IN THE OREGON TAX COURT

REGULAR DIVISION

Property Tax

YU CONTEMPORARY, INC., Plaintiff, v. DEPARTMENT OF REVENUE, State of Oregon, Defendant. And MULTNOMAH COUNTY ASSESSOR, Defendant-Intervenor.	Case No. TC 5245 DEFENDANT-INTERVENOR MULTNOMAH COUNTY ASSESSOR'S CLOSING ARGUMENT

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I. INTRODUCTION

Defendant-Intervenor Multnomah County Assessor ("Assessor") submits the following closing arguments in support of its position that Plaintiff YU Contemporary, Inc. ("YU") is not an art museum or a charitable organization under ORS 307.130, and therefore not entitled to the partial property tax exemption it seeks under that statute. Even if YU qualified as an art museum or charitable organization (which it does not), its use of the building is so mixed with other commercial-non-art displaying, and non-charitable endeavors, that any art or charity is incidental at best, and certainly not primary. Further, it is clear from the testimony presented at trial that YU's focus and purpose is not to provide art to the public, but rather to support the artists themselves. Any public benefit is again also incidental at best. Plaintiff's interpretation of what constitutes an art museum and what standard is applied to work associated with such an endeavor is well beyond what the legislature intended. Plaintiff's definition is far reaching and exceeds the boundaries of ORS 307.130, and such an interpretation would create a "Pandora's Box" of entities seeking exemption under Plaintiff's loose and broad definition.

II. PROCEDURAL BACKGROUND

The Assessor incorporates by reference the procedural background described in Plaintiff's Closing Argument. (Plaintiff's Closing Argument, p. 1-2).

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III. ARGUMENT

A. Plaintiff's Theory Regarding Usage And Eligibility Would Make It So That Basically Almost Any Entity Could Be Exempt As An "Art Museum".

The main issues before the Court in is this appeal are (1) does YU meet the definition of an art museum under ORS 307.130(a) or a charitable institution; (2) if so, is the subject property being primary and exclusively used for that purpose under the statute? The answer to both those question in this case is, NO.

While the statutory definition of an art museum is admittedly broad, this Court has previously concluded that:

> "[T]he determination of the nature of the exempt character necessary to qualify for exemption requires interpretation of the broad language of the statute. The purpose of the inquiry is to determine legislative intent in its enactment. In so doing, we are not bound by the broad, literal meaning of the words used, if the legislative intent can be discerned."

Oregon Stamp Soc. v. State Tax Comm. 1 OTR 190, *198 (Feb. 21, 1963) (*citing Allen v. Multnomah County,* 179 Or 548, 554 (1946).

The Court further stated that legislative intent to exempt must be clear beyond a reasonable doubt. *(Oregon Stamp Soc.,* at 198) (*citing Behnke-Walker v. Multnomah County*, 173 Or 510 (1944). Here, Plaintiff's requested interpretation of the definition of an art museum under ORS 307.130 would make it such that basically any registered non-profit could be considered an art museum, and thus tax exempt, so long as it once in a while displays some art, with very little public outreach and the primary benefit of its existence being for that of the artists it recruits. In that scenario, the public benefit would be incidental and quite clear that the main purpose of the institution would not be to display art. Surely the legislature did not intend for such a broad definition to be applied making exemption that easily achieved, since the

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presumption is that all property taxable unless specifically exempted. *Corp. of Sisters of Mercy v. Lane County,* 123 Or 144, 152 (1927); *Benton County v. Allen*, 170 Or 481, 484 (1943).

While YU does display art from time to time, such display is not its primary purpose, is limited in scope and outreach to the public, and serves as the end to a mean (i.e., giving unknown artists the opportunity to come and work on the projects for months at a time). (Tr. 171:20-25; 172: 1-25). Further, a significant amount of use for the main gallery area for rentals such as corporate events, wedding receptions, trade shows, and other private endeavors clearly show that the uses of the space are not primarily for the display of art. (Stipulated Facts ¶49-80).

