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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

S061266

**APPELLANT'S OPENING BRIEF
AND EXCERPT OF RECORD**

Appeal from a Decision of the Oregon Tax Court
by the Honorable Henry J. Breithaupt

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I. STATEMENT OF THE CASE

A. Nature of the Action and Relief Sought.

This appeal concerns the taxation of affordable housing developments owned by a charitable organization and leased to low income families. The underlying case is an appeal filed by Plaintiffs Corvallis Neighborhood Housing Services (“CNHS”) dba Willamette Neighborhood Housing Services (“WNHS”) and Carolina Sunset Development, LLC (“CSD”) (collectively the “Affordable Housing Providers”) from a decision of the defendant Linn County Assessor (the “Assessor”). In that decision, the Assessor concluded that several properties owned by the Affordable Housing Providers did not meet the terms for an exemption from property taxation under ORS 307.130 for property owned by a charitable institution. The Oregon Tax Court affirmed the decision of the Linn County Assessor and the Affordable Housing Providers appealed.

B. Nature of Judgment Sought to Be Reviewed.

The judgment for which review is sought is a judgment of the Oregon Tax Court denying an exemption under ORS 307.130 for the Affordable Housing Providers and assessing their property.

C. Statutory Basis of Appellate Jurisdiction.

Jurisdiction in the Oregon Supreme Court is appropriate under ORS 305.445, which grants the Oregon Supreme Court exclusive jurisdiction over appeals from the Oregon Tax Court.

D. Timeliness of Appeal.

The judgment of the Oregon Tax Court was entered into the register by Judge Henry Breithaupt on March 28, 2013. The Notice of Appeal was filed on April 24, 2013 -- 27 days after entry of judgment. ORS 19.255 provides 30 days from the date of entry of judgment for an appeal to be filed. The appeal was timely filed.

E. Question Presented on Appeal.

Whether real and personal property owned by a non-profit charitable institution and leased to needy individuals “is actually and exclusively occupied or used” in the charitable work of the institution so as to qualify for a tax exemption pursuant to ORS 307.130.

F. Summary of Arguments.

ORS 307.130 provides that real and personal property owned by a charitable institution is exempt from ad valorem taxation if that property “is actually and exclusively occupied or used” in the charitable work carried on by such institutions. The primary charitable purpose of the non-profit Affordable

Housing Providers is to provide safe, decent, sanitary, affordable housing for persons of low and moderated means. In leasing residential property to needy individuals and families at below market rents, the Affordable Housing Providers are actually and exclusively using that property in their charitable work and, therefore, their property qualifies for the charitable property tax exemption under ORS 307.130.

The Tax Court held that the real and personal property of the Affordable Housing Providers was not exempt from taxation because the Affordable Housing Providers granted a “possessory interest” to needy individuals and families by leasing affordable residential housing to them. According to the Tax Court, the grant of a possessory interest violated the exclusive possession requirement the court found in ORS 307.130. The Tax Court distinguished previous opinions of this Court allowing leased property to qualify for the charitable tax exemption because, in the Tax Court’s view, the needy individuals and families were not a “partner or ‘joint actor’” with the charitable institution. That distinction finds no support in either the statute or this Court’s case law.

The Tax Court erred in its holding by inserting additional requirements for qualifying for exemption under ORS 307.130 and misconstruing the legislative intent of ORS 307.130. The Tax Court’s decision repealed by

implication the applicability of ORS 307.130 to the real and personal property of any charitable institution that provides decent housing to needy individuals and families.

G. Summary of Material Facts.

The dispositive order of the Tax Court, dated February 27, 2013, and found in ER pp 25 – 42, summarized many of the facts necessary to resolve this case. A few additional facts will be provided after quoting the Tax Court’s order:

“The facts stated below largely reflect the Stipulation of Facts and Stipulated Exhibits provided to the court by the parties.

“* * * * *

“Taxpayers provide housing for low-income individuals and families in Linn County and Benton County. The low-income housing projects at issue in this case are all located in Linn County. ([Stipulated Facts] at 3.)

“Prior to 2006, taxpayer operated primarily in Corvallis and other areas of Benton County. (*Id.*) However, in 2006 Linn County Affordable Housing (LCAH), a low-income housing provider in neighboring Linn County, was forced to wind down due to financial difficulties and transferred four low-income housing projects to Corvallis Neighborhood Housing Services (CNHS) dba Willamette Neighborhood Housing Services (WNHS). (*Id.*) Two of these projects were located in the city of Lebanon and two in the city of Sweet Home. (*Id.*) Three of these projects were multifamily rental apartment buildings. (*Id.*) The fourth consisted of six single family rental homes located in Sweet Home. (*Id.*) As of July 1, 2010, CNHS owned only the single family homes directly. (*Id.*) The three apartment complexes were owned by Carolina LLC, which was in turn wholly owned by CNHS. (*Id.*) These properties are referred to in this order collectively as ‘the subject properties.’

“The construction capital for the subject properties included government funding that requires the subject properties to be reserved for low-income households. (*Id* at 4-11.) In some instances these funds were conditioned upon, among other things, recording rent restrictions and limits on tenant income as covenants that run with the land. (*Id.*) Most of the funding sources relied upon by taxpayers required that tenants' household incomes not exceed some prescribed percentage of the Area Median Income, typically below 50 to 60 percent. (*Id.*) Other funding sources relied upon by taxpayers required taxpayers to provide social service programming to tenants. (*Id.*) The operating expenses for the subject properties, including debt servicing, were financed in part by rents collected from taxpayers' tenants. (*Id* at 11-12.)

“* * * * *

“Under the lease agreement used by taxpayers during the tax year at issue, taxpayers granted to its residents the right to use a given housing unit as a residence in consideration for payment of rent. (Stip Ex Bat 1; Stip Facts at 17.) 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. (Stip Ex Bat 2-3.) Otherwise, tenants appear to have had the right to exclude others, including agents or employees of taxpayers, from their own leased dwellings.

