



1600 Pioneer Tower
888 SW Fifth Avenue
Portland, Oregon 97204
503.221.1440

Michael J. Millender

Direct Dial: 503.802.2164
Fax: 503.274.8779
michael.millender@tonkon.com

March 31, 2016

VIA FEDEX

Oregon Tax Court, Regular Division
1241 State Street, Floor 4R
Salem, OR 97301

Re: *YU Contemporary, Inc. vs. Dept. of Revenue and Multnomah County Assessor*, Case No. TC 5245

Dear Clerk:

Enclosed for filing in the above-referenced case are the following documents:

1. The parties' Stipulations for Trial (2 copies); and
2. Plaintiff's Trial Memorandum (2 copies).

Sincerely yours,

A handwritten signature in black ink, appearing to read 'MJM', written over a horizontal line.

Michael J. Millender

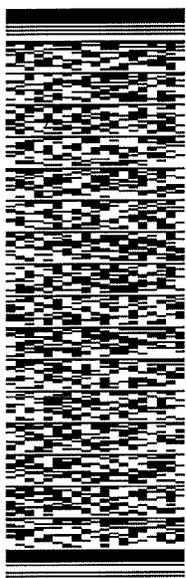
MJM/jeh
Enclosures
copy w/enc: Mr. Carlos Rasch (via email)
Mr. Daniel Paul (via email)

ORIGIN ID: MRIA (503) 802-2164
MICHAEL WILKENDER
MONKON TOPP LLP
888 S.W. FIFTH AVENUE
SUITE 1600
PORTLAND, OR 97204
UNITED STATES US

SHIP DATE: 31MAR16
ACTWGT: 1.00 LB
CAD: 2853388/NET3730
BILL SENDER

TO REGULAR DIVISION
OREGON TAX COURT
1241 STATE STREET
FLOOR (4R)
SALEM OR 97301

REF: 99997-322895
(503) 986-5650
INV:
P.O. DEPT:



J161010020501uv

TRK# 7760 0796 3270
0201

FRI - 01 APR 10:30A
PRIORITY OVERNIGHT

86 SLEA

97301
OR-US PDX



540.J1/CF34/727F

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	2
III.	WITNESSES.....	2
IV.	LEGAL FRAMEWORK FOR TRIAL.....	3
A.	YU Is an "Art Museum" Under ORS 307.130.....	4
B.	YU Is Entitled to an Exemption for Property "Used in Conjunction with the Public Display of Works of Art or Used to Educate the Public About Art".....	5
1.	The Text and Context of ORS 307.130 Support Granting the Exemption to YU	6
2.	The Legislative History of ORS 307.130 Further Supports YU's Right to the Exemption.....	9
C.	Even if Art Museums Are Held to the Same "Use" Standards as Other Nonprofits, ORS 307.130 Does Not Require YU to Conform to Traditional Art Museum Standards.....	12
1.	"Exclusive Use" Means "Primary Use," Based on Days or Hours of Actual Use.....	12
2.	The "Actual Use" Standard Takes Into Account the Nature of the Organization and the Property	14
D.	YU is a "Charitable" Organization Because It Relies on Volunteers, Is Supported by Donors, and Makes Its Programs Available to the General Public At No Cost or Low Cost	16
1.	YU Provides a Clear Benefit to the Portland Community.....	17
2.	YU Satisfies the "Gift and Giving" Requirement by Providing Access to Art and Other Cultural Programming for No or Low Cost, and With the Support of Volunteers, Grants and Individual Donations.....	18
E.	YU's Ancillary Programs Are "Literary" Within the Meaning of ORS 307.130.....	18
F.	In the Alternative, YU Is a "Charitable Institution" Within the Meaning of ORS 307.130(2)(a)	19
V.	CONCLUSION.....	21

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Boring Damascus Grange No. 260 v. Clackamas County Assessor,</i> TC-MD No 101150B, 2011 WL 2712739 (July 13, 2011).....	13, 14, 15
<i>Church of the Brethren v. Coos County Assessor,</i> TC-MD No 990512D, 1999 WL 33117384 (Dec 17, 1999).....	13
<i>Comcast Corp. v. Dep't of Rev.,</i> 356 Or 282, 337 P3d 768 (2014)	8
<i>Due-Donohue v. Beal,</i> 191 Or App 98, 80 P3d 529 (2003).....	8
<i>German Apostolic Christian Church v. Dep't of Rev.,</i> 279 Or 637, 569 P2d 596 (1977)	12
<i>Korean Bethel Presbyterian Church v. Washington County Assessor,</i> TC-MD No 070015D, 2008 WL 80208 (Jan 4, 2008).....	15
<i>Lebanon Community Foundation, Inc. v. Linn County Assessor,</i> TC-MD No 011005A, 2002 WL 1591920 (July 18, 2002)	15, 17, 20
<i>Lindsey v. Farmers Ins. Co. of Oregon,</i> 170 Or App 458, 12 P3d 571 (2000).....	8
<i>Moshe Wilhelm/Chabad Lubavitch of Oregon v. Dep't of Rev.,</i> TC No 3809, 1995 WL 604456 (Oct 12, 1995).....	15
<i>Multnomah County v. Dep't of Rev.,</i> 13 OTR 339 (1995).....	14
<i>Newspace Center for Photography v. Multnomah County Assessor,</i> TC-MD No 130545C, 2014 WL 3509471 (July 15, 2014).....	20, 21
<i>Oregon Country Fair v. Dep't of Rev.,</i> 10 OTR 200 (1986).....	20, 21
<i>Oregon Writer's Colony v. Dep't of Rev.,</i> 14 OTR 69 (1996).....	17
<i>Portland Hibernian Benev. Soc'y v. Kelly,</i> 28 Or 173, 42 P 3 (1895)	8

<i>Rigas Maja, Inc. v. Dep't of Rev.</i> , 12 OTR 471 (1993).....	18
<i>Roman Catholic Archdiocese of Archbishop of Portland in Oregon v. Dep't of Rev.</i> , 13 OTR 211 (1995).....	15
<i>Snyder v. Espino-Brown</i> , 350 Or 141, 252 P3d 318 (2011)	8
<i>State v. Gaines</i> , 346 Or 160, 206 P3d 1042 (2009)	5, 6
<i>Subud Portland v. Multnomah County Assessor</i> , TC-MD No 070621C, 2009 WL 242347 (Jan 28, 2009).....	13
<i>Theatre West of Lincoln City, Ltd. v. Dep't of Rev.</i> , 319 Or 114, 873 P2d 1083 (1994)	8, 16, 19
<i>Westside Community Church v. Benton County Assessor</i> , TC-MD No 070727E, 2007 WL 4440218 (Dec 19, 2007).....	15
<i>Young Men's Christian Ass'n of Columbia-Willamette v. Dep't of Rev.</i> , 308 Or 644, 784 P2d 1086 (1989)	20
Statutes and Regulations	
Or Laws 1997, ch 599, § 1	6
Or Laws 1999, ch 773, §1	7
ORS 307.130.....	<i>passim</i>
ORS 307.140(1).....	13
OAR 150-307.130-(A).....	17, 18
Other Authorities	
<i>Webster's Third New International Dictionary</i> (unabridged ed. 1993)	9

TRIAL MEMORANDUM

I. INTRODUCTION

Plaintiff YU Contemporary, Inc. (hereafter, "YU") does not look or operate like a typical art museum. It is a relatively new organization, founded by working artists, that only acquired a permanent space in 2013. Its building is not a series of hushed and darkened galleries; instead, YU owns a light-filled, century-old former industrial laundry in inner Southeast Portland that is suited for large-scale contemporary art as well as concerts and films. Rather than amassing a permanent collection, YU mounts temporary exhibits by nationally and internationally recognized artists. Those exhibits do not arrive ready to install. Instead, YU typically brings artists to Portland, gives them studio space to finish and adapt their work for display, and lets them oversee the installation of their exhibits. YU cannot afford to advertise its exhibits with billboards or radio ads, so it relies on media reviews, mailings, its website, and even Twitter and Facebook to reach the public.

Even though YU is an unconventional institution, it is still entitled to an exemption from property tax under the "art museum" provisions of ORS 307.130. For the reasons detailed below, a nonprofit need not conform to any preconceived notions about art or its display to qualify for exemption as an art museum under ORS 307.130. To the extent not already established by the parties' Stipulations for Trial (hereafter, the "Stipulations"), the evidence and testimony at trial will show that YU satisfies the statutory requirements for status as an "art museum" and also satisfies the "use" standard applicable to such an institution. The evidence and testimony will also show, in the alternative, that YU satisfies the definition of a "charitable institution" under ORS 307.130 and meets the "use" standard applicable to such an institution.

II. FACTUAL BACKGROUND

YU is a contemporary art center dedicated to presenting emerging and under-acknowledged artists, supporting the creation of new works, and providing educational programs to foster community engagement. Stipulations at ¶¶ 2, 4 (hereafter, "Stip."). Thousands of people visit YU annually. YU has presented exhibitions showcasing the work of national and international artists, and it has presented many unique musical performances and other programs. Stip. at ¶ 16-47.

YU owns and conducts the vast majority of its activities at real property, known as the Yale Union Laundry Building, located at 800 S.E. 10th Avenue in Portland. Stip. at ¶ 9. The evidence at trial will establish that the building is listed on the National Register of Historic Places. The building was donated to YU in October 2013. Stip. at ¶ 10. Some areas of the building (totaling approximately 4,647 square feet) are leased commercially, and YU does not dispute the taxability of these areas. Stip. at ¶ 14.

On or about October 16, 2013, YU timely applied for a property tax exemption under ORS 307.130 for the 2014-2015 tax year under ORS 307.130. Stip. at ¶ 102. Intervenor Multnomah County Assessor denied the application on September 9, 2014. Stip. at ¶ 104. On December 8, 2014, YU timely appealed the denial to the Magistrate Division of this Court. Stip. at ¶ 105. The Regular Division granted YU's Petition for Special Designation on April 21, 2015.

III. WITNESSES

YU's witnesses at the trial will be Jennifer Martin and Aaron Flint Jamison. Ms. Martin is the Operations Manager for YU and oversees finances, grant applications and day-to-day operations at the YU building. Mr. Jamison is a co-founder of YU and serves as

Board President. He is a working artist and recently had solo exhibitions in London, Paris, Geneva and New York. His work was included in the 2014 Liverpool Biennial, a contemporary art festival in Liverpool, England. Mr. Jamison currently divides his time between Seattle, where he is Assistant Professor at the University of Washington, and his home in Portland.

