

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BISHOP TRUMAN BERST,)	
GOOD SHEPHERD MINISTRIES,)	
ALTERNATIVE HEALTH & HERBS)	
REMEDIES,)	
)	
Plaintiffs,)	TC-MD 060670C
)	
v.)	
)	
LINN COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s denial of a property tax exemption application for the 2006-07¹ tax year regarding property identified in Defendant’s records as assessor’s account 87326. Trial was held by telephone March 13, 2007. Truman Berst (Berst) appeared and testified at trial on behalf of Plaintiffs. Gary Blacklock (Blacklock), appraisal supervisor, testified on behalf of Defendant and Gene Karandy, Assistant County Counsel, observed.

I. STATEMENT OF FACTS

Berst leases the subject property, a building located at 425 Jackson Street SE, Albany, Linn County, Oregon 97321. (Ptf’s Ex 1 at 1, 4.) According to the uncontroverted testimony, the building is approximately 5,000 square feet. A sign above the front door states: “Alternative Health & Herbs Remedies, Your Complete Health & Herb Source.” (Def’s Ex E.) A lobby area with books and tapes for sale is located inside the front door. (Def’s Ex G.) A manufacturing and production area is located beyond the lobby, with herbs and other products stocked on shelves. (Def’s Ex H.) Additionally, there is a mixed use room that serves as both a break room and a storage room, with boxes, a table, and chairs. (Def’s Ex J.)

¹ Plaintiff’s Complaint named tax year 2005-06; however, the issue was clarified at the initial case management conference based on the year of the denial.

Berst runs a business called Alternative Health & Herbs Remedies (AHHR) from the building. (Ptf's Ex 10.) On December 21, 2006, the message for the phone line at AHHR stated:

“This is master herbalist, Reverend Truman Berst, thank you for calling, Alternative Health and Herb Remedies. Dial zero anytime for the operator. Alternative Health and Herbs Remedies, your complete health and herbs source. To make a purchase from our retail catalog, or request expert health information, and consultation, please dial 106 now. To request a catalog, or printed information, please dial 101. If you are one of our nationwide retail stores, or a wholesale customer, please dial 102. For accounting or billing, dial 104. For our purchasing, and administration department, dial 105. Dial zero anytime for the operator. Again dial [*sic*] retail orders dial 101, wholesale orders dial 102. Retail catalog orders and health consultations dial 106. Accounting and billing 104. Purchasing and administration 105. Thank you for calling Alternative Health and Herbs Remedies, home of Truman Berst, world famous herbal remedies, wishing you health and happiness.”

(Def's Ex D.) The phone message was changed on December 23, 2006, after an initial court hearing, to include references to Good Shepherd Ministries, a bible passage, and “donation orders.” (Ptf's Ex 12.)

Herbs and other products can be ordered from the AHHR website. (Def's Ex L; Ptf's Ex 15.) Defendant submitted pages labeled “Retail Order Form” from the website. (Def's Ex L at 1.) That form is dated August 2005, and includes a price column beside each product name. (Def's Ex L at 1-8.) Berst also submitted an exhibit from the website labeled “Retail Member Donation Order Form.” (Ptf's Ex 15 at 1.) That form is dated March 2007, and includes a caption that states “A Nonprofit Evangelical Christian Ministry, an Integrated Auxiliary of Good Shepherd Ministries, a Mission Society in Albany, Oregon.” (Ptf's Ex 15 at 1, 8.) The March 2007, form does not include a price column next to the names of the products. (Ptf's Ex 15 at 1-8.) That document was prepared on or about the time of trial.

Berst applied for a religious organization tax exemption for the entire property for tax year 2006-07 in March of 2006. Berst testified on cross examination that AHHR is an outreach ministry of the church organization Good Shepherd Ministries. Blacklock testified that the

application was denied on June 12, 2006, pursuant to ORS 307.140(1), following an interior inspection, because the property was not used solely for church purposes, and because ORS 307.140(1) specifically excludes stores from being exempt.

II. ANALYSIS

“Generally, all property located within Oregon is taxable. *See* ORS 307.030. * * * [T]axation is the rule and exemption the exception, available only where it is specifically provided and only in accordance with specified conditions.” *Living Enrichment Center Properties, LLC v. Dept. of Rev. and Clackamas Cty. Assessor.*, TC No 4770 (June 6, 2007) (quoting *Erickson v. Dept. of Rev.*, 17 OTR 324, 328 (2004)) (footnote omitted).

ORS 307.140² exempts from taxation qualifying property of religious organizations.

The statute provides, in relevant part:

“(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. However, any part of any house of public worship or other additional buildings or property which is kept or used as a *store or shop* or for any purpose other than those stated in this section *shall be assessed and taxed* the same as other taxable property.”

