

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LAWRENCE R. DERR,)
)
 Plaintiff,) TC-MD 060493B
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals concerning certain personal property¹ assessments for the 2005-06 tax year. A trial was held on January 9, 2007. Lawrence R. Derr participated on his own behalf; Dennis Wardwell, certified appraiser, represented Defendant.

The key issue is whether certain "swim floats" are exempt from taxation.

I. STATEMENT OF FACTS

The subject property consists of a floating pad and the new structure erected thereon located adjacent to Plaintiff's houseboat. It is sited on the Columbia River at Rivers Bend Marina near Scappoose.

Plaintiff acquired an unimproved swim float in 1991, along with his purchase of a houseboat. The float is mainly connected to the area's common walkway by chains attached with clevis-type fasteners that may be easily unhooked. Construction was undertaken during 2004 to erect a building on the float. The structure is used as a shop and exercise area. There is electricity but no plumbing or cooking facilities. The interior finish is painted sheetrock. On one side is a garage-type overhead door.

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¹ Account P516549.

For the January 1, 2005, assessment date, Defendant computed a total real market value (RMV)² of \$31,480, allocating \$13,570 to the float and \$17,910 to the improvements. The appraiser classified the building as a "shed." (Def's Statement at 1, Aug 3, 2006.)

The subject property is mainly connected to the walkway and pilings; it is not primarily connected to the house itself. It could easily be moved to another location on the river.

Defendant maintains the float is near to and "part of" the Plaintiff's houseboat. Its representative testified that it was their policy to assess all swim floats improved with structures.

II. ANALYSIS

The general rule is that tangible personal property, used in a personal manner, is exempt from taxation. *See* ORS 307.190(1).³ Certain exceptions apply. ORS 830.700(4) defines a floating home as "a moored structure that is secured to a pier or pilings and is used primarily as a domicile and not as a boat." Floating homes are not exempt from taxation. *See* ORS 307.190(2)(c). Defendant concedes the subject property is not a floating home.

The evidence establishes that the subject property is mainly connected to the walkway and pilings; it is not primarily and permanently connected to the house. Therefore, it is not *annexed* to the houseboat.

The case of *Sideras v. Dept. of Rev.*, 13 OTR 310 (1995) is of critical importance to this situation. There, a swim float was attached by chains to the channel side of a floating home; it was not attached to the walkway on the other side of the home. The court held that the float

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² Plaintiff stated that if the property is found to be taxable, he does not contest the RMV as determined by Defendant.

³ All references to the Oregon Revised Statutes (ORS) are to 2005.

could only be taxed "if it is part of the floating home" to which it is attached. *Id.* at 313. After examining legislative intent and applying certain concepts from the law of fixtures, Judge Byers concluded that the property was exempt. *Id.* at 314.

A similar result is dictated in this case. Here, the degree of house securement is much less and further removed. The walkway itself is where the attachment is focused. The court in *Sideras* made no distinction as to whether the float was improved with structures. Although Defendant's policy may be one of uniform application, it is not consistent with the general exemption of most personal property. The subject property is not part of the adjacent floating home.

Plaintiff has the burden of proof and must establish his case by a "preponderance" of the evidence. *See* ORS 305.427. A "[p]reponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). "[I]f the evidence is inconclusive or unpersuasive, the taxpayer will have failed to meet his burden of proof." *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990). Plaintiff has clearly met that statutory requirement in this record.

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III. CONCLUSION

The subject property is exempt from taxation for the 2005-06 tax year.⁴ Both the real market value and assessed values of the float and new structure shall be removed from the assessment roll. Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is granted.

Dated this _____ day of February 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on February 13, 2007. The Court filed and entered this document on February 13, 2007.

⁴ The court emphasizes that the result of this case is based on the examination of the specific facts in the record as applicable to this individual situation.