

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BISHOP TRUMAN J. BERST,)	
GOOD SHEPHERD MINISTRIES,)	
)	
Plaintiffs,)	TC-MD 060529C
)	
v.)	
)	
BENTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs filed this appeal following Defendant’s exemption application denial for the 2006-07 tax year. Plaintiffs’ Complaint seeks an exemption for tax years 2004-05, 2005-06, and 2006-07.¹ Plaintiffs were represented at trial by Truman Berst (Berst). Defendant was represented by Cindy Weddle, Exemption Specialist, Benton County assessor’s office, and Doug Hillpot, Benton County Assessor.

I. STATEMENT OF FACTS

The subject property is a 1,500 square foot two bedroom, two bath residence, with a living room, dining room, kitchen, and one or more offices.² Berst holds legal title to the property, identified as Account 219570. Berst lives in the home with his wife and daughter. Berst has lived in the home since 1992. There is a cross and a church sign on the main entrance of the home that reads “Good Shepherd Ministries Chapel.”

There is a second building on the property that Defendant describes as a detached garage with a carport and storage shed. A photograph of that building submitted by Defendant as part of

¹ On July 31, 2006, the court issued an Order that dismissed tax years 2004-05 and 2005-06.

² Berst contends there are three offices; Defendant insists there is only one. The court believes there are two: one with two work areas, and that the second office is a room described by Defendant as the piano room. However, the court’s Decision obviates the need for a resolution of the issue.

its Exhibit B supports that description. According to the uncontroverted testimony, the main portion of that building is approximately 500 square feet in size. Inside the building is a pool table and several dozen chairs, plus other miscellaneous items. Berst testified that he holds religious meetings in that building, as well as in the living room of the main residence.

Although the facts are not entirely clear, Berst apparently became an ordained minister on February 9, 2001, as evidenced by a document titled “Ministerial Commission,” and submitted as part of Plaintiffs’ Exhibit 4. (Ptf’s Ex 4, at 9.)³ The ordaining authority was the Christian Heritage Institute. Neither party submitted any evidence about that institute. That same day (February 9, 2001), Berst established an unincorporated nonprofit church organization known as Good Shepherd Ministries, and executed a lease granting the church the right to use and occupy the subject property. (Ptf’s Exs 1, 3.)

Under the terms of the lease, which identifies Berst as the landlord and Good Shepherd Ministries as the tenant, the property is to be used by “Bishop Truman Berst, his wife and daughter exclusively, for spiritual, administrative, educational, literary, benevolent, charitable, entertainment, and recreational purposes[.]” (Ptf’s Ex 1 at 1.) The term of the lease is 20 years. (*Id.*) The lease provides for the payment of monthly rent by tenant in the amount of \$937.50, which apparently coincides with the underlying monthly mortgage payment on the property. The lease includes a clause which states that rent “has been established to reflect the savings below market rent resulting from the exemption from taxation.” (*Id.*)

³ Exhibit 4 is the Bylaws for Good Shepherd Ministries. Inserted approximately in the middle of those bylaws is the “Ministerial Commission.” Official numbering for the bylaws begins with page two. However, there are two pages before the numbered page two, the first of which is fairly described as a cover sheet exhibiting the words “Bylaws for Good Shepherd Ministries.” Berst attached another sheet of paper to the front of the formal bylaws, identifying the materials by case number, case name, and exhibit number. The “Ministerial Commission” is unnumbered and was inserted between official bylaw page numbers seven and eight. The court renumbered that exhibit, beginning with the cover sheet which it denoted as page one. By that renumbering, the “Ministerial Commission” is found on page nine.

According to the Ministerial Commission, Berst is the head of the church. The church's constitution and bylaws, also adopted February 9, 2001, reflect that the church is governed by a three-member Board of Directors, called trustees, consisting of Berst, his brother Marvin Berst, and Olga Usmanova. (Ptf's Exs 3 and 4.) According to Article XIII of its constitution, the "church is organized to promote the principle of separation of church and state as set forth in Thomas Jefferson's 'Virginia Statute of Religious Freedom' of 1776." (Ptf's Ex 3 at 8.)⁴ Article XIV states that the church's tenets and beliefs are derived from "The Holy Bible, * * * the Magna Carta, Fairfax Resolve, Declaration of Resolve of the First Continental Congress of 1774, the Declaration of Independence and the Constitution of the United States with the preamble thereto, and the immutable laws of nature and nature's Creator." (Ptf's Ex 3 at 9.) The Ministerial Commission set forth in Article 5.5 of the church's bylaws provides:

"The head of this church and order shall at all times on a 24 hour day, seven day (7) days a week, three hundred sixty-five (365) days a year basis be engaged in the work of the church as an evangelist, minister and pastor-teacher. * * * He is directed to follow the word of God and duties of this church and order, established under the ordaining authority, and the congregation, without compromise."