ORS 307.140(1) (emphasis added).

Exemption statutes are strictly but reasonably construed. *German Apost. 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 Apost. 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.”

² All references to the Oregon Revised Statutes (ORS) are to 2003.

Washington Co. Assessor II v. Jehovah's Witnesses, 18 OTR 409, 422 (2006) (*Wash. County Assessor II*). Additionally, "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." *German Apost. Christ. Church*, 279 OR at 642. Moreover, 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*).

The applicable statute, ORS 307.140, provides an exemption for "houses of public worship," such as churches, synagogues, and mosques, and for "other additional buildings and property." ORS 307.140(1). The language of the statute suggests that any "additional buildings" or "property" must be used in connection with the house of public worship. The subject property is used primarily as a warehouse and retail store for the storage, packaging, and sale of herbs and herb products to the public through the Internet, telephone, and, on a more limited basis, in person. The evidence does not establish that there were actually any worship services taking place on the subject property. Additionally, the information on AHHR's website and price list (prior to the changes made after the appeal was filed) did not reveal any connection to Good Shepherd Ministries or any other religious organization, but, instead, reveal a retail operation. And, there are no signs on the outside of the building that would alert a customer or passerby that the property is anything other than a retail herbal store.

Berst testified that the building includes a room that serves as a "modest chapel," as well as a break room and storage area. Berst also testified that the room will be renovated into a chapel once he finds out whether the property qualifies for an exemption. There is also a small area inside the front door with bookshelves containing religious and health-related books and tapes. Finally, Berst testified that he prays with some of the people who call into the store.

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; *Washington County*, 11 OTR at 254. The court is not persuaded that worship services take place in the "modest chapel." Moreover, notwithstanding the fact that a chapel is planned, and that there is the incidental dissemination of religious materials and some praying, the court concludes that the primary use of the property is not as a house of public worship, but, rather, as a retail store. Plans for future expansion into an exempt use are insufficient to qualify a property for exemption. *Eman. Luth. Char. Bd. v. Dept. of Rev.*, 263 Or 287, 502 P2d 251 (1972). And, if the occasional act of praying, or the incidental sale of religious materials entitled a business operation to an exemption, many businesses in this state would no doubt end up exempt from property taxation. That was not the intent of the legislature. The statute is intended to reduce the operational costs of nonprofit religious organizations that rely on financial contributions for their continued existence. It is for that reason that the court's focus must be on the primary, as opposed to incidental, use of the property. Again, the primary use of the subject property is the sale of herbs and that is not an exempt use. Moreover, absent the existence of a house of public worship, the property cannot, by statute, qualify for an exemption, because exemption is available to "houses of public worship and other *additional* buildings and property." ORS 307.140(1) (emphasis added).

Regardless of whether the property is, or includes, a house of public worship, ORS 307.140 precludes exemption for any part of a building "used as a store or shop." *Foundation of Human Understanding v. Dept. of Rev.*, 301 Or 254, 262, 722 P2d 1 (1986). In *Found. of Human Understanding*, the court held taxable a portion of a church building used to sell tapes and books. *Id.* The balance of the church building, used for church meetings, seminars, and educational activities, was granted exemption. *Id.* at 256, 262. In the present case, the subject property is a warehouse and retail store used primarily for the sale of herbs, with a

limited sale of books and tapes, and incidental religious activity such as praying. Under the statute and relevant case law, it matters not whether the sale of books in the lobby and the sale of herbs and herb products advances the aims of religion, makes a profit, or competes with nonexempt businesses. *Id.* at 262. The fact that the primary use is as a store precludes exemption.

In certain circumstances a property may be entitled to partial exemption provided the relevant area satisfies the statutory requirements. *Wash. Co. Assessor II*, 18 OTR at 415; *see e.g., Found. of Human Understanding*, 301 Or 254; *German Apost. Christ. Church*, 279 Or at 644-45; *Washington County*, 11 OTR at 252. The court does not believe that any portion of the subject property qualifies for exemption because the predominant activity is commercial rather than religious. However, if there was sufficient charitable religious activity, there must be a proper evidentiary foundation to aid the assessor or court in determining the amount of space to exempt. Such a foundation is lacking in this case.

III. CONCLUSION

For the reasons set forth above, the court concludes that the subject property does not qualify for a religious exemption under ORS 307.140. The primary use of the subject property does not meet the requirements of the statute. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal must be, and is hereby, denied, and that the subject property remained taxable for the 2006-07 tax year.

Dated this _____ day of August 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 August 9, 2007. The Court filed and entered this document on August 9, 2007.