real property’. ORS 308.875. This establishes the class of taxable property. Classes of taxable property are required to be reported as in ORS 308.320 and ORS 308.330 with the mandates of ORS 308.146 which establishes a maximum assessed and assessed value as 103 percent from the prior year for real property or personal property used in a business. ORS 307.190(2)(a), ORS 308.290.” (Ptf’s Compl at 2.)

Plaintiff’s argument is difficult to follow. However, the conclusion Plaintiff reaches – that his manufactured home, and all others in Oregon, are exempt from taxation – is simply not

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³ Plaintiff’s Complaint asked for \$1,000,000, which was later amended to \$10 million.

supported by the cited authorities. Plaintiff’s manufactured structure is subject to ad valorem taxation, as explained below.

The general rule in Oregon is that all property, real and personal, is subject to taxation.

ORS 307.030(1) provides:

“*All real property within this state and all tangible personal property situated within this state, except as otherwise provided by law, shall be subject to assessment and taxation in equal and ratable proportion.*” (Emphasis added.)

ORS 308.105(1) enforces the general rule of taxation of personal property and clarifies that such property is “assessed for taxation” where it is located (its “situs”). That statute provides:

“Except as otherwise specifically provided, *all personal property* shall be assessed for taxation each year at its situs as of the day and hour of assessment prescribed by law.” (Emphasis added.)

Plaintiff’s manufactured home is tangible personal property. *See* ORS 307.020(3)

(“ [t]angible personal property’ * * * includes all chattels and movables.”).⁴ Thus, unless there is an exception, Plaintiff’s personal property, the manufactured structure, is subject to assessment and taxation.

ORS 307.190(1) provides an exception to the general rule of taxation for “tangible personal property held by the owner * * * for personal use, benefit or enjoyment[.]” That provision would appear to provide Plaintiff the relief he seeks – the non-taxation of his property. However, there is an exception to that exception in the case of “[m]anufactured structures as

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⁴ A “chattel” is “[m]ovable or transferable property; esp., personal property.” *Black’s Law Dictionary*, 229 (7th ed 1999). Plaintiff’s manufactured home was moved to its current location by a truck that towed it to the manufactured home park. It is, therefore, a chattel.

defined in ORS 446.561[.]” pursuant to which such property is taxed. ORS 307.190(2)(d).⁵

Plaintiff’s home is a manufactured structure within the definition of ORS 446.561(1)(a).⁶

Accordingly, although most tangible personal property held for personal use is exempt from taxation, manufactured structures are not exempt.

Plaintiff is correct that under ORS 308.875 a manufactured structure is classified as real property if “the manufactured structure and the land upon which the manufactured structure is situated are owned by the same person.” However, Plaintiff does not own the land under his home, and his manufactured structure is therefore not classified as real property. Moreover, the very next sentence of ORS 308.875 provides:

“If the manufactured structure is owned separately and apart from the land upon which it is located, it *shall be assessed and taxed* as personal property.”
(Emphasis added.)

That statutory provision makes clear two points. Plaintiff’s manufactured structure is considered personal property because he does not “own the land upon which it is located,” and it is subject to assessment and taxation; the statute provides that “it *shall be* assessed and taxed[.]” (Emphasis added.)

The court rejects Plaintiff’s assertion that there is an implication from the last sentence of ORS 308.875 that “the assessor shall not establish a value factor” for his manufactured structure. (Ptf’s Compl at 2.) That sentence does provide that “[m]anufactured structures need not be

⁵ Subsection (2) of ORS 307.190 provides in part:

“The exception provided in subsection (1) of the section does not apply to:
* * * * *
“(d) Manufactured structures as defined in ORS 446.561”.

⁶ ORS 446.561(1)(a) provides that a “manufactured structure” means a “manufactured dwelling” as defined in ORS 446.003. ORS 446.003(26)(a) defines a manufactured dwelling as a “residential trailer,” a “mobile home,” or a “manufactured home.” Finally, a “manufactured home” is defined as “a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction [.]” ORS 446.003(26)(a)(C).

returned under ORS 308.290.” ORS 308.875. However, that provision merely exempts the owner of a manufactured structure from complying with the personal property return requirements of ORS 308.290. Absent that exception, owners of manufactured structures would be required to file a personal property return each year estimating the real market value of their property. The upshot of the last sentence of ORS 308.875 is that the assessor determines the value of manufactured structures without the owner’s annual value estimate.

Finally, the purpose behind ORS 308.320 and ORS 308.330, two additional statutes cited by Plaintiff, is to ensure that each county assessor assesses all property in the county and does not willfully or knowingly fail to assess any person or property that is assessable, or under or over value such property. Those provisions have little or nothing to do with reporting classes of taxable property, as Plaintiff asserts.

