

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

CARIS-SELL HOMES, )  
 )  
 Plaintiff, ) No. 991440B  
 )  
 v. )  
 )  
 UMATILLA COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

Plaintiff is appealing the imposition of property taxes on two manufactured homes for tax year 1999-00. The property is identified as Umatilla County Account Nos. 155562 and 155563. A telephone trial was held on April 4, 2000. Kathy Wendell and Walt Wendell appeared for plaintiff. Doug Olsen, Assistant County Counsel, represented the defendant at trial. Paul Chalmers, Assessor, and Stacey Johnson, Appraisal Technician, appeared for defendant.

The Complaint was submitted as a small claims case. However, property tax cases involving exemption issues are for the standard designation. The court will process the appeal as a standard designation and waive the additional filing fee.

**STATEMENT OF FACTS**

Plaintiff is in the business of selling manufactured homes. Mr. and Ms. Wendell have operated plaintiff since 1996.<sup>1</sup> They are members of the Oregon Manufactured Housing Association. Plaintiff's usual place of business is in Hermiston.

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<sup>1</sup> Mr. and Ms. Wendell have been involved in this same type of business for a number of years in several states.

Plaintiff maintains a dealer certificate for that location. Toward the end of 1998, plaintiff placed the manufactured homes at issue in a residential subdivision in Stanfield, five miles from Hermiston. Plaintiff was not aware of the requirement to obtain a supplemental dealer certificate for the Stanfield location. They became aware of the requirement in the fall of 1999 and obtained the supplemental certificate shortly thereafter.

The manufactured homes sit on poured foundations, have attached garages and are fully landscaped. Mr. Wendell testified that once on a foundation, a manufactured home is not meant to be moved. Each manufactured home had a dealer plate displayed in the window. The land on which the manufactured homes sit is owned by Stanfield Construction. Mr. and Ms. Wendell testified that the manufactured homes are owned by Conseco.<sup>2</sup> The tax statements list Stanfield Construction as the owner of both homes.

Ms. Wendell testified that she met with Ms. Johnson in September 1999 and asked her what needed to be done in terms of the homes in Stanfield. Ms. Johnson, on the other hand, testified that the conversation took place January 4, 1999. The assessment date for tax year 1999-00 was January 1, 1999, and she performs her work related to dealer inventory in the last week of December and the first week of January. Ms. Johnson further testified that she told Ms. Wendell that, in addition to the dealer plates, she personally was not aware of any other requirements for the homes.

### **COURT'S ANALYSIS**

The issue before the court is whether two move-in ready, manufactured homes that are off-site may be considered dealer inventory and therefore exempt from

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<sup>2</sup> Mr. Wendell testified that Conseco maintains title until the units are paid off. This arrangement is common for auto dealers and is called a dealer's flooring statement.

property taxation when the dealer did not have a supplemental dealer certificate for the second location. As a secondary issue, does the defendant have an affirmative duty to inform plaintiff of the supplemental dealer certificate requirement when defendant was asked if there was anything else plaintiff needed to do.

Plaintiff raises a claim of estoppel against the defendant. Estoppel is granted in limited circumstances<sup>3</sup> when certain elements have been met. In order for plaintiff to successfully prove estoppel, they must show that: 1) the defendant misled them by its conduct, 2) they had a good faith reliance on the conduct; and 3) they were injured by their reliance on the defendant's conduct. *Sayles v. Dept. of Rev.*, 13 OTR 324, 328 (1995). *See also Portland Adventist Hospital v. Dept. of Rev.*, 8 OTR 381, 388 (1980) and *Cascade Manor, Inc. et al v. Dept. of Rev.*, 5 OTR 482, 486-487 (1974). Even if the first two elements were met, the third one was not. The parties disagree when the meeting between Ms. Wendell and Ms. Johnson took place. The court finds that the meeting took place in January. However, any requirement for the supplemental dealer certificate arose **before** the manufactured homes were placed in Stanfield. Therefore, plaintiff could not have been injured by a statement Ms. Johnson made **after** the manufactured homes were placed in Stanfield.

ORS 307.030(1) provides that, unless exempted by law, all tangible personal

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<sup>3</sup> “The policy of efficient and effective tax collection makes the doctrine [of estoppel] of rare application. It could only be applied when there is proof positive that the collector has misinformed the individual taxpayer and that taxpayer has a particularly valid reason for relying on the misinformation and that it would be inequitable to a high degree to compel the taxpayer to conform to the true requirement.” *Johnson v. Tax Commission*, 248 Or 460, 463-464, 435 P2d 302 (1967).

property within this state is taxable. ORS 307.400(2) provides an exemption for inventory, which is defined in ORS 307.400(3). The definition relevant to this proceeding is found in ORS 307.400(3)(f) which provides:

“(3) As used in subsection (2) of this section, ‘inventory’ means the following tangible personal property:

“\* \* \* \* \*

“(f) Items of tangible personal property described as materials, supplies, containers, goods in process, finished goods and other personal property owned by or in possession of the taxpayer, that are or will become part of the stock in trade of the taxpayer held for sale in the ordinary course of business.”

When interpreting exemption statutes, the court is guided by the principle that “[t]axation is the rule and exemption from taxation is the exception.” *Willamette Egg Farms, Inc. v. Dept. of Rev.*, 14 OTR 337, 339 (1998) (citation omitted). With minor exceptions not relevant here, anyone in the business of buying or selling vehicles, including manufactured homes, must have a dealer certificate. See ORS 822.005. If the dealer wishes to conduct business at an additional location, that dealer must obtain a supplemental certificate. ORS 822.040(5). The dealer must obtain the supplemental certificate **before** conducting business at the second location. OAR 735-150-0030(4)(a). The parties agree that plaintiff did not have a supplemental certificate on the assessment date of January 1, 1999. Since plaintiff did not have the supplemental certificate on the assessment date, they were not operating in the ordinary course of business at the Stanfield location. Plaintiff’s claim for exemption for the two manufactured homes must be

denied.<sup>4</sup>

### CONCLUSION

For the reasons stated above, the court finds that plaintiff's two manufactured homes identified as Umatilla County Account Nos. 155562 and 155563, are not exempt from taxation under ORS 307.400.

IT IS THE DECISION OF THE COURT that plaintiff's appeal is denied.

Dated this \_\_\_\_\_ day of April, 2000.

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SALLY L. KIMSEY  
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.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON APRIL 12, 2000. THE COURT FILED THIS DOCUMENT ON APRIL 12, 2000.**

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<sup>4</sup> Because the court finds plaintiff's lack of a supplemental certificate fatal to their claim, the court need not rule on whether a manufactured home that sits on a foundation, has an attached garage and is fully landscaped is exempt from taxation under ORS 307.400.