(Ptf's Ex 4 at 8.)

In that same article is a statement requiring Berst, as the head of the church, "to keep employment and work (when necessary) to earn income to use to support his family, and the church and order hereby established." (*Id.*) Berst testified that he holds a second job as a consultant to a charitable organization, but that he performs his duties without leaving the subject property, presumably from the church offices within the residence/parsonage. Berst testified that

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⁴ Plaintiffs' Exhibit 3 is a multi-page document titled "Constitution of Good Shepherd Ministries Articles of Organization." All of the pages in that exhibit were not numbered; therefore, the court renumbered them as pages 1 through 12. The language quoted from the constitution associated with this footnote is from Article XIII.

the nominal salary of \$83 per week from his consulting job augments his Social Security earnings and enables him to perform his ministerial duties for the church.

According to his testimony, Berst broadcasts a worldwide daily religious teaching program from an office within the residence. At one point, Berst referred to the program as an internet broadcast, at another point as a radio broadcast, and at yet another point as a radio, internet, and television broadcast. Berst testified that those broadcasts are the primary church ministry and that broadcast listeners form the main body of his congregation. Berst testified that he ministers to a congregation of thousands and sometimes millions of people. However, Berst testified that he also periodically holds religious meetings and other gatherings in the second building on the property (the converted garage). Berst testified that he ministers to the Russian Pentecostal Church in Lebanon and that members of that church occasionally come to the subject property in groups of 50 or 100. When pressed on cross-examination, Berst testified that between 50 and 100 people per week come to the property. The court did not find that testimony particularly credible and concludes it was an exaggeration of the frequency and number of church visitors coming to the subject property.

Berst applied for a property tax exemption for the entire property in 2006 under the provisions of ORS 307.140.⁵ No application was filed in 2004 or 2005. Defendant denied the exemption application by letter dated May 5, 2006, because the property was “not used exclusively for religious purposes as required by ORS 307.140.” (Ptf’s Ex 5.) Berst appealed, requesting exemption for tax years 2004-05, 2005-06, and 2006-07.

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⁵ All references to the Oregon Revised Statutes (ORS) are to 2005 unless otherwise stated.

II. PRELIMINARY MATTER

The court issued an Order July 31, 2006, dismissing the 2004-05 and 2005-06 tax years because Plaintiffs did not apply for exemption in 2004 or 2005. Although the determination in that Order was correct, the court incorrectly cited ORS 307.162(1) (2003), which governs the filing requirements for qualifying organizations that own the property for which exemption under ORS 307.140 is sought. *See* ORS 307.140 (2003) (providing that “[u]pon compliance with ORS 307.162, the following property owned or being purchased by religious organizations shall be exempt from taxation”). In this case, the religious organization – Good Shepherd Ministries – does not own the property, but, instead, leases the property. The property is owned by Berst, who is not a religious organization, but rather a taxable owner.

ORS 307.112 (2003) makes the exemption provided by ORS 307.140 available to lessees who undertake a qualifying use of the property. The pertinent language exempts “[r]eal or personal property of a taxable owner held under lease or lease-purchase agreement by an institution, organization or public body * * * granted exemption or the right to claim exemption for any of its property under * * * ORS 307.140[.]” An application must be filed on or before April 1 of the assessment year corresponding to the tax year beginning on the following July 1. *See* ORS 307.112(2) (requiring a claim for exemption); 307.112(4)(a) (providing that “[t]he claim shall be filed on or before April 1”); ORS 307.112(4)(b) (providing that “[t]he exemption shall first apply for the tax year beginning July 1 of the year for which the claim is filed”).

As indicated in the court’s earlier Order,

“Berst acknowledges that no application was filed in 2004 or 2005. Berst apparently telephoned the assessor’s office in late 2004 or early 2005 to inquire about the taxes * * * [and] that call established a dialogue regarding the taxes. Berst ultimately filed an application in 2006.”

(Order at 2, July 31, 2006.)

Because no application was filed in 2004 or 2005, dismissal of those years was, and remains, appropriate. However, the correct statutory provision is ORS 307.112, not ORS 307.162. The court's earlier Order stands, and is incorporated herein, modified as necessary to reflect that the statute authorizing dismissal in this case for failure to file an exemption application, is ORS 307.112. Tax years 2004-05 and 2005-06 are dismissed.

The question remaining is whether the subject property qualifies for exemption for the 2006-07 tax year, a year for which an application was filed.

III. ANALYSIS

Religious organizations can obtain a property tax exemption under ORS 307.140 provided they use the property in a manner consistent with the statute. The statute exempts from taxation:

“(1) All houses of public worship and other additional buildings and property *used solely* for administration, education, literary, benevolent, charitable, entertainment and recreational purposes by religious organizations, the lots on which they are situated, and the pews, slips and furniture therein.”

