

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

NORTH HARBOUR CORPORATION,)	
)	No. 991473E
Plaintiff,)	
)	DECISION GRANTING
v.)	DEFENDANT’S MOTION FOR
)	SUMMARY JUDGMENT AND
MULTNOMAH COUNTY ASSESSOR,)	DENYING PLAINTIFF’S MOTION
)	FOR SUMMARY JUDGMENT
Defendant.)	

Plaintiff appeals defendant’s denial of its application for exemption for the 1999-2000 tax year. Plaintiff requested an exemption under ORS 307.330, which provides an exemption for commercial facilities under construction. The parties stipulated to the material facts and submitted the case to the court on cross motions for summary judgment. For ease of reference herein, the parties are referred to as “taxpayer” and “the county.”

STATEMENT OF FACTS

The subject property is a 32-unit condominium project.¹ (Stip Facts 1.) The parties agree the property was under construction and not in use or occupancy on January 1, 1999. (Stip Facts 2-3.) They further agree the improvements were under construction for more than one year, and the developer of the project intends to sell the condominium units. (Stip Facts 4-5.)

Taxpayer timely filed an application for exemption under ORS 307.330. The county denied the application, finding the property was not being built “primarily for the
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furtherance of the production of income.” (Ptf’s Mot for Summ J, Ex A.) Taxpayer appeals

¹ The subject property is identified in the Multnomah County Assessor’s records as Account No. R226439 (old number R61125-0160).

the county's denial.

COURT'S ANALYSIS

ORS 307.330² provides a property tax exemption for certain commercial structures under construction. The statute provides, in pertinent part:

“(1) Except for property centrally assessed by the Department of Revenue, each new building or structure or addition to an existing building or structure is exempt from taxation for each assessment year of not more than two consecutive years if the building, structure or addition:

“(a) Is in the process of construction on January 1;

“(b) Is not in use or occupancy on January 1;

“(c) Has not been in use or occupancy at any time prior to such January 1 date;

“(d) **Is being constructed in furtherance of the production of income;** and

“(e) Is, in the case of nonmanufacturing facilities, to be first used or occupied not less than one year from the time construction commences. Construction shall not be deemed to have commenced until after demolition, if any, is completed.” ORS 307.330 (emphasis added).

The county denied taxpayer's application because it concluded a condominium project does not meet the requirement that the structure be built in “furtherance of the production of income.” *Id.* In the context of this appeal, the county further claims the property does not qualify because a condominium project is not a nonmanufacturing “facility.”

Statutory Construction

The first issue presented by the parties is whether the court should apply a strict or liberal construction to the statute. Under Oregon law, exemption statutes are traditionally given a strict, yet reasonable construction. See *Eman. Luth. Char. Bd. v. Dept. of Rev.*,

² All references to the Oregon Revised Statutes are to 1999.
DECISION

263 Or 287, 502 P2d 251 (1972). Taxpayer maintains, however, that a liberal construction applies to this exemption statute. As support for its contention, taxpayer cites the Tax Court's decision in *Aero Air, Inc. v. Dept. of Rev.*, 8 OTR 461 (1980). In *Aero Air*, the subject improvements were constructed in less than a year. Therefore, to qualify for exemption under ORS 307.330, the taxpayer needed to demonstrate the property was a manufacturing facility.³ Because only two percent of the structure's square footage was used for manufacturing, the court held the structure was a nonmanufacturing facility and denied the exemption. In so ruling, the court observed it should apply a liberal construction to the statute, stating:

“There seems to be little doubt that the legislature, in enacting ORS 307.330, wished to encourage and promote manufacturing industry in Oregon. Considering this legislative intent, it would appear that the legislature would approve what has been termed a ‘liberal construction’ of this tax statute even though, in the matter of tax exemption, Oregon traditionally has been a ‘strict construction’ state.” *Id.* at 464.

At first blush, *Aero Air* seems to set the rule for liberal construction. However, when reaching this conclusion, the court in *Aero Air* noted it would “appear” the legislature would approve a liberal construction; it provided no specific authority or guidance for this proposition. After reviewing other cases interpreting ORS 307.330, it becomes apparent the court's premise in *Aero Air* is an isolated incident. Cases both before and after *Aero Air* have applied the traditional principle of strict construction to the statute. See, e.g., *Multnomah County v. Dept. of Rev.*, 13 OTR 223, 229 (1995) (applying the principle of strict construction after *Aero Air*); *Phillips Industries v. Dept. of Rev.*, 5 OTR 462, 469 (1974) (applying the principle of strict construction before *Aero Air*). Therefore, the court

³ The requirement that a property not be used less than one year from the date construction commenced only applies to nonmanufacturing facilities. See ORS 307.330(1)(e).

finds that, when construing ORS 307.330, it is appropriate to apply the traditional method of strict construction.

Furtherance of the Production of Income

The next issue presented is whether the condominium was built “in furtherance of the production of income.” ORS 307.330(1)(d).

When interpreting a statute, the objective of the court is to determine the intent of the legislature. To determine whether the legislature intended to grant a condominium project under construction a property tax exemption under ORS 307.330, the court must examine both the text and context of the statute. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). The text of the statute is the starting point in the analysis and is “the best evidence of the legislature’s intent.” *Id.* In evaluating the text, the court is guided by the principle that it should not “insert what has been omitted” or “omit what has been inserted.” ORS 174.010.