B. *Equal Protection*

Plaintiff contends that the taxation of his personal property manufactured structure, if authorized by statute, violates the equal protection clause “under Article XIV and avoiding ‘involuntary servitude of Article XIII.[.]’” (Ptf’s Compl at 2.) In his Complaint, Plaintiff argues that other personal property is not assessed and that his manufactured structure is licensed and titled as other personal property such as yachts and motorhomes which are exempted from ad valorem property taxation. (*Id.* at 2, 3.) At the hearing, Plaintiff complained that an individual with a half million dollar recreational vehicle does not pay property taxes and that to tax his manufactured structure violates Plaintiff’s federal equal protection rights. There was no elaboration on Plaintiff’s involuntary servitude argument.

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Under the fourteenth amendment to the United States Constitution, a state shall not “deny to any person within its jurisdiction the equal protection of the laws.” In *Dutton Lumber Corporation v. State Tax Commission*, 228 Or 525, 539, 365 P2d 867 (1961), the Oregon Supreme Court explained the principles of that amendment as follows:

“The equal protection of the laws required by the Fourteenth Amendment does not prevent states from resorting to classifications for the purposes of legislation and they have a wide range of discretion in that regard (*Safeway Stores v. Portland*, 149 Or 581, 595, 42 P2d 162; *Wittenberg v. Mutton*, 203 Or 438, 446, 280 P2d 359) if the classification is reasonable, not arbitrary and rests upon some ground of difference having a fair and substantial relation to the object of the legislation, so that persons similarly situated shall be treated alike.”

Moreover, “[t]his latitude is notably wide in classifications for purposes of taxation.” *Dutton Lbr. Corp.*, 228 Or at 539.

On review, the court must determine if the grounds for the classification rest upon a rational basis “and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.” *Huckaba v. Johnson*, 281 Or 23, 26, 573 P2d 305 (1978) (citations omitted).

Applying those standards, there is a rational basis for an ad valorem property tax on personal property manufactured homes, but not on recreational vehicles. Such a distinction is clearly not unreasonable or arbitrary and is based upon a genuine difference between the two types of property. Recreational vehicles are self-propelled conveyances driven on the state’s highways and are subject to motor vehicle registration fees under ORS 803.420. Manufactured homes, on the other hand, are not self-propelled vehicles and, although they are transported to a site over the state’s highways, once they reach their destination, they are detached from the vehicle that transported them, placed on a foundation, and connected to water, sewer, and electrical services. At that point, they are affixed to the land and not easily moved and are taxed

on an ad valorem basis. Funds from the two taxes are used for different purposes; one to support the state's roadways and the other to support general government services. A more compelling argument might exist if the legislature chose to impose an ad valorem property tax on stick-built homes but not on manufactured homes, where both are used for residential purposes, or if manufactured homes classified as real property were subject to the tax while those classified as personal property were not. That, however, is not the situation in Oregon. The tax scheme Plaintiff complains of does not violate the federal Equal Protection Clause.

Plaintiff's involuntary servitude argument is entirely devoid of legal or factual support. The thirteenth amendment was ratified by the requisite number of states, including Oregon, in 1865. The purpose was to abolish slavery,⁷ defined as "1. A situation in which one person has absolute power over the life, fortune, and liberty of another. 2. The practice of keeping individuals in such a state of bondage or servitude." *Black's Law Dictionary* 1393 (7th ed 1999). An ad valorem tax on a residential structure clearly does not constitute slavery.

C. *The \$6 Assessment Under ORS 446.525.*

Plaintiff contends that the only legal tax on his property is a \$6 assessment under ORS 446.525. The court disagrees. First, it has already been shown that personal property manufactured homes are subject to ad valorem taxation. ORS 446.525 unambiguously supports that conclusion. That statute provides in relevant part:

"A special assessment is levied annually upon each manufactured dwelling *that is assessed for ad valorem property tax purposes* as personal property. The amount of the assessment is \$6."

ORS 446.525(1).

⁷ The thirteenth amendment provides:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

D. *Assessed Value Under ORS 308.146*

Plaintiff's tax year 2005-06 assessed value was increased approximately eight percent, from \$28,105 to \$30,353.⁸ Plaintiff argues that the "9 percent increase from \$28,105 to \$30,353 * * * clearly violates ORS 308.146." (Ptf's Compl at 4.) Plaintiff did not make clear in his Complaint the specific relief sought for the alleged violation, but did complain during the April 20, 2006, proceeding that the increase "exceeds three percent." The numbers set out by Plaintiff in his Complaint are the old and new assessed value, and the court concludes Plaintiff requests a limitation of three percent on the increase in assessed value.

Oregon does have a three percent limitation on value increases, but that limitation applies to maximum assessed value, not assessed value. *See* Or Const, Art XI, § 11(1)(b) (limiting the increase in maximum assessed value of no more than three percent over the prior tax year).⁹ That limitation is codified in ORS 308.146(1), which provides:

"The maximum assessed value of property shall equal 103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the prior year, whichever is greater."

