

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

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OREGON TAX COURT

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MAGISTRATE DIV.

Property Tax
CITY OF PENDLETON,)
)
 Plaintiff,) No. 991122A
)
 v.)
)
 UMATILLA COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

At issue is the assessment, for the 1989-90, 1990-91, 1991-92, 1992-93 and 1993-94 tax years, of property identified by Account Nos. 146515, 146516 and 146517.

Plaintiff was represented by its City Manager, Larry Lehman. Defendant appeared and made his arguments.

STATEMENT OF FACTS

The property at issue consists of the Umatilla Historical Society Museum, the Pendleton Chamber of Commerce, ancillary parking and an RV dump station. It is owned by the Union Pacific Railroad Company, who at all relevant times leased the property to plaintiff for \$1 per year and the obligation to pay property taxes.

In 1994 defendant told plaintiff the property was taxable. Plaintiff responded by applying to exempt the property. The exemption was granted.

Defendant, during the 1998-99 tax year, took steps to demand payment of taxes for previous tax years. Notice of a correction under ORS 311.205 was issued, with a demand for payment for the 1989-90 through 1993-94 tax years.

COURT'S ANALYSIS

The essence of plaintiff's case was succinctly stated when the City observed that these additional amounts were a lot of money to be charged for the failure to file some pieces of paper. This reasoning is easily understood.

However, standing alone, it is not enough to justify relief. This court has no ability to exempt property in any other manner than that specifically set out by the legislature. City property may only be exempted according to ORS 307.090.¹ ORS 307.112 requires that, in order to apply ORS 307.090 so as to exempt property leased by a city from an otherwise taxable owner, an application must be filed. The application process was not completed until the 1994-95 tax year. The application cannot reach back to change the status of the property for prior tax years. The court cannot now extend or expand the exemption to operate in a manner greater than that set out in the legislative grant.

While it was not argued by the parties, the court has carefully considered other arguments. One is to note that Oregon Laws 1999, chapter 500, section 3 specifically amended ORS 311.206² to add the following language:

"(3) Notwithstanding subsection (1) or (2) of this section or other provision of law establishing the delinquency date for additional taxes, additional taxes may not be assessed and imposed if the correction is a result of:

"(a) The disqualification of property from a tax exemption granted erroneously by a tax official; or

¹In relevant part, ORS 307.090(1) specifies that, "Except as provided by law, all property of* * *cities* * *is exempt from taxation." The importance of the emphasized language (which emphasis was added by the author) is discussed in *Lane County v. Dept. of Rev.*, 13 OTR 166 (1994).

²ORS 311.206 is the statute setting out the manner in which the roll corrections under ORS 311.205 become assessed as additional taxes.

“(b) The failure by a tax official to timely disqualify property from a tax exemption.”

Two barriers exist to the application of this statute to the years in question. The first is that it is equivocal as to whether, in this specific situation, defendant granted an exemption in error, or instead failed through oversight to assess the property. The court, however, need not resolve this controversy due to the second factor. Defendant added these additional amounts to the roll for the 1998-99 tax year, which ended on June 30, 1999. The amendments to ORS 311.206 worked by Oregon Laws 1999, chapter 500, section 3 did not become effective until October 23, 1999.

Revisions to the law during the course of an appeal can dramatically change the litigation. *Potter v. Dept. of Rev.*, 312 Or 143, 817 P2d 291 (1991). However, in order for the October 23, 1999, changes to avail plaintiff, the amendments to ORS 311.206 must be found to be retroactive. Oregon Laws 1999, chapter 500, section 3 lacks a retroactivity clause. Earlier cases from the Tax Court have set out a general rule that statutes will not be construed retroactively unless they admit of no other reasonable construction. *Jayne v. Dept. of Rev.*, 6 OTR 251, 258 (1975).

More recent decisions as to whether a statute has a retroactive application set out sophisticated tests, such as a study of the tense in which the statute has been written, its stated purpose and general structure, and its legislative history. *Newell v. Weston*, 150 Or App 562, 946 P2d 691 (1997), *rev den* 327 Or 317, 966 P2d 221 (1998). The application of such an analysis to Oregon Laws 1999, chapter 500, section 3 is inconclusive. In such a situation the court must rely on other tests to discern the legislature's intentions. *Vloedman v. Cornell*, 161 Or App 396, 400, 984 P2d 906, 908 (1999).

The method in such instances is to look as to whether the change is

“remedial” or “substantive”. *Vloedman* 161 Or at 400. “Remedial” statutes are those which go to a remedy, as opposed to “substantive” legislation, which affect or modify a substantive right or duty. *Id.* at 401; *Perkins v. Willamette Industries*, 273 Or 566, 571 n 1, 542 P2d 473 (1975). Remedial statutes may be given retroactive effect. Substantive statutes may not. *Id.*

Is Oregon Laws 1999, chapter 500, section 3 then “remedial” or “substantive”? The conclusion of the court is that the legislation is “substantive”. “Substantive” statutes, as set out above, are those that go to a duty. The duty of an assessor to assess property is statutory. ORS 308.330. Oregon Laws 1999, chapter 500, section 3, in carving out a category of roll corrections for which the assessor no longer has a duty to assess, changes the “substantive” duties of the assessor. Under the criteria set out above, it may not be given a retroactive reach.

This conclusion, however, does not mean that plaintiff is entitled to no relief at all. Corrections to the roll of this sort must comply with the procedures set out in ORS 311.216 to 311.232. The language of ORS 311.216(1) limits its reach to the “* * *current assessment and tax rolls or on any such rolls for any year or years not exceeding five years prior to the last roll so returned* * *”. Here the correction was made during the 1998-99 tax year. The “last roll so returned” would have been the 1997-98. Defendant’s power to make corrections, under the five year limit, ended with the 1992-93 tax year. The 1989-90, 1990-91, and 1991-92 tax years were beyond the reach of defendant’s corrections. Plaintiff’s appeal may be granted as to those tax years.

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DECISION

CONCLUSION

IT IS THE DECISION OF THIS COURT that the assessments are voided for the 1989-90, 1990-91, and 1991-92 tax years. The assessments for the 1992-93 and 1993-94 tax years are upheld. Relief is granted to this extent.

Dated this 1st day of February, 2000.

SCOT A. SIDERAS
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.