

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

PORTLAND COMMUNITY LAND TRUST,	)	
	)	
Plaintiff,	)	TC-MD 040250B
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

This matter is before the court on the parties' cross-motions for summary judgment. Plaintiff appeals Defendant's denial of the property tax exemption provided to charitable organizations under ORS 307.130, for tax year 2003-04.<sup>1</sup> A case management conference was held May 18, 2004; oral argument was held January 18, 2005. Celia A. Howes, Garvey Schubert Barer, Portland, argued the cause for Plaintiff. John Thomas, Deputy County Attorney, Multnomah County Attorneys, argued the cause for Defendant. For ease of reference, the parties will be referred to as "PCLT" and "Assessor."

I. STATEMENT OF FACTS

The court finds the following facts based upon the submissions and arguments of the parties.<sup>2</sup> At issue are 28 parcels of land located in Multnomah County.<sup>3</sup> The parcels are

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

<sup>2</sup> Reference to "Facts" are to those stipulated to by the parties, as set forth in the document entitled "Stipulated Statement Of Undisputed Facts In Support Of Parties' Motion For Summary Judgment," filed July 27, 2004.

<sup>3</sup> Although the earlier Complaint listed some accounts as Habitat for Humanity, the parties agreed to the following in the Facts filed later. The parties list the following 27 tax roll account numbers: R125161, R131506, R171773, R172730, R190908, R241855, R242311, and R282359 for the North Interstate Buyer Initiated Properties; account numbers R503099, R503117, R503122, R503128, R503131, R503133, R503134, R503135, R503137, R503138, R503139, R503140, R503142, R503144, R503145, R503147, and R503148 for the Rosemont Commons Properties; and account number R102334 (listed twice) for the Rodney Leases.

collectively known as the “North Interstate Buyer Initiated Properties,” the “Rosemont Commons Properties,” and the “Rodney Leases” (hereinafter referred to as “the properties”). (Fact 3.) The properties are owned by PCLT, a nonprofit corporation organized and operated as described under Internal Revenue Code (IRC) section 501(c)(3). (Facts 1, 2.) PCLT purchases and holds in trust real property improved with residential dwellings; its purpose is to make home ownership affordable for families with lower-than-average income levels. (Facts 6, 9.) To facilitate that purpose, PCLT enters into a renewable 99-year lease on the land with the home buyer for substantially less than the current market rate, and the home buyer purchases the living structure for less than fair market value. (Fact 9.) PCLT, as the real property owner, is responsible for payment of the *ad valorem* tax on the land and, as a charitable organization, timely filed for exemption from that tax under ORS 307.130 for tax year 2003-04. (Fact 4.)

PCLT’s lessees do not qualify for exemption under ORS 307.130 and pay *ad valorem* tax on the living structure and any other property improvements they have purchased. (Fact 11.) PCLT’s lessees reimburse PCLT for its payment of *ad valorem* tax on the land. (Handler Aff in Support of Ptf’s Resp, 13 at 3.) PCLT provides certain services to its lessees free of charge, such as painting and landscaping – as well as classes on home buying, money management, and home maintenance. (Fact 9.)

Upon being denied exemption under ORS 307.130 for tax year 2003-04, PCLT timely appealed to this court.

## II. ANALYSIS

As the parties agree that PCLT is the owner of the properties and meets the definition of a charitable institution, the only issues before the court are whether PCLT is itself using the properties and, if so, whether its purpose and activities meet the requirements of ORS 307.130.

A. *PCLT's Use of the Properties*

At oral argument, Defendant clarified that it is not asserting that actual physical occupation of the property by the charitable organization is essential to qualify for exemption, citing *Samaritan Village, Inc. v. Benton County Assessor*, TC-MD No 001064C (Jan 23, 2003) (exemption granted for senior adult living facility).<sup>4</sup> Rather, Defendant argues that because PCLT's lessees have the right to exclude others from the parcel they are leasing, the right to make improvements and alterations, and the right to transfer the property (although limited), PCLT's lessees are possessing and using the land rather than PCLT – a fact that necessarily means that PCLT has failed to meet the use and possession requirements of OAR 150-307.130-(A)(2).

