

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

EAA Chapter 292,

Plaintiff(s).

No. 982949B

v.

Plaintiffs' Evidence for Valuation

Decisions and Response to

Defendants' Case

Polk County Assessor

Defendant.

INTRODUCTION

Experimental Aircraft Association (EAA) Chapter 292 is representing itself before the court. EAA Chapter 292 is a recognized 501(c)(3) organization by Federal, State, and Polk County governments. If we were just "an association of hobbyists" like the Polk County Assessor contends we would be a 501(c)(7) organization in the eyes of the IRS and be merely a "Social Recreation Club." EAA Chapter 292 is 501(c)(3) exempt because we are educational, because we are scientific, and because we do testing for public safety. The property that the Polk County Assessor wishes to tax serves all those functions. It was built with thousands of volunteer hours by the sweat of our members. The materials were purchased with tax-deductible donations. We have an outstanding mortgage on approximately one-third of the total project. How can we not be an exempt organization?

Even with a very limited budget, we currently allocate considerable funds to our Young Eagles Program. Three times each year we fly youngsters between the ages of eight and eighteen, and try to excite them about careers in aviation and the aeronautical sciences. We are eagerly awaiting a Science, Math, and Technology integrated educational program currently under development at national EAA that we want to take to the same local area schools that we service with the Young Eagles Program. Chapter members are now left wondering if we can fund this or be forced to pay property taxes instead. It all comes out of the dues of our membership. (A just released "Vision of Eagles" brochure is on order for the court.)

Our case is largely in response to the criticisms lodged by the Polk County Assessor in his brief served April 12, 1999. The critical issues revolve around the definition of "scientific" and in demonstrating how the state is relieved of a burden. In this case -- the case of experimental aviation -- we are constantly involved in the scientific testing of materials where they were designed to operate -- in the air. In order to evaluate designs fairly, we try very hard to eliminate -- at least minimize -- human error. It demands that we constantly educate ourselves about the errors others have made, hopefully learning from those mistakes. This is how science is conducted in the world of experimental aircraft. The federal government and the Federal Aviation Administration (FAA) make the "burden" case for us, as will become clear on pages 3 and 4.

Corrections to the evidence submitted by the Polk County Assessor:

#### SUMMARY

1. Chapter 292 in Independence has had approximately 100 members for the past three years, and the 35 members cited in the assessor's summary (page 1) was only the number of members who attended the meeting that evening who voted on the revised Articles of Incorporation.
2. Scientific activity is the primary purpose of our organization. We are the Experimental Aircraft Association. We design, manufacture, and test the aircraft we build ourselves. We do this in a very scientific and methodical manner, because public safety and our lives depend on our competence in numerous branches of science and technology as well as in maintaining skills as pilots and aviators.
3. In the aviation community experimenters are at the forefront of scientific investigation. It was the experimental aircraft movement that made great strides in aircraft design during the 1920's and 30's -- especially on the air race circuit -- that gave our nation the ability to produce a superior product during the Second World War. It was the experimental aircraft movement that designed and funded through the donations of individuals from all over the country, the Voyager Aircraft designed by Burt Rutan, which flew around the world non-stop and non-refueled (December 14, 1986 to December 23, 1986) and inspired a rebirth in aviation and in composite technology that is only now fully coming to fruition. The Boomerang aircraft, another Burt Rutan design, that will soon be manufactured at Salem Airport by a new corporation formed by the Morrow family, will set a new standard in corporate aircraft and is also a descendent of the experimental aircraft movement. It is the experimental aircraft association that has supervised the building of more aircraft during the past decade than all the commercial aircraft makers combined.
4. One of our own members, Myron "Buzz" Buswell (EAA #54) was one of the original founders of the Experimental Aircraft Association. Another Oregonian, George Bogardus, flew the aircraft that he himself built, from Portland, Oregon to Washington, D.C. in 1947. Homebuilt and custom-built aircraft were illegal then, and a pilot could only fly in an aircraft that was built under the supervision of the Federal Aviation Administration. His historic flight is credited with giving birth to the legislation that established the experimental aircraft category.

#### EVIDENCE: SCIENTIFIC

1. The revised language in the articles of incorporation, and designation as "charitable," was specified by the IRS and is reflective of how chapter assets are to be distributed in the event of the dissolution of the organization. The IRS also stipulated that any royalties or revenues resulting from our research must remain a part of the charitable organization (or other 501(c)(3) entity), and not accrue to any individual member(s). We conduct our research in good faith and have agreed to abide by the terms of our agreement with the IRS. Is the assessor attempting to challenge the definition or determination by the IRS of "charitable"?

2. First, a common definition of scientific from Webster's New World College Edition, 1964: "scientific: 1. of or dealing with science; as scientific study. 2. used in or for natural science; as, scientific apparatus. 3.a) based on, using, or in accordance with the principles and methods of science; systematic and exact; as, scientific classification, b) trained in following or observing the principles and methods of science; as, a scientific thinker. 4.a) done according to methods gained by training; as scientific boxing, b) having or showing skill and training; skillful."