“While in possession of LCAH, all four of the subject properties were exempted from property tax under ORS 307.130.2 In December of 2009 the owner of record in the Linn County property records for the three multifamily projects acquired by Carolina LLC changed to reflect their acquisition by Carolina LLC. (Decl of Sanders at, 3.) This record change prompted the county to review the exemption given to these properties and to disqualify the multifamily projects owned by Carolina LLC from property tax exemption for the 2010-11 tax year. (*Id* at, 5.) After further review of the county's records, the county also disqualified the single family homes in Sweet Home that CNHS owned directly from property tax exemption for the 2010-11 tax year. (*Id* at, 6.) Taxpayers appealed these disqualifications to the Oregon Tax Court. (*Id* at 7).

Additionally, CNHS is an I.R.C. 501(c) (3) corporation.

Stipulation of Facts, p. 2. CNHS was formed “exclusively for charitable purposes to serve low and moderate income people through community development/neighborhood revitalization needs and community self-help activities within Linn and Benton Counties.* * * This purpose includes the provision of safe, decent, sanitary, affordable housing for persons of low and moderated means.” *Id.*, CNHS Amended Articles of Incorporation, Article 9. CSD is an Oregon limited liability company of which WNHS is the sole member.¹

The subject properties were developed with government funding that requires the properties to be reserved for low-income households. Stipulation of Facts, p. 4. All units are rented at below market rents, with “market rents” determined by the HOME Investment Partnership Grant – a federally-funded affordable housing program administered federally by Housing and Urban Development and by the Oregon Housing and Community Services. *Id.* Additionally, WNHS receives donations from individuals and small business and funding from private grants. Affidavit of James Moorefield, ¶11, p. 4.

¹ Under ORS 307.022, a limited liability company wholly owned by a nonprofit corporation qualifies for property tax exemption to the extent the nonprofit corporation qualifies for the exemption.

The subject properties are rented or leased to needy individuals and families whose annual household incomes are in the range of \$0.00 to \$36,539. *See, e.g.* Exhibit H, Part 2, pp. 7, 9 and 17 attached to Affidavit of Jodi Erickson. The amount of rent for the subject affordable housing is based upon the household income of the individuals and families renting or leasing the residential housing of the Affordable Housing Providers. *Id.*

II. ASSIGNMENT OF ERROR

FIRST ASSIGNMENT OF ERROR

The Tax Court erred in determining that the Affordable Housing Providers were not entitled to a tax exemption for real and personal property owned by the Affordable Housing providers and leased to low-income and needy individuals that are used for the charitable work carried on by the Affordable Housing Providers.

A. Preservation of Error

Appellant argued that the Affordable Housing Providers were non-profit, charitable institutions that used their real and personal property in the furtherance of their charitable purpose of providing safe, decent, sanitary, affordable housing for persons of low and moderated means and, thus, the subject property qualified for exemption pursuant to ORS 307.130 in Plaintiff's Memorandum in Support of Plaintiff's Motion for Summary Judgment, in Plaintiff's Response to Defendant's Motion for Summary Judgment, and in oral argument before the Tax Court on March 21, 2012.

B. Standard of Review.

The scope of review of a decision of the tax court judge is limited to errors or questions of law or lack of substantial evidence in the record.

ORS 305.445.

III. ARGUMENT

In 1955, the Oregon legislature established a “new test” for the determination of the right to tax exemption for property owned by a charitable institution by amending ORS 307.130 to provide for exemption for property of these institutions “as is actually and exclusively occupied *or used* in the...charitable...work carried on by such institutions.” (Emphasis added.) By the plain language of ORS 307.130, and by the interpretation of the language by this Court and the Oregon Tax Court, 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. Thus, the Affordable Housing Providers are entitled to a property tax exemption for the properties that they use to provide much-needed housing to needy individuals and families.

A. The Standard for Construing A Tax Exemption Statute is Strict But Reasonable and Consistent With The Statutory Construction Methodology of this Court

Whether the homes and apartments provided to needy families and individuals are “used” by the Affordable Housing Providers in carrying out their charitable goals and, therefore, subject to exemption under ORS 307.130, is a question of statutory construction for the Court to resolve. This Court has held that “tax exemption statutes are to be construed strictly but reasonably.” *Emanuel Lutheran Charity Bd. v. Dept. of Rev.*, 263 Or 287, 291, 502 P2d 251 (1972). The *Emanuel Lutheran* court relied on *Mult. School of Bible v. Mult. County*, 218 Or 19, 343 P2d 893 (1959) in which this Court stated:

“But the rule of strict construction does not require the narrowest possible meaning be given to the words descriptive of the exemption, for a fair and reasonable interpretation must be made to all laws, with regard to the ordinary acceptance of the language employed and the object sought to be accomplished thereby.” 218 Or at 27-28.

In *Emanuel Lutheran*, this Court stated the strict but reasonable test “merely means that the statute will be construed reasonably to ascertain the legislative intent, but in case of doubt will be construed against the taxpayer.” 263 Or at 291. The strict but reasonable standard enunciated by this Court in these earlier cases is consistent with the methodology this Court has enunciated in construing a statute to determine legislative intent in the Court’s later cases.

In resolving questions of statutory construction, “the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted * *.” ORS 174.010. At the first level, the court looks to the text of the statute to derive the intent of the legislature. ORS 174.020(1)(a); *Portland Gen. Elec. Co. v. Bureau of Labor & Indus.*, 317 Or 606, 610, 859 P2d 1143 (1993) (“*PGE*”). “As part of the text and context, the court includes consideration of its own prior interpretations of the statute.” *Living Enrichment Center Properties, LLC v. Dept. of Rev.*, 19 OTR 324, 330 (2007) citing *State v. Sullens*, 314 Or 436, 443, 829 P2d 708 (1992)

If the court finds that the language of ORS 307.130 is ambiguous, the proper construction of ORS 307.130, and more specifically the term “used,” must be determined pursuant to the framework this Court established in *PGE* and modified in *State v. Gaines*, 346 Or 160, 171-72. *PGE* first requires an examination of the text and context of the statute. *PGE*, 317 Or at 610-11; *Gaines*, 346 Or at 171. Words are to “be given their plain, natural, and ordinary meaning.” *PGE*, 317 Or at 611. The context of the statute “includes other provisions of the same statute and other related statutes.” *Id.* If the legislature’s intent is clear” from the text and context, “further inquiry is unnecessary.” *Id.*

Also, the court may consult any legislative history presented by a party that it believes to be useful in its analysis, and the evaluative weight given to such legislative history is for the court to decide. ORS 174.020(3); *Gaines*, 346 Or at 172. To the extent that examination of the text and context, and an examination of the legislative history, does not resolve questions of legislative intent to the Court's satisfaction, the Court may also apply "general maxims of statutory construction to aid in resolving the remaining uncertainty." *PGE*, 317 Or at 612; *Gaines*, 346 Or at 172.