The court agrees that PCLT's lessees, who hold most of the rights of typical homeowners, are using the properties as their principal residences. The court also agrees that actual physical occupation of the property by the charitable organization is not essential to gain exemption under ORS 307.130. The court does not agree, however, that use of a property by one entity precludes the possibility of concurrent use of the property by another entity. Whenever a landlord rents property, concurrent usage of that property occurs, with the landlord using the property for its intended purposes as a rental, and the tenant using the property for its intended purposes through possession. Actual and exclusive use can be achieved by the landlord or lessor of a property, satisfying the usage requirements of ORS 307.130. By allowing its lessees to occupy the

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<sup>4</sup> To interpret the requirements of OAR 150-307.130-(A) (2)(d) to mandate actual physical occupation would conflict with the statutory requirement that the property be “actually and exclusively occupied *or* used” by the charitable organization. See ORS 307.130(1)(a).

properties as their principal residences, PCLT is using the property for its charitable purpose – providing the opportunity of home ownership to families who could not otherwise afford to buy a home.

Further, PCLT has carefully crafted its lease provisions to ensure that its ability to use the properties will continue indefinitely. To keep its properties affordable for subsequent lower-income families, PCLT lessees cannot sell their homes and reap the full profit resulting from market appreciation; if they choose to sell, their return is limited to 25 percent of any appreciation evidenced by appraisal at the time of sale. (Stip Ex F at 17-18, 20-21; Stip Ex C at 2.) PCLT’s lease also stipulates that the property must be occupied by the lessee – someone who has been determined during the application process to have an income level below that normally essential for the purchase of a home. (Stip Ex F at 6.) The above provisions eliminate the possibility of higher income entities or individuals purchasing a property from PCLT and holding it for investment purposes.

The requirement in ORS 307.130(1)(a) of actual and exclusive occupation or use has been interpreted by the Oregon Supreme Court. In *Willamette Univ. v. Tax Com.*, 245 Or 342, 422 P2d 260 (1966) that court addressed the question of when property owned by [a] charitable institution is “actually and exclusively occupied or used in \* \* \* work carried on by such institutions[.]” *Id.* at 345. The court stated that the student residences “when completed and occupied [are] admittedly exempt from taxation under ORS 307.130,” and identified the only issue as being whether exemption was warranted “during the time the buildings are in the course of construction.” *Id.* at 344. In the case at hand, PCLT’s use of its properties for residences for a specifically identified population at no profit to itself is analogous to Willamette University’s proposed use of its student residence halls.

The supreme court also addressed the issue of use in *German Apost. Christ. Church v. Dept. of Rev.*, 279 Or 637, 569 P2d 596 (1977). In that case, the court held that only those portions of a residential building that were actually used for charitable purposes by the church qualified for exemption. The court stated that if “the primary use of the property is reasonably necessary for the charitable functions of the taxpayer, an exemption under ORS 307.130 will be allowed.” *Id.* at 642. See also *Mult. School of Bible v. Mult. Co.*, 218 Or 19, 36-37, 343 P2d 893 (1959) (holding that on-campus building used for student activities as well as administrators’ residences qualified for exemption). In the case at hand, use of the properties as principal residences for lower-than-average income families is not only reasonably necessary, it is essential to PCLT’s charitable purpose. Without such a use, PCLT’s charitable purposes would be thwarted in their entirety.

This court has also found organizations to qualify for exemption under ORS 307.130 when the organizations were using the property to provide housing. See *Samaritan Village*, TC-MD No 001064C (senior adult living facility); *Rigas Maja, Inc. v. Dept. of Rev.*, 12 OTR 471 (1993) (adult foster care facility). Although the case at hand differs in the length of its leases (here the properties are being leased on 99-year leases, a vehicle often used to transfer all but actual title to property), PCLT has added restrictions to its lease agreements to retain more control and negate the usual purpose of a 99-year lease. To ensure that its charitable purposes continue to be furthered, PCLT’s lessees must meet income requirements at the time of purchase, reside on the property, and forfeit the right to receive fair market value from the sale of their home. This ensures that the properties are used in a manner that meets PCLT’s charitable purpose.

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In sum, PCLT’s purpose is to make home ownership affordable for families with lower-than-average income levels. The only use made of the properties is as residences for families with lower-than-average income levels – a use that is more than “reasonably necessary” to the provision of home ownership opportunities to those families. This court has previously found that charitable organizations using property for residential purposes qualify for exemption under ORS 307.130. The court finds that PCLT’s use of the properties satisfies the requirements of ORS 307.130(1)(a).

B. *PCLT’s Purpose and Activities*

To qualify for exemption under ORS 307.130, an organization must satisfy the following three requirements: (1) “have charity as its primary, if not sole, object”; (2) “be 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, 89, 817 P2d 1292 (1991).