3. We contend that building aircraft by the experimental aircraft association is an inherently scientific enterprise. When we claim that "we are primarily an educational institution -- focusing on the safety issues involved in the building and operation of aircraft," the experimental aircraft association, and our local chapter in particular, is declaring that its mission is to help its members conduct good science. We research designs, test materials, and analyze solutions in order to expand the knowledge base of the entire chapter. This means not falling out of the sky and killing yourself or others by forgetting to use the proper bolt or safety device. This also means promoting safety in the environment where we operate, and promoting rules in coordination with other governing agencies that establish proper conduct in the airport environment. And, for us, this also means introducing youngsters to aviation and teaching them about the science of aeronautics.

4. Education is the bedrock of science, for the science of aviation is constantly evolving. Like any other highly technical field, we regularly educate one another as to the latest developments in areas that can make our aircraft safer, lighter, and stronger, that help us communicate better, and so on. The most visible example of how the science of building constantly changes is found in the way aircraft are covered. The science of aviation first looked to fabric for its strength and lightweight to cover the structure and provide the airfoil shape. Before long, to protect the fabric from the elements and to make the shape more taut, cotton linen was painted with butyrate and nitrate. Most fabric covered aircraft are now covered in Dacron which is then heat shrunk and painted with new environmentally friendly latex paints that have only been developed in the past two years. Other planes are covered with a fabric that is already pre-shrunk and has the color dyed into the fabric at the factory -- like the kites one commonly sees on the coast nowadays. This is but one example about how the science of building aircraft is dramatically changing. Our seminars bring this science and technology to all of our members, the aviation community and the general public. In the previous two years we have held Aircraft Builder's Conferences at Aurora State Airport where we shared our expertise in technical fields with over 300 people each year from all over the Northwest. Seminars and hands-on workshops covered topics such as metalworking, welding, composites, fabric covering, wood construction, and engines. Our monthly newsletter, *The Taledrager*, regularly disseminates information to builders about technical developments, safety alerts, and medical information pertinent to safe flight. Thirty complimentary copies also go out to other EAA organizations throughout the state, to local fixed base operators, and to the local media.

5. 5a. Part of the science of certificated aircraft -- Cessnas, Pipers, Beeches, and so on -- is the collection and distribution of data on each aircraft type and the problems they encounter during their life span. This critical data is distributed to the current registered owners of certificated aircraft by the federal government through the Federal Aviation Administration (FAA) and National Transportation Safety

Board. Certificated aircraft are required to undergo annual inspections, and during these inspections all outstanding Airworthiness Directives (A.D.s) must be complied with. These often include mandatory modifications to engines, flight surfaces, and structural components. This governmental function is provided without any extra charge and is done in the interest of public safety.

5b. Many members of the EAA build their own aircraft. These are not built under the supervision of the FAA like all certificated aircraft are, and the government does not maintain a data base on these aircraft, since by definition they are a unique creation of each individual builder. The EAA fills this void in the data by monitoring the safety in the experimental aircraft fleet. The EAA conducts regular seminars on proper building techniques. The EAA supervises the building process of every member through the EAA Technical Counselor Program. And finally, the EAA assists in the flight-testing program through the EAA Flight Advisor Program.

5c. Here we would like to quote directly from FAA Advisory Circular 20-27D on "Certification and Operation of Amateur-Built Aircraft" in order that the court may better understand the process: "In the past, the FAA inspected amateur-built aircraft at several stages during construction. These inspections were commonly called precover inspections . . . After reassessing the need for these inspections, the FAA in 1983 decided to perform only one inspection prior to initial test flight . . . In recent years, amateur builders have adopted a practice whereby they call upon persons having expertise with aircraft construction techniques, such as the EAA Technical Counselors . . . to inspect particular components, e.g., wing assemblies, fuselages, etc., prior to covering, and to conduct other inspections, as necessary. This practice is an effective means of ensuring construction integrity."

5d. EAA Chapter 292 is fortunate to have two EAA certified technical counselors supervising and overseeing the construction of approximately 30 to 35 aircraft under construction each year. These two technical counselors volunteer hundreds of hours of their time each year to insure that others construct their aircraft in a professional manner, ensuring public safety in the process.

5e. In this light the EAA unquestionably "relieves the state of a burden which would involve a much larger amount of taxation than would be waived by the exemption."

The Experimental Aircraft Association cannot be equated with the Oregon Stamp Society. From the above examples it should be evident that we are indeed engaged in the science of aviation and that we are much more than an "association of hobbyists." We are quite sure that other scientific organizations have clauses in their by-laws too that declare that they "promote fellowship among their members" and "engage in education," but this does not detract from the primary purpose of these organizations, which is conducting good science.