Plaintiff's maximum assessed value did not increase by more than three percent. In fact, there was no increase in Plaintiff's maximum assessed value from tax year 2004-05 to tax year 2005-06; the value remained at \$55,036. The reason for the lack of a change in maximum assessed value is that the property's assessed value for the prior year (2004-05) was \$28,105 and the prior-year maximum assessed value was \$55,036; ORS 308.146(1), set forth above, provides that the current year maximum assessed value is the greater of 103 percent of the prior-year

⁸ $\$30,353$ (new assessed value) - $\$28,105$ (old assessed) = $\$2,248$ (amount of assessed value increase); $\$2,248 \div \$28,105 = 0.79985 = 0.8$ (rounded) = 8 percent.

⁹ Art. XI, section 11(1)(b) provides:

"For tax years beginning after July 1, 1997, the property's maximum assessed value shall not increase by more than three percent from the previous tax year."

assessed value or 100 percent of the prior-year maximum assessed value. A three percent increase and the prior-year's assessed value (\$28,105) yields a value of \$28,948 (rounded); that number is less than the prior-year's maximum assessed value of \$55,036. Accordingly, the maximum assessed value remained unchanged at \$55,036.

Plaintiff's assessed value did increase by more than three percent in tax year 2005-06. The reason is that Plaintiff's assessed value is based on his real market value rather than his maximum assessed value, and there is no three percent limitation on the annual change in real market value. Plaintiff's assessed value is based on his real market value because of the dictates of ORS 308.146(2), which provides that assessed value is the lesser of maximum assessed value or real market value. Plaintiff's real market value was less than his maximum assessed value. The assessor determines real market value each year in accordance with ORS 308.205. The statutory definition of real market value is "the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm's length transaction occurring as of the assessment date for the tax year." ORS 308.205(1).¹⁰ In other words, real market value is the likely selling price between motivated parties without any undue influences. Once the real market value is established, assessed value is simply the lesser of real market value or maximum assessed value, as explained above.

The assessor determined that Plaintiff's real market value as of January 1, 2005 (tax year 2005-06) was \$30,353, up approximately eight percent over the prior year. That number was less than the statutory determination of maximum assessed value (\$55,036), and Defendant, therefore, set Plaintiff's assessed value at \$30,353. The increase in assessed value exceeded three percent because Plaintiff's assessed value in both tax years 2004-05 and 2005-06 (the current year) was

¹⁰ ORS 308.007 provides for a January 1 assessment date each year which corresponds to the tax year beginning on the following July 1.

based on real market value. If Plaintiff's maximum assessed value was less than his real market value, assessed value would be based on maximum assessed value, and the annual increase would be limited to three percent. Plaintiff's real market value is less than his maximum assessed value because of the substantial reduction in real market value in 2002 and the subsequent declines in real market value in 2003 and 2004. However, the important point is that the three percent statutory limitation on values applies to maximum assessed value and not assessed value.

Because Plaintiff's property was legally and properly taxed by Defendant and Plaintiff has not shown an error in Defendant's valuation, Plaintiff's requests for "[a] cease and desist [order prohibiting the] taxation of personal property manufactured homes[,] * * * indictments [against those] facilitat[ing] the collection of * * * [the] tax[, and] a double six year tax refund" are denied.¹¹ (Ptf's Compl at 8.) Moreover, assuming without deciding that the court has the authority to order the Director of the Oregon Department of Revenue to act under ORS 305.110 and ORS 305.120, as Plaintiff requests on page 8 of his Complaint, the court's decision obviates the need for such an order because Plaintiff has been given an explanation of why his property is subject to taxation. Neither will the court award a refund of amounts previously ordered by this court in a prior appeal or punitive damages. The amounts Plaintiff was previously ordered to pay were ordered by the Regular Division of this court, which is a higher tribunal than the Magistrate Division. Magistrates cannot overturn actions of the Judge of the Regular Division. As for punitive damages, this court has no statutory authority to award such damages because they are based on tort claims and this court only has jurisdiction over tax matters. *See Masse v. Dept. of Rev.*, 18 OTR 100, 107 (2004) (rejecting the taxpayer's assertion that the Tax Court had

¹¹ The nature of the court's denial should not be interpreted as an affirmation of the court's authority to grant the type of relief Plaintiff requested in other circumstances.

jurisdiction over tort claims, stating that “[t]his court has jurisdiction only in respect of issues arising under the tax laws of this state.”).

IV. CONCLUSION

The court concludes that Plaintiff’s personal property manufactured structure is subject to ad valorem property taxation, that the \$6 assessment provided by ORS 446.525 is not the only legal tax applicable to manufactured homes, and that the eight percent increase in Plaintiff’s assessed value did not violate ORS 308.146 because the three percent value increase limitation provided in subsection (1) applies to maximum assessed value and not assessed value. The other relief requested by Plaintiff is denied because Plaintiff’s legal theory was rejected by the court, as explained above, and the court lacks the authority to grant the type of relief requested. Now, therefore,

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

Dated this _____ day of June 2006.

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 on June 15, 2006. the Court filed and entered this document on June 15, 2006.