In determining whether an organization has charity as its primary object, the courts look to the organization’s articles and bylaws. *See Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 301 Or 423, 427, 723 P2d 320 (1986) (citing *Found. of Human Understanding v. Dept. of Rev.*, 301 Or 254, 722 P2d 1 (1986); *Benton Co. v. Allen*, 170 Or 481, 485, 133 P2d 991 (1943); *Hamilton v. Corvallis Hosp. Ass’n.*, 146 Or 168, 171-72, 30 P2d 9 (1934)). PCLT’s Articles Of Incorporation state that it is “organized exclusively for charitable, religious, educational, literary, or scientific purposes”; that no part of its net earnings “shall inure to the benefit” of \* \* \* its members, directors, officers, or other private persons”; and that at dissolution its assets shall be distributed to a government body or another organization qualifying as a charity under

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IRC section 501(c). (Aff of Howes in Supp of Pet's Mot for Summ J Ex 1 at 1-2.) Based upon PCLT's stated organizational purposes, the court finds that PCLT has charity as its primary object.

Second, PCLT must be performing in a manner that furthers its charitable object. In *Hazelden Springbrook, Inc. v. Yamhill County Assessor.*, TC-MD No 031037D, WL 1237628 (May 11, 2004), the court found that because the taxpayer provided no more than a list of general activities, and did not provide evidence of specific events it had offered or participated in, that it had failed to carry its burden of proof on that point. PCLT has provided the court with a specific list of activities that it performs on behalf of its lessees. It offers free classes on subjects such as home buying, credit counseling, money management and budgeting, and workshops on home maintenance. (Ptf's Memo In Support of Pet's Mot For Summ J at 6.) It offers assistance in the areas of home refinancing, debt consolidation, bankruptcy, and home resale, and provides financial assistance through a "zero-interest loan fund." (Aff of Handler in Support of Ptf's Resp at 2.) It acts as an advocate in ways such as appealing property tax assessments and passing the benefit of any relief on to its lessees, interceding with city officials when latent code violations might have resulted in fines, and establishing a formal relationship with five mortgage providers. (*Id.*) It provides assistance with property improvement such as painting and landscaping free of charge. (Fact 9(e).) All of the above activities are performed at no benefit to PCLT or its members, and for the good of its lessees. As such, the court finds that PCLT is performing in a manner that furthers its charitable purpose.

The Assessor contends that advancement of home ownership is not a charitable purpose and that, even if it were, PCLT's charitable benefit is not limited to its intended recipients because the home buyers' income levels are measured only at the time of signing the lease.

(Def’s Cross-Mot For Summ J at 5.) However, PCLT’s purpose is to “stabiliz[e] a family’s financial status through homeownership.” (Ptf’s Resp at 6.) By leasing its properties under carefully crafted restrictions, rather than selling them, and monitoring income levels at entry rather than throughout the program, PCLT maintains a delicate balance between its goal of propelling its lessees into financial stability and retaining its properties for future low-income buyers. Because its purpose is to help families enter the realm of home ownership and improve their financial circumstances – not to extend a temporary benefit – PCLT’s charitable purpose is not forestalled by its failure to monitor the home buyers’ income levels.

The final requirement for PCLT to meet the purpose and activity requirements of OAR 150-307.130-(A) (3) is that its activities involve an element of gift or giving. In the *Dove Lewis* case, the Supreme Court stated that “[i]n determining whether an organization is, by its conduct, charitable, the crucial consideration is the element of a gift or giving.” *Dove Lewis*, 301 Or at 428. In *SW Defenders*, the court extended that premise with the holding that whether a gift has been given or not is judged from the perspective of the recipient. *SW Defenders*, 312 Or at 91. Here, PCLT leases the land for less than fair market value and allows its lessees to purchase the improvements at less than fair market value. That results in a benefit to PCLT’s lessees – acquisition of a home for less than fair market value. In addition, PCLT offers to its lessees educational tools, financial guidance, and services for no remuneration. Because PCLT’s lessees are the recipients of services for free and homes for less than fair market value, PCLT’s activities demonstrate the element of giving.

Because PCLT has charity as its primary purpose, is performing in a manner that furthers that charitable purpose, and its activities involve giving, the court finds that PCLT has met the purpose and activities requirements for exemption under ORS 307.130.



## VI. CONCLUSION

The court finds that Plaintiff's use of the properties meets the requirements of ORS 307.130, as do Plaintiff's purposes and activities. Plaintiff's appeal of Defendant's denial of its application for exemption under ORS 307.130 is granted for the reasons stated above. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal of Defendant's denial of exemption under ORS 307.130 is granted;

IT IS FURTHER DECIDED that Plaintiff's Motion For Summary Judgment is granted; and

IT IS FURTHER DECIDED that Defendant's Cross Motion For Summary Judgment is denied.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2005.

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JEFF 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 Jeff Mattson April 29, 2005. The Court filed and entered this document April 29, 2005.***