#### EVIDENCE: CHARITABLE

It has been over a year since this application was originally submitted. Since then our outreach to the community has evolved in a number of ways:

1. Chapter 292 actively supports the national EAA's efforts to fly one million youngsters -- "Young Eagles," as we call them -- between 1993 and 2003, the 100th Anniversary of Flight. We have expanded our Young Eagles Program to include a third weekend that is dedicated to Girl Scouts and Boy Scouts. This will regularly be the third weekend in July and is being coordinated through the Cascade Pacific Council of the Boy Scouts of America. We hope to inspire youngsters in the community. We try to share our joy in and enthusiasm for aviation with these free airplane rides. We only hope that one or two of them grow up to pursue careers in science and aviation and maybe become the next Neil Armstrong, John Glenn or Sally Ride. To illustrate that point, we would like to quote from Sport Aviation: EAA's Monthly Membership Magazine, January 1999, in an article entitled "EAAers ABOARD DISCOVERY": "Senator John Glenn may have received most of the ink and air time during the Discovery shuttle flight in late October and early November, but there were also three EAA members aboard: Commander Curt Brown (EAA 398832) of Alvin, TX and Mission Specialists Stephen Robinson (EAA 469573) and Scott Parazynski (EAA 390163), both of Houston, TX. Congratulations to all for a successful mission that brought more favorable attention to NASA than any other in recent memory."

2. EAA Chapter 292 is now an official co-sponsor of Aviation Explorer Post 202 of the Boy Scouts of America. As a co-sponsor we provide them with access to our chapter hangar and special tools for their projects. They currently meet in the hangar every Monday evening. A number of our members are regular advisors to this group.

#### EVIDENCE: CONSIDERATION

Chapter 292 has shown that the Experimental Aircraft Association is indeed primarily involved with the science of aviation. The experimental nature of this science dictates that continuing education in safety and proper procedures be a principle focus of our activity. Chapter 292 of the EAA provides a genuine service to over 100 builders and pilots in the Willamette Valley. The builders and aviators involved in the Experimental Aircraft Association are involved in something quite special, for they are on the cutting edge of technology, and the nature of their scientific experiments necessarily involves test flying.

Orville and Wilber Wright would be members of our chapter if they had been around fifty years later. Their father was on the preacher circuit here in the Willamette Valley around Woodburn when they began tinkering in their bicycle shop in Dayton, Ohio. We can't imagine a world without airplanes -- but airplanes simply wouldn't be built without experimenters. Members of the EAA try to build more efficient engines, lighter structures, stronger landing gear and many other things. We hope we will contribute something significant to the movement through our endeavors. We systematically attack problems in a rational and deliberate way. We regularly test our conclusions and solutions to a multitude of challenging questions. We are indeed doing science as our primary function.

EAA Chapter 292 is actively engaged in promoting, educating and involving the local community in aviation at Independence State Airport, Polk County's only public use airport. We have a vision to be recognized within this community as a focal point for young people who want to pursue aviation opportunities and careers in the aeronautical sciences.

If our property taxes were to be \$1,200 each year for instance, this would require the entire dues of nearly a third of our current membership and put an unbearable strain on our finances. If the chapter were forced to divert its dues income to property taxes we would be compelled to reduce our discretionary spending on our charitable work and curtail some scientific investigations. We did not embark upon this path until we had secured the 501(c)(3) status from the IRS and presumed that we would then secure the exemption from property tax from Polk County as well. We think this was the intent of the Oregon Legislature when they granted tax exemption for Literary, Benevolent, Charitable and Scientific institutions under ORS 307.130. We trust that the Magistrate Court concurs.

#### CONCLUSION

Chapter 292 of the Experimental Aircraft Association is a 501(c)(3) non-profit organization and is recognized as such by Federal, State, and Polk County governments. We are indeed 100% charitable as defined by the IRS, and we do many good works throughout the year and provide many benefits to the community. We actively pursue the science of aeronautics in many ways: through methodical and systematic investigation of problems and solutions, through education, evaluation, and training in proper methods, materials, and techniques. EAA's Technical Counselor program is an acknowledged success by the FAA and is even endorsed by them to insure quality workmanship and construction integrity for the aircraft that routinely fly overhead. EAA programs that promote safety in flight-testing and training insure that the greater public interest is protected. The general public and the state benefits at a fraction of the cost such a program would cost the state to administer. The EAA contends that it is largely due to our collective efforts that Polk County is relatively free of aircraft accidents or incidents. For the EAA to maintain or even expand their inspection and safety programs, a property tax exemption is warranted and justifiable in the name of public safety.

#### CERTIFICATION OF SERVICE

I hereby certify that on May 4, 1999, a copy of this Evidence was served on Douglas Schmidt, Defendant's Representative, in person, to the Polk County Assessor's Office in Dallas, Oregon.

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Mike Pongracz, Chapter Secretary  
EAA Chapter 292