IV. LEGAL FRAMEWORK FOR TRIAL

The threshold matter in this case is the parties' disagreement over the standard for exemption that applies to art museums under ORS 307.130. Defendant Oregon Department of Revenue and intervenor Multnomah County Assessor (hereafter, the "Defendants") are expected to make a two-part argument: A nonprofit must meet certain standards regarding opening hours, signage and publicity to qualify as an art museum, and art museums are held to same standards of property "use" that apply to literary, benevolent, charitable, and scientific institutions.

For the reasons detailed below, these arguments do not withstand statutory scrutiny. The text, context, and legislative history of ORS 307.130 show that the legislature intended for the "art museum" exemption to be broadly available to art centers that enrich the cultural life of our state. Even if art museums are held to the standard applicable to charitable and other institutions, this standard does not require YU to look or operate like a large, traditional art museum. Finally, even if an arts organization does not meet the statutory requirements for an "art museum," it can still qualify for exemption as a "charitable institution" if it meets the requirements articulated by this Court and the Oregon Supreme Court over many decades.

A. YU Is an "Art Museum" Under ORS 307.130

ORS 307.130(1)(a)¹ defines "art museum" to mean "a nonprofit corporation organized to display works of art to the public." There are only three operative phrases in this definition: An art museum must be a "*nonprofit corporation*," and its mission must be the "*display*" of art to the "*public*." An art museum's mission need not include the development and maintenance of a permanent collection; instead, it must "display" art. The definition thus covers not only institutions like the Portland Art Museum, but also institutions like YU that put on rotating temporary exhibitions.² The institution must also be outward-facing and present art to the "public." However, the definition does not require the institution to conform to certain opening hours or to advertise its exhibits in any particular way.

YU meets the definition of an "art museum." YU is an Oregon nonprofit corporation, and it has had 501(c)(3) status since 2011. Stip. at ¶¶ 1, 3. Its mission, as stated in its Bylaws and on its annual filings on Form 990, is to promote contemporary art and encourage public discourse about art. Stip. at ¶¶ 2, 4. Furthermore, the evidence and testimony at trial will establish that YU maintains reasonable hours and uses appropriate advertising strategies for its exhibitions and other events.

¹ For convenience, all citations are to the 2015 edition of the Oregon Revised Statutes. None of the relevant statutory provisions have changed since the beginning of the tax year in question, but two provisions cited below – ORS 307.130(4) and (5) – were renumbered in connection with amendments to ORS 307.130 that took effect in 2015.

² As Mr. Jamison will testify, art exhibition halls are not common in the United States, but they have a long history in Europe, particularly in Germany and Austria. For example, the famous Secession Building in Vienna was erected in 1897 to hold rotating exhibits of works by avant-garde artists such as Gustav Klimt.

B. YU Is Entitled to an Exemption for Property "Used in Conjunction with the Public Display of Works of Art or Used to Educate the Public About Art"

To qualify for exemption, it is not sufficient for a nonprofit to meet the definition of an "art museum." It must also "use" the property in a manner that satisfies ORS 307.130. The parties disagree on the "use" standard applicable to art museums. The Defendants are expected to argue that all institutions claiming exemption under ORS 307.130 – including art museums – must meet the standard set forth in ORS 307.130(2)(a) (hereafter, "Subsection (a)"), which establishes an "actual and exclusive use" standard for literary, benevolent, charitable, and scientific institutions. However, ORS 307.130(2)(f) (hereafter, "Subsection (f)") exempts property of an art museum that "is used in conjunction with the public display of works of art or used to educate the public about art * * *."³

An Oregon court interprets a statute using the three-step framework established in *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009). First, the court examines the text and context of the statute to determine the legislature's intent. *Id.* at 171. Second, the court can consider the legislative history of the statute, if it appears useful to the court's analysis. *Id.* at 172. Third, if the legislature's intent remains unclear after examining text, context and legislative history, the court may use maxims of statutory construction to resolve any remaining uncertainty. *Id.* Here, the text, context and legislative history of ORS 307.130 show that the "used in conjunction with" standard set forth in Subsection (f) is not coterminous with the "actual and exclusive use" standard, and in fact was intended by the

³ Subsection (f) goes on to state that the exemption is not available for property used by an art museum to sell art, reproductions or other items to the public. This provision is inapplicable because YU does not sell works to the public or commercially promote artists.

legislature to be more lenient than the standard in Subsection (a). It is not necessary for the Court to reach the third step in the *State v. Gaines* framework.

1. The Text and Context of ORS 307.130 Support Granting the Exemption to YU

The text and context of ORS 307.130(2) (hereafter, "Section 2") plainly show that art museums are subject to their own "use" standard. The section begins with a lead-in sentence that reads:

"Upon compliance with ORS 307.162, the following property owned * * * by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation."

This lead-in sentence is followed by a series of subsections that set forth the use requirements for the six types of organizations covered by Section 2 and also address such matters as the taxability of parking lots. Subsection (a) explains how four types of organizations – literary, benevolent, charitable and scientific institutions – must use their property in order to qualify for the exemption:

"Except as provided in ORS 748.414, only 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."⁴

If the legislature had wanted art museums to be subject to this standard, it easily could have added them to the list in Subsection (a). Instead, the legislature took a different approach. In 1997, it enacted Subsection (f),⁵ which states that the exemption is available for:

⁴ The phrase "such institutions" refers to the four types of "institutions" listed in the lead-in sentence. This wording was fixed before art museums were added to the statute in 1997, and it was not revised as part of those amendments. *See* Or Laws 1997, ch 599, § 1 (HB 2332).

⁵ Or Laws 1997, ch 599, §1 (HB 2332).

"The real and personal property of an art museum that is used in conjunction with the public display of works of art or used to educate the public about art * * *."

The "in conjunction with" standard established in Subsection (f) also applies to the property of volunteer fire departments, which was added to the statute in 1999.⁶ ORS 307.130(2)(g).

There is further textual evidence that the legislature intended art museums to be treated differently than the four types of institutions referenced in Subsection (a). When the legislature amended ORS 307.130 in 1997 to add art museums, it also amended a provision of the statute, currently codified as ORS 307.130(4), which previously read:

"An institution shall not be deprived of an exemption under this section solely because its primary source of funding is from one or more governmental entities."

The 1997 legislation amended this provision to read:

"An *art museum* or institution shall not be deprived of an exemption under this section solely because its primary source of funding is from one or more governmental entities."

(Emphasis added.)

The term "institution" refers to the literary, benevolent, charitable, and scientific organizations that are described as "institutions" in Subsection (a). It was necessary to add "art museum" to ORS 307.130(4) to confirm that government-funded art museums are also entitled to its protections, even though art museums are covered by separate provisions of Section 2.

⁶ Or Laws 1999, ch 773, §1 (HB 2732).

The next question in the analysis of text and context is what the legislature meant by the phrase "used in conjunction with." Two principles applied by Oregon courts are helpful in answering this question.

First, when the legislature uses different terms in the same statute, the court will infer that the legislature intended them to have different meanings. *Due-Donohue v. Beal*, 191 Or App 98, 100, 80 P3d 529 (2003) ("When the legislature uses different terms in the same statute, we infer that it intended them to have different meanings."); *Lindsey v. Farmers Ins. Co. of Oregon*, 170 Or App 458, 464, 12 P3d 571 (2000) ("When the legislature uses different language in similar statutory provisions, it is presumed to have intended different meanings."); *Snyder v. Espino-Brown*, 350 Or 141, 150, 252 P3d 318 (2011) (same).

Variants of Subsection (a) have been a part of Oregon law since 1854. *See Theatre West of Lincoln City, Ltd. v. Dep't of Rev.*, 319 Or 114, 119, 873 P2d 1083 (1994) (reciting history); *Portland Hibernian Benev. Soc'y v. Kelly*, 28 Or 173, 189-90, 42 P 3 (1895) (same). The standard of use set forth in Subsection (a) has been examined and applied by this Court and the Oregon Supreme Court in dozens of cases. If the legislature had wanted art museums to be held to the well-litigated standard applicable to literary, benevolent, charitable, and scientific institutions, it would have either added art museums to Subsection (a), or it would have used the "actual and exclusive use" phrasing in Subsection (f). The legislature's decision to use the term "in conjunction with" in Subsection (f) cannot be ignored. The legislature wanted art museums to be held to a different standard.

Second, if a statute does not include a specialized definition for a term, a court will presume that the legislature intended for a standard dictionary definition to apply. *Comcast Corp. v. Dep't of Rev.*, 356 Or 282, 296, 337 P3d 768 (2014). According to the 1993

unabridged edition of *Webster's Third New International Dictionary*, "conjunction" means "the act of conjoining or state of being conjoined," "union, association, combination," "an instance of conjoining or coming together," and "occurrence together." *Webster's* defines "conjoin" as "to join together (as separate entities) for a common purpose or a common end." *Id.* at 479-80.

Based on these definitions, an art museum uses property "in conjunction with" displaying art to the public or educating the public about art if its art-related and ancillary activities are joined, associated, combined, or concurrent, or if the museum's various activities serve a common purpose or common end. The inquiry does not hinge on whether the art museum's use of the property for art-related purposes is the exclusive or even primary use of the property.

2. The Legislative History of ORS 307.130 Further Supports YU's Right to the Exemption

The legislative history of Subsection (f) confirms that the legislature intended for the property tax exemption to be broadly available to organizations that display art and sponsor other cultural programming in their communities. A copy of the legislative history for Subsection (f) compiled by the Oregon State Archives is attached as Exhibit A.

Subsection (f) was enacted in 1997 to aid the Coos Art Museum. According to the testimony presented to the House Revenue Committee, county assessors around Oregon have historically exempted art museums from property tax under ORS 307.130.⁷ In Coos County, however, the assessor revoked the Coos Art Museum's exemption in 1993, and the museum

⁷ Assessors presumably granted exemptions on the grounds that art museums are "charitable institutions" covered by Subsection (a). For the reasons provided in Part IV.F, these assessors were justified in treating museums as charitable institutions.

was facing a \$30,000 annual property tax bill. The taxes were such a drain on the museum's finances that the museum had turned over its property to the City of Coos Bay. *Id.* at 3-5.

