

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JOHN M. CAGE JR,)	
)	
Plaintiff,)	TC-MD 060580D
)	
v.)	
)	
COLUMBIA COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s denial of an Oregon Active Military Service Member’s Exemption Claim dated January 14, 2006. This issue is before the court on cross motions for summary judgment. Oral argument was held in the Oregon Tax Courtroom on Tuesday, October 3, 2006. Plaintiff appeared on his own behalf. Nancy Sullivan, Office Manager, Columbia County Assessor, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

The parties stipulate to the following facts. Plaintiff’s wife, SueJenn Cage (Cage), who was a member of the United States Army Reserve, received orders to report to active duty on August 15, 2003. (Ptf’s Ex 9.) On behalf of herself and Plaintiff, she filed an Oregon Active Military Service Member’s Exemption Claim on January 14, 2006, seeking a property tax exemption for their primary residence for the 2006-07 tax year. On April 17, 2006, Defendant denied the claim, stating that Cage did not meet the requirement that she “be serving under title 32 and have a change in status to title 10.” (Ptf’s Ex 3.) Plaintiff appeals the denial.

II. ANALYSIS

The parties agree that their dispute centers on the inclusion of the term “military reserve forces” in the following statute:

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“Upon compliance with ORS 307.289, there shall be exempt from taxation up to \$60,000 of the assessed value of the homestead of any resident of this state who is:

“(a) Serving in the Oregon National Guard, *military reserve forces* or organized militia of any other state or territory of the United States; and

“(b) Performing service, after a change in status from serving under Title 32 to serving under Title 10 of the United States Code, for more than 178 consecutive days during the tax year for which the exemption is claimed.”

ORS 307.286(1).¹ (Emphasis added.)

In order to qualify for the exemption, both subparts of ORS 307.286(1) must be met. The word “and” creates a two-part statutory requirement. There is no dispute that Cage owned a home, resided in Oregon, and was a member of the United States Army Reserves at the time she was called to active duty. *See* ORS 307.286(1)(a). However, because she was called to active duty by the Department of the Army, Cage did not have a “change in status from serving under Title 32 to serving under Title 10 of the United States Code.” ORS 307.286(1)(b). “Title 32” covers service in the National Guard, and “Title 10” specifically relates to the Armed Services. Title 10, Subtitle E entitled Reserve Components, addresses the ability of the President of the United States to “call into Federal service members and units of the National Guard of any State.” 10 USC § 12406 (2003). “Orders for these purposes shall be issued through the governors of the States.” *Id.* At no time was Cage in the Oregon National Guard, and therefore, she did not serve in the military under Title 32. Her orders to report for military duty were issued by the Department of the Army, not the Governor of the State of Oregon. (Ptf’s Ex 9.) Having failed to meet the second part of the two-part test in ORS 307.286(1), Cage does not meet the statutory requirements for exemption from property taxation.

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¹ All references to the Oregon Revised Statutes (ORS) are to the 2005 year.

Plaintiff argues that the court cannot ignore the inclusion of the term “military reserve forces” which he defines as those serving in a federal branch of the armed services, *e.g.*, army, navy, marines, coast guard and air force. Relying on his definition, Plaintiff argues that the court should conclude that, because it is impossible for military reserve forces to meet the second part of the two-part statutory requirement, the legislature intended military reservists to be exempt from taxation without meeting the requirements of ORS 307.296(1)(b).

When analyzing a statute, the court’s first step is to analyze its text and context. *See PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993). It is the role of the court to “ascertain and declare what is, in terms or in substance, contained” in the statute. ORS 174.010. *PGE* directs the court to accept the plain meaning of a statute and “that words of common usage typically should be given their plain, natural, and ordinary meaning.” *PGE*, 317 Or at 611. The court cannot add “what has been omitted” and, as Plaintiff states, the court cannot “omit what has been inserted.” ORS 174.010. If, after trying to determine the intent of the legislature from the text and context of the statute the meaning is still unclear, the court may turn to the legislative history of the statute. *See PGE*, 317 Or at 611-12.

Looking for the plain meaning of “military reserve forces,” those three words do not appear together in a dictionary definition. However, the definition of “reserve” incorporates “military” and “forces.” “Reserve” is defined as “the military forces of a country not part of the regular services or in the U.S. of the National Guard; *also*: a member of these forces: reservist.” Webster’s *Third New Int’l Dictionary* (unabridged ed 2002, p. 1930.) This definition suggests that “military reserve forces” can be armed forces (“the combined military, naval, and air forces of a nation”) or, the “National Guard.” *Id.*, p.119.

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Because the meaning is still unclear, the court now turns to the “legislative history” of the statute. *PGE*, 317 Or at 611. In ascertaining the meaning of “military reserve forces,” the testimony of Representative Jeff Kropf, who introduced the legislation, is very helpful. Representative Kropf testified: “ * * *that it says ‘serving in the Oregon National Guard, military reserve forces or organized militia of any state or territory of the United States’ - *that is meant to mean Oregonians who serve in National Guard or reserve units outside of the state of Oregon.* We have individuals in Ontario and Pendleton and Portland who serve in the Washington and Idaho Guards and *reserve units.*” Testimony, House Veterans’ Affairs Committee, HB 3334, Apr 7, 2005, Tape 58, Side B (Statement of Rep Jeff Kropf) (emphasis added). Additional clarification is found in the testimony of Colonel Mike Caldwell. When discussing Title 10, Colonel Caldwell indirectly defined those individuals who are the subject of the statute. He testified that “the average Title 10 tour, that is, conversion from *drilling reservists and guard status* to an active duty status under US Code Title 10 has been running 18 months.” The testimony of both Representative Kropf and Colonel Caldwell defines the intended recipients of the proposed legislation to be individuals who serve in the Oregon National Guard or similar reserve units located in neighboring states.

Additional assistance to aid the court in defining the term “military reserve forces” is found in the following statutory rule of construction *ejusdem generis*.

“Where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.

“ * * * The rule “accomplishes the purpose of giving effect to both the particular and the general words, by treating the particular words as indicating the class, and the general words as extending the provisions of the statute to everything embraced in that class, though not specifically named by the particular words.” ’ ’ ”

Seven-Up Bottling Co. of Salem, Inc. v. Dept. of Rev., 10 OTR 400, 406-407 (1987), citing

2A Sutherland Statutory Construction § 47.17 (4th ed.). The specific term, “Oregon National Guard,” set forth in ORS 307.286(1)(a) is followed by the general words – “military reserve forces or organized militia of any other state or territory of the United States.”² ORS 307.286(1). Those general words, when read in context with the statutory requirement of a change in status from Title 32 to Title 10, reinforce the court’s conclusion that ORS 307.286 allows only those serving in the National Guard who meet the residency and property ownership statutory requirements to request an exemption. That statute does not offer those who serve in other branches of the armed forces a property tax exemption.

III. CONCLUSION

After carefully reviewing the statute and considering the legislative history and rules of statutory construction, the court concludes that SueJenn Cage fails to meet the statutory requirements of ORS 307.286(1) and Plaintiff’s property is not exempt from taxation. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s cross motion for summary judgment is denied; and

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² The court notes that the words “military reserve forces or organized militia of any other state or territory of the United States” are separated from “Oregon National Guard” by a comma. The placement of, and lack of a comma after, “military reserve forces” suggest that those words were added to define “Oregon National Guard” and not to refer to another distinct group of individuals serving in another branch of the armed forces.

IT IS FURTHER DECIDED that Defendant's cross motion for summary judgment is granted.

Dated this _____ day of November 2006.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on November 9, 2006. The Court filed and entered this document on November 9, 2006.