1. **The text of ORS 307.130 demonstrates that the legislature intended to expand the exemption for literary, benevolent, charitable and scientific institutions to property not exclusively occupied by the institution but employed by these institutions in the furtherance of their literary, benevolent, charitable and scientific purposes.**

This Court has stated that "there is no more persuasive evidence of the intent of the legislature than 'the words by which the legislature undertook to give expression to its wishes.'" *Gaines*, 346 Or at 171. Thus, the first step in attempting to ascertain the legislature's intent in the exemption of real and personal property is to look at the plain meaning the words "as is actually and exclusively occupied *or used* in the...charitable...work carried on by such institutions." (Emphasis added.)

In a previous case involving ad valorem taxes, this Court has interpreted the plain meaning of the word "used":

“The statutes, however, do not provide a definition of the word ‘used.’ In ordinary usage, the verb ‘to use’ means ‘to put into action or service[;] have recourse to or enjoyment of [;] employ.’ *Webster’s Third New Int’l Dictionary* 2523–24 (unabridged ed 2002). Synonyms for that verb include to ‘employ, utilize, apply, avail.’ *Id.* at 2524. ‘Use * * * indicates any putting to service of a thing, usu[ally] for an intended or fit purpose or person[.]’” *Id.*

Pacificorp Power Marketing, Inc. v. Dept. of Rev., 340 Or 204, 215, 131 P3d 725 (2006). Likewise, an additional dictionary definition of “used” is “employed in accomplishing something.” *Webster’s Third New Int’l Dictionary* 2524 (unabridged ed 2002).

The dictionary definition of “to use” or “used” clarifies the legislature’s intent to exempt real and personal property of a charitable institution that is “employed,” “utilized” or “put into service” by the charity for the intended purpose of carrying on by the charitable work of that institution. Here, the charitable work of the Affordable Housing Providers is to provide housing for those that need housing. The properties at issue are employed, or put into service, by providing housing to needy individuals and families at below market rent and based upon what the individuals and families can afford to pay. This use of the property directly accomplishes the charitable purpose of the Affordable Housing Providers. How else could the Affordable Housing Providers put into service its property for its charitable purpose of providing

affordable housing to needy individuals and families without the beneficiaries of the charity actually being housed on the property?

The language used by the legislature in ORS 307.130 is not ambiguous. There is no requirement in the statute or the definition of the words that require exclusive possession and the Tax Court erred in importing that requirement. As discussed in more detail below, the statute focuses on how the property is used, not who occupies it. The court need go no further than the plain language of ORS 307.130 to hold that the residential housing of the Affordable Housing Providers is used in the charitable work carried on by these charitable institutions. Exclusive possession of the individual homes and apartments is part of providing housing for the needy among us and this exemption allows the Affordable Housing Providers to carry on that important work. Because the properties at issue are actually and exclusively used in the charitable work of providing housing, this Court should reverse the Tax Court's contrary conclusion and hold that the properties are used consistently with the exemption at ORS 307.130.

2. **The context of ORS 307.130 demonstrates that the legislature intended to exempt real and personal property of a charitable institution that is employed in pursuit of the institution's charitable goals, in this case, providing affordable housing to needing individuals and families.**

In resolving an issue of statutory interpretation, the courts should also consider the context of the disputed statute. *See, e.g., Jones v. Gen. Motors Corp.*, 325 Or 404, 411, 939 P2d 608 (1997); *State v. Perry*, 336 Or 49, 54-55, 77 P3d 313 (2003); *Fresk v. Kraemer*, 337 Or 513, 520-21, 99 P3d 282 (2004). Since *PGE*, the court has expanded the scope of the contextual inquiry to include the historical circumstances surrounding a disputed statute's enactment. *Fisher Broadcasting, Inc. v. Dep't of Revenue*, 321 Or 341, 351, 898 P2d 1333 (1995) (discussing a "nationwide effort to promote uniform allocation of income" to give context to Oregon's codification of the Uniform Division of Income for Tax Purposes Act of 1965). The Court has also formed its interpretation of Oregon law with decisions from courts in other jurisdictions. *See, e.g., GPL Treatment, Ltd. v. Louisiana-Pacific Corp.*, 323 Or 116, 124-26, 914 P2d 682, 687-88 (1996) (taking into account federal and state case law in order to determine the Oregon legislature's intent behind the Oregon Statute of Frauds).

- a. **ORS 307.130 and earlier versions.**

If the plain meaning of the words the legislature used in ORS 307.130 is not sufficient, the context of ORS 307.130 answers the questions of what the

legislature meant by exempting the real and personal property that “is actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institutions.”

Oregon law has long provided a tax exemption for charitable property and a short examination of the history of that exemption would be beneficial to resolving this case.

1) 1854 version. Even before Oregon became a state, the territorial legislature passed an act authorizing exemption from taxation for charitable institutions. That act provided that:

“[T]he personal property of all literary, benevolent, charitable and scientific institutions incorporated within this state, and such real estate belonging to such institutions as shall be actually occupied for the purposes for which they were incorporated [shall be exempt from taxation].” M. P. Deady, *GENERAL LAWS OF OREGON*, Chapter LIII, Title I, Section 4 (3) (1845-1864); HILL’S *ANNOTATED LAWS*, Section 2732; *see Portland Hiberian Benev. Soc. v. Kelly* 28 Or 173, 30 LRA 167 (1895) (holding that the portion of plaintiff’s real property that was not actually occupied by the benevolent society was not exempt from tax).