ORS 307.140 (emphasis added).

Exemption statutes are strictly but reasonably construed. *German Apostolic Christ. Church v. Dept. of Rev.*, 279 Or 637, 640, 569 P2d 596 (1977); *Washington County v. Dept. of Rev.*, 11 OTR 251, 254 (1989) (Washington County). The Supreme Court has stated that “[s]trict but reasonable means merely that the statute will be construed reasonably to ascertain the legislative intent, but in case of doubt will be construed against the taxpayer.” *German Apostolic Christ. Church*, 279 Or at 640 (quoting *Eman. Luth. Char. Bd. v. Dept. of Rev.*, 263 Or 287, 291, 502 P2d 251 (1972)). This court has stated that “[i]n close cases, exemptions must be denied.” *Washington Co. Assessor II v. Jehovah’s Witnesses*, 18 OTR 409, 422 (2006) (*Wash. County Assessor II*). The burden is on the taxpayer to prove that a claim of exemption meets the

statutory requirements. ORS 305.427; *Golden Writ of God v. Dept. of Rev.*, 300 Or 479, 483, 713 P2d 605 (1986) (*Golden Writ of God*).

In order to qualify for the exemption provided in ORS 307.140, “the primary use of the property must advance charitable purposes or goals of the religious organization.” *German Apost. Christ. Church* at 642. Generally, “the use of the property * * * does not have to fulfill a religious function or be directly related to the religious goals of the church[,]” but need only “fulfill[] a generally recognized charitable function.” *Id.* However, “if the charitable use is the advancement of religion, then such use must be primarily for the benefit of the church as well as reasonably necessary for the furthering of the religious aims of the church.” *Id.* Thus, there is a two-part test looking at primary use and reasonable necessity. That test essentially mirrors the one used by the courts under ORS 307.130 and announced in *German Apost. Christ. Church*, 279 Or at 641-642 (requiring reasonable necessity and exclusive, meaning primary, use). Moreover, the Supreme Court has declared that “decisions interpreting ORS 307.130 are of value in discerning the contours of ORS 307.140.” *Id.* at 641.

The court’s focus must be on the primary as opposed to incidental use of the property. *Golden Writ of God*, 300 Or at 483 (referring to ORS 307.130, and ORS 307.140 can be similarly analyzed); *Washington County v. Dept. of Rev.*, 11 OTR 251, 254 (1989) (*Washington County*) (denying exemption under ORS 307.140 because primary use of the parsonage was as a residence and there was only incidental use of the property for religious purposes).

In *Wash. County Assessor II*, this court observed certain generalizations about the two-part test that can be inferred from the applicable cases. The court noted that under the first prong, which requires that the religious use be “primarily for the benefit of the church,” exemptions have been allowed where “the property was used primarily or essentially for religious

objectives, with only incidental benefit to the persons using the property[.]” and denied in cases where “the use was primarily for the convenience of a religious official, and the benefits to the church were incidental[.]” *Wash. County Assessor II* at 418 (citations omitted). As for the second prong, which requires that use of the property be “reasonably necessary for the furthering of the religious aims of the church,” the court observed that the cases fall into two categories: “cases involving residences and those not involving residences.” *Id.* Where a residence is involved, two requirements must be met. “[T]he official living in the residence must be required to live there by either church doctrine or practical necessity[.] * * * [and] the proximity of the residence to the house of worship must be necessary to further religious objectives.” *Id.* at 419 (citations omitted).

Looking more closely at some of the relevant cases, the Oregon Supreme Court granted exemption under ORS 307.130 to a residence located on the campus of a religious college. The residence was occupied by two college employees whose functions were deemed essential to the educational mission of the college and who were required to live on campus. *Mult. School of Bible v. Mult. Co.*, 218 Or 19, 37, 343 P2d 893 (1959). The court observed that “even their convenience, as affected by their use of this residence on the school campus, was associated with the performance of duties in behalf of the school which would seem to render it highly expedient that they should reside where they do and not elsewhere.” *Id.* In another case, the court allowed an exemption for a convent where Catholic nuns lived and prayed communally in accordance with the tenets of their religion because communal, prayerful living was itself a religious objective, and because the nuns were required to reside in the convent. *House of Good Shepherd v. Dept. of Rev.*, 300 Or 340, 342-44, 710 P2d 778 (1985).

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Conversely, exemption was disallowed in *Golden Writ of God*. There, the Supreme Court affirmed the Tax Court's denial of an exemption under ORS 307.130 and ORS 307.140 for a religious organization seeking to exempt a farm and a residence communally occupied by approximately 20 adherents to the faith who believed that all the property, including the plants and animals thereon, was holy. *Golden Writ of God*, 300 Or 484-87. The court stated:

“The farmland with a house and a barn were just that: farmland, a house and a barn. The property was no different from the farms and homes in which millions of Oregonians have meditated and prayed since this state was founded in 1859. The house was primarily used for living quarters for the persons who lived there.”

