

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

<u>EAA Chapter 292,</u>)	
)	
Plaintiff(s))	No. <u>982940B</u>
)	
v.)	
)	Defendants Evidence for
<u>Polk County Assessor</u>)	Valuation Decisions
)	
Defendant.)	
)	

SUMMARY

The Plaintiff had submitted an Application for Property Tax Exemption (Application) on a property located at 4803 Airport Rd., Independence, OR. The property consists of a 40 ft. by 157 ft. airplane hanger and work/repair area. The building was built in 1997 and is on land leased from the Oregon Aeronautics Division. According to documents filed to revise the Articles of Incorporation (Exhibit A), as of October 1997 there were 35 members in this chapter.

The Plaintiff applied for exemption under ORS 307.130 (Exhibit B) as a Literary, Benevolent, Charitable, and Scientific institution. The Defendant denied the application based upon the fact that the information provided did not qualify the institution as scientific or charitable in that those activities are merely incidental to the institutions primary purpose, which is a club for airplane enthusiasts.

The Oregon Tax Court has ruled in Oregon Stamp Society v Commission (1963) (Exhibit C) that an institution claiming a scientific exemption must also be charitable and that the scientific activity must be the primary purpose of the institution, not an incidental or minor part. The Tax Court characterized the plaintiff (Oregon Stamp Society) "as an association of hobbyists and is not sufficient to characterize the plaintiff as a literary or scientific institution."

The Oregon Tax Court, in the Oregon Stamp Society ruling, stated that in order to grant an exemption, the institution receiving the exemption must provide an activity "which relieves the state of a burden which would involve a much larger amount of taxation than would be waived by the exemption."

EVIDENCE

SCIENTIFIC

The plaintiff claims to be a scientific institution. However, in Section II of the revised Articles of Incorporation dated October 9, 1997, it states that "This organization is organized exclusively for charitable purposes within the meaning of Section 501 c 3 of the Internal Revenue Code." In a letter dated June 10, 1998 sent to Douglas Schmidt at Polk County (Exhibit D), Mr. Pongracz the chapter Secretary, states on page 2 that "Since we are primarily an educational institution—focusing on the safety issues involved in the building and operation of aircraft—".

In attachments provided with the complaint (Exhibit E), the plaintiff provided some boilerplate that is published in every monthly newsletter. On page 1, part of that boilerplate states the purpose of EAA Chapter 292 as the following:

- To promote and encourage the sport and hobby of recreational aviation.
- To cooperate with and assist governmental agencies in the development of programs relating to aviation activities.
- To promote and encourage aviation safety in the design, construction, and operation of all types of aircraft.
- To encourage and engage in research for the improvement and better understanding of aviation and the science of aeronautics.
- To foster, promote, and engage in aviation education.
- To foster closer fellowship among its members through the exchange of ideas of mutual interest.

Out of the six activities listed under the purpose of the institution, only one even mentions some type of scientific function, and that function is building an ultralight aircraft as a group.

It would appear from the plaintiffs' own documents that this institution is not scientific. They were incorporated as a charitable organization, they consider themselves an educational group and only an incidental part of what they do is remotely scientific.

CHARITABLE

EAA Chapter 292 was organized as a charitable organization and is claiming an exemption based upon charity as part of their activity. In Exhibit D page 2 and Exhibit E page 2, the plaintiff identifies the charitable activities of the group. The extent of the charitable activity is to provide free airplane rides to 60 children twice a year. The value of this charity is estimated at \$4,200 per year. This would mean that the other 363 days of the year, the chapter is doing some other activity.

Part of the documentation submitted by the EAA Chapter 292 in order to qualify as a non-profit corporation was Form 1023 "Application for Recognition of Exemption" (Exhibit F). Page 9 (Exhibit F, Page 6) of that document lists "Other Assets" as Aircraft Parts and Small Hanger. No where is there mentioned any aircraft owned by the EAA. It must be assumed that the free airplane rides provided as the institution charitable function would have used member owned aircraft, which would not appear to qualify the institution as charitable.

If the airplane rides are charitable, it is merely an incidental and minor part of the institution and not the primary purpose of the institution, which is an aviation club where people with similar interests can gather and exchange information.

CONSIDERATION

The Oregon Tax Court in its Oregon Stamp Society v. Commission ruling stated that the activity conducted by the institution must "relieve the state of a burden which would involve a much larger amount of taxation than would be waived by the exemption." The question from this is whether the activities conducted by the Plaintiff would become a burden on the state if the Plaintiff were not around. The answer to this question would have to be no, the activities would not become a burden on the state and neither would the state be obligated to bear those activities.

CONCLUSION

The Oregon Tax Court in the Oregon Stamp Society v. Commission ruling laid out fairly clearly the criteria for determining if a literary or scientific institution should be exempt under ORS 307.130. Those criteria are:

The institution must be nonprofit

The institution must be charitable

The institution must perform a literary or scientific activity which relieves the state of a burden which would involve a much larger amount of taxation than would be waived by the exemption

The literary or scientific activity must be a primary function of the institution, not merely an activity incidental to a primary activity or purpose

Is the EAA Chapter 292 nonprofit, YES.

Is the EAA Chapter 292 charitable, NO.

Does the EAA Chapter 292 perform a literary or scientific activity that relieves the state of a burden, NO. There is no activity performed by the Plaintiff that the state would be obligated to bear.

Is the literary or scientific activity performed by the EAA Chapter 292 the primary activity, NO. The Plaintiffs own documents report them as charitable and educational with any scientific activity merely incidental.

Based upon the information provided, it is requested that the Defendants ruling to not allow the exemption be upheld and the property remain as taxable.