This act was continued after statehood in 1859 by operation of Article XVIII, section 7, of the state constitution. *YMCA v. Dept. of Rev.*, 308 Or 644, 784 P2d 1086 (1989).

2) 1955 amendment. This Court addressed the 1955 amendment in *YMCA v. Dept. of Rev.*, which involved the taxation of two

fitness centers operated by the YMCA. The court explained the history of the charitable exemption provision as follows:

“[The 1854 charitable exemption cited above] remained intact for 101 years, until the 1955 legislature amended ORS 307.130 to read, in pertinent part, as follows:

“(1) Upon compliance with ORS 307.170, the following property owned by incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:

“(a) Except as provided in ORS 740.080, only such real or personal, or portion thereof, as is actually *and exclusively* occupied *or used* in the literary, benevolent, charitable or scientific work carried on by such institutions. Or. Law 1955, ch. 576 § 1 (a) (emphasis added).’

“In 1959, this court commented as follows on the effect of the added words “exclusively” and “used”:

“‘The **fundamental** change made in ORS 307.130 by the act of 1955 * * * was to establish **a new test** for the determination of the right to tax exemption. By the act of 1955, such property ‘or portion thereof, as is actually and exclusively occupied or used’ became the cardinal criterion for the purposes of tax exemption.

“‘In short, before the 1955 amendment, the right to tax exemption turned upon *actual occupation* for the purposes of the institution. But after the amendment, the test to be thereafter applied was: whether the property was *actually and exclusively occupied or used* for such purposes.’

“*Mult. School of Bible v. Mult. Co.*, 218 Or 19, 26, 343 P2d 893 (1959) (citation omitted). In that case, this court examined the decisions in other jurisdictions and concluded:

“[T]he words ‘exclusively occupied or used,’ as employed in ORS 307.130, as amended, refer to the primary purpose for which the institution was organized and includes any property of the institution used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment and fulfillment of the generally recognized functions of such a charitable institution.’ 218 Or at 36–37, 343 P2d 893.

“This court has construed the exemption statute many times over the years. *See, e.g., YMCA v. Dept. of Rev.*, 268 Or 633, 635, 522 P2d 464 (1974); *Friendsview Manor v. Tax Com.*, 247 Or 94, 420 P2d 77 (1966), *rehearing allowed and former opinion adhered to*, 247 Or 94, 427 P2d 417 (1967); *Methodist Homes v. Tax Com.*, 226 Or 298, 308, 360 P2d 293 (1961); *Kappa Gamma Rho v. Marion County*, 130 Or 165, 176, 279 P 555 (1929); *Willamette University v. Knight*, 35 Or 33, 56 P 124 (1899).” *YMCA*, 308 Or at 650 – 652; (emphasis in *italics* in original, emphasis in **bold** added).

In short, this Court interpreted the 1955 amendment to ORS 307.130 to be a “fundamental change” establishing a “new test” for the exemption of real and personal property owned by a charity in addition to the actual occupation or possession of the property by the charity. By insertion of the words “or used” the 1955 legislature created an alternative to the “occupation” and removed any possible justification for actual physical possession of the property to qualify for exemption. After the 1955 amendment, in interpreting ORS 307.130, the courts look not only as to whether the property was actually and exclusively occupied by the charitable institution; but, in addition, the court must look to the “primary purpose for which the institution was organized” and exempt “any

property of the institution used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment and fulfillment of the generally recognized functions of such a charitable institution.” *Id.*

The purposes of the Affordable Housing Providers are stated in their Articles of Incorporation, which provide that CNHS was organized:

“[E]xclusively for charitable purposes to serve low and moderate income people through community development/neighborhood revitalization needs and community self-help activities within Linn and Benton Counties.* * * *This purpose includes the provision of safe, decent, sanitary, affordable housing for persons of low and moderate means.*” *Id.*, CNHS Amended Articles of Incorporation, Article 9. Ex. A to Stipulation of Facts, pp. 2-3 (emphasis added).

Leasing affordable housing to needy individuals and families fulfills the charitable purpose of the Affordable Housing Providers. This use of the property is not incidental and reasonably necessary for the accomplishment and fulfillment of its charitable function of these Affordable Housing Providers, but essential to the fulfillment of their charitable purpose. Thus, the Affordable Housing Providers are “using” the properties at issue to accomplish their charitable work and entitled to the charitable purpose tax exemption for the properties at issue.

3. **The Court's prior interpretations of ORS 307.130 supports exemption of housing owned and provided by charitable or religious organizations as substantially contributing to the furtherance of the charity's goals and include cases granting exemption for property used by a charity in providing low income housing to needy individuals or families.**

Since 1955, this court and the Oregon Tax Court have construed the language "actually and exclusively occupied or used" of ORS 307.130 in a number of cases. In none of these cases did the court hold that the "actual and exclusive use" language from ORS 307.130 nullified an exemption to a charitable institution simply because the institution rented or leased residential property to individuals to occupy. Likewise, prior to the Tax Court's decision in this case, no Oregon court has held that residential occupancy of a property by the beneficiary of the charity is inconsistent with the charitable institution's use of the property for its charitable purposes under ORS 307.130. Indeed, in an unpublished opinion, the Oregon Tax Court quoted Zollman, *AMERICAN LAW OF CHARITIES*, § 219, at 154 (1924): "Furnishing board, lodging and nursing to needy persons is the most familiar and useful of charities."

R.E.A.C.H. Community Development v. Dept. of Rev., Tax Court Case No. 2189 (February 18, 1986).²

² Even the Internal Revenue Service recognizes organizations that provide low-income housing "will be considered charitable...because they relieve the poor and distressed..." I.R.S. Rev. Pro. 96-32, 1996-1 C.B. 717, 1996-20 I.R.B. 14.

