

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KENNETH L. GARDNER,)	
)	
Plaintiff,)	TC-MD 070044C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the assessment of two structures for the 2006-07 tax year.¹ The parties agree to the relevant material facts and, following a hearing on August 10, 2007, asked the court to render a decision based on applicable law. Plaintiff appeared on his own behalf. Defendant was represented by Ken Collmer and Karla Hartenberger, both of whom are appraisers with the county assessor's office.

I. STATEMENT OF FACTS

Plaintiff has two pole buildings on a 3.24 acre parcel, carried in Defendant's records as Account R341993. The land is taxed at a lower rate under the farm use special assessment statutes. The buildings are valued at their real market value (RMV) and assessed at a lower rate based on their maximum assessed value (MAV) under Measure 50, as provided in ORS 308.146.²

The larger building measures 60 feet by 200 feet and encompasses an indoor arena and numerous stalls. The smaller building is approximately 1,084 square feet. Defendant placed a RMV of \$69,530 on the larger building and \$7,240 on the smaller building. Plaintiff contends that the two pole buildings are exempt from taxation under ORS 307.397. Defendant disagrees,

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¹ Plaintiff appealed tax years 2001-02 through 2006-07; however, the court issued an Order on May 11, 2007, dismissing tax years 2001-02 through 2005-06, leaving open the 2006-07 tax year only.

² All references to the Oregon Revised Statutes (ORS) are to 2005.

arguing that the buildings are “real property” under OAR 150-307.010, and that Oregon taxes all real property unless it is specifically exempted by statute.

II. ANALYSIS

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.”

The subject property, two pole buildings, are unquestionably classified as real property.

ORS 307.010 defines real property as “[t]he land itself” and “[a]ll buildings, structures, improvements, machinery, equipment or fixtures erected upon, above or affixed to the land[.]”

Plaintiff insists that the structures are exempt under ORS 307.397(1) as agricultural buildings. The court disagrees. ORS 307.397(1) provides in part:

“The following items of real property machinery and equipment or tangible personal property are exempt from ad valorem property taxation:

“(1) Frost control systems used in agricultural or horticultural activities carried on by the farmer [.]”

To be exempt, the subject property must be “machinery and equipment,” or “tangible personal property.” Additionally, the property must fall into one of the five categories enumerated in the statute. Plaintiff’s pole buildings are not machinery and equipment, nor are they tangible personal property.

Tangible personal property is defined by statute as “all chattels and movables, such as boats and vessels, merchandise and stock in trade, furniture and personal effects, goods, livestock, vehicles, farming implements, movable machinery, movable tools and movable equipment.” ORS 307.020(1)(c). Plaintiff’s buildings clearly do not fall within the definition of tangible personal property. Nor do the buildings constitute “machinery and equipment.”

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Although there is no statute or rule specifically defining the term machinery and equipment, there is an administrative rule defining real property, and that rule clearly distinguishes between buildings on the one hand and machinery and equipment on the other. The rule provides:

“(b) Buildings, structures, improvements, machinery and equipment. These are improvements on the land and are real property when erected upon or affixed to the land.

OAR 150-307.010(2)-(b).

Other Oregon statutes and administrative rules clearly distinguish between “buildings and structures,” and “machinery and equipment.” For example, ORS 307.394 exempts from taxation certain personal property farm machinery and equipment used primarily to prepare land and plant crops. The corresponding administrative rule, OAR 150-307.394, provides that the exempt machinery and equipment is that which is “used to place a farm crop in storage.” The exemption is not available for farm buildings or structures. ORS 307.330 exempts certain commercial facilities under construction, and subsection (2) provides that “[i]f the property otherwise qualifies for exemption * * * the exemption shall likewise apply to any machinery or equipment located at the construction site which is or will be installed in or affixed to such building, structure or addition.”

Moreover, a common sense understanding of those terms refutes any contention that buildings fall under the category of machinery and equipment. Plaintiff insists that the buildings constitute “equipment.” Webster’s includes the following definition of equipment: “(1): the implements (as machinery or tools) used in an operation or activity: APPARATUS <where a tractor is standard ~> <sports ~> (2): all fixed assets *other than land and buildings* of a business enterprise <the plant, ~, and supplies of the factory>.” Webster’s Third New Int’l Dictionary at 768 (unabridged ed 2002) (emphasis added in italics).

Not only are Plaintiff’s buildings neither real property machinery and equipment nor tangible personal property, as required by the statute, they do not fit within any of the five

statutorily enumerated categories. The buildings are not “[f]rost control systems used in agriculture * * * [t]rellises used for hops, beans or fruit or for other agricultural or horticultural purposes; [h]op harvesting equipment, * * * [o]yster racks, trays, stakes [etc.]” or “[e]quipment used for the fresh shell egg industry * * *.” ORS 307.397 (1) through (5).

Absent a statutory exception, Plaintiff’s pole buildings are real property “subject to assessment and taxation in equal and ratable proportion.” ORS 307.030(1). Contrary to Plaintiff’s claim, the exception provided by ORS 307.397 does not apply to Plaintiff’s pole buildings. Plaintiff has cited no other statutory authority for the claimed exemption, and the court is aware of none.

Plaintiff insisted at one point that other horse operations are not taxed for their pole buildings. If that is true, it is not because the buildings are not taxable, but rather because the assessor’s office is unaware of their existence. In certain circumstances, such buildings may be erected without a permit.

III. CONCLUSION

The court concludes that Plaintiff’s two pole buildings are not exempt from taxation under ORS 307.397 because they are neither “real property machinery and equipment” nor “tangible personal property,” as required by that statute. Although Plaintiff’s land qualifies for farm use special assessment, his farm-related buildings are fully taxable in accordance with applicable law.

Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's buildings are taxable and his appeal is denied.

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 31, 2007. The Court filed and entered this document on August 31, 2007.