The museum's administrator, Helen Scully, supported the bill in testimony and in a letter to the Revenue Committee. Ms. Scully's letter explained the vital role that the museum played in its community:

"I am here to underline the importance of protecting nonprofit art and culture centers in communities of Oregon, and most particularly in my community, the Coos Bay-North Bend area. As you may suppose, in areas like ours (rather off the beaten path), community theater, art, music and other cultural events play a very prominent role in the lives of residents in the region. The Coos Art Museum serves as more than just a center of art, lectures and musical events; it also serves as THE center of art education for children and adults in the areas, and also as a place for such events as weddings, receptions, community board and committee meetings."

Id. at 5 (capitalization in the original).

Committee members raised two main concerns about the legislation: Whether museum gift shops should be taxable, and whether assessors in other counties might attempt to claim that art museums were liable for property tax for years *before* the new legislation took effect. *Id.* at 2.

As detailed above, the plain meaning of "used in conjunction with" establishes a more lenient standard for art museums than the "actual and exclusive use" standard applicable to other institutions. The legislative history supports the conclusion that "used in conjunction with" was intended to bear its plain meaning. The legislature was aware that art museums benefit their communities not only by displaying art to the public; in the words of Ms. Scully, they are "center[s] of art, lectures and musical events" as well as places for weddings, receptions and meetings. It is reasonable to conclude that the legislature adopted the "used in

conjunction with" phrasing because it wanted all of the property used by art museums for their various cultural and educational activities (except for gift shops) to be exempt from tax.

In summary, analysis of ORS 307.130 establishes three propositions:

First, the legislature intended art museums to be held to a different standard of use than the nonprofit organizations described in Subsection (a). The legislature signaled its intent by placing the "use" requirements for art museums in a separate subsection of ORS 307.130 and by using distinctive language – the "used in conjunction with" phraseology – to describe this standard of use.

Second, by employing the term "used in conjunction with," the legislature intended to exempt art museums from the higher, more burdensome, "actual and exclusive" use standard applicable to certain other nonprofits. Instead, an art museum can claim the exemption if the various uses of its property are associated, linked, or concurrent with displaying or educating the public about art, or if the various uses serve a common end.

Third, the legislative history shows that the legislature intended the art museum exemption to be broadly available to organizations that display art, teach about art, and provide ancillary cultural benefits to their communities.

YU meets this standard of use. YU puts on four major art exhibits per year, and it presents performances, talks and other cultural events in connection with these exhibits. Stip. at ¶¶ 16-30, 79. In addition to its exhibits and related programming, YU provides a range of other musical, film-related and literary activities that draw people to the building and expose them to new forms of cultural expression. Stip. at ¶¶ 31-47, 79. The evidence and testimony at trial will establish that YU has a small art library. And YU makes its space available for community functions and private events. Stip. at ¶¶ 48-79.

C. Even if Art Museums Are Held to the Same "Use" Standards as Other Nonprofits, ORS 307.130 Does Not Require YU to Conform to Traditional Art Museum Standards

For the reasons detailed in Part IV.B above, the Court should measure YU's use of its property by applying the "used in conjunction with" standard set forth in Subsection (f), and it should deem this standard to be lower than the "actual and exclusive use" standard found in Subsection (a). If, however, the Court finds that YU is subject to the Subsection (a) standard, the Court should not deny YU's claim for exemption just because YU does not operate like a large, traditional art museum. At trial, YU will show that, despite its relative smaller scale, it satisfies the higher standard that applies to other exempted organizations, as clarified by prior decisions of this Court.

1. "Exclusive Use" Means "Primary Use," Based on Days or Hours of Actual Use

Although Subsection (a) states that property must be "exclusively" occupied or used in an institution's work, the Oregon Supreme Court has held that the exemption is available if "the primary use of the property is reasonably necessary for the charitable functions of the taxpayer * * *." *German Apostolic Christian Church v. Dep't of Rev.*, 279 Or 637, 642, 569 P2d 596 (1977). Decisions by both the Regular and Magistrate Divisions of this Court over the past twenty years illustrate how this primary use/reasonable necessity standard is applied. They show that the standard is applied to the days or hours in which the property is actually in use. They also show that the rental of property to outside groups for fundraising purposes does not disqualify the property, unless such rentals are the primary use of the property.

In *Subud Portland v. Multnomah County Assessor*, TC-MD No 070621C, 2009 WL 242347 (Jan 28, 2009), a religious organization⁸ used property for its own activities and also rented it to outside groups. The organization conducted three worship services and one discussion group per week, which presumably meant that the property was not used at all for large stretches of the week. *Id.* at *5. Judge Robinson applied the "primary use" standard based on the parties' stipulated classification of the hours in which the property was actually in use. *Id.* at *4-5. These uses were worship, discussion, and fundraising (68%); weddings, receptions and memorial services (6%), and rentals to outside groups (26%). *Id.* at *5-6. Judge Robinson concluded that the organization qualified for the exemption. It is noteworthy that Judge Robinson classified the organization's own fundraising uses of the property as "core religious use." *Id.* at *5.

In *Subud*, the organization rented its property to outside group at below-market rates. In an earlier case, *Church of the Brethren v. Coos County Assessor*, TC-MD No 990512D, 1999 WL 33117384 (Dec 17, 1999), Judge Tanner considered a church-affiliated organization that rented its camping facilities to outside groups, with no indication that the rates were below-market. The assessor argued that these rentals disqualified the organization from claiming the tax exemption. *Id.* at *4. Judge Tanner rejected this argument because these rentals were not the primary use of the property and the rental fees supported the organization's exempt activities. *Id.*

⁸ Property of religious organizations is exempt under ORS 307.140(1) if it is "used solely" for religious and other enumerated purposes. The use standards under ORS 307.140(1) and ORS 307.130(2)(a) are analyzed interchangeably. See *Boring Damascus Grange No. 260 v. Clackamas County*, TC-MD No 101150B, 2011 WL 2712739, at *6-9 (July 13, 2011) (surveying cases).

As noted above, YU's programming includes four major exhibitions per year, in addition to various musical performances, readings, and other live events. Stip. ¶ 79. The evidence and testimony at trial will establish that most of YU's exhibitions are built or modified at its building, involving additional use of the building in the weeks and months leading up to an exhibition. Like other nonprofits, YU supports its programming with revenues from event rentals, but this usage is greatly exceeded by the number of days that the building is used for exhibits and other cultural programming. Stip at. ¶¶ 48-79.

2. The "Actual Use" Standard Takes Into Account the Nature of the Organization and the Property

YU is a young organization operating in a large building. The Defendants are expected to argue that YU does not use its property intensively enough to qualify for exemption. However, the testimony and evidence at trial will establish that, apart from the commercially leased spaces not at issue in this case, YU is using all of its space in a manner that supports its mission and intensively enough to meet the requirements of Subsection (a).

YU agrees that if a nonprofit organization does not utilize a property, the property is ineligible for the exemption because the organization does not satisfy the "actual use" requirement of Subsection (a). *See Boring Damascus Grange No. 260 v. Clackamas County Assessor*, TC-MD No 101150B, 2011 WL 2712739, at *6-7 (July 13, 2011) (surveying cases). Moreover, an organization's use of a property can be so minimal that it does not satisfy the actual use requirement. *See, e.g., Multnomah County v. Dep't of Rev.*, 13 OTR 339, 342 (1995) (social service organization's occasional use of property to teach a few mentally ill patients how to do yardwork, in one-hour sessions, was insufficient to establish "use").

Outside of extreme cases, however, this Court had held that property qualifies for exemption even if property is used sporadically, and even if the property is not used to its maximum potential. The Court also considers the organization's *plans* for the property, taking into account the organization's resources.

In the *Boring Damascus Grange* case, for example, the Grange owned a property that was overgrown with weeds. 2011 WL 2712739, at *1-2. However, the organization had plans to clean up the property, restore a stream, and provide access to nearby hiking trails. *Id.* at *6. It had held several clean-up sessions and developed restoration plans. *Id.* at *3-4. Judge Boomer held that the property was eligible for exemption because Grange was trying to clean up the property, portions of it could not be used due to its terrain, and the Grange's long-term plans for the property advanced its charitable mission. *Id.* at *10. Judge Boomer made allowance for the fact that the Grange's "progress in preparing the subject property for its ultimate purpose had been relatively slow because [it] is a nonprofit organization and reliant on volunteer labor." *Id.*; see also *Lebanon Community Foundation, Inc. v. Linn County Assessor*, TC-MD No 011005A, 2002 WL 1591920 (July 18, 2002); *Moshe Wilhelm/Chabad Lubavitch of Oregon v. Dep't of Rev.*, TC No 3809, 1995 WL 604456 (Oct 12, 1995).

Finally, several cases recognize that an organization's use of property for storage qualifies as "use." See, e.g., *Roman Catholic Archdiocese of Archbishop of Portland in Oregon v. Dep't of Rev.*, 13 OTR 211, 212 (1995); *Korean Bethel Presbyterian Church v. Washington County Assessor*, TC-MD No 070015D, 2008 WL 80208, at *2 (Jan 4, 2008); *Westside Community Church v. Benton County Assessor*, TC-MD No 070727E, 2007 WL 4440218, at *3-4 (Dec 19, 2007).

By design, YU has no standing collection of art. Its programming is purposefully dynamic, and each exhibition is unique. It does not have the goal – or the resources – to have an exhibition on display every day of the year. That is not part of its model. These facts, however, do not keep YU from satisfying the "actual use" standard. The evidence and testimony at trial will establish that, in addition to its large exhibition space, YU maintains areas for exhibiting artists, speakers, and performers to work during their visits to Portland, areas for storage, and a small library dedicated to books about contemporary art. These activities also qualify as actual use. Moreover, YU has already started to remodel the building and has embarked on a capital campaign to pay for a seismic upgrade and full restoration. YU clearly satisfies the "actual use" standard.