In *German Apostolic Church v. Dept. of Rev.*, 279 Or 637, 569 P2d 596 (1977), this Court was asked to determine whether a portion of a two-story housing facility leased to needy and elderly church members as low-rent apartments was exempt as a charitable use under ORS 307.130 (as opposed to ORS 307.140 relating to religious organizations). Each of the apartments in the housing facility included a living room, dining and kitchen area, bathroom, and one or two bedrooms. This Court stated:

“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.” 279 Or at 641.

This Court held that the housing facility did contribute to the furtherance of the charity’s goals and was exempt:

“Lessees of the apartments are required to pay what they can afford and only as much as needed to run the apartments. The availability of low-rent apartments was possible through donations of others and not through any action of their own. An exemption should be allowed for those apartments actually rented to those in need during the tax year.” 279 Or at 648.

This Court made no mention of the fact that the lessee’s exclusive occupation of the housing facility was somehow a factor in determining whether the property was entitled to exemption. Nor did this Court grant the exemption based upon the finding that the lessee was “a partner or ‘joint actor’ with the charitable, public or governmental institution in accomplishing its charitable purposes.”

Tax Court Order Denying Plaintiff's Motion for Summary Judgment at 14, ER p. 39.

In one of this Court's earliest cases after the 1955 amendment to ORS 307.130, this Court noted that many other jurisdictions had "exclusive use" language in their exemption statutes and that "an examination of their decisions will be helpful in framing our judgment" regarding housing provided by the charitable institution to school employees. *Mult. School of Bible*, 218 Or at 29. The Court reviewed, for example, *Young Men's Christian Ass'n of Los Angeles v. Los Angeles County*, 35 Ca. 2d 760, 221 P2d 47, 51 (1950). There, the California Supreme Court held that property owned by the YMCA and used for dormitory rooms was exempt from taxation. After reviewing that case, this Court stated:

"If the incidental use (in the case at bar, the residential use by essential employees of plaintiff) does not interrupt the exclusive occupation of the buildings for school purposes, then there can fairly be said to be left an exclusive use in the school on which the law lays hold for purposes of tax exemption." 281 Or at 29.

In *Mult. School of Bible* there was no suggestion by this Court that the occupation and possession of residential property by school employees caused the property not to be exempt because the property was not "exclusively used" by the charitable institution. The holding was just the opposite. This Court found that the housing of school employees furthered the primary purpose for

which the school was organized and was consistent with the language “exclusively occupied or used” for the charitable purpose of the institution.

Several other cases involving institutions providing residences to house individuals were decided by this Court in favor of exemption under ORS 307.130. In *Willamette University v. State Tax Commission*, 245 Or 342, 422 P2d 260 (1966) this Court noted that construction of housing for students of the university facilitated the charity’s exempt purposes. 245 Or at 345. In *YMCA v. Dept. of Rev.*, 268 Or 633, 522 P2d 464 (1974), this Court held that property leased to the armed services to house draftees, as well as property leased to and occupied by Job Corp administrative personnel was exempt from taxation under ORS 307.130 because “[i]t is enough if the activity undertaken on the property substantially contributes to the charity’s goals.” 268 Or 633, 635, 522 P2d 464 (1974). This Court found that both housing draftees and “the occupancy of the rented area [by Job Corp personnel] as an integral part of a charitable enterprise [of the YMCA].” 268 Or at 637 and 639. There can be no more “integral part” of the charitable purposes of the Affordable Housing Providers than the actual provision of “safe, decent, sanitary, affordable housing for persons of low and moderate means.”

In *House of Good Shepherd v. Dept. of Rev.*, 300 Or 340, 710 P2d 778 (1985) this Court considered an appeal from the Tax Court’s denial of an

exemption under ORS 307.130 of a building used as a residence to house nuns. The Tax Court assumed no residence for members of a religious order can be exempt unless the primary use of the property is “reasonably necessary for the charitable functions of the taxpayer.” 300 Or at 343. Citing *German Apostolic Church. Christ Church v. Dept. of Rev.*, *supra*, this Court stated:

“In *German Apost. Christ Church v. Dept. of Rev.* [citations omitted], we interpreted ORS 307.130 to require a taxpayer to demonstrate both a need for the activity undertaken on the property for which the exemption is sought and actual use of the property for this activity.” 300 Or at 344.

This Court reversed the Tax Court and held that the residential property used to house nuns was exempt from taxation because such housing advanced the purpose of the charitable institution. It is difficult to imagine a use of the properties at issue that would more directly advance the purposes of the Affordable Housing Providers than the use being made of them.

In *Rigas Maja, Inc. v. Dept. of Rev.*, 12 OTR 471 (1993),³ the Oregon Tax Court was asked to determine if a two-story residence leased from a church by a related non-profit corporation and used to house elderly individuals in need of assisted care was exempt from taxation under ORS 307.130. The Tax Court

³ Although the *Rigas Mata* case is not a decision of this Court and is not binding precedent, this Court has noted that it “commonly give tax court case law close attention for its intrinsic logical value.” *Trendwest Resorts, Inc. v. Dept. of Rev.*, 340 Or 413, 421, 134 P2d 932 (2006).

found that the elderly needy individuals were the “legitimate objects of charity”⁴ and the property of the charitable organization “is exclusively used in furtherance of its charitable purposes and is exempt from property taxation.” 12 OTR at 475.

In this case, the Tax Court found the Affordable Housing Providers’ purpose “to provide housing for needy individuals and families – indisputably answers an important social need” and “that those goals were charitable.” Tax Court Order at 10 and 11. And, in light of the fact that the taxing authorities introduced no evidence to the contrary, the Tax Court held that the Affordable Housing Providers had charity as its primary, if not sole, object. *Id.* Finally, the Tax Court found that the Affordable Housing Providers operated low-income housing projects without profit, private benefit or advantage and, in doing so, these activities contributed to the specific goals of the Affordable Housing Providers, *i.e.* providing housing for needy individuals and families were performing in a manner that furthers their charitable purpose. Tax Court Order at 11; ER at 36.

