

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WESTSIDE COMMUNITY CHURCH,)	
)	
Plaintiff,)	TC-MD 070727E
)	
v.)	
)	
BENTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s decision to grant only partial exemption for a residential structure and land, owned by Plaintiff, and identified in Defendant’s records as Parcel 143234, Map Tax 12504DA01200 for the 2007-08 tax year. Trial was held December 10, 2007. Plaintiff was represented by Linda Domingues, the designated representative for the nonprofit charitable entity (the church). Defendant was represented by Cindy Weddle (Weddle), Exemptions Tech Specialist, Benton County Assessor’s office. For ease of reference, the parties will be referred to as the church and the county.

I. STATEMENT OF FACTS

The parties agree to the following facts, many of which are set forth in the county’s trial brief. The appeal involves a 1,594 square foot residence (*i.e.*, a house) built in 1959 and situated on a 0.86 acre lot owned by the church. There is also a storage shed and a portion of the church parking lot carried on this property account. The subject property (the home and 0.86 acre of land, plus the storage shed and a portion of the parking lot) is located adjacent to a 5 acre parcel to the east that is improved by the church’s main building (sanctuary and classrooms, etc.) and the majority of the church parking lot. The church has owned the property for many years. At one time, all of the roughly six acres and the improvements thereon (the church, parking lot, house

and stored shed) were carried in the assessor's records as one tax lot with one account number. The home, at that time, was used by the church for the storage of food and clothing collected by church members and given to those in need, and for various church meetings. The church also let a nonprofit 4-H group use the house for its meetings.

Sometime in the early 1990s, the use of the house shifted to ministry-related residential use. The church first allowed a homeless man to live in the house and, after that, other individuals and families who had some connection to the church resided there at a reduced rent. At one time, the pastor and his family lived in the home. When the church began using the home for residential purposes, it requested that the house and land around it (0.86 acres) be split off into a separate assessor account so that the property could be taxed. Plaintiff paid taxes on that property for more than 10 years, up to and including the 2006-07 tax year. The church continued to use the portion of the parking lot and the storage shed for church purposes, although it did not apply for, or receive, property tax exemption on the subject tax account.

The last people to live in the home were a teacher and his wife who taught at the church's school. They lived in the home and paid rent (at a reduced rate) until early July 2006. When they moved out, the church contemplated tearing the house down because it needed a considerable amount of work to repair the leaky roof, fix some of the interior walls damaged by water, and have the leaky plumbing repaired. The church, instead, decided to use portions of the home to store church property, mainly tables and filing cabinets. However, the house was not used for church meetings because of its poor condition. The church has no current plans to use the house for church meetings in the future.

On January 29, 2007, Plaintiff submitted an application for tax exemption for religious organizations. Weddle inspected the property on June 14, 2007, and determined that only a

portion of the property qualified for exemption. Weddle concluded that 100 percent of the paving and the storage shed qualified for exemption, but that only 25 percent of the land and 25 percent of the residence so qualified. Weddle determined that the property qualified for a 28 percent overall exemption from property taxes and so notified Plaintiff. The total assessed value (AV), before application of the exemption, is \$182,836. The 28 percent exemption amounts to \$51,194 of exempt value, reducing the net taxable AV to \$131,642. Plaintiff timely appealed, seeking a 100 percent exemption for the property.

II. ANALYSIS

ORS 307.140¹ 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 (emphasis added). Thus, the statute requires that the property be used “solely” for a qualifying purpose, and provides that property “used * * * for any [other] purpose * * * shall be assessed and taxed,” rather than granted exemption.

The county does not dispute that the church is a religious organization, as required by ORS 307.140. Instead, the county contends that the church is only using a portion of the residence for a religious purpose – the storage of church property – and that the unused portions of the home do not qualify for exemption; the county granted a partial exemption for the land in proportion to the amount allowed for the residence. The county requests that the court uphold

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

that determination. The church responds that it is using the home solely for religious purposes and that no portion of the home is used for any purpose unrelated to the church. Accordingly, the church insists that the entire residence and all of the land upon which it sits qualify for exemption under ORS 307.140.