D. YU is a "Charitable" Organization Because It Relies on Volunteers, Is Supported by Donors, and Makes Its Programs Available to the General Public At No Cost or Low Cost

The Oregon Supreme Court has long held that a literary or scientific institution claiming exemption under ORS 307.130 must not only meet use requirements but also demonstrate that "a significant portion of its activities have a charitable objective." *Theatre West*, 319 Or at 117. This requirement presumably also applies to art museums, volunteer fire departments, and other organizations that have become eligible for exemption under ORS 307.130 in recent decades.⁹

⁹ In other words, the term "charitable" plays two roles in the application of ORS 307.130. In Subsection (a), it functions as a catch-all category for organizations that are entitled to the exemption but are not scientific, literary or benevolent institutions or art museums. Nonprofit hospitals and nursing homes would fall into this category. More generally, however, any organization claiming exemption under ORS 307.130 must demonstrate that it is "charitable" in the sense that it benefits the community at large and its activities include an element of gift or giving.

The Department of Revenue has adopted a rule, OAR 150-307.130-(A), which provides criteria distilled from the case law that assessors must use in determining whether an organization claiming exemption under ORS 307.130 is charitable. The Department's rule and the case law establish that an organization furthers charitable objectives if it provides a community benefit and its activities include an element of "gift and giving." YU will establish at trial that its activities satisfy both of these criteria.

1. YU Provides a Clear Benefit to the Portland Community

An organization's activities must be "for the direct good of the public or community at large," as opposed to its members or a professional group such as teachers, physicians or architects. OAR 150-307.130-(A)(4)(b). Community benefit is not limited to the good that arises from traditional charitable activities such as healing the sick, caring for the aged, and helping the poor. The legislature confirmed that community benefit is not so narrowly limited by amending ORS 307.130 in 1987 to provide that "[a]n institution shall not be deprived of an exemption under this section because its purpose or the use of its property is not limited to relieving pain, alleviating disease or removing constraints." ORS 307.130(5).

This Court has taken a broad view of activities that directly benefit the community. In *Oregon Writer's Colony v. Dep't of Rev.*, 14 OTR 69 (1996), Judge Byers concluded that a writers' retreat that offered workshops to the public was eligible for the exemption. *Id.* at 73-76. In the *Lebanon Community Foundation* case, Magistrate Sideras held that "a public park directly benefits its community * * * [and] providing a public park may qualify as a charitable activity for purposes of ORS 307.130." 2002 WL 1591920, at *2.

The evidence and testimony at trial will show that YU exposes the Portland community to thought-provoking and cutting-edge art that otherwise would not be exhibited.

YU's music programs similarly allow the public to sample unusual and innovative performers who would not be presented at commercial venues. In sum, YU's cultural activities, advertised to and attended by the public, directly benefit the community.

2. YU Satisfies the "Gift and Giving" Requirement by Providing Access to Art and Other Cultural Programming for No or Low Cost, and With the Support of Volunteers, Grants and Individual Donations

To be eligible for exemption, there must also be an "element of gift and giving * * * in the organization's activities, relating to those it serves." OAR 150-307.130-(A)(4)(d). The delivery of services "at no cost or at a price below the market price or price to the organization" indicates that a gift element is present. *Id.* Other indicators of giving are the fact that an organization relies on substantial volunteer labor and donations to carry out its mission. OAR 150-307.130-(A)(4)(d)(D) (volunteer labor); *Rigas Maja, Inc. v. Dep't of Rev.*, 12 OTR 471, 475 (1993) (donations and volunteer labor). YU can readily prove that an element of giving is present in its activities. As the testimony and evidence at trial will demonstrate, YU charges low or no fees for its exhibits and concerts. Even for programs where a fee is charged, YU allows students and low-income persons to attend for free. YU relies heavily on volunteer labor, and it is supported by individual donors as well as an impressive array of private foundations and public grant-making bodies. Stip. at ¶¶ 6-8 (detailing private and public support for Plaintiff and its "membership" program for donors).

E. YU's Ancillary Programs Are "Literary" Within the Meaning of ORS 307.130

The evidence and testimony at trial will show that several of YU's ancillary activities emphasize the written word and printed matter. These activities have included poetry readings, displays of letterpress poetry texts and other visual installations based on the

written word, and talks by authors and literary scholars. In addition, YU has taken over publication of *Veneer*, an avant-garde magazine of artistic and philosophical ideas that was founded by Mr. Jamison.

YU's activities, which are "literary" in the colloquial sense, are also "literary" within the meaning of ORS 307.130. In *Theatre West*, the Oregon Supreme Court held that for purposes of ORS 307.130, "literary" means "of or pertaining to that broad range of written materials, including plays, that enjoy the label 'literature.'" 319 Or at 119. "Literature," in turn, means "writings in prose or verse," especially "writings having excellence of form or expression and expressing ideas of permanent or universal interest." *Id.* at 118-19. YU's literary programming satisfies this definition.

Finally, YU's literary endeavors are also "charitable" under the standards described in Part IV.D above. The testimony at trial will show that YU charges nominal or no fees to attend its literary events, and its publications are sold at or below cost, or even given away for free.

F. In the Alternative, YU Is a "Charitable Institution" Within the Meaning of ORS 307.130(2)(a)

YU intends to prove at trial that it is an "art museum" that meets the standards of use applicable to art museums found in Subsection (f). However, if the Court finds that YU does not meet the requirements for an art museum, YU also qualifies as a "charitable institution" under Subsection (a). As the cases detailed in Part IV.D demonstrate, an organization is charitable if its activities directly benefit the public and there is the requisite element of gift or giving.

The only Oregon decisions directly questioning whether cultural organizations are "charitable" are *Oregon Country Fair v. Dep't of Rev.*, 10 OTR 200 (1986), and Judge Robinson's recent decision in *Newspace Center for Photography v. Multnomah County Assessor*, TC-MD No 130545C, 2014 WL 3509471 (July 15, 2014). Both of these decisions bear brief comment.

In *Oregon Country Fair*, Judge Byers relied on a 1943 decision for the proposition that the term "charitable" is limited to "relieving pain, alleviating disease or removing constraints" and does not include cultural activities. 10 OTR at 204-05.

One year after Judge Byers' decision, the legislature enacted ORS 307.130(5), which is quoted on page 17 above. The Oregon Supreme Court has held that this enactment was a response to *Oregon Country Fair*. The legislature intended to overturn the portion of the decision that limited "charitable" to traditional, narrow activities. *Young Men's Christian Ass'n of Columbia-Willamette v. Dep't of Rev.*, 308 Or 644, 652, 784 P2d 1086 (1989)

Based on this legislative history and the guidance of the Oregon Supreme Court, Judge Sideras correctly noted in *Lebanon Community Foundation* that *Oregon Country Fair* is no longer good authority on what activities are "charitable":

"At one point this court believed that charity was limited to relieving pain, alleviating disease, or removing constraints. *Oregon Country Fair v. Dept. of Rev.*, 10 OTR 200 (1986). * * * Current definitions of charity for purposes of ORS 307.130 are more generous, and * * * it is enough that the activity conducted by the charitable institution * * * be for the direct good or benefit of the public or community at large."

2002 WL 1591920, at *2.

In *Newspace*, Judge Robinson quoted *Oregon Country Fair* in concluding that a photography organization's activities were not charitable. 2014 WL 3509471, at *7. YU

respectfully submits that Judge Robinson's reliance on *Oregon Country Fair* was misplaced in view of the legislative history of ORS 307.130(5) and, in any event, was not necessary to decide the case. As Judge Robinson went on to hold, the taxpayer in *Newspace* was also ineligible for exemption as a charity because it lacked the requisite degree of gift or giving. *Id.* at *8.

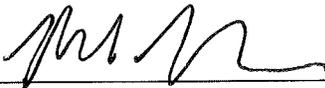
For these reasons, if the Court needs to reach the issue whether YU is a "charitable institution" for purposes of Subsection (a), the fact that YU is a cultural organization is not an obstacle, and the evidence and testimony at trial will prove that YU meets the use requirements applicable to charitable institutions.

V. CONCLUSION

YU is an art museum – or a charitable institution – that is entitled to a property tax exemption under ORS 307.130(2)(a) or (f). At trial, YU will request that this Court reverse the denial of YU's application for property tax exemption, except with respect to the portion of the property that is leased to commercial tenants.

DATED this 31st day of March, 2016.

TONKON TORP LLP

By 
Michael J. Millender, OSB #035268
Direct Phone: (503) 802-2164
E-Mail: michael.millender@tonkon.com
Jeff Bradford, OSB #133080
Direct Phone: (503) 802-5724
E-Mail: jeff.bradford@tonkon.com
Tonkon Torp LLP
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204
Of Attorneys for Plaintiff

Listing of Legislative Records in Oregon State Archives pertaining to:
1997 HB 2332 relating to: taxation

HOUSE REVENUE COMMITTEE MINUTES:

May 23: p. 2
Also on tape: 182, side A

Jun 2: p. 1-2
Also on tape: 193, side A

EXHIBIT FILE CONTAINS:

1. EXH A of 5/23: Testimony submitted by Helen G. Scully, Coos Art Museum. 2 pages.
2. EXH G of 5/23: Revenue Impact of Proposed Legislation submitted by Brian Reeder. 1 page.
3. EXH A of 6/2: Proposed amendments submitted by Reeder. 1 page.
4. EXH B of 6/2: Proposed amendments submitted by Reeder. 3 pages.

SENATE REVENUE COMMITTEE MINUTES:

Jun 13: p. 12-13
Also on tapes: 197, side B

EXHIBIT FILE CONTAINS:

1. EXH Z of 6/13: Staff Measure Summary submitted by Reeder. 1 page.
2. EXH AA of 6/13: Revenue Impact Statement submitted by Reeder. 1 page.
3. EXH BB of 6/13: fiscal Impact Assessment submitted by Reeder. 1 page.

Minutes: 5 pages
Exhibits: 10 pages
Total pages: 15 pages

Compiled by: Theresa Rea, Reference Archivist, April 15, 2015.