By an examination of the text and context, including numerous prior interpretations of this Court and the Tax Court, it is clear the low-income residential housing provided by the Affordable Housing Providers meets the

⁴ 12 OTR at 474.

“new test” of the 1955 amendment to ORS 307.130 because the properties at issue were “exclusively occupied or used” in the charitable work carried on by those institutions. The primary purpose of the Affordable Housing Providers is to provide affordable housing for needy individuals and families – almost universally recognized as a charitable endeavor. It is axiomatic that to fulfill the primary purpose of the Affordable Housing Providers – providing affordable housing to needy individuals and families – it is reasonably necessary for the Affordable Housing Providers to make available the actual affordable housing to the beneficiaries of charity to occupy and reside within. Thus, it is not necessary to go beyond the text and context of ORS 307.130 for this Court to reverse the Tax Court and remand this case to determine any remaining questions of fact. *Gaines*, 346 Or at 173 (“When the text of a statute is truly capable of having only one meaning, no weight can be given to legislative history that suggests – or even confirms – that legislators intended something different.”)

B. The Tax Court Erred in Interpreting “Exclusively Occupied or Used” to Exclude Exemption For Properties in Which the Beneficiary Of The Charity Has a “Possessory Interest” in the Property and Was Not “Joint Actor” or Partner With a Charitable Institution in Accomplishing its Charitable Purposes

The Tax Court engaged in a three-step process in reaching its decision to deny exemption, as a matter of law, to the property owned by the Affordable

Housing Providers and leased to low-income individuals and families. First, the court looked to whether the Affordable Housing Providers were charitable institutions. Dismissing the assessing authorities' argument that the primary purpose of the Affordable Housing Providers was housing, rather than charity,⁵ the Tax Court found that

“Because taxpayers’ purported mission answers an important need of society at large, taxpayers professed not to be doing so on a for-profit bases, and the taxing authorities have not introduced evidence to counter either of taxpayers’ assertions, the court concludes that the taxpayers meet the first of the three charitable classification factors.” Tax Court Opinion at 10; ER p 35.

Second, the Tax Court examined whether the Affordable Housing Providers had “charity as its primary, if not sole, object.” Tax Court Opinion at 8; ER at 33. The court found “there is no dispute that taxpayers operated low-income housing projects” and “that none of the taxpayer’s founders, employees, or officials obtained any profit, private advantage, or benefit from the operations of taxpayers.” Tax Court Opinion at 11; ER at 36. Thus, the Tax Court held that “[i]nasmuch as the court has ruled that those goals are charitable, taxpayers satisfy the second charitable classification factor.” *Id.*

⁵ Tax Court Opinion at 8.

Third, the Tax Court examined “[w]hether the subject properties are ‘exclusively used or occupied’ in the charitable work of taxpayers. Tax Court Opinion at 12; ER at 37. The Tax Court discussed four prior cases⁶ and held:

“The upshot of these cases is that a grant of possessory interest in property owned by a charitable institution to another person or entity violates the exclusive occupation or use requirement of ORS 307.130 unless the lessee’s use or occupation of the property actively contributes to the purposes of the charitable institution in such a way that the lessee can be viewed as a partner or “joint actor” with a charitable, public, or governmental institution in accomplishing its charitable purposes.” Tax Court Opinion at 14; ER at 39.

In so holding, the Tax Court erred on a number of grounds: (1) the court did not properly look to the text and context, legislative history or general maxims of statutory construction as required by *PGE* and *Gaines*; (2) the court misinterpreted the prior holdings of this court and of the Tax Court regarding the interpretation of “exclusive possession or use;” (3) the court inserted language into the statute – “possessory interest” and “partner or joint actor” -- that had neither been articulated by this Court or the Tax Court, nor intended by the 1955 legislature to be conditions for granting an exemption to charitable institutions pursuant to ORS 307.130; and, (4) improperly relied upon

⁶ *Young Men’s Christian Association v. Dept. of Rev.*, 268 Or 633, 522 P2d 464 (1974); *Albany General Hospital v. Dept. of Rev.*, 6 OTR 446 (1976), *aff’d* 277 Or 727, 561 P2d 1029 (1977), *Multnomah School of the Bible v. Multnomah County*, 218 Or 19, 343 P2d 893 (1959) and *Lewis & Clark College v. Commission*, 3 OTR 429 (1969).

“legislative history” of other statutes – ORS 307.540 and ORS 307.548 – to support the court’s decision to deny exemption to real property used by the Affordable Housing Partners in accomplishing their charitable purpose.

1. The Tax Court failed to ascertain the legislative intent within the framework this court established in *PGE* and modified in *Gaines*.

Whether providing affordable housing to needy individuals or families is exclusive occupation or use in the charitable work carried on by the Affordable Housing Providers is a question of statutory construction for the Court to resolve. In *PGE* and *Gaines*, this Court established a framework to resolve questions of statutory construction. The Tax Court failed to follow this framework and, thus, came to an erroneous conclusion of the legislature’s intent in providing for a “new test” for determining the exemption of the real and personal property of a charitable institution.

In *Gaines*, this Court stated:

“This court remains responsible for fashioning rules of statutory interpretation that, in the court’s judgment, best serve the paramount goal of discerning the legislature’s intent. In that regard, as this court and other authorities long have observed, there is no more persuasive evidence of the intent of the legislature than ‘the words by which the legislature undertook to give expression to its wishes’”³⁴⁶ Or at 171.

The Tax Court failed to examine the text to determine the legislature’s intent in granting exemption to the real and personal property “exclusively used” in the charitable work carried on by the Affordable Housing Providers. If

the Tax Court had given the term “used” its “plain, natural, and ordinary meaning” as required by *PGE*,⁷ as analyzed above, the court should have concluded that the term meant “to put into action or service,” “to employ, utilize, apply or avail,” “putting to service a thing, usu[ally] for an intended or fit purpose or person,” or “employed in accomplishing something.”