The statutory provision that is the subject of disagreement between the parties is ORS 307.330(1)(d), which requires the property be constructed “in furtherance of the production of income.” Taxpayer maintains the project satisfies this requirement because it was built to produce income to the developer. The county maintains the statute anticipates granting the exemption to a commercial building that will generate an ongoing income stream after construction is complete. In summary, the parties disagree as to whether “income” suggests a one-time event or an ongoing stream. In *Webster’s Third New Int’l Dictionary*, the word “income” is defined, in relevant part, as follows:

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“4a: a gain or recurrent benefit that is usu. measured in money and for a given period of time, derives from capital, labor, or a combination of both, includes gains from transactions in capital assets, but excludes unrealized advances in

value: commercial revenue or receipts of any kind except receipts or returns of capital.” *Webster’s Third New Int’l Dictionary* 1143 (unabridged ed 1993).

The definition of income refers to a single gain **or** a recurrent benefit. What is unclear to the court is whether the legislature intended the word “income” to refer to a single gain, recurring benefit, or both. Because the statute is subject to more than one plausible reading, the court finds it appropriate to examine the statute’s legislative history. See *PGE*, 317 Or at 611-12.

ORS 307.330 was originally enacted in 1959 and provided an exemption for manufacturing facilities under construction. See Or Laws 1959, ch 246. In 1961, the legislature broadened the statute allowing properties being constructed “in furtherance of the production of income” to be included and adding nonmanufacturing facilities to the exempt classification. See Or Laws 1961, ch 552.⁴ In *Bain v. Dept. of Rev.*, 293 Or 163, 646 P2d 12 (1982), the Oregon Supreme Court discussed at length the legislative history of the statute. The court noted the history “abounds with comments indicating that the purpose of the statute is to promote the economy of Oregon by offering an aid in attracting and developing new industries to the state.” *Id.*, 293 Or at 170. Testimony before the legislature indicated the tax exemption “would be used in national advertising to attract industrial development to Oregon.” *Id.* at 171. The court went on to hold:

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“It is a logical interpretation, therefore, * * * to conclude that nonmanufacturing was meant to refer to **income-producing enterprises** other than manufacturing, such as commerce, agriculture, mining, finance, insurance, real estate and services.” *Id.* (emphasis added).

⁴ For a basic outline of the legislative process, see *Urban Off. & Parking v. Dept. of Rev.*, 4 OTR 523 (1971).

In *Philips*, the Tax Court noted that the exemption only applies during the period the project is under construction because, during that time, the project “is unable to produce that income which, eventually, the entrepreneur expects to use to pay expenses, including the property taxes, and make a profit.” *Philips*, 5 OTR at 469.

When expanding the statute to include nonmanufacturing facilities, legislative discussion centered on the fact commercial construction is just as important as industrial construction as a source of wealth and payrolls. Examples such as hotels, motels, and convention facilities were provided. See Testimony, Senate Tax. Comm., SB 416, March 17, 1961, (statement of Robert Drager, Planning and Dev. Dept.). The objective in adding commercial construction to the exemption statute was that such projects have a beneficial effect on the economy due to the resulting jobs and payroll. See Testimony, Senate Tax. Comm., SB 416, March 17, 1961, (statement of Raymond Baeler, Association of Oregon Contractors). Both industrial and commercial facilities provide continuing jobs in the business operations of the occupants and in maintenance. See *id.* (noting Oregon’s need for job producing activities).

The focus of the statute is to attract industry to the state of Oregon and to stimulate the economy by creating jobs. The court concludes that, implicit within this purpose, is that the jobs provided be of an ongoing nature. Nowhere in the legislative discussion were construction jobs mentioned as the reason for providing the exemption. As noted in *Bain*, nonmanufacturing was meant to refer to “income-producing enterprises.” A condominium project itself is not an income-producing enterprise. The developer may receive income when the property is sold but the project itself does not produce an income. The court finds that the production of income needs to come from the *use* of the property, not the sale thereof.

Condominiums, like houses, are sold as a single income event. After construction is complete, they do not create resulting jobs and payroll, which have a beneficial effect on the economy. That houses or condominiums may potentially be rented does not raise them to the level of property subject to the exemption because they are not built in furtherance of such a goal.⁵

CONCLUSION

After reviewing the applicable statute and its legislative history under a strict construction standard, it is the court's conclusion the legislature did not intend to extend the exemption under ORS 307.330 to a condominium project being built for sale.

Contemplated in the statute is that the anticipated use of the property provide an income stream. Constructing a condominium project for sale, and thereby providing a one-time income to the developer, is not the type of "producer of income" the legislature intended.

Now, therefore;

IT IS THE DECISION OF THIS COURT that plaintiff's Motion for Summary

Judgment is denied; and

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IT IS FURTHER DECIDED that defendant's Motion for Summary Judgment is granted.

Dated this _____ day of April, 2001.

⁵ Because the court concludes the county properly denied the exemption under ORS 307.330(1)(d), it need not address the county's argument that a condominium project is not a nonmanufacturing facility.

COYREEN R. WEIDNER
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 97301-2563. 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 COYREEN R. WEIDNER ON APRIL 11, 2001. THE COURT FILED THIS DOCUMENT ON APRIL 11, 2001.