PUBLIC HEARING -- HB 2332

- 018 Rep. Lehman HB 2332 attempts to solve problem that occurred only in Coos County. Assessor does not recognize Coos Art Museum as tax exempt. As a result, museum had to transfer all its holdings to City of Coos Bay.
- 038 Helen Scully Refer to written testimony (EXHIBIT A)
Gave brief background on Coos Art Museum. Museum was not taxed until 1993, when Coos County assessed museum for \$95,751 in taxes. Museum turned over its entire collection and property to city. In addition, county assessed Coos Bay urban renewal district. The county is assessing the urban renewal district for 1997 for \$3,000 the museum's gift shop, which is a fund-raiser. Asked for tax exemption to solve these problems.
- 067 Rep. Shetterly Pointed out, revenue impact, exemption bill could cause other counties to assess back taxes on other art museums, reasoning that, if this bill exempts them, they must have been taxable before.
- 079 Scully Clarified, Coos County is going after urban renewal district for the City of Coos bay which owns the building.
- 084 Rep. Lehman Noted, assessor believes the small gift shop in museum creates an issue. Bill would allow art museum to take back all its property.
- 104 All Questions and discussion concerning museum, gift shop.
- 121 Scully Museum is a non-profit charitable organization. It does not charge admission, but raises money through memberships.
- 140 Rep. Lehman Concerning issue of gift shop, does not want record to reflect that he thinks it might be excluded. Does not know impact of gift shop.
- 187 Rep. Shetterly Suggested look at statute language with respect to use of how other non-profits are treated.
- 190 All Questions and discussion concerning gift shop, where money goes.
- 206 Chair Brian Committee seems to have a consensus to help. Must make sure it does not create unintended consequences for other non-profits before passing bill.
- 236 Chair Brian Closed public hearing on HB 2332.

PUBLIC HEARING -- HB 2143

- 251 Yvonne Addington Refer to written testimony (EXHIBITS B, C) "Line-By-Line

These minutes paraphrase and/or summarize statements made during this meeting. Text enclosed in quotation marks reports the speaker's exact words. For complete context of proceedings, please refer to the tape recording.

HOUSE REVENUE COMMITTEE

JUNE 2, 1997 - 8:30 A.M. - HEARING ROOM A - STATE CAPITOL BUILDING

Members Present: Rep. Lee Beyer, Vice Chair
Rep. Tom Brian, Chair
Rep. Tony Corcoran
Rep. Randall Edwards (arrived at 9:17 a.m.)
Rep. Anitra Rasmussen
Rep. Lane Shetterly (left meeting 9:05 a.m.)(returned 9:48 a.m.)
Rep. Mark Simmons (arrived at 9:10 a.m.)
Rep. Ken Strobeck

Members Excused: Rep. Leslie Lewis

Invited Testimony: Rep. Ken Messerle, Coquille, District 48,
Rep. Tim Josi, Bay City, District 2
John Young, Superintendent, Northwest Regional ESD
Harold Riggins, Superintendent of Schools of Administrative School
District No. 10, which includes Seaside, Gearhart, and Cannon Beach
Ozzie Rose, Confederation of Oregon School Administrators
Betsy Biller, Director of Communications for Hillsboro School District
Bill Dixon, Albany School District

Staff: Steve Meyer, Economist
Brian Reeder, Economist
Carol Phillips, Committee Assistant

TAPE 193, SIDE A

006 Chair Brian Opened meeting at 8:58 a.m.

OPENED WORK SESSION ON HB 2332

021 Rep. Ken Messerle HB 2332 was initiated on behalf of the Coos Bay Art Museum, but it now includes other museums around the state as well. This bill refers to a situation where someone interpreted the law differently from how it had been interpreted in the past. Asked that the bill be made retroactive so the Coos Bay Art Museum would not have to pay \$30,000 in property taxes for the past year. Unless there are Amendments made to the bill, it will take effect as of 1998.

038 Brian Reeder Exhibit A - 2332 (-2) Amendments. Reeder's understanding is that the Coos

These minutes paraphrase and/or summarize statements made during this meeting. Text enclosed in quotation marks reports the speakers exact words. For complete context of proceedings, please refer to the tape recording.

Bay Art Museum had worked out their prior year tax problems and currently does not owe any taxes.

- 042 Rep. Beyer Asked if the time line could be moved up one year to 1997.
- 044 Reeder Responded there may be a timing issue that requires a 1998 date but will look into it.
- 048 Messerle Added that in his conversation with the mayor of Coos Bay learned that there is a tax bill due, and the mayor asked if the bill could be made retroactive. Questions and discussion interspersed.
- 060 Reeder Stated that the property of museum has been turned over to the city. The testimony of the head of the museum pointed out that, other than a small amount of tax on the gift shop portion of the museum, prior year taxes have been forgiven.
- 066 Chair Brian Added that the property had been shifted to the ownership of the city to avoid 1996 property taxes. Felt the time line should be changed to 1997 instead of 1998.
- 071 Chair Brian ASKED FOR TEMPORARY SUSPENSION OF RULES TO HAND ENGROSS HB 2332 (-2) PAGE 3 LINE 4 TO CHANGE YEAR FROM 1998 TO 1997.
HEARING NO OBJECTION, THE CHAIR SO ORDERED.
- 085 Rep. Beyer MOVES (-2) AMENDMENTS TO HB 2332 BE ADOPTED.
HEARING NO OBJECTION, THE CHAIR SO ORDERED.
- 088 Rep. Beyer MOVES HB 2332 AS AMENDED TO THE HOUSE FLOOR WITH DO PASS RECOMMENDATION.
ROLL CALL VOTE: MOTION PASSES: 5 - 0 - 4
REPRESENTATIVES VOTING AYE: CORCORAN, RASMUSSEN, STROBECK, BEYER, BRIAN.
REPRESENTATIVES ABSENT: EDWARDS, LEWIS, SHETTERLY, SIMMONS.
Representative Lehman will carry the bill on the House Floor.

CLOSED WORK SESSION ON HB 2332

OPENED WORK SESSION ON HB 2143

- 108 Reeder Outlined subject matter of HB 2143 which makes changes to enterprise zone law allowing zones in sparsely populated counties to have separate areas of a zone more than 12 miles apart. It is a way of getting two geographically

These minutes paraphrase and/or summarize statements made during this meeting. Text enclosed in quotation marks reports the speakers exact words. For complete context of proceedings, please refer to the tape recording.

HB 2332
A
Scully
5-23-97

May 23, 1997

The Honorable Tom Brian
Chair, House Revenue Committee
Oregon State Capitol
Salem, Oregon 97310

Dear Representative Brian and Members of the Committee:

My name is Helen Scully, and I am Administrator of the Coos Art Museum in Coos Bay, Oregon. Thank you for the opportunity to appear before you today on HB 2332.

I am here to underline the importance of protecting nonprofit art and culture centers in communities of Oregon, and most particularly in my community, the Coos Bay-North Bend area. As you may suppose, in areas like ours (rather off the beaten path), community theater, art, music and other cultural events play a very prominent role in the lives of residents in the region. The Coos Art Museum serves as more than just a center of art, lectures and musical events; it also serves as THE center of art education for children and adults in the area, and also as a place for such events as weddings, receptions, community board and committee meetings.

Although the Coos Art Museum is the center of these activities, we are by no means prosperous. We do maintain much of our fiscal standing through membership fees, gifts and donations and special fundraising events. The city of Coos Bay owns the facility and covers the cost of utilities and major maintenance needs. The Coos Art Museum manages the facility for the City and provides programs for the citizens of the community. We fulfill a community need, serving a broad geographic area, from Florence to Brookings. Our programs reach ten school districts.

Yet we have had major tax problems with Coos County in the past. Consequently, our board of directors has turned over the Coos Art Museum collection and all office equipment and property to the City of Coos Bay, because the burden of paying taxes assessed on this property would put us out of business.

Existing statute provides for tax exemptions for organizations designated as literary, benevolent, scientific, and charitable. Art museums are not designated specifically, and that is the reason we ask for this specific exemption in HB 2332.

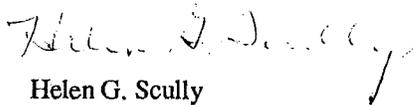
Taxing real or personal property of Oregon nonprofits places a fiscal burden on organizations that is extremely difficult to overcome. We urge you to recognize the efforts of small nonprofit museums who exist only to serve community needs. Our town would be less rich were it not for the Coos Art Museum.

The taxing of nonprofits appears to be unique to Coos County. We have tried to work with the County Assessor's Office, but apparently we fail to convince them of our charitable contributions to the community we serve. We certainly understand the pressures put on local governments to find revenue sources. But Coos County is currently assessing the City of Coos Bay Urban Renewal District on income generated through museum shop sales.

After many years of trying to work with this County Assessor's Office, we feel the only remedy to acquire--once and for all--the nonprofit tax exemption is through legislation.

I ask for your support for HB 2332, and thank you once again for this opportunity to present our case to this body.

Sincerely,



Helen G. Scully
Administrator

REVENUE IMPACT OF PROPOSED LEGISLATION
1997 REGULAR SESSION

BILL NUMBER	REVENUE AREA	ECONOMIST	DATE
HB 2332	Property Tax	Reeder	5/22/97

MEASURE DESCRIPTION:

Includes non-profit art museums as a category of property exempt from local property taxes. This measure apparently affects only the Coos Art Museum. According to the Oregon Arts Commission, assessors in all counties except Coos have interpreted ORS 307.130, which exempts literary, benevolent, charitable, and scientific institutions, to include non-profit art museums as an exempt category.

REVENUE IMPACT:

Local Government:

Uncertain. The tax liability of the Coos Art Museum is relatively small. It is possible, however, that passage of this measure would cause other counties to assess back taxes on other art museums, reasoning that if this bill exempts them, then they must have been taxable prior to the measure's passage.

State Government:

None

HOUSE REVENUE COMMITTEE

Bill No. HB 2332 Pages 1

Exhibit A Date 6-2-97

Presented by Brian Hooper

HB 2332-1

(LC 1303)

5/28/97 (DJ/ps)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2332**

1 On page 1 of the printed bill, line 7, after "public" insert ", but does not
2 include any portion of the nonprofit corporation's real or personal property
3 that is used to sell or hold out for sale works of art or reproductions of
4 works of art or other items to be sold to the public".

