

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

CONTEMPORARY CRAFTS ASSOCIATION, )  
 )  
 Plaintiff, )  
 ) TC-MD 021225D  
 v. )  
 )  
 MULTNOMAH COUNTY ASSESSOR, )  
 )  
 Defendant. )  
 ) **DECISION**

Plaintiff appeals Defendant's determination that a portion of its property is taxable. The parties filed cross motions for summary judgment. Oral argument was held on Tuesday, March 25, 2003. David Cohen, Executive Director, argued on behalf of Plaintiff. Steven Skinner, Exemption Section Specialist, argued on behalf of Defendant.

**STATEMENT OF FACTS**

The parties stipulated to the following facts. Plaintiff is an organization devoted to the promotion of “creativity and fine art in contemporary craft disciplines through educational experiences and high quality exhibitions.” (Stip Facts at paragraph 3.) Plaintiff’s property, identified as Multnomah County Assessor’s Account R129304, displays “contemporary crafts in three exhibition galleries, a permanent collection gallery and a sales gallery.” (Stip Facts at paragraph 4.) The subject property was 100 percent exempt from property taxation.

On September 16, 2002, Defendant sent a Notification of Status Change (Notice) to Plaintiff. In its Notice, Defendant stated that a portion of Plaintiff’s property, specifically the sales gallery, was not exempt from property tax. Defendant cited ORS 307.130(1)(f) as the reason for its status change.

Plaintiff disagreed with Defendant's determination and filed its Complaint requesting that the subject property be returned to its nontaxable status.

### ANALYSIS

An art museum, which is defined as "a nonprofit corporation organized to display works of art to the public", is generally exempt from taxation. ORS 307.130(4)(a). Specifically ORS 307.130(1)(f)<sup>1</sup> provides that after making a proper application, property "owned or being purchased by art museums \* \* \* shall be exempt from taxation" if the property "is used in conjunction with the public display of works of art or used to educate the public about art, but **not including any portion of the art museum's real or personal property that is used to sell, or hold out for sale, works of art, reproductions of works of art or other items to be sold to the public.**" ORS 307.130(1)(f) (emphasis added).

Plaintiff alleges that the "main intention of this statute - to focus on potential profit centers that do not directly correlate with the organization's mission - and then for governmental bodies to be empowered to tax them accordingly" should not be applicable to it. (Ptf's Resp to Cross Mot for Summ J (Response)) (emphasis in original). Plaintiff explained that all of its works are available for sale on a consignment basis, and after operating costs, including staff, advertising, materials and other related costs, Plaintiff does not make a net profit from its sales gallery.

When interpreting a statute, the objective of the court is to determine the intent of the legislature. The text of the statute is the starting point in the court's analysis and is "the best evidence of the legislature's intent." *PGE v. Bureau of Labor and Industries*, 317 Or

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

606, 610, 859 P2d 1143 (1993). 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. With respect to statutes granting an exemption from tax, the court is required to construe an exemption statute “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), citing *Mult. School of Bible v. Mult. Co.*, 218 Or 19, 27-28, 343 P2d 893 (1959). Finally, those seeking an exemption are required to meet the terms of the statute. *North Harbour Corp. v. Dept. of Rev.*, 16 OTR 91, 95 (2002), citing *Mercy Medical Center, Inc. v. Dept. of Rev.*, 12 OTR 305 (1992).

In this case, Plaintiff’s use of the subject property appears to meet the statutory definition of an art museum. See ORS 307.130(4)(a). Plaintiff has designated a portion of its property as a sales gallery. In the sales gallery, Plaintiff’s “inventory of items \* \* \* consist of all original one-of-a-kind artworks on consignment from local and regional artists.” (Stip Facts at paragraph 5.) Plaintiff’s use of this portion of its property for the sale of works of art clearly fits within the “plain, natural, and ordinary meaning” of the exclusion clause of the statute. *PGE*, 317 Or at 611 and ORS 307.130(1)(f).

Plaintiff stated that its “argument is not with the actual language but how those words are interpreted.” (Ptf’s Response.) Plaintiff concluded that “the intent of this statute by those who created it, was focused on museums who developed retail operations whose sole purpose was as an income generator for the organization, separate from their mission.” (Ptf’s Mot for Summ J at 2.) Unfortunately, the exclusion set forth in the statute does not reflect such an intent nor does it use the word “retail.” See ORS 307.130(1)(f).

Plaintiff suggested to the court that the legislative intent of the statute was to review the  
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profitability of a nonprofit organization's gift shop or sales gallery in evaluating whether the property qualifies for exemption. The legislative history does not support Plaintiff's suggestion. In reviewing the legislative history of this statute which was amended during the 1997 legislative session by House Bill 2332, the court found that, while the members discussed the taxable status of an art museum's gift shop, the final conclusion was that "the gift shop portion of the museum \* \* \* would be taxable." Tape recording, House Revenue Committee, HB 2332A, June 13, 1997, Tape 197, Side B at 359 (statement of Brian Reeder, Economist, explaining the bill to the committee members). Although the committee may have assumed that the gift shop would provide a financial contribution to the organization rather than drain financial resources, the testimony does not state that the decision to tax the property of the gift shop was tied to its overall profitability, but rather its use. *Id.* at May 23, 1997, Tape 182, Side A at 79-190 (statements of Helen Scully, Coos Art Museum; Representative Mike Lehman; and Representative Lane Shetterly).

Unfortunately, Plaintiff's choice to designate a portion of its property for the sale of works of art is an excluded activity and cannot be exempt from taxation.

### **CONCLUSION**

Now, therefore,

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

Dated this \_\_\_\_\_ day of May, 2003.

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JILL A. TANNER  
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 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 MAY 7, 2003. THE COURT FILED THIS DOCUMENT ON MAY 7, 2003.**