

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

NORTHWEST EVALUATION	)	
ASSOCIATION, an Oregon nonprofit	)	
corporation,	)	
	)	
Plaintiff,	)	TC-MD 050607E
	)	
v.	)	
	)	
CLACKAMAS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals Defendant’s denial of Plaintiff’s 2004-05 property tax exemption application.<sup>1</sup> A trial in the matter was held December 13, 2005, in the courtroom of the Oregon Tax Court. Bruce A. Rubin and Ryan R. Nisle, Attorneys, appeared on behalf of Plaintiff. Linda Dunn of the Clackamas County Assessor’s office appeared on behalf of Defendant.

I. STATEMENT OF FACTS

On October 28, 2004, Plaintiff filed an application for a 2004-05 property tax exemption. Plaintiff sought exemption as a literary, benevolent, charitable, or scientific institution under ORS 307.112 and 307.130.<sup>2</sup> (Ptf’s Ex 1.) Plaintiff leases the subject property<sup>3</sup> from OR-Kruse Woods V, LLC. The lease provides a rent rebate if Plaintiff qualifies for tax exemption. (Ptf’s Ex 11.) The property is a building comprised of several floors that is used by Plaintiff as office space for its operations. (Ptf’s Ex 11.)

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<sup>1</sup> Plaintiff’s Complaint requests exemption for both the 2004-05 and 2005-06 tax years. However, Plaintiff’s application only sought exemption for the 2004-05 tax year. As a result, the 2004-05 tax year is the proper year before the court. The court observes, however, that any exemption granted for the 2004-05 tax year will flow through to the 2005-06 tax year.

<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

<sup>3</sup> The property is listed as Account 00227310.

Plaintiff was founded by a group of Pacific Northwest educators who, during a research conference in the mid-seventies, began discussing the inadequacy of testing tools in school systems. (Ptf's Ex 7.) The group was formally organized as a non-profit institution in 1977. (*Id.*) Plaintiff was granted tax exempt status by the Internal Revenue Service in 1978. (Ptf's Ex 1.) Plaintiff partners with school districts and other educational agencies to evaluate student performance through periodic assessments that measure student growth. (Ptf's Ex 7.) Their mission statement is "Partnering to help all kids learn." (*Id.*)<sup>4</sup> Based on its internationally recognized research, Plaintiff has developed a computerized, adaptive assessment called Measures of Academic Progress (MAP). The MAP measures a student's academic growth from year to year, as opposed to ranking students based on their performance in comparison to other students and schools. (*Id.*) The MAP contains over 27,000 test questions with a known

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<sup>4</sup> Article I, section 7 of Plaintiff's bylaws provides:

"The objectives of the NWEA shall be:

"(a) To promote the sharing of information about testing and evaluation.

"(b) To facilitate the pooling of testing and evaluation resources and to foster cooperative test development between and among school districts.

"(c) To promote the proper use and interpretation of measurement data.

"(d) To develop and maintain the highest possible standards for the construction of measurement instruments.

"(e) To foster the professional development and upgrading of competencies of members with regard to testing and evaluation.

"(f) To provide a vehicle for expressing measurement and evaluation concerns to other organizations including state agencies, colleges and universities, commercial test publishers and other professional and testing or evaluation organizations.

"(g) To provide a forum for members to identify common needs, establish priorities and identify resources to meet these needs."

(Ptf's Ex 1). Plaintiff's Articles of Incorporation espouse similar objectives. (*Id.*)

difficulty. The computerized test changes the next question based on whether the student answers the prior question correctly or incorrectly.

Plaintiff provides assessment tools to over 1,700 school districts. (Ptf's Ex 10.) Of those school districts, Plaintiff has designated 640 as small districts because they have a student enrollment of less than 750. (Ptf's Ex 7.) Plaintiff waives \$1,000 of its standard fee for small districts. (*Id.*) In addition, for all schools, Plaintiff only charges up to 50 percent of the number of students enrolled, even though schools typically test more than 50 percent of their students. (*Id.*) Purchasing schools may administer the assessment up to four times a year. (*Id.*) Data from the assessments is made available to students, parents, and educators through immediate results and various reports that are created by Plaintiff. (*Id.*)

Plaintiff's primary activities are designing and administering its assessments, collecting and reporting data, performing research, and publishing whitepapers. (*Id.*) One of Plaintiff's reasons for conducting assessments is to gather data for its Growth Research Database (GRD). (*Id.*) The GRD allows Plaintiff and its clients to track the growth of individual students, schools, and districts, which in turn allows Plaintiff to improve its assessments and conduct studies. (*Id.*) Those studies are accessed by policymakers, state superintendents, the U.S. Department of Education, lobbyists, and others. (*Id.*) Gage Kingsbury (Kingsbury), Plaintiff's Director of Research, testified that Plaintiff employs five full-time researchers, all of whom hold doctorate degrees in systems science, education, or psychology. Kingsbury also testified that Plaintiff conducts two types of research: (1) research that advances the field of student assessment, and (2) research that identifies common problems in education and the means to correct them. In addition, Kingsbury stated that Plaintiff's research studies and other publications are available to anyone on Plaintiff's website. (*See* Ptf's Ex 23.)