5

HOUSE REVENUE COMMITTEE

Bill No. HB 2332 Pages 3
Exhibit B Date 6-2-97

Presented by HB 2332-2 Brian Reeder

(LC 1303)

6/2/97 (DJ/ps)

PROPOSED AMENDMENTS TO
HOUSE BILL 2332

1 On page 1 of the printed bill, line 2, after "ORS" delete the rest of the
2 line and insert "307.130."

3 Delete lines 4 through 31 and pages 2 and 3 and insert:

4 "**SECTION 1.** ORS 307.130 is amended to read:

5 "307.130. (1) Upon compliance with ORS 307.162, the following property
6 owned or being purchased by **art museums or** incorporated literary, be-
7 nevolent, charitable and scientific institutions shall be exempt from taxation:

8 "(a) Except as provided in ORS 748.414, only such real or personal prop-
9 erty, or proportion thereof, as is actually and exclusively occupied or used
10 in the literary, benevolent, charitable or scientific work carried on by such
11 institutions.

12 "(b) Parking lots used for parking or any other use as long as that park-
13 ing or other use is permitted without charge for no fewer than 355 days
14 during the tax year.

15 "(c) All real or personal property of a rehabilitation facility or any retail
16 outlet thereof, including inventory. As used in this subsection, 'rehabilitation
17 facility' means either those facilities defined in ORS 344.710 or facilities
18 which provide physically, mentally or emotionally disabled individuals with
19 occupational rehabilitation activities of an educational or therapeutic na-
20 ture, even if remuneration is received by the individual.

21 "(d) All real and personal property of a retail store dealing exclusively
22 in donated inventory, where the inventory is distributed without cost as part
23 of a welfare program or where the proceeds of the sale of any inventory sold
24 to the general public are used to support a welfare program. As used in this

1 subsection, 'welfare program' means the providing of food, shelter, clothing
2 or health care, including dental service, to needy persons without charge.

3 "(e) All real and personal property of a retail store if:

4 "(A) The retail store deals primarily and on a regular basis in donated
5 and consigned inventory;

6 "(B) The individuals who operate the retail store are all individuals who
7 work as volunteers; and

8 "(C) The inventory is either distributed without charge as part of a wel-
9 fare program, or sold to the general public and the sales proceeds used ex-
10 clusively to support a welfare program. As used in this paragraph,
11 'primarily' means at least one-half of the inventory.

12 **"(f) The real and personal property of an art museum that is used**
13 **in conjunction with the public display of works of art or used to edu-**
14 **cate the public about art, but not including any portion of the art**
15 **museum's real or personal property that is used to sell, or hold out for**
16 **sale, works of art, reproductions of works of art or other items to be**
17 **sold to the public.**

18 "(2) An **art museum** or institution shall not be deprived of an exemption
19 under this section solely because its primary source of funding is from one
20 or more governmental entities.

21 "(3) An institution shall not be deprived of an exemption under this sec-
22 tion because its purpose or the use of its property is not limited to relieving
23 pain, alleviating disease or removing constraints.

24 **"(4) As used in this section:**

25 **"(a) 'Art museum' means a nonprofit corporation organized to dis-**
26 **play works of art to the public.**

27 **"(b) 'Internal Revenue Code' means the federal Internal Revenue**
28 **Code as amended and in effect on December 31, 1996.**

29 **"(c) 'Nonprofit corporation' means a corporation that:**

30 **"(A) Is organized not for profit, pursuant to ORS chapter 65 or any**
31 **predecessor of ORS chapter 65; or**

1 “(B) Is organized and operated as described under section 501(c) of
2 the Internal Revenue Code.

3 “SECTION 2. The amendments to ORS 307.130 by section 1 of this
4 Act apply to tax years beginning on or after July 1, 1998.”.

5

Oregon from wherever they may occur on pay-per-view. The bill reduces the tax rate to 3.5% for telecast events, leaving the tax rate on gate receipts on events occurring in Oregon at 6%. The bill eliminates tax altogether on telecast and pay-per-view events. The Amendment deletes the provision which sunsets the rate.

- 315 Chair Baker HEARING NO OBJECTION, THE CHAIR SO ORDERS.
- 316 Sen. Duncan MOVES HB 2585 AS AMENDED TO THE SENATE FLOOR WITH DO PASS RECOMMENDATION.
ROLL CALL VOTE: MOTION PASSES: 5 - 1 - 0
SENATORS VOTING AYE: DUNCAN, HARTUNG, LEONARD, BRYANT, BAKER.
SENATOR VOTING NAY: DUKES
Sen. Leonard will carry the bill on the Senate Floor.

CLOSED WORK SESSION ON HB 2585A

OPENED PUBLIC HEARING ON HB 2332A

- 359 Brian Reeder Explained that this bill specifically adds non-profit art museums to the list of entities exempt from property taxes under ORS 307.130, i.e. benevolent, literary, charitable, and scientific institutions. Under current law in 35 of Oregon's 36 counties, county assessors have interpreted ORS 307.130 to include non-profit art museums, but in Coos County the assessor has maintained that the Coos County Art Museum is taxable. All of the property of the art museum has been turned over to the City of Coos Bay, so currently there is no tax liability due. The museum would like to have tax-exempt status. The gift shop portion of the museum, however, would be taxable.
- 392 Rep. Mike Lehman Added that the purpose of this bill is to educate the Coos Bay county assessor.

CLOSED PUBLIC HEARING ON HB 2332A

OPENED WORK SESSION ON HB 2332A

- 416 Chair Baker MOVES HB 2332A TO THE SENATE FLOOR WITH DO PASS RECOMMENDATION.
ROLL CALL VOTE: MOTION PASSES: 5 - 0 - 1
SENATORS VOTING AYE: DUKES, DUNCAN, HARTUNG, LEONARD, BAKER.
SENATOR ABSENT: BRYANT
Sen. Duncan will carry the bill on the Senate Floor.

These minutes paraphrase and/or summarize statements made during this meeting. Text enclosed in quotation marks reports the speakers exact words. For complete context of proceedings, please refer to the tape recording.

CLOSED WORK SESSION ON HB 2332A

OPENED PUBLIC HEARING ON HB 2134A

461 Steve Jacky Exhibit FF - Written testimony. Explained that HB 2134A establishes rates and re-authorizes the harvest taxes for the Oregon State University research forest research lab and for the Department of Forestry forest practices program for another two years. This funds the current service level of the forest research lab.

TAPE 198, SIDE B

027 Jacky Continued comments. Questions and discussion interspersed.

CLOSED PUBLIC HEARING ON HB 2134A

OPENED WORK SESSION ON HB 2134A

061 Chair Baker MOVES HB 2134A TO THE SENATE FLOOR WITH DO PASS RECOMMENDATION.
ROLL CALL VOTE: MOTION PASSES: 5 - 0 - 1
SENATORS VOTING AYE: DUKES, DUNCAN, HARTUNG, LEONARD, BAKER.
SENATOR ABSENT: BRYANT
Sen. Hartung will carry the bill on the Senate Floor.

CLOSED WORK SESSION ON HB 2134A

OPENED WORK SESSION ON HB 3163

092 Yates Exhibit GG - What HB 3163 B57 does. Under current law some of the diesel fuel is used by motor boats, and some of tax is distributed to Marine Board. First three cents would all go to parks. One of the next three cents would go to parks, but the remaining two would go to Marine Board. Questions and discussion interspersed.

122 Yates Exhibit HH - (-C73) Amendments. Comments and discussion.

153 Chair Baker MOVES (-C73) AMENDMENTS TO HB 3163 BE ADOPTED.
HEARING NO OBJECTION, THE CHAIR SO ORDERED.

158 Yates Exhibit II - Estimated Cost of Reduced HB 3163 Increase for High-Mileage Vehicles for Calendar Year 1998 and 2000. These Amendments design a weight-mile tax table that will hold heavy vehicles as a group at the cost responsibility share of 37.7%. Questions and discussion interspersed.

These minutes paraphrase and/or summarize statements made during this meeting. Text enclosed in quotation marks reports the speakers exact words. For complete context of proceedings, please refer to the tape recording.

69TH OREGON LEGISLATIVE ASSEMBLY - 1997 Regular Session
STAFF MEASURE SUMMARY
House Committee on Revenue

MEASURE: HB 2332A
CARRIER: LEHMAN

SENATE REVENUE COMMITTEE

Bill No. HB 2332 Pages 1
Exhibit 2 Date 6-13-97
Presented by Brian Reeder

REVENUE: YES - -revenue impact

FISCAL: NO - fiscal impact

Action: Do Pass as Amended and Be Printed Engrossed

Vote: 5 - 0 -4

Yeas: Representatives Beyer, Corcoran, Rasmussen, Strobeck, Brian

Nays:

Exc.: Representatives Edwards, Lewis, Shetterly, Simmons

Prepared By: Brian Reeder, Economist

Meeting Dates: May 23, June 2, 1997

WHAT THE BILL DOES:

Adds non-profit art museums to the category of property exempt from local property taxes under ORS 307.130. Excludes from the exemption gift shops operated by non-profit art museums.

ISSUES DISCUSSED:

Services provided by the Coos Art Museum. Prior tax payments made by the museum. Tax status of the gift shop that the museum operates.

EFFECT OF COMMITTEE AMENDMENTS:

Clarifies that the portion of the museum used for the gift shop is taxable. Changes effective date of the measure from tax year beginning July 1, 1998 to tax year beginning July 1, 1997.

BACKGROUND:

Currently, the only non-profit art museum in the state that pays local property taxes is the Coos Art Museum. The Coos County Assessor has interpreted ORS 307.130 to exclude non-profit museums from exemption. Assessors in other counties have interpreted the law to include them. This bill explicitly includes them in the definition of property exempt from taxation.

06/03/97 10:17 AM

This summary has not been adopted or officially endorsed by action of the committee.

PRO Form - 1997 Session

STATE OF OREGON
LEGISLATIVE REVENUE OFFICE
H-197 STATE CAPITOL BUILDING
SALEM, OREGON 97310-1347
PHONE (503) 986-1266 — FAX (503) 986-1770

SENATE REVENUE COMMITTEE
Bill No. HB 2332 Pages 1
Exhibit AA Date 6-3-97
Presented by Gillian Reeder

**REVENUE IMPACT OF PROPOSED LEGISLATION
1997 REGULAR SESSION**

BILL NUMBER	REVENUE AREA	ECONOMIST	DATE
HB 2332A	Property Tax	Reeder	6/3/97

MEASURE DESCRIPTION:

Includes non-profit art museums as a category of property exempt from local property taxes. This measure apparently affects only the Coos Art Museum. According to the Oregon Arts Commission, assessors in all counties except Coos have interpreted ORS 307.130, which exempts literary, benevolent, charitable, and scientific institutions, to include non-profit art museums as an exempt category.