The Oregon Supreme Court has ruled that to qualify for an exemption under ORS 307.140 “the primary use of the property must advance charitable purposes or goals of the religious organization.” *German Apost. Christ. Church v. Dept. of Rev.*, 279 Or 637, 642, 569 P2d 596 (1977). 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.” *Id.* Moreover, “[t]he burden is upon the taxpayer to prove that a claim of exemption meets the statutory requirements.” *Golden Writ of God v. Dept. of Rev.*, 300 Or 479, 483, 713 P2d 605 (1986); ORS 305.427.

Typically, when a residence is involved in an exemption case, there is a member or employee of the organization living in the home, and the question is whether the use is primarily personal or organizational. Here, the home is unoccupied and used for church storage. Only a portion of the home – about one fourth – is so used. The rest of the home is sitting empty and not used for any purpose. The question is whether the entire house qualifies for exemption when only a portion of the house is used for an exempt purpose, and the remainder is unused. For the reasons set forth below, the court concludes that the entire house does not qualify for exemption.

There are situations in which the court has allowed exemption for the nominal (*i.e.*, partial) use of the property by a qualifying organization. In *Society of St. Vincent DePaul v. Department of Revenue*, the Oregon Supreme Court held that where the charitable organization immediately began using a portion of the building and was preparing the entire building for use,

the property qualified for exemption. 272 Or 360, 537 P2d 69 (1975). That case was decided under ORS 307.130, but the courts have held that “decisions interpreting ORS 307.130 are of value in discerning the contours of ORS 307.140.” *German Apost. Christ. Church*, 279 Or at 641; *see also Washington Co. Assessor II v. Jehovah’s Witnesses*, 18 OTR 409, 414 (2006). Similarly, in *The International School v. Department of Revenue*, this court allowed exemption under ORS 307.145 on a one-half acre parcel owned by, and located adjacent to, an exempt school, where the school initially used only a portion of the land but had plans to increase its use after clearing and leveling the land, and fencing the playground. 13 OTR 220, 222 (1995). The statute required “exclusive” use, and the court held that while “the use was minimal as of the assessment date, it was sufficient.” *Id.* at 222. In *Willamette University v. Tax Commission*, the court construed ORS 307.130 to allow an exemption for a building that was under construction but not yet completed, despite the fact that no qualifying use was actually underway. 245 Or 342, 422 P2d 260 (1966). The court, in that case, ruled that the statutory term “‘actually occupied and used’ pertains to whether or not the premises are then being prepared to carry out purposes of the exempt charity and if they are they fall within the legislative intent.” *Id.* at 349.

Those cases are distinguishable from the present case because the plaintiffs were advancing fairly quickly towards complete use of the property for qualifying exempt purposes. By contrast, in this case the church is using only a portion of the building and has no plans for expanded use. In fact, the church may cease using the house altogether, and tear it down to make room for a larger parking lot. Moreover, the use of the house is for convenience rather than necessity. *German Apost. Christ. Church*, 279 Or at 642.

Exemption statutes are strictly but reasonably construed. *Id.* at 640; *Washington County v. Dept. of Rev.*, 11 OTR 251, 254 (1989). The Oregon 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.” *Washington Co. Assessor II*, 18 OTR at 422.

The county has allowed a partial exemption for the subject property based on the church’s proportionate use of the residence, allowing an equal amount of the land (25 percent) to be exempt. The county has exempted the entire value of the outbuilding and the paved area used for church access and parking, resulting in an overall exemption of 28 percent. That decision comports with applicable case law, including a line of cases allowing for a partial exemption based on a partial qualifying use. *Id.* at 415 (“It is possible that only some parts of an organization’s property, or even *parts of a single building*, are exempt, while other parts are not.”) (emphasis added); *see e.g.*, *Found. of Human Understanding v. Dept. of Rev.*, 301 Or 254, 722 P2d 1 (1986) (holding that some parts of a religious organization’s property are exempt under ORS 307.140, and other parts are taxable); *German Apost. Christ. Church*, 279 Or at 644-45 (holding an office exempt and the rest of a residence taxable). The court finds no reason to disturb the county’s decision.

III. CONCLUSION

After careful consideration of the matter, the court concludes that Plaintiff is not entitled to a complete (100 percent) exemption under ORS 307.140 on property used only partially for church purposes. Defendant’s grant of a partial exemption of 28 percent is therefore upheld.

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Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied and the property retains its partial, 28 percent exemption.

Dated this _____ day of December 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 December 19, 2007. The Court filed and entered this document on December 19, 2007.