The plain meaning of “exclusively used” translates, in this case, to the real and personal property of the Affordable Housing Providers (affordable residential housing), “employed” or “put into service for an intended person” (the low-income individual or family, *i.e.* the beneficiaries of the charity) by the Affordable Housing Providers “to accomplish something” (the charitable purpose for which the Affordable Housing Providers were created).

Nothing in the plain meaning of “exclusively used” by the charity suggests that an exemption cannot be granted for the real or personal property of a charitable institution that is affordable residential housing occupied by the recipient of the charity. The grant of a possessory interest to the beneficiary of the charity does not change the nature of the institution’s use of its property; the institution may have granted one “stick” from its bundle of property rights, but the properties are still being exclusively employed for charitable purposes. The Tax Court’s decision focused upon the use of the property made by the recipient

⁷ 317 Or at 611.

of the charity, while the text of ORS 307.130 clearly is focused upon the use of its property made by the charitable institution itself in accomplishing its charitable purpose. The Tax Court's decision does not accurately reflect the text of the statute or the legislature's intent in granting an exemption pursuant to ORS 307.130.

2. The Tax Court misinterpreted the prior holdings of this court and of the Tax Court regarding in interpreting "exclusive possession or use."

Nothing in the four cases reviewed by the Tax Court suggests that "a grant of a possessory interest in property owned by a charitable institution to another person or entity violates the exclusive occupation or use requirement of ORS 307.130." In fact, neither the term "possessory interest" nor other term with a similar meaning can be found in those four cases. The Tax Court misinterpreted the holding in those cases and ignored this Court's holding in a number of other cases.

In *YMCA v. Dept. of Rev.*, 268 Or 633, 635, 522 P2d 464 (1974), this Court also found a charitable exemption, even though the property was exclusively possessed by entities other than the charitable institution. In that case, the downtown Portland YMCA leased its property both to house Selective Service draftees and, to the Job Corp for office space and recreation. Both the draftees and the Job Corp were the beneficiaries of the YMCA's charitable use

of the property. Both had “possessory interests” in the housing and the office, respectfully, that gave them the right to exclude others. However, in resolving that case, this Court did not focus upon the use of the property by the beneficiaries of the charity. Instead, this Court focused upon whether “the activity undertaken on the property substantially contributes to the furtherance of the charity’s goals.” 268 Or at 635 (citing *Mult. School of the Bible*). This Court held that providing residential housing to inductees and leasing offices to the Job Corp “fell within the general charitable goals of the Y.M.C.A organization” and “within the scope of the charitable objectives which the Y.M.C.A. espouses.” 268 Or 637, 638. Further, this Court held “we regard the occupancy of the rented area as an integral part of a charitable enterprise.” 268 Or 639. There is little question that providing affordable housing to needy families “substantially contributes to the furtherance” of the Affordable Housing Provider’s objectives in this case and, that the provision of rental housing is an “integral part” of their charitable enterprise.

The Tax Court cited *Albany General Hospital* as interpreting the holding in *YMCA v. Dept. of Rev.* to mean that the grant of any possessory interest requires that the grantee be a “joint agent” or “partner” with the institution to qualify for the exemption under ORS 307.130. The Tax Court misreads the holding in both of these cases. In both cases, this Court focused upon whether

the institution's use of the property, *i.e.* allowing occupancy of the rented area by a third party, substantially contributed to, or was in the scope of, the institution's charitable objectives. In *YMCA*, this Court found that the use of the property was within the YMCA's charitable objectives. In *Albany General Hospital*, this Court agreed with the Tax Court that a portion of the hospital's building complex leased to the Linn County Health Department was not exempt pursuant to ORS 307.130 because "[t]here was no substantial evidence that the county's programs [vaccinating preschool children, alcoholic detoxification and counseling center, and a venereal disease control clinic] aided the hospital's work." Again, the focus of the court in both cases was upon whether the use of the property of the charitable institution was within, and furthered, the charitable objective of that institution.

The Tax Court cited this Court's decision in *Mult. School of Bible* for support that an exemption should be granted "when the possessor is an agent of a charitable institution engaged in work necessary to the purposes of the institution." Tax Court Order at 13. There, this Court held that the school's entire campus, including dormitory housing students, as well as a residential structure occupied by the school's superintendant and the school's dining hall supervisor, was exempt from taxation pursuant to ORS 307.130. While there was discussion in that case about whether housing the school's superintendants

was necessary for the school to fulfill the school's educational purposes, there was no discussion that the superintendant's occupancy of the residence would disqualify the property for exemption but for the fact that the superintendants were "agents" of the school.

Instead, this Court focused upon the use of the real property and whether it was utilized to fulfill the charitable functions of the institution:

"[T]he words 'exclusively occupied or used,' as employed in ORS 307.130, as amended, refer to the primary purpose for which the institution was organized and includes any property of the institution used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment and fulfillment of the generally recognized functions of such a charitable institution. 218 Or at 36-37.

Further, the Tax Court ignored the fact that Multnomah School of the Bible's property involved tax exemption of student residential facilities as did the cases from other jurisdictions which this Court relied upon in *Multnomah School of the Bible: Cedars of Lebanon Hospital v. Los Angeles County*, 35 Cal2d 729, 221 P2d 31 (1950) (housing of student nurses); *Young Men's Christian Assoc. v. Los Angeles County*, 35 Cal2d 760, 221 P2d 47 (1950) (dormitory rooms); *Serra Retreat v. Los Angeles County*, 35 Cal2d 755, 221 P2d 59 (1950) (lodgings for priests); *Blackman v. Houston*, 39 La Ann 592, 2 So 193 (1919) (rooms for two to three hundred scholars); *Carter v. Patterson* 39 SW 1110 (Tex Civ App 1897) (building used as a boarding school,

including housing for teachers); and *Midwest Bible & Missionary v. Sestric* 364 Mo. 167, 260 S.W.2d 25 (1953) (residences for school superintendant as well as housing for male and female students). 218 Or at 31-35.