REVENUE IMPACT:

Local Government:

Uncertain. Ownership of the Coos Art Museum has been transferred to the City of Coos Bay, so the property is exempt from property taxes as government property. Under this measure the property will be exempt if ownership is transferred back to the non-profit organization. The share of the property this is used as the gift shop remains taxable.

State Government:

None

SENATE REVENUE COMMITTEE

Bill No. HB 2332 Pages 1
Exhibit 6A Date 6-13-97
Presented by V. J. Van Rooden

H Rev

LEGISLATIVE FISCAL OFFICE

Fiscal Impact Assessment

Bill No. HB 2332 -A

Date 6-2-97

This office has reviewed the proposed legislation and determined that it has

NO EXPENDITURE IMPACT on state or local governments.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **PLAINTIFF'S TRIAL**

MEMORANDUM on:

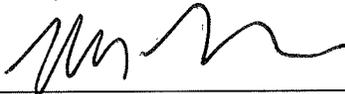
Daniel Paul
Assistant Attorney General
Department of Justice
1162 Court Street NE
Salem, OR 97301

Carlos Rasch
Assistant County Counsel
Multnomah County Attorney's Office
501 SE Hawthorne Boulevard,
Suite 500
Portland, OR 97214

by electronic service on the date set forth below.

DATED this 31st day of March, 2016.

TONKON TORP LLP

By 

Michael J. Millender, OSB #035268
Jeff Bradford, OSB #133080

Of Attorneys for Plaintiff

IN THE REGULAR DIVISION
OF THE OREGON TAX COURT
(Property Tax)

YU CONTEMPORARY, INC.,)	Case No. TC 5245
)	
Plaintiff,)	
)	
vs.)	STIPULATIONS FOR TRIAL
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant)	
)	
and)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Intervenor.)	

The parties in this matter all stipulate to the following facts:

Plaintiff

1. Plaintiff YU Contemporary, Inc. ("Plaintiff") is an Oregon public benefit nonprofit corporation that was incorporated on October 15, 2009 under the name "YU Center for the Arts." The incorporators were Aaron Flint Jamison and Curtis Knapp. On March 2, 2011, Plaintiff filed Amended Articles of Incorporation that changed its name to "YU Contemporary, Inc."

2. Plaintiff's bylaws state that its "primary purpose shall be to provide a permanent national caliber professional arts center for the display of national, regional and local visual and performing arts; to provide infrastructure to promote and support the Portland arts community; to create a vehicle to expose contemporary arts and the Portland art community to the City of Portland and the nation at large; and to provide other activities and services that are necessary or appropriate to carry out these purposes."

3. On January 25, 2011, the Internal Revenue Service granted Plaintiff's application for exemption from tax under 26 U.S.C. 501(c)(3), with an effective date of September 15, 2009.

4. Plaintiff files annual returns with the IRS on Form 990. Plaintiff's Form 990s state that "YU is a center for contemporary art in Southeast Portland, Oregon. It is led by a desire to support emerging and under-acknowledged contemporary artists, propose new modes of production, and stimulate the ongoing public discourse around art."

5. Plaintiff's activities are overseen by its Board of Directors, whose size has grown from four to eight members. The Board of Directors meets quarterly.

6. During the 2013-2015 period, Plaintiff applied for and received grants to support its general operations from the following organizations: The Foundation for Contemporary Arts, the Andy Warhol Foundation for the Visual Arts, the Autzen Foundation, the Foundation for Contemporary Arts, the Oregon Arts Commission, the Schwabe Charitable Fund, the Henry Lea Hillman, Jr. Foundation, and the James F. & Marion L. Miller Foundation.

7. Plaintiff also received funding from the Meyer Memorial Trust, the Kinsman Foundation, and HCP, Inc. for the specific purpose of making necessary upgrades to its real property.

8. Additionally, Plaintiff has two tiers of membership opportunities. Members who contribute between \$60 - \$1,199 annually receive discounted entry to concerts, mailed invitations to exhibits, previews of exhibits, and an invitation to Plaintiff's yearly member and volunteer event. Members who contribute \$1,200 or more annually are also invited to attend Board meetings, invited to Plaintiff's annual staff dinner, and are given keycard access to Plaintiff's building during regular office hours for Plaintiff-related purposes.

The Property

9. Plaintiff owns real property, known as the Yale Union Laundry Building, that is located at 800 S.E. Tenth Avenue in Portland (the "Property").
10. On October 16, 2013, Alter, LLC, an Oregon limited liability company ("Alter"), donated the Property to Plaintiff by special warranty deed.
11. The Property is identified by the Multnomah County Assessor ("Intervenor") as account number R150452.
12. The Property is approximately 28,800 square feet in total.
13. The Property contains an upstairs ballroom or gallery that is Plaintiff's primary space used for cultural events and private rentals. Prior to renovations in 2014, Plaintiff also maintained a downstairs ballroom that it used for the same purposes. As part of the 2014 renovations, the downstairs ballroom was remodeled and divided into Plaintiff's administrative offices and the commercially leased space described in Paragraph 14, below.
14. 4,647 square feet of the Property is leased to commercial tenants (the "Leased Space"). The Leased Space was taxable during the 2014-2015 tax year.

Plaintiff's Activities at the Property

15. Since Plaintiff acquired the Property on October 16, 2013, it has held cultural events at the Property including, but not limited to, those described in paragraphs 16 through 47, below.
16. Between October 5 and December 1, 2013, Plaintiff exhibited manuscripts by poet Susan Howe. Admission to the exhibition was free. In addition to Plaintiff's general sponsors, sponsors of the exhibition included The Fields Fund of the Oregon Community Foundation, Work for Art, Vista Capital, Umpqua Private Bank, and Literary Arts.

17. In connection with the Howe exhibition, Marjorie Perloff, Professor Emerita of English at Stanford University, gave a talk at the Property on November 9, 2013.

18. Between November 15 and December 1, 2013, Plaintiff exhibited a video installation by artist Liz Magic Laser. Admission to the exhibition was free. In addition to Plaintiff's general sponsors, sponsors of the exhibition included Work for Art, Vista Capital, and Umpqua Private Bank.

19. Between April 26 and June 29, 2014, Plaintiff exhibited a visual art installation by Japanese artist Yuji Agematsu. In addition to Plaintiff's general sponsors, sponsors of the exhibition included The Fields Fund of the Oregon Community Foundation, Work for Art, Vista Capital, Umpqua Private Bank, and Literary Arts.

20. In connection with the Agematsu exhibition, Plaintiff presented the following auxiliary programs at the Property: a talk by Andrew Lampert, a filmmaker and film scholar, on May 31, 2014; a performance by Graham Lambkin, a musician, on June 8, 2014; and an installation of a performance tape by Japanese choreographer Tatsumi Hijikata, which ran throughout the exhibition.

21. Between September 5 and October 19, 2014, Plaintiff exhibited an audio/visual installation by artist Park McArthur. Admission was free. In addition to Plaintiff's general sponsors, sponsors of the exhibition included Jason Hirata, Umpqua Private Bank, and Work for Art.

22. In connection with the McArthur exhibition, Vanessa Place and Alex Fleming performed a reading at the Property on September 5, 2014. Ms. Place is a writer and criminal appellate attorney from Los Angeles and Mr. Fleming is an artist from New York.

23. Between November 8 and December 21, 2014, Plaintiff exhibited a sculpture and visual arts installation by British sculptor and artist Terry Atkinson. Admission

to the exhibition was free. In addition to Plaintiff's general sponsors, sponsors for the exhibition included Umpqua Private Bank and Work for Art.

24. In connection with the Atkinson exhibition, Mr. Atkinson and guest curator Richard Birkett gave a talk at the Property on November 9, 2014.

25. On March 13 and 14, 2015, Plaintiff presented a performance and video installation by visual artist and musician Charlemagne Palestine. Admission to the exhibition was free. In addition to Plaintiff's general sponsors, sponsors for the performance included the Regional Arts & Culture Council, Pacific Northwest College of Art, and the Martin family.

26. Between May 30 and July 19, 2015, Plaintiff exhibited an installation by Willem Oorebeek, a Dutch artist who works with photography and print media. In addition to Plaintiff's general sponsors, sponsors for the exhibition included The Mondriaan Fund and the Martin family.

27. Between August 1 and September 6, 2015, Plaintiff exhibited the works of Richard Hawkins, Jason Simson, Lily van der Stokker, Leidy Churchman, and Clement Rodzielski in a partnership with the Paris art gallery castillo/corrales. Admission to the exhibition was free. In addition to Plaintiff's general sponsors, sponsors for the exhibition included the Consulate General of France (San Francisco) and the Martin family.

28. In connection with the castillo/corrales exhibit, Plaintiff presented a performance at the Property on August 1, 2015 by Jeff Witscher, a musician, and a talk at the Property on August 2, 2015 by Richard Hawkins, one of the artists in the exhibit.

29. Between October 10 and December 20, 2015, Plaintiff exhibited a group show called MOMMY, a mixture of sculptures and other visual art. Admission to the exhibition was free.

30. In connection with the MOMMY exhibit, Plaintiff presented a performance at the Property on November 14, 2015 by Karin Schneider, an artist, and a screening on December 18, 2015 by Paul McCarthy, a painter and performer.

31. Since October 16, 2013, Plaintiff has also presented a number of musical performances and other cultural programs at the Property.

32. Between January 4, 2014 and February 6, 2014, Plaintiff and the Northwest Film Center co-presented a documentary film series, with related talks by guest speakers, titled "The Devil, Probably." Showings were held in Whitsell Auditorium at the Portland Art Museum, but the following speakers used studios at the Property during their visits to Portland: Thomas Beard, Programmer at Large for the Film Society of Lincoln Center, January 10-13, 2014; Hartmut Bitomsky, a German filmmaker and producer, January 17-20, 2014; Thom Andersen, a filmmaker, film critic, and faculty member at the California Institute of the Arts, January 23-26, 2014; and Andy Rector, an actor, February 1-3, 2014.

33. On February 28, 2014, Plaintiff presented a performance at the Property by Lubomyr Melnyk, a composer and pianist.

34. On March 22, 2014, YU and Reed College co-presented a performance of electronic compositions by Madalyn Merkey. The performance was held at Reed, but Ms. Merkey used studios at the Property during her visit to Portland.

