IN THE SUPREME COURT OF THE STATE OF OREGON

CORVALLIS NEIGHBORHOOD HOUSING SERVICES, INC., dba Willamette Neighborhood Housing Services; and CAROLINA SUNSET DEVELOPMENT, LLC, Plaintiffs-Appellants, v. LINN COUNTY ASSESSOR; and DEPARTMENT OF REVENUE, State of Oregon, Defendants-Respondents.	Tax Court No. 4996 Supreme Court No. S061266

RESPONDENT DEPARTMENT OF REVENUE'S ANSWERING BRIEF

Review of the Decision of the Oregon Tax Court
Honorable Henry C. Breithaupt, Judge

Opinion Filed: March 28, 2013
Before: Henry C. Breithaupt, J.

Continued…

DAVID L. CANARY #760869
Garvey Schubert Barer
121 SW Morrison St. 11th Floor
Portland, OR 97204
Telephone: (503) 228-3939 x3134
Email: dcanary@gsblaw.com

Attorney for Plaintiff-Appellants

EUGENE J KARANDY, II #972987
Linn County Attorney's Office
104 4th SW, Rm. 123
P.O. Box 100
Albany, OR 97321

Attorney for Respondent

ELLEN F. ROSENBLUM #753239
Attorney General
ANNA M. JOYCE #013112
Solicitor General
INGE D. WELLS #881137
Senior Assistant Attorney General
ROCHELLE NEDEAU #793337
Senior Assistant Attorney General
1162 Court St. NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4402
Email: inge.d.wells@doj.state.or.us
rochelle.nedeau@doj.state.or.us

Attorneys for Defendant-Respondent

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RESPONDENT DEPARTMENT OF REVENUE'S ANSWERING BRIEF

STATEMENT OF THE CASE

Defendant Oregon Department of Revenue (DOR or department)[1] accepts the statement of the case of plaintiffs Corvallis Neighborhood Housing Services (CNHS) and Carolina Sunset Development, LLC (CSD) ("taxpayers"), except as supplemented below.

Nature of the Action and Relief Sought

Taxpayers provide low-income housing[2] in Linn County. The county disqualified taxpayers' property from tax exemption under ORS 307.130 for the 2010-11 tax year, and taxpayers appealed that disqualification to the Oregon Tax Court. The parties filed cross-motions for summary judgment. The tax court denied taxpayers' motion, and granted defendants' motion on the ground that the subject properties were not "actually and exclusively used" in taxpayers' charitable

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[1] On December 6, 2013, defendant Linn County Assessor waived appearance in this matter.

[2] DOR uses the term "low-income housing" throughout this brief to describe a scheme whereby construction capital for housing projects is provided in part by government funding, and in exchange for that funding, the housing units must be reserved for low-income households
. (ER 27).

work.[3] The tax court then entered judgment denying taxpayers' exemption and assessing their property accordingly. Taxpayers appeal from that judgment.

Summary of Argument

Taxpayers contend that they are eligible for a tax exemption under ORS 307.130 for properties they lease to low-income tenants. That argument is without merit, because the text and context of ORS 307.130 show that the legislature did not intend that statute to exempt taxpayers' property from taxation. Further, the legislature enacted ORS 307-540 - 307.548 in 1985 in order to provide an exemption for low-income housing subject to the approval of local governing bodies. That statutory scheme demonstrates that the legislature did not intend ORS 307.130 to apply to property like that at issue in this case. The judgment of the Tax Court should be affirmed.

ANSWER TO ASSIGNMENT OF ERROR

The Tax Court did not err in granting defendants' motion for summary judgment, because taxpayers were not entitled to a tax exemption under ORS 307.130 for properties they leased to private individuals to use exclusively as their personal residences.

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[3] The Tax Court found that there was a material dispute of fact on the issue of whether taxpayers are "charitable institutions." (Tr 13-14). The question to be answered in this appeal is whether, assuming taxpayers *are* engaged in charitable work, the subject properties are "actually and exclusively occupied or used" in furtherance of that work.

Preservation of Error

The assigned error was preserved.

