

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

UNITED STATES ATHEISTS,	)	
	)	
Plaintiff,	)	No. 001108E
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	<b>DECISION ON</b>
	)	<b>CROSS MOTIONS FOR</b>
Defendant.	)	<b>SUMMARY JUDGMENT</b>

Plaintiff appeals defendant’s denial of its application for exemption as a qualifying charitable, scientific or literary organization. The matter is before the court on the parties’ Cross Motions for Summary Judgment. The court has considered the stipulated facts, memorandums and oral arguments of the parties.

**STATEMENT OF FACTS**

Plaintiff, United States Atheists, is a non-profit organization incorporated in Oregon with no members as that term is defined in Oregon Revised Statutes Chapter 65. According to its Articles of Incorporation and Bylaws, United States Atheists is “organized and operated exclusively for charitable, scientific, literary, and education purposes.” (Ptf’s Bylaws.) Mr. Steven Skinner, Tax Exemption Specialist, Multnomah County Division of Assessment and Taxation, read to the court Article 9 of plaintiff’s Articles of Incorporation, stating that at the time of dissolution all of plaintiff’s assets would be transferred to a federal or state public purpose.

As of February 16, 1999, donors were permitted to deduct any contribution made to plaintiff that was a gift with no consideration received. (Internal Revenue Code Section

170; Ptf's Reply at Ltr 1045, p. 2.) Ms. Nancy Powell, President of United States Atheists, testified that plaintiff maintains a separate bank account for all contributions. No one is paid for working on plaintiff's projects; it relies on volunteers. (Stip Fact at Part II, 4.)

Plaintiff filed an application on March 29, 2000, with Multnomah County to have its leased building exempt from property tax. Plaintiff's leased building includes a room designated as a meeting or community center with an approximate capacity of 50 persons. According to Ms. Powell, "banks of books" containing "Freethought" literature are placed on shelves in the meeting area. A television production control room, storage area, kitchen and rest room are found in the building. Plaintiff only uses the building for its "corporate purposes as detailed in its corporate charter." (Ptf's Mot for Summ J at 3.)

The parties have stipulated that plaintiff's activities include the following: (1) production of a newspaper that is distributed free of charge in over 70 locations throughout the Portland area; (2) production of a cable access television show, "Bunk Busters", which is shown three times a week without commercials; (3) a weekly (Tuesday) evening meeting, free of charge, offering lectures, classes, programs and debates; (4) a meeting or community center open to the public on Monday, Wednesday and Friday, 9:30 a.m. to 2:30 p.m. and at other times when volunteers are available; and (5) an Internet web site, [unitedstatesatheists.com](http://unitedstatesatheists.com), containing current articles devoted to the separation of church and state.

In its application, plaintiff declared that its activities met the statutory qualifications of charitable. See ORS 307.130. The parties stipulated that plaintiff's activities were dedicated to opposing "anti-Atheist, Humanist, Skeptic and Freethought discrimination." (Stip Fact at Part II, 1.) Its efforts to oppose discrimination include "enlightening and

educating the public to respect and accept individuals of a different opinion on religion.”

*Id.* In addition, plaintiff encourages “Atheist pride in non-believers by setting examples of the claim to freedom of expression” and “encourages ‘closet atheists’ to enjoy the freedom of freely expressing their views by coming out of a self imposed closet.” *Id.*

Defendant denied plaintiff’s application for exemption on August 21, 2000. Mr. Skinner testified that in the county’s opinion plaintiff’s activities did not qualify as charitable because there is no tangible gift or giving involved. He testified that plaintiff’s charitable activity centers around “knowledge”, but it is difficult to measure the extent of giving because there is no degree or certification granted. In addition, Mr. Skinner stated that if plaintiff were to cease its activities, “it is unlikely a government agency would replace the services carried on by the plaintiff.” (Def’s Mot for Summ J at 2.)<sup>1</sup>

On October 19, 2000, plaintiff filed its appeal with the court. During the January 4, 2001, case management conference, the parties set a briefing schedule. Oral arguments were held on May 2, 2001.

### **COURT'S ANALYSIS**

Plaintiff alleges that it is entitled to a property tax exemption because the activities performed at its leased property location qualify it for an exemption. Plaintiff relies on ORS 307.112 and 307.130<sup>2</sup> which read as follows:

“Real or personal property of a taxable owner held under lease or

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<sup>1</sup>Mr. Skinner quoted a portion of the Oregon Administrative Rule (OAR 150-307.130(3)(c) which reads: “If the activity of the charitable institution relieves a government burden, it is an indicator that the institution may be charitable. Failure to relieve a government burden will not disqualify an organization as charitable.”

<sup>2</sup>All references to the Oregon Revised Statutes are to 1999.  
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lease-purchase agreement by an institution, organization or public body, other than the State of Oregon, granted exemption or the right to claim exemption for any of its property under ORS 307.090, 307.130, \* \* \* is exempt from taxation \* \* \*.” ORS 307.112(1)

“\* \* \* [O]nly such real or personal property, or proportion thereof, as is actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institutions.” ORS 307.130(1)(a).