35. On April 4, 2014, Plaintiff presented a musical performance at the Property by Evol, a computer musical performance group. The artists also used studio space at the Property.

36. On April 22, 2014, Plaintiff presented Representative Earl Blumenauer's annual Congressional Art Competition for young people who live in his district.

37. On May 30, 2014, Plaintiff presented a reading and film screening at the Property by Andrew Lampert. Mr. Lampert used a studio at the Property during his visit to Portland from May 29 to June 2, 2014.

38. On November 15, 2014, Plaintiff presented a talk at the Property on publishing and printed matter by James Hoff, an artist. Mr. Hoff used a studio and the print shop at the Property during his visit to Portland between November 14 and November 17, 2014.

39. On November 21, 2014, Plaintiff presented a performance of electronic experimental music at the Property by DJ Stingray. Mr. Stingray used a studio at the Property as a green room.

40. Between November 22 and December 2, 2014, Lucas Quigley, a visiting curator, used a studio at the Property.

41. On February 8, 2015, Plaintiff presented a screening and talk at the Property by Mike Kuchar, a filmmaker.

42. On February 27, 2015, Plaintiff presented a performance at the Property by Mark Fell, a British musician.

43. Between March 19 and March 23, 2015, Plaintiff and the Portland Institute for Contemporary Art co-presented a dance residency at the Property by Sarah Michelson, a British dancer and choreographer.

44. On April 10, 2015, Plaintiff presented a performance at the Property by Loren Connors, a musician from New York.

45. On May 2, 2015, Plaintiff presented a performance at the Property by Keyon Gaskin, a performance artist.

46. On June 6, 2015, Plaintiff presented a talk and performance at the Property by Elysia Crampton, a musician.

47. On November 5, 2015, Plaintiff presented a performance at the Property by M.E.S.H., a German music producer.

48. In addition to the exhibitions, performances and other programming listed above in paragraphs 16-47, above, Plaintiff rented out space at the Property to individuals, companies, and groups for their events between October 16, 2013 and December 31, 2015, as described in paragraphs 49-78, below:

49. Between December 7, 2013 and December 8, 2013, the upstairs ballroom was rented out for the Laika Holiday Party for \$5,800.

50. Between December 13 and December 14, 2013, the upstairs ballroom was rented out for the Smarsh Holiday Party for \$8,400.

51. Between October 13 and December 21, 2013, Plaintiff earned approximately \$14,200 in income from event rentals.

52. Between January 4 and January 5, 2014, the upstairs ballroom was rented out for the Williams Wedding for \$5,200.

53. On January 18, 2014, the upstairs ballroom was rented out for the Frey Wedding for \$3,450.

54. Between February 7 and February 9, 2014, the upstairs and downstairs ballrooms were rented out for The One Motorcycle Show for \$15,000.

55. On March 8, 2014, the upstairs ballroom was rented out for the Nishida Wedding for \$3,800.

56. Between March 14 and March 17, 2014, the upstairs ballroom was rented out for the Nike, Inc., Offsite Brand Leadership Briefing for \$9,600.

57. Between May 17 and May 18, 2014, the upstairs ballroom was rented out for the Buckman Arts Focus Elementary School Gala and Auction for \$5,150.

58. On May 24, 2014, the upstairs ballroom was rented out for the Chau Wedding for \$3,000.
59. On June 28, 2014, the upstairs ballroom was rented out for the Johnson Wedding for \$2,400.
60. On August 9, 2014, the upstairs ballroom was rented out for the Brown Wedding for \$3,450.
61. Between August 16 and August 17, 2014, the upstairs ballroom was rented out for the Heino Wedding for \$4,150.
62. Between August 30 and August 31, 2014, the upstairs ballroom was rented out for the Gilbert Wedding for \$5,350.
63. Between September 12 and September 14, 2014, the upstairs ballroom was rented out for XOXO for \$20,000.
64. Between October 25 and October 26, 2014, the upstairs ballroom was rented out for the Valadez Wedding for \$7,000.
65. In 2014, Plaintiff earned approximately \$87,550 in income from event rentals.
66. On January 2, 2015 the upstairs ballroom was rented for the Moore Wedding for \$2,500.
67. Between January 20 and January 21, 2015, the upstairs ballroom was rented out for the Nike Leadership Offsite for \$7,350.
68. Between April 25 and April 26, 2015, the upstairs ballroom was rented out for the Buckman School Auction for \$6,000.
69. Between May 24 and May 25, 2015, the upstairs ballroom was rented out for the Dahle Wedding for \$5,175.

70. Between June 27 and June 28, 2015, the upstairs ballroom was rented out to Julie Miller for \$6,150.

71. Between September 10 and September 13, 2015, the upstairs ballroom was rented out for XOXO for \$20,000.

72. Between October 16 and October 17, 2015, the upstairs ballroom was rented out for the O'Leary Wedding for \$5,250.

73. On November 7, 2015, the upstairs ballroom was rented out for the Attar Wedding for \$4,800.

74. Between December 5 and December 6, 2015, the upstairs ballroom was rented out for the Valari Wedding for \$5,250.

75. On December 12, 2015, the upstairs ballroom was rented out for the Ruby Receptionists Holiday Party for \$3,900.

76. Between December 19 and December 20, 2015, the upstairs ballroom was rented out for the Puppet Labs Holiday Party for \$5,250.

77. In 2015, Plaintiff earned approximately \$71,625 in income from event rentals.

78. Between October 16, 2013 and December 31, 2015, Plaintiff earned approximately \$173,375 in income from event rentals.

79. Between October 16, 2013 and December 31, 2015, Plaintiff presented 9 exhibitions and 23 musical performances and other cultural programs at the Property, and it rented out space at the Property for 26 private events.

Relevant Non-parties

80. Prior to June 2014, Chroma Games, Inc., a Delaware corporation ("Chroma"), was among the tenants in the Leased Space.

81. On July 25, 2013, Chroma filed an Amendment to Annual Report/Information Statement with the Oregon Secretary of State to reflect that the Property was its principal place of business and mailing address.

82. Upon vacating the Leased Space in June 2014, Chroma did not amend its Annual Report/Information Statement with the Oregon Secretary of State to reflect that the Property was no longer its principal place of business and mailing address.

83. On February 23, 2015, Chroma filed an Amendment to Annual Report/Information Statement to reflect its new principal place of business and mailing address.

84. On April 4, 2014, Alter filed an Amendment to Annual Report/Information Statement with the Oregon Secretary of State that listed the Property as its principal place of business.

85. On February 24, 2015, Alter filed Articles of Dissolution with the Oregon Secretary of State. The Articles of Dissolution stated that the date of dissolution was October 18, 2013.

86. Prior to March 15, 2013, Marriage Records, LLC ("Marriage Records") listed the Property as its principal place of business and mailing address with the Oregon Secretary of State.

87. On March 15, 2013, approximately six months before Alter donated the Property to Plaintiff, Marriage Records was administratively dissolved by the Oregon Secretary of State.

88. Emprint Press is an assumed business name that was registered with the Oregon Secretary of State by Emily M. Johnson on April 14, 2011.

89. Ms. Johnson conducts a letterpress printing business under the name Emprint Press. She used printing equipment at the Property during the relevant time period.

90. In both the initial assumed business name registration and in a renewal of registration filed on April 2, 2013, Ms. Johnson listed the Property as her principal place of business and mailing address.

91. The Oregon Secretary of State terminated the assumed business name registration for Emprint Press on April 15, 2015 for failure to renew.

92. From December 15, 2008 to January 19, 2016, Aaron Flint Jamison listed the Property's address as his own with the Oregon Department of Motor Vehicles ("DMV").

93. From June 6, 2013 to September 19, 2014, Thomas E. Blood listed the Property's address as his own with the DMV.

94. On August 24, 2007 and again on March 4, 2010 and May 17, 2012, Erik W. Gage listed the Property's address as his own with the DMV.

95. On May 29, 2013, Mr. Blood listed the Property's address as his own in order to register to vote in Oregon.

96. On July 2, 2013, Robert G. Snowden listed the Property's address as his own with the DMV to register a certificate of title for a vehicle.

97. Based on Mr. Snowden's representations to the DMV, the Multnomah County Circuit Court used the Property's address in a general judgment entered against him on September 23, 2104 for a moving violation with the same vehicle.

98. On August 22, 2014, Mr. Snowden listed the Property's address as his own in order to register to vote in Oregon.

99. On July 15, 2013, Emily M. Johnson listed the Property's address as her own with the DMV.

100. Also on July 15, 2013, Ms. Johnson listed the Property's address as her own in order to register to vote in Oregon.

101. On December 18, 2013, Curtis J. Knapp listed the Property's address as his own with the DMV.

Denial of Exemption

102. Plaintiff timely applied for a property tax exemption for the 2014-2015 year on or about October 16, 2013.

103. On July 1, 2014, Intervenor conducted an inspection of the Property as part of its investigation into the exemption application.

104. On September 9, 2014, Intervenor denied Plaintiff's application.

105. Plaintiff timely appealed Intervenor's denial of its exemption by filing a complaint in this matter on December 8, 2015.

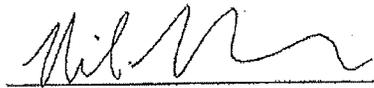
Evidence

In addition to the foregoing facts, the parties agree that each exhibit listed on their respective exhibit lists, submitted on March 28, 2016, is authentic and admissible at trial.

[Signature page follows]

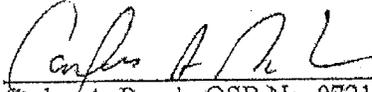
DATED this 1st day of April, 2016.

TONKON TORP LLP



Michael J. Millender, OSB No. 035268
Jeffrey G. Bradford, OSB No. 133080
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204-2099
Of Attorneys for Plaintiff

MULTNOMAH COUNTY
ATTORNEY'S OFFICE



Carlos A. Rasch, OSB No. 072179
501 SE Hawthorne Boulevard,
Suite 500
Portland, OR 97214
Attorney for Intervenor Multnomah
County Assessor

OREGON DEPARTMENT OF JUSTICE



Daniel Paul, OSB No. 140309
1162 Court Street NE
Salem, OR 97301
Attorney for Defendant OR
Department of Justice

090997/32395/7154173v3