In *Mult. School of Bible*, this Court concluded that these cases stood for the principle that residential housing was exempt because the housing was “incidental to the prime purposes of the institution and reasonably necessary to the accomplishment of that purpose.” 281 Or 31. The occupants of the residential housing were recipients and beneficiaries of the charitable or educational purposes of the institutions. No mention was made that they were “agents” of the institution owning the property such that an exemption could be granted. Thus, the Tax Court’s attempt to read into the language of ORS 307.130 that occupation of residential property by the beneficiary of the charity disqualifies the property from exemption unless the occupant is an “agent” of the charitable institution is misplaced.

The use of the Affordable Housing Providers’ property here is even more compelling because the residential use is not “incidental” to the primary purpose of the charitable institutions, but directly accomplishes that purpose. Occupancy of the properties here is not “reasonably necessary” to accomplish the Affordable Housing Providers’ charitable purpose; it is essential to accomplish that purpose. If the properties at issue cannot be provided to needy

families, the Affordable Housing Providers will not be able to accomplish their purposes.

Furthermore, the Tax Court ignored decisions of this Court that could not be reconciled with the Tax Court's interpretation of ORS 307.130. In *German Apostolic Christian Church v. Dept. of Rev.*, *supra*, this Court focused upon whether the use of the property advanced charitable purposes, not the uses of the property made by the beneficiaries of the charity:

“If, then, 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 * * * * It is enough if the use fulfills a generally recognized charitable function. Under ORS 307.130, the nonprofit corporation statute, the property must be used “in the work carried on by such institutions.” 279 Or at 643.

In the *German Apostolic* case, this Court held that, under ORS 307.130, an exemption should be allowed for “low-rent apartments actually rented to needy and older members of the congregation.” 279 Or 645, 648. This Court implicitly held that providing low-rent apartments to needy individuals (*i.e.* the beneficiaries of the institution's charity) advanced the charitable purposes or goals of the charitable institution and, as such, the residential property of the charitable institution was exempt from taxation under ORS 307.310.

Likewise, the Tax Court ignored this Court's decision in *House of Good Shepherd*, *supra*, in which this Court reversed the Tax Court and held that, under ORS 307.130, the residential property used to house nuns was exempt

from taxation because such housing advanced the purpose of the charitable institution.

The Tax Court also failed to address this Court's holding in *Willamette University v. State Tax Commission, supra*, in which this Court held that student university housing facilitated the charity's exempt purposes. The Tax Court even went so far as to dismiss Tax Court Judge Byers' opinion in *Rigas Maja, Inc., supra*⁷. There, Judge Byers considered whether "the organization as well as its activities" were exempt from taxation under ORS 307.130, the language of which was cited in footnote 1 of the opinion. 12 OTR at 471. In that case, an Oregon nonprofit organized for the purpose of providing adult foster care for elderly and needy members of the Latvian community and leased a two-story residence from the Oregon Latvian Evangelical Lutheran Church. The Tax Court found that the plaintiff was a charitable institution and "its property is exclusively used in furtherance of its charitable purposes and is exempt from property taxation." 12 OTR at 475.

In these cases, which the Tax Court chose to ignore or dismiss, the beneficiaries of the charity actually occupied and had a "possessory interest" in the residential housing and certainly could not be said to be "agents" of the

⁷ The Tax Court held "that case is distinct from the case at bar because exclusive use or occupancy does not appear to have been at issue." Tax Court Opinion at 16.

institution. These cases are consistent with the entire line of cases interpreting the “exclusive occupancy or use” language of post-1955 ORS 307.130 to

“refer to the primary purpose for which the institution was organized and includes any property of the institution used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment and fulfillment of the generally recognized functions of such a charitable institution.” *Mult. School of Bible*, 218 Or at 36–37.

In this case, the Tax Court interpreted the “exclusive occupancy or use” language of ORS 307.130 to exclude from exemption residential property of charitable institution provided to, and occupied by, the beneficiary of the institution’s charity unless the beneficiary is an “agent” of the institution. That interpretation violates the “cardinal rule” of statutory construction “simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted * * * .”

ORS 174.010

3. **The Tax Court erred in improperly relying upon “legislative history” of other statutes – ORS 307.540 and 307.548 – to support the court’s decision to deny exemption to real property used by the Affordable Housing Partners in accomplishing their charitable purpose.**

The Tax Court attempted to bolster its interpretation of ORS 307.130 by reference to the legislative history of ORS 307.540 to 307.548, which was adopted by the 1985 legislature in Senate Bill 503 (SB 503) Tax Court Order at 15, ER p. 40. The Tax Court gave “considerable weight” to the written

testimony of Debbie Wood who stated that low income housing projects “are not covered under the general tax exemptions for charitable organizations.” Tax Court Order at 16, ER p. 41. The Tax Court’s reliance upon the legislative history of a different statute, and reliance upon statements of a lay supporter of SB 503, was in error for a number of reasons.

First, the Tax Court ignored the purpose of SB 503, which had nothing to do with tax exemption of non-profit charitable institutions under ORS 307.130. SB 503 was introduced at the request of R.E.A.C.H. Community Development, which had been denied a tax exemption for low income housing by the Department of Revenue in 1984 and by the Tax Court in 1986 in an unpublished opinion of Tax Court Judge Byers. *R.E.A.C.H. Community Development, Inc. v. Dept. of Rev.*, TC No. 2189 (Unpublished Opinion 1989). In that case, Judge Byers held that the plaintiff has not shown by a preponderance of evidence that plaintiff’s “charity” (monthly subsidies it provides in rent payment) exceeds the taxes which would be lost by exemption, *i.e.*, that if a tax exemption was granted the rent charges to the tenants would be reduced as well. Consequently, contrary to Ms. Wood’s written statement in support of SB 503, low income housing was denied exemption by the Tax Court as result of a failure of proof, not because the language of ORS 307.130 “does not cover” low-income housing projects in general. To the contrary,

Judge Byers stated: “* * * * aiding the poor in obtaining shelter is traditionally squarely with the definition of charity.” Opinion at