Standard of Review

"The scope of the review of either a decision or order of the tax court judge shall be limited to errors or questions of law or lack of substantial evidence in the record to support the tax court's decision or order." ORS 305.445. On appeal from a grant of summary judgment, this court considers "whether the Tax Court erred in concluding that there was no genuine issue of material fact and that [the moving party] was entitled to summary judgment as a matter of law." *Martin v. City of Tigard*, 335 Or 444, 449, 72 P3d 619 (2003) (applying that standard to appeal of a tax court decision).

ARGUMENT

The issue in this case is whether taxpayers are eligible for a tax exemption under ORS 307.130 for properties they lease to low-income tenants. That statute allows for an exemption for real or personal property owned by a charitable institution if the property is "*actually and exclusively occupied or used* in the literary, benevolent, charitable or scientific work carried on by such institutions." As explained below, the tax court correctly concluded that exemption is not applicable here, because it does not apply to properties leased to individuals to use as their personal residences.

A. Introduction

The relevant facts needed to resolve the issue before this court are undisputed. CNHS is a non-profit corporation, formed "exclusively for charitable purposes" including providing "housing for low-income individuals and families" in Linn County.[4] (ER 26). That housing consists of three "multifamily rental apartment buildings" and six single family homes. (*Id.*). Pursuant to the lease agreement used by taxpayers during the 2010-11 tax year,

> taxpayers granted to its residents the right to use a given housing unit as a residence in consideration for payment of rent. Taxpayers reserved the right to enter leased premises in emergencies or upon 24 hours' notice to perform maintenance or other tasks aimed at ensuring the serviceability of the premises. Otherwise, tenants appear to have had the right to exclude others, including agents or employees of taxpayers, from their own leased dwellings.

(ER 27-28) (internal citations omitted).

The Linn County assessor determined that taxpayers did not qualify for the exemption from property tax under ORS 307.130 for the 2010-11 tax year.[5] Taxpayers appealed that determination to the Oregon Tax Court. (ER 28).

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[4] CSD is not a non-profit corporation. However, CNHS is the sole member of CSD, and there is no dispute that taxpayers, collectively, are non-profit corporations for purposes of property tax exemptions. *See* ORS 307.022.

[5] This is the only provision under which taxpayers sought exemption. As discussed below, other exemptions enacted after ORS 307.130 may apply to taxpayers' property.

The parties filed cross-motions for summary judgment. Taxpayers contended that "they are charitable institutions and that the subject properties are either occupied or used by taxpayers exclusively in furtherance of their charitable work[.]" (ER 31). In turn, defendants contended that "taxpayers are not charitable institutions and that taxpayers do not exclusively occupy or use the subject properties." (*Id.*). At oral argument on the motions for summary judgment, the court determined that "material questions of fact" existed with regard to the question of whether taxpayers were "charitable institutions," and the court therefore denied both parties' motions for summary judgment on that issue. (Tr 13-14; ER 29). However, the tax court granted defendants' motion on the issue of whether taxpayers exclusively used or occupied the subject properties, holding that "there is no provision of Oregon law providing for an exemption from property tax for property leased to private individuals and used solely as a personal residence." (ER 41). The court then entered a judgment stating that the subject properties "are not exempt from property tax under ORS 307.130 for tax year 2010-11." (ER 44).

Taxpayers appeal from that judgment, renewing their argument that they are entitled to a tax exemption under ORS 307.130, because "real and personal property of a charitable institution that provides affordable housing to needy individuals is property occupied and used in the charitable work of that institution." (App Br at 8). As explained below, that argument is without merit.

B. The text and context of ORS 307.130 show that the legislature did not intend that statute to exempt taxpayers' property from taxation.

