

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

FLORENCE AREA HUMANE SOCIETY,)
)
 Plaintiff,) TC-MD 070458B
)
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

This appeals concerns property¹ used as a thrift store. At issue is whether it is entitled to exemption pursuant to ORS 307.130² for the 2007-08 tax year.

A trial was held August 22, 2007. Sandra K. Buch, Board of Directors President, appeared for Plaintiff. Joyce Kehoe (Kehoe), Exemptions Specialist, represented Defendant.

I. STATEMENT OF FACTS

On February 5, 2007, Plaintiff filed an application seeking exemption for the subject property. The application was denied by Defendant on February 7, 2007.

The subject property is located at 1187 and 1193 Bay Street in Florence, Oregon. It comprises two tax lots and the improvements erected thereon. **At all pertinent times, it has been**

///

///

///

///

///

¹ Accounts 0803617 and 0803625.

² All references to Oregon Revised Statutes (ORS) and to Oregon Administrative Rules (OAR) are to 2005.

used as a retail thrift store, with all items donated for resale. It is staffed by volunteers of the organization. The funds raised are used for the benefits of animals. According to the Complaint:

“We promote the education of children and the public in humane practices, we operate a humane shelter for homeless pets, we offer below cost spay and neuter services, and we distribute pet food to those who cannot afford it.”

(Compl at 2.)

Plaintiff is described as a shelter organization providing humane services to animals. It is a nonprofit organization recognized by the Internal Revenue Service. For purposes of this appeal, Defendant’s representative admitted³ the organization was a nonprofit entity, a charitable institution that involved elements of giving through thrift sales of donated property. The bar to subject property exemption, according to Defendant, is the actual use or target market of those sales proceeds.

The vast majority of sales proceeds are directed towards the welfare of animals. While there was some mention of educational programs, the main recipients of those efforts are animals, by way of feeding, sheltering, or spaying and neutering.

II. ANALYSIS

ORS 307.130(1) provides that

“(1) Upon compliance with ORS 307.162, the * * * property owned * * * by * * * charitable * * * institutions shall be exempt from taxation:

“* * * *

“(d) All real and personal property of a retail store dealing exclusively in donated inventory, where the inventory is distributed without cost as part of a welfare program or where the proceeds of the sale of any inventory sold to the general public are used to support a welfare program. As used in this subsection, ‘welfare program’ means the providing of food, shelter, clothing or health care, including dental service *to needy persons* without charge.” (Emphasis added).

³ Trial testimony of Kehoe.

In conjunction with that statute, the Oregon Department of Revenue has drafted rules to provide guidance in this area. OAR 150-307.130-(A) is an example. Section (4)(c) of that rule provides that “the institution must perform a function or act which is good or beneficial for humans *and other living things*. The second part entails a gift or act of giving.” (Emphasis added.) Plaintiff points to that language and urges the property exemption be allowed for the subject thrift store.

In the interpretation of exemption statutes, “[t]axation is the rule, and exemption from taxation is the exception.” *Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 301 Or 423, 426-27, 723 P2d 320 (1986). In its analysis, the court is guided by the rule that property tax exemption statutes must be strictly, but reasonably construed. *SW Oregon Pub. Def. Services v. Dept. of Rev.*, 312 Or 82, 88-89, 817 P2d 1292 (1991). “Strict but reasonable construction does not require the court to give the narrowest possible meaning to an exemption statute. Rather, it requires an exemption statute be construed reasonably, giving due consideration to the ordinary meaning of the words of the statute and the legislative intent.” *North Harbour Corp. v. Dept. of Rev.*, 16 OTR 91, 95 (2002). (Citation omitted.)

In construing the statute, the court follows the leading case on statutory interpretation, *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). *PGE* directs the court to accept the plain meaning of a statute and “that words of common usage typically should be given their plain, natural, and ordinary meaning.” *Id.* at 611. The legislative intent is to be determined first from the text and context of the statute. *Id.*

Here, the language of the statute is clear and unambiguous. It defines the target group (of thrift store sales) as *certain needy persons*. It does not include other entities, organizations, inanimate objects, things, or animals. By restricting that group to exclude animals specifically in the statute, the court cannot ignore the plain meaning of those words. Needy persons do not include animals.

The case of *Teen Challenge International Pacific Northwest Centers v. Lane County Assessor*, TC-MD No 060668E (May 31, 2007), involved a similar thrift store. There, the proceeds were used for a residential recovery center for a certain clientele. Citing to the “needy persons without charge” section of ORS 307.130(1)(d), the court held that those sales proceeds did properly benefit a welfare program, as it served food and shelter to humans in need. *Id.* at 4. That case cannot be extended to cover a welfare program for animals. Absent a legislative expansion, the court cannot interpret the statutory mandates to stretch that far.

III. CONCLUSION

A thrift store whose proceeds benefits animals in need does not qualify for exemption under ORS 307.130(1)(d). Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied.

Dated this _____ day of November 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on November 6, 2007. The Court filed and entered this document on November 6, 2007.