In applying these statutes, the court is guided by the principle that taxation is the rule and property tax exemption statutes are construed strictly. *Willamette Egg Farms, Inc. v. Dept. of Rev.*, 14 OTR 337, 339 (1999). In analyzing 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.*

First, the parties agree that plaintiff’s property is “actually and exclusively occupied” by the plaintiff, United States Atheists, a non-profit organization. ORS 307.130(1)(a). Plaintiff meets the organizational requirements of a charity. It is incorporated in Oregon as a non-profit corporation, recognized by the Internal Revenue Service as income tax exempt, maintains a separate account for funds, operates for the general public and not only its founders and officials, and its Articles of Incorporation provide that should it dissolve its assets will be used for charitable purposes.

Even though organized as a charity, in order for plaintiff’s property to be exempt from property taxation, plaintiff’s purpose and activities must qualify as charitable, literary, or scientific work. *Id.* To qualify as a charitable institution, an organization must satisfy the following three elements: (1) “have charity as its primary, if not sole, object”; (2) “must be

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performing in a manner that furthers its charitable object”; and (3) its “performance must involve a gift or giving.” *SW Oregon Pub. Def. Services v. Dept. of Rev.*, 312 Or 82, 90, 817 P2d 1292 (1991).

Plaintiff’s purpose and activities are not charitable work. Beginning with the first and second elements, plaintiff’s sole or primary objective is “to educate the public on the importance of the separation of state and church and to show that religion is against reason.” (Ptf’s Bylaws, Article I: Purpose.) Even though plaintiff states it is organized and operated exclusively for charitable purposes, its primary object or purpose and the manner in which it operates is to educate. It provided resources free of charge to those who used its services to accomplish its goal of opposing anti-Atheist, Humanist, Skeptic and Freethought discrimination. Plaintiff’s activities were teaching or educating, but not solely or primarily charitable.

In defining the third element, the Oregon Tax Court has held that the essence of charity is “giving to the poor and needy.” *Corp. of LDS v. Dept. of Rev.*, 14 OTR 244, 249 (1997). Plaintiff alleged that it gives the “most valuable gift”, knowledge. (Ptf’s Reply at 1.) It relied on quotes from philosophers to support its position that knowledge is good and its own statements that discrimination is harmful. *Id.* at 1 -2. Plaintiff has not provided any evidence that those individuals receiving its publications and other services are the “poor and needy.” *Id.* Its dominant purpose must be “doing good to others” rather than being organized “for the convenience of” those who use its services. *Kappa Gamma Rho v. Marion County*, 130 Or 165, 166 (1929). Plaintiff submitted no evidence to the court showing that its activities result in a direct good or benefit to the public or community at large. The court does not find its statements offered as evidence sufficient to conclude that

plaintiff was doing good to others. In contrast, the court concludes that plaintiff was providing a facility and publications for the convenience of those individuals seeking to use its services.

Having concluded that plaintiff is not a charitable institution because its activities fail to meet all three of the required elements, it could be entitled to tax exemption if its activities qualify as literary or scientific work.<sup>3</sup> Plaintiff's activities do not qualify as literary work. The Oregon Tax Court has held that "[a] qualified literary organization must be imbued with a sense of operating for the public good." *Oregon Writer's Colony v. Dept. of Rev.*, 14 OTR 69, 74 (1996). The court outlines five different aspects of operating for the public good. *Id.* at 74-75. In each aspect, the court distinguishes public benefit from promoting or serving the interests of its members or patrons. Plaintiff fails to qualify as a literary organization because its primary focus is to promote its interest in opposing "anti-Atheist, Humanist, Skeptic and Freethought discrimination" rather than any public interest. (Stip Fact at Part II, 1.)

Plaintiff's activities do not qualify as scientific work. The Oregon Supreme Court has held that "[s]cientific societies are usually and ordinarily understood to embrace organizations for the promotion of science or the pursuit of scientific studies for the purpose of developing science" rather than the primary purpose of educating its members or patrons. See *Kappa Gamma Rho v. Marion County*, 130 Or 165, 176 (1929).

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<sup>3</sup> To qualify its property as exempt, a significant portion of a literary or scientific organization's activities must have a "charitable objective" in contrast to being a charitable organization. See *Theatre West of Lincoln City, Ltd. v. Dept. of Rev.*, 319 Or 114, 117 (1994); *Oregon Writer's Colony v. Dept. of Rev.*, 14 OTR 69 (1996); *Math Learning Center v. Dept. of Rev.*, 14 OTR 62 (1996),.

Because plaintiff's work is to educate rather than conduct research and make scientific inquiries, its primary purpose is not consistent with the concept of a scientific organization.

*See Math Learning Center v. Dept. of Rev.*, 14 OTR 62, 64 - 65 (1996).

Plaintiff's property is not exempt from taxation because its activities are not charitable, literary, or scientific work in accordance with ORS 307.130(1)(a).

### **CONCLUSION**

IT IS THE DECISION OF THIS COURT that defendant's Motion for Summary Judgment is granted.

IT IS FURTHER DECIDED that plaintiff's Motion for Summary Judgment is denied.

Dated this \_\_\_\_\_ day of June, 2001.

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JILL A. TANNER  
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 JILL A. TANNER ON JUNE 18, 2001. THE COURT FILED THIS DOCUMENT ON JUNE 18, 2001.**