Id. at 486.

The Court further noted that members of the Golden Writ of God were not required to live in the residence or on the farm property, as were the nuns in *House of Good Shepherd*. *House of Good Shepherd*, 300 Or at 340.

In *Washington County* this court held taxable, under ORS 307.140, a single-family residence owned by the Oak Hills Christian Reformed Church, Inc., which was used as a parsonage by the pastor and his family. The court found “that the primary use of the property is as a residence.” *Washington County*, 11 OTR at 254. Although the pastor was required to live in the parsonage, the court found that “the use of the property to accomplish religious purposes is only incidental or secondary to the primary purpose of providing a residence for the pastor and his family.” *Id.* The court acknowledged that the case presented a “close question,” and exemption was denied, except for a study, which the parties stipulated was exempt, in spite of the fact that the house was regularly and frequently used for religious activities. Such use included temporary housing for members and pastors on a very infrequent basis, almost daily social functions, weekly Sunday school in the living room, family room, and kitchen, an annual

one-week long vacation Bible school in the garage and on the lawn, and monthly leaders' meetings. *Id.* at 252-54, 252 n 1.

In the instant appeal, the court finds that the property is used primarily as a residence for Berst and his family. Photographs reveal the property is indistinguishable from many other homes in Oregon. Berst has lived in the home since 1992, and it does not appear that the use of the property has changed much since he moved in. There may be an increase in religious type activity, but the evidence does not show that the property is used "primarily for the benefit of the church," or that it is "reasonably necessary for the furthering of the religious aims of the church," as required under *German Apost. Christ. Church*, 279 Or at 642. Accepting that the primary religious activity is the daily broadcast emanating from one or two of the offices in the home, it would appear that that activity could occur anywhere and need not be housed within Berst's residence. It is true that church rules require Berst to live in the home, which is leased by Good Shepherd Ministries, but Berst himself established those rules, and they inure to his benefit. What we have here is a requirement by the organization Berst controls, mandating that Berst live in the house he owns and leases to his organization. Burst has to live somewhere, and there is no evidence showing that his proximity to the broadcast studio is necessary to accomplish the church's religious purposes. The same is true with regard to proximity to the converted garage. Rather, the use is primarily for the benefit of Berst and his family, with, at best, only an incidental benefit to the organization.

Moreover, the court does not believe that weekly groups of between 50 and 100 people come to the subject property for religious teaching or other religious purposes, although individuals and smaller groups may well come to Berst's home on a less frequent basis to discuss
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religious matters. If those meetings are larger or more frequent than understood by the court, the substantiation is lacking and the testimony self-serving.

When a proper evidentiary foundation is made, certain portions of the given property, including a single room within a building, may be granted exemption while other parts are held taxable. *Wash. County Assessor II*, 18 OTR at 415; *see e.g., Found. of Human Understanding v. Dept. of Rev.*, 301 Or 254, 722 P2d 1 (1986); *German Apost. Christ. Church*, 279 Or at 644-645; *Washington County*, 11 OTR at 252. However, “where the evidence does not demonstrate which portion of the [property] is devoted to exempt activities, or reasonably necessary to allow those activities, no partial exemption on that account should be allowed.” *Golden Writ of God*, 300 Or at 484.

In this case, there is testimony that Berst broadcasts a daily religious program from an office within the residence. The program is presumably broadcast on behalf of Good Shepherd Ministries. Unfortunately, Berst did not provide any detail on the actual amount of space within the residence devoted to that activity. In fact, the parties do not even agree on the number of offices within the residence, and Berst did not satisfactorily substantiate his claim of three. In this state of the record, given that the primary use of the property is as a personal residence for Berst and his family, and that such use is unnecessary to attain the religious objectives of the organization, the court concludes Plaintiffs are not entitled to an exemption on any of the property at issue.

It is not the limited *amount* of religious use that defeats Plaintiffs’ bid for exemption, but rather the *primary* use of the property. As in *Golden Writ of God*, the subject property is used primarily as a residence for Berst and his family, with incidental benefit to Good Shepherd Ministries. *Id.* at 486-87.

IV. CONCLUSION

For the reasons set forth above, the court concludes that the subject property is not entitled to exemption under ORS 307.140. Now, therefore,

IT IS THE DECISION OF THIS COURT that the subject property is taxable for the 2006-07 tax year due to a lack of sufficient qualifying use, and dismissed for the two prior tax years (2004-05 and 2005-06) because no application was filed.

Dated this _____ day of June 2007.

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 13, 2007. The Court filed and entered this document on June 13, 2007.