In addition, the purpose of the organization is not to display art to the public, but rather to support emerging or unknown artists, pay artists to come and work on their artwork, and give artists a platform to work on their art. (Tr. 170:1-8). In fact, a significant portion of the building for which Plaintiff seeks exemption is dedicated to giving the artists work spaces for free, to come and work on their exhibits for sometimes months at a time. (Tr. 173: 5-22). Plaintiff is not open for all artists to use or benefit from, but rather a select few artists that YU themselves choose to work with. (*Id.* at 11-14). While this is certainly a worthwhile endeavor, it is not primarily for the purpose of public benefit, but rather the artists themselves. (Tr. 164: 6-21). Plaintiff's own co-founder, Flint Jamison, concedes that Plaintiff is not an art museum, rather a center for contemporary arts. (Tr. 200:23-25, 201: 1-9). Mr. Jamison goes on to describe that what makes YU a center for arts or a "Kunsthal" is essentially what makes it not exempt, i.e., its mixed use and focus on creating and producing art, not collecting it. *Id.* at 201: 1-9. Thus, by its own co-founder's admission, YU is not an art museum. Further, the actual display of art is limited to four exhibitions a year during limited months out of the year. (Tr. 166:14-25).

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Because of building occupancy restrictions, Plaintiff is permitted only 12 for profit permits and 12 non-profit permits a year for occupancy in the building above 50 people. (Tr. 60:12-15). That means that public display is severely limited and exhibitions are targeted as four day events at any given one time. (*Id.* at 22-25). Thus, the public display of art really accounts for a small percentage of the activity at the subject property. Plaintiff incorrectly relies on the position that the work done before and after the limited display of actual art to the public meets the use requirement under the "in conjunction standard," under ORS 307.130 (f). However, that argument is debunked by Department of Revenue correctly in its closing brief.

B. Plaintiff's Use Of The Subject Property Does Not Support The Definition Of An Art Museum.

In this appeal, it should be noted that this case is to determine whether the subject property is partially exempt or fully taxable. The standard of use is detailed more fully in the Department of Revenue's Closing Argument. Plaintiff concedes that significant portions of the building are used for commercial, non-art related or YU related activities, and are therefore taxable. This includes the large portions of basement and first floor. What is at issue is the use of the other portions of the building, including parts of the first floor, the mezzanine level, "work spaces," "green rooms" for artists to relax, a second floor kitchen, and the main exhibition space on the second floor, and whether the use is such that it qualifies YU for exemption. The use of the exhibition space is probably the most significant as this is basically the only area in the building that is used to display any sort of art at all to the public, albeit on a very limited basis throughout the year. Yet this exhibition space is the primary space for any sort of art display, yet serves as the space for the other private commercial endeavors and rentals such as weddings, trade shows, and corporate events. (Stipulated Facts, ¶48-80). Between October 13, 2013 and

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December 31, 2015, Plaintiff received over $175,000 in rental income from use of the main exhibit space. Clearly, this mixed use shows that the space is not primarily or exclusively used for the display of art and certainly not for charitable purposes. Therefore, such use is not exempt under ORS 307.130.

In addition to not being an art museum, Plaintiff fails to meet the definition of a charitable organization subject to exemption for the reasons set forth above, and in the Department of Revenue's Closing Argument. The primary reason for Plaintiff's existence is more to benefit the artists it supports and not to benefit the public at large. Plaintiff fails to have any significant public outreach and is limited as to the use of the property such that the only public benefit is incidental at best.

IV. CONCLUSION

Plaintiff has failed to overcome its burden of proof relating to its application for exemption. The clear mixed use and lack of charitable focus benefiting the public at large definitely shows that YU does not meet the definition for exemption under ORS 307.130. As a result, the Assessor respectfully requests that the Court uphold the denial of YU's exemption application.

DATED this 1st day of August, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2016, I served the foregoing **DEFENDANT-INTERVENOR MULTNOMAH COUNTY ASSESSOR'S CLOSING ARGUMENT** on:

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by the following method or methods as indicated:

☒ by **mailing** to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.

☐ by causing a true copy thereof to be **hand delivered** to said person(s) at the last known address for said person(s) as shown above, on the date set forth above.

☐ by mailing via **certified mail, return receipt requested**, to said person(s) a true copy thereof, said copy placed in a sealed envelope, postage prepaid and addressed to said person(s) at the last known address for said person(s) as shown above, and deposited in the post office at Portland, Oregon, on the date set forth above.

☐ by **facsimile** to said person(s) a true copy thereof at the facsimile number shown above, which is the last known facsimile number for said person(s) on the date set forth above. A copy of the confirmation report is attached hereto.

☒ by **emailing** to said person(s) a true copy thereof at the email address shown above, which is the last known email address for said person(s) on the date set forth above.

Amy Goodale

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