Resolving the parties' dispute requires this court to determine what the legislature intended by its use of the phrase "actually and exclusively occupied or used[.]" To discern that intent, this court follows the methodology set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993) and modified by *State v. Gaines*, 346 Or 160, 206 P3d 1042 (2009). The court first examines the statute's text and the context in which the statute appears, which includes the history and former versions of the statute, and case law construing the statute. *Gaines*, 346 Or at 167; *see also Fresk v. Kraemer*, 337 Or 513, 520-21, 99 P3d 282 (2004) ("Statutory context includes other provisions of the same statute and other related statutes, as well as the preexisting common law and the statutory framework within which the statute was enacted."). Under *Gaines*, a party is "free to proffer legislative history to the court and the court will consult it after examining text and context," where it appears useful to the court. *Gaines*, 346 Or at 172.[6] The court decides what weight to give that legislative history. "If the legislature's intent remains unclear after examining text, context, and legislative

[6] To the best of the department's knowledge, there is no legislative history shedding light on this dispute. And in fact, low-income housing schemes of the type at issue in this case likely did not exist in 1955, when the language in ORS 307.130 on which this case turns was enacted.

history, the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty." *Id.*

1. The text of ORS 307.130 demonstrates that the legislature did not intend it to apply to low-income housing.

All real and personal property in Oregon is subject to taxation unless expressly exempted by statute.[7] *See* ORS 307.030 ("All real property within this state and all tangible personal property situated within this state, except as otherwise provided by law, shall be subject to assessment and taxation in equal and ratable proportion."). One such exemption is set forth in ORS 307.130. That statute provides, in relevant part:

> (2) Upon compliance with ORS 307.162, the following property owned or being purchased by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:
>
> (a) 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.

(emphasis added).

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[7] "Taxation is the rule, and exemption from taxation the exception." *Corporation of Sisters of Mercy v. Lane Co.*, 123 Or 144, 152, 261 P 694 (1927). And as discussed below, this court has long held that tax exemption statutes should be strictly construed in favor of the state. *See Mult. School of Bible v. Mult. Co.*, 218 Or 19, 27, 343 P3d 893 (1959) ("it is a canon of universal recognition that tax exemption statutes should be strictly construed in favor of the state and against the taxpayer").

A version of ORS 307.130 has existed in Oregon since 1854. *See Mult. School of Bible v. Mult. Co.*, 218 Or 19, 24-25, 343 P3d 893 (1959) (explaining history). The phrase "actually and exclusively occupied or used" was added to the statute in 1955. Or Laws 1955, ch 576 § 1. The plain meaning of that phrase demonstrates that the exemption was not intended to apply to low-income housing that taxpayers owned and leased exclusively to private individuals for the individuals' use as a personal residence.

In examining statutory text, this court gives words of common usage their "plain, natural, and ordinary meaning." *PGE*, 317 Or at 611. In 1955, "actually" meant "in act or in fact; really; also, at the present moment; for the time being." *Webster's Second New Int'l Dictionary* 28 (unabridged ed 1952).[8] To use something "exclusively" meant "excluding or having power to exclude, or prevent entrance, debar from possession, participation, or use[.]" *Webster's Second New Int'l Dictionary* 890 (unabridged ed 1952).

Given the plain meaning of those terms, for a property to be exempt under ORS 307.130(2)(a), its owner must in fact "occupy or use" the property for its charitable work, do so to the exclusion of others, and with power to exclude others

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[8] In construing statutes enacted many years ago, this court consults the dictionaries in use at that time. *State v. Perry*, 336 Or 49, 52, 77 P3d 313 (2003). In this particular case, the dictionary definitions of the relevant terms have remained substantially unchanged since 1952.

or to bar their possession. It is undisputed that taxpayers do not "occupy" the property at issue; rather, they lease the property to others. Nor can it be said that taxpayers actually and *exclusively* "use" the properties. On the contrary, taxpayers leased the rights to exclusive use and possession to their lessees, who in turn used them exclusively for private dwellings. Stated differently, it is the tenants, not taxpayers, who "actually and exclusively" occupy or use the subject properties. Thus, the text of the statute shows that ORS 307.130(2)(a) does not apply to taxpayers' property.

Taxpayers contend that by making affordable housing available they are "using" the property within the meaning of the statute. (App Br 12). But that argument is inconsistent with the text, for either of two reasons. First, "to use," in ordinary parlance, means "to convert to one's service; to avail oneself of; to employ." *Webster's Second New Int'l Dictionary* 2806 (unabridged ed 1952). Further, this court has defined "use" in the context of other assessment statutes to require "some degree of control" over the property at issue. *Pacificorp Power Marketing v. Dept. of Rev.*, 340 Or 204, 217, 131 P3d 725 (2006). In the context of a living space, "to use" the space is to live in it, and to exercise control over it. Here, taxpayers were not living in the property, their tenants were. In other words, the tenants, and not taxpayers, were using the property.