Schools or school districts may choose to become members of Plaintiff for a \$250 annual fee. The total revenue from membership amounts to 0.2 percent of Plaintiff's revenue. (Ptf's Ex 10.) Plaintiff currently has fewer than 200 members. (*Id.*) Member schools or districts receive two benefits not available to non-members. (*Id.*) They may vote for the board of directors, and they receive a subscription to Plaintiff's newsletter. (*Id.*) That newsletter, however, is available to anyone on Plaintiff's website. (*Id.*) Plaintiff does not limit any of its services to members, nor do members enjoy a pricing structure different than non-members. (*Id.*)

## II. ANALYSIS

ORS 307.112 allows an exemption from property tax for "real \* \* \* property of a taxable owner held under lease or lease-purchase agreement by an institution \* \* \* granted exemption or the right to claim exemption for any of its property under ORS \* \* \* 307.130." ORS 307.130, in turn, exempts from taxation property used by "charitable and scientific institutions."

Plaintiff claims it satisfies the requirements for both a charitable and scientific organization. When the court analyzes exemption cases, it is "guided by the principle that taxation is the rule and exemption from taxation is the exception." *Native Forest Council v. Lane Cty. Assessor*, 17 OTR 30, 33 (2001) (citing *Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 301 Or 423, 426-27), 723 P2d 320 (1986). Courts are to construe exemption statutes strictly, yet reasonably. *SW Oregon Pub. Def. Services v. Dept. of Rev.*, 312 Or 82, 88-89 (1991).

In order to meet the requirements of ORS 307.130, the property must be used "by [an] \* \* \* incorporated \* \* \* benevolent, charitable[, or] scientific institution[]." The words "benevolent" and "charitable," when used together, have the same meaning as each other for

purposes of ORS 307.130. See *Rogue Gem v. Josephine County Assessor*, 17 OTR 446, 451 (2003) (citing *Methodist Homes, Inc. v. Tax Com.*, 226 Or 298, 308-09, 360 P2d 293 (1961)). Charitable and scientific organizations are not the same, however. A “charitable organization must have charity as its primary, if not its sole, object. A literary or scientific organization has a different primary purpose,” but a “significant portion of its activities” must have a charitable objective. *Math Learning Center v. Dept. of Rev.*, 14 OTR 62, 65 (1996) (citations omitted). The court will first analyze whether Plaintiff meets the requirements of a scientific institution.

#### A. *Scientific Institution*

In *Math Learning Center*, the Oregon Tax Court found that the plaintiff had a scientific purpose. In doing so, the court looked to the dictionary definition of mathematics. *Id.* at 64. After determining that “there can be little question that mathematics is an area for scientific inquiry,” the court turned to the plaintiff’s purpose and activities. *Id.* The court examined the plaintiff’s mission statement and its articles of incorporation, concluding that the plaintiff’s purpose was to promote learning mathematics and related subjects, and its activities were research and publication. *Id.* The court noted that the plaintiff also conducted seminars and workshops “to convey the results of its investigations and findings to those who teach mathematics.” *Id.* at 64-65.

The case before the court has a similar fact pattern. Plaintiff is engaged in psychometrics, which is defined as “a branch of clinical or applied psychology dealing with the use of and application of mental measurement.” *Webster’s Third New Int’l Dictionary* 1833 (unabridged ed 2002). Psychology is defined as “the science of mind or of mental phenomena and activities.” *Id.* Plaintiff was founded by educators who were seeking to improve student

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psychometric methods. The objectives set out in their articles of incorporation and bylaws support improvements in the field of psychometrics.

In addition, Plaintiff's activities are consistent with those of a scientific organization. Plaintiff employs five full-time researchers, in addition to support staff, to conduct and publish research. Those researchers all hold advanced degrees. The research they conduct assists Plaintiff as well as policymakers, state superintendents, and the U.S. Department of Education to continually improve testing methods. Kingsbury testified at trial that he has been invited to give presentations on Plaintiff's research and findings. The results of the MAP tests given to students are gathered into the GRD to better facilitate the study of testing methods and the analysis of the data. Given the objectives of Plaintiff and all that it does, the court concludes Plaintiff is a scientific institution.

*B. Charitable Objective*

In *Math Learning Center*, the Tax Court held that, although the plaintiff was a scientific organization, a significant portion of its activities had to be charitable to qualify for exemption. The court looked to activities the plaintiff freely offered, its status as a nonprofit, and whether it conferred any private benefit on members, shareholders, or founders. *Math Learning Center*, 14 OTR at 66-67. The court noted that, among other things, the plaintiff provided tuition waivers, contributed to curriculum development at Portland State University, and supported publications by the Oregon Council of Teachers of Mathematics. In addition, the court noted that the plaintiff was organized as a nonprofit and was "not engaged in business to earn a profit for its shareholders," concluding that "[t]he only private benefits derived are those by salaried or paid employees." *Id.* at 67. Finally, the court observed that its founders received no private benefit. *Id.*

Plaintiff here engages in numerous similar charitable activities, such as providing fee waivers for small districts, charging only for the first 50 percent of assessments administered, and making its research freely available on its website. Like the plaintiff in *Math Learning Center*, Plaintiff is organized as a nonprofit and confers no private benefit to any shareholder or founder except those benefits “derived \* \* \* by salaried or paid employees.” *Id.* Plaintiff has members, unlike plaintiff in *Math Learning Center*, but membership does not confer any discount or additional services that are not available to nonmembers. Accordingly, the court concludes that a significant portion of Plaintiff’s activities have a charitable objective.

### III. CONCLUSION

The court concludes that Plaintiff is a scientific institution with a sufficient charitable objective to qualify for exemption. Accordingly, Plaintiff meets the requirements for a property tax exemption pursuant to ORS 307.112. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s application for 2004-05 property tax exemption is granted.

Dated this \_\_\_\_ day of April 2006.

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COYREEN R. WEIDNER  
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 Coyreen R. Weidner April 5, 2006. The Court filed and entered this document April 5, 2006.***