But even assuming for the sake of argument that renting a house or apartment to another individual to use is itself a form of "use," taxpayers'

argument fails for a second reason. To fall within the statute, property must not merely be "used" in a taxpayer's charitable work—it must be used "exclusively" in taxpayers' charitable work. In other words, the property cannot be used in any way other than in the work of the charity. Here, the dwellings were demonstrably used by persons other than the taxpayers in ways other than for the taxpayers' charitable purposes – they were used as residences by the tenants who were living there in an ordinary landlord-tenant relationship.

2. Although this court's prior cases interpreting ORS 307.130 are distinguishable on their facts, they support the department's position that the exemption does not apply to low-income housing.

At the first level of analysis of a statute, this court considers prior case law interpreting it. *See State v. Cloutier*, 351 Or 68, 100, 261 P3d 1234 (2011) (this court's "analysis of [a statute] is also informed by this court's prior construction of that statute or its predecessors"); *State v. Murray*, 343 Or 48, 52, 162 P3d 255 (2007) ("At the first level of analysis of a statute, this court also considers case law interpreting that statute").

Taxpayers contend that this court's prior interpretations of ORS 307.130 support their entitlement to an exemption. (App Br 19-25). But the prior cases interpreting ORS 307.130 do not squarely answer the question presented by this case: whether a property owner providing low-income housing is entitled to a tax exemption for properties leased to private individuals for those individuals to use

exclusively as their personal residences. Further, those cases support the department's interpretation of the statute.

This court has held that "[B]y requiring that exempt property be actually occupied for charitable or other exempt purposes the legislature must have meant something more than mere ownership[.]" *Eman. Luth. Char. Bd. v. Dept. of Rev.*, 263 Or 287, 291-92, 502 P2d 251 (1972) ("land merely being held for future use" is not "being actually occupied or used for the plaintiff's charitable work). Thus, the mere fact that taxpayers are a charitable institution and hold fee title to the property is insufficient to entitle them to an exemption.

"To qualify for a charitable exemption under ORS 307.130, the taxpayer must show first that 'the activity undertaken on the property substantially contributes to the furtherance of the charity's goals.'" *German Apost. Christ. Church v. Dept. of Rev.*, 279 Or 637, 641, 569 P2d 596 (1977), citing *YMCA v. Dept. of Rev.*, 268 Or 633, 635, 522 P2d 464 (1974). Also, "it must be shown that the property was exclusively occupied or used for such a purpose." *German Apost.*, 279 Or at 642 (citation omitted). If "the primary use of the property is reasonably necessary for the charitable functions of the taxpayer, an exemption under ORS 307.130 will be allowed." *Id.; see also Willamette Univ. v. Tax Comm.*, 245 Or 342, 344-45, 422 P2d 260 (1966) ("'Exclusively used' is primary use made of the property, and its use for exemption purposes is measured by the

reasonable applicability of the property to carry out the purposes of the exempt taxpayer.").[9]

In *German Apost.*, the taxpayer sought an exemption under ORS 307.130 for six apartment buildings located in a building on property owned by the church. The apartments were rented to elderly members of the church congregation. The apartments "were rented at a rate well below rentals for comparable housing in the area and at a level designed to cover costs of upkeep. The recipients of this largesse were elderly women with little income." *Id.* at 647. These elderly tenants were "required to pay what they can afford and only as much as needed to run the apartments." *Id.* at 648. This court allowed the exemption "for those apartments actually rented to those in need" during the applicable tax year. *Id.* at 648. However, the court's focus in *German Apost.* was on whether renting the apartments *only* to church members "vitiates the finding of a charitable purpose." *Id.* at 646-47. The court held that it did not. Nothing in the court's opinion resolves the question of whether a taxpayer can be said to exclusively occupy or use a property that is leased to another as part of an arms-length transaction.[10]

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[9] In *Willamette Univ.*, the court held that student housing that was under construction during the relevant tax year was entitled to an exemption, even though it was not yet physically occupied. 245 Or at 349.

[10] If an exempt lessee used property it occupied for its own charitable purposes, that lessee would be entitled to a tax exemption under other provisions of Chapter 307. *See e.g.* ORS 307.166 (a charitable organization leasing property

Footnote continued…

Similarly, in *Mult. School of Bible*, 218 Or at 37, this court held that a residential structure on a college campus occupied as a personal residence by the school's building superintendent and dining hall supervisor was exempt under ORS 307.130. The court noted that although use of the residence might have contributed "incidentally" to the "benefit and convenience" of the school employees, that convenience "was associated with the performance of duties in behalf of the school which would seem to render it highly expedient that they should reside where they do and not elsewhere." *Id.* at 37. Stated differently, although there was some incidental benefit to the employees in being provided on-campus housing, the primary benefit was to the school. That is in contrast to the present case, where the tenants receive the sole benefit of the housing.

The remaining cases relied upon by taxpayers are also distinguishable on their facts. In *YMCA v Dept. of Rev.*, 268 Or 633, 636, 522 P2d 464 (1974), the taxpayer "entered into a contract with the Armed Services to provide room and board for draftees arriving in Portland prior to the date of their induction." The court held that the portion of the YMCA's property used to house the draftees was exempt from taxation, because the YMCA staff provided services beyond "just a

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(…continued)
from another charitable organization is entitled to an exemption "if used by the lessee or possessor in the manner, if any, required by law for the exemption of property owned or being purchased by the lessee or possessor" if the rent payable under the lease reflects the savings resulting from the exemption).

room or a food service." *Id.* at 637. By providing those services, the government contract "fell within the general charitable goals" of the YMCA. *Id.*

And in *House of Good Shepherd v. Dept. of Rev.*, 300 Or 340, 710 P2d 778 (1985), this court found exempt a building owned by a religious organization used solely as a convent for Catholic nuns who were required for religious reasons to reside in the semi-cloistered religious quarters. The court found that the taxpayer's charitable purpose was "the advancement of religion," and that "the manner in which the individuals lived and the purpose for which they used their residence" furthered that charitable purpose. *Id.* at 344, 347.

Neither *YMCA* nor *House of Good Shepherd* addressed the issue presented by this case. Although in both cases the property was used as some form of a personal residence, neither case involved a lease agreement under which the tenants had exclusive control over the property. Further, there was a relationship between the property owners and the tenants that went beyond the arms-length lease transactions that characterize the relationship between these taxpayers and their tenants.

Taxpayers denied rental applications from those who had too little or too much income to fit their criteria, or lacked a secure income source for paying rent. (TCF 382-83). Unlike the nuns in *House of Good Shepherd* or the elderly women in *German Apost.*, taxpayers' tenants were expected to pay rent regardless of their circumstances, and at least one tenant was evicted during the 2010-11 tax year

when she was unable to do so. (TCF 379). Further, taxpayers do not donate housing or personal care services to their lessees. Although they do maintain a residential services program, that program is primarily engaged in referring tenants to outside sources for assistance in order to reduce the costs associated with evictions and high turnover. (TCF 386).

In short, the relationship between taxpayers and their tenants in this case is an arms-length one, no different than a typical landlord-tenant relationship except for the fact that the properties are leased at below-market rates. None of this court's cases interpreting ORS 307.130 compel the conclusion that taxpayers are entitled to an exemption for these properties.

C. If this court determines that the legislature's intent is not clear, ORS 307.130 must be construed against taxpayers.

In the department's view, the text and context of ORS 307.130 are clear: the legislature did not intend that the statute be applied to exempt property from taxation that is leased to tenants for use as their personal residence. That should end the inquiry. *See* Gaines, 346 Or at 171 ("text and context remain primary, and must be given primary weight in the analysis"). But in the event this court disagrees, "general maxims of statutory construction" may be used to resolve any ambiguity in the statute. *Gaines*, 346 Or at 172. One such maxim—applied by this court for decades—is that ambiguities in a statute conferring a tax exemption should be construed against the taxpayer, because exemptions should be the

exception, not the rule. *See Emanuel Lutheran Charity Bd. v. Dept. of Revenue*, 263 Or 287, 291, 502 P2d 251 (1972) ("this court is committed to the rule that tax exemption statutes are to be construed strictly but reasonably"); *Skyline Assembly of God v. Dept. of Rev.*, 274 Or 259, 263, 545 P2d 879 (1976) (same); *Mult. School of Bible*, 218 Or at 27 ("it is a canon of universal recognition that tax exemption statutes should be strictly construed in favor of the state and against the taxpayer").

In *Methodist Book Concern v. Galloway*, 186 Or 585, 592-93, 208 P2d 319 (1949), this court held that "even if the statute should be deemed ambiguous we would be required to apply the rule repeatedly set forth in our opinions to the effect that tax exemption statutes should be strictly construed and that an exemption should be denied unless it is so clearly granted as to be free of reasonable doubt." This court's holdings in *PGE* and *Gaines* "did not disavow old or settled rules" for determining the meaning of statutes. *Mastriano v. Bd. of Parole*, 342 Or 684, 159 P3d 1151 (2007). Thus, if after considering both text and context the intent of the legislature remains unclear, ORS 307.130 should be construed against the taxpayer.

D. The 1985 statutory scheme providing an exemption for low-income housing demonstrates that the legislature did not intend ORS 307.130 to apply to property like that at issue in this case.

In 1985, the legislature enacted a comprehensive scheme to provide tax exemptions for low-income housing owned by non-profit corporations. *See*

ORS 307.540 - 307.548. This statutory scheme demonstrates that the 1955 legislature did not intend that statute to apply to low-income housing.

State v. Ofodrinwa, 353 Or 507, 300 P3d 154 (2013) provides an example of how later legislation can assist the court in interpreting an earlier statute. The issue before the court in *Ofodrinwa* was whether the phrase "does not consent" in ORS 163.425 "refers only to actual consent or whether it also refers to the lack of capacity to consent." 353 Or at 510. To answer that question, the court considered "the meaning and effect of the 1991 amendment to the sexual abuse statutes on the 1983 legislature's understanding of the phrase 'does not consent.'" *Id.* at 511-12. The court noted that the "text, context, and history of the 1983 amendment permit different inferences" regarding the legislature's intent. *Id.* at 523. However, the court went on to note that the 1991 legislature provided an age-related defense to ORS 163.425. The court rejected defendant's argument that the 1991 legislature's intent was not "relevant to determining what a phrase enacted in 1983 means." *Id.* at 529. Instead, the court held that "this is a case in which the 1991 amendment added a defense to the crime of second-degree sexual abuse that, as a matter of the statute's text and legislative history, rests on the proposition that 'does not consent' in ORS 163.425 includes instances 'in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age[.]'" *Id.* at 529 (citation omitted). The court held that the "1991 amendment is the

legislature's last word on the subject and, as such, controls the meaning of the phrase 'does not consent' in ORS 163.425." *Id.* at 530.

Ofodrinwa thus stands for the proposition that a later-enacted statute may, in some circumstances, represent the "last word" on the meaning of an earlier statute. That is true in this case. The 1985 legislature was aware that ORS 307.130 provided a tax exemption for property "actually and exclusively occupied or used" in the work carried on by charitable institutions. Yet the legislature understood that this provision did not apply to low-income housing, because it enacted ORS 307.540 - 307.548 in order to create a broad-based tax exemption for low-income housing in response to "a shifting away from old federal programs" that provided subsidies for these projects. Tape Recording, Senate Committee on Revenue and School Finance, SB 503, May 8, 1985, Tape 173, Side A (statement of State Housing Council representative Debbie Wood).

The intent of the legislation was "to help privately funded non-profit groups in providing affordable, high quality housing for low income people." Testimony, Senate Committee on Revenue and School Finance, SB 503, May 8, 1985, Ex 4 (statement of Sen Nancy Ryles). Although ORS 307.130 was not mentioned, the legislature appeared to assume that it did not apply to low-income housing, and that a separate exemption was needed. *See* Testimony, Senate Committee on Revenue and School Finance, SB 503, May 28, 1985, Ex 4 (statement of Terry Drake) (legislation intended to "design a system as sort of a separate segment of

the statutes that speaks specifically and exclusively to this type of low income residential housing"); Testimony, House Committee on Revenue and School Finance, SB 503, June 15, 1985, Ex 3 (statement of Debbie Wood) ("The housing projects that are not given specific statutory exemption from taxes are not covered under the general tax exemptions for charitable organizations").

In sum, the 1985 legislature's enactment of a specific scheme to obtain a tax exemption for low-income housing is the "last word" on the subject, and it demonstrates that the general exemption in ORS 307.130 does not apply to non-profit corporations providing low-income housing.

Indeed, taxpayers' reading of ORS 307.130 is flatly inconsistent with the legislature's later-enacted scheme. As explained above, ORS 307.130 provides an automatic exemption to any taxpayer meeting the statutory criteria. In contrast, ORS 307.540 - 307.548 require (1) that a local governing body adopt the statutory provisions; and (2) that the local governing body approve the exemption. ORS 307.543(1); 307.547(1). Those provisions reflect the legislative intent that, rather than mandating an exemption, local governing bodies be able to take their fiscal circumstances into account when deciding whether to approve an exemption. *See* Testimony, Senate Committee on Revenue and School Finance, SB 503, May 8, 1985, Ex 6 (statement of Debbie Wood) (Because local governments have fiscal considerations, this legislation would authorize the granting of tax

exemptions for these activities, but would not mandate a tax exemption."). As Senator Ryles explained:

> Senate Bill 503 proposes to allow local governing bodies the option to grant a full or partial property tax exemption for property owned or being purchased by non-profit organizations providing housing for low income persons.

Testimony, House Committee on Revenue and School Finance, SB 503, June 15, 1985, Exhibit 1.

In this case, taxpayers could have—but did not—apply for exemptions under ORS 307.540 - 307.548. Had they done so, the local governing body would have been in a position to exercise its discretion to grant or deny the exemption, just as the legislature intended. If ORS 307.130 is construed to apply to properties leased to low-income persons as their personal residence, ORS 307.540 - 307.548 will be rendered meaningless, because no property owner will seek exemption under those provisions.

The 1985 legislature's enactment of a specific scheme to obtain a tax exemption for low-income housing thus demonstrates unequivocally that the legislature has never understood ORS 307.130 to apply to properties like those here at issue. Whatever ambiguity may have been inherent in the statute in that regard when it was first enacted was definitively resolved in 1985.[11]

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[11] Further, even assuming for the sake of argument that ORS 307.130, as originally enacted, could be construed so broadly as to encompass an exemption

Footnote continued…

CONCLUSION

The Tax Court's judgment should be affirmed.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General
ANNA M. JOYCE
Solicitor General

/s/ Inge D. Wells
INGE D. WELLS #881137
Senior Assistant Attorney General
inge.d.wells@doj.state.or.us
ROCHELLE NEDEAU #793337
Senior Assistant Attorney General
rochelle.nedeau@doj.state.or.us

Attorneys for Defendant-Respondent

IDW:bmg/5005106

(…continued)
for low-income housing, the legislature has implicitly amended the statute by adopting a scheme in 1985 that is inconsistent with that construction. *See State ex rel Med. Pear Co. v. Fowler*, 207 Or 182, 195, 295 P2d 167 (1956) (Application of the doctrine of repeal by implication is appropriate "if the enforcement of an earlier statute would thwart the purpose of a later one").

NOTICE OF FILING AND PROOF OF SERVICE

I certify that on February 21, 2014, I directed the original Respondent's Answering Brief to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and served upon David L. Canary, attorney for Carolina Sunset Development LLC and Corvallis Neighborhood Housing Services Inc., by using the electronic filing system. I further certify that on February 21, 2014, I directed the Respondent's Answering Brief to be served upon Eugene J. Karady, II, attorney for respondent Linn County Assessor, by mailing two copies, with postage prepaid, in an envelope addressed to:

Eugene J. Karady, II
Linn County Attorney's Office
PO Box 100
Albany, Oregon 97321

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 5,020 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(2)(b).

/s/ Inge D. Wells

INGE D. WELLS #881137
Senior Assistant Attorney General
inge.d.wells@doj.state.or.us

Attorney for Defendant-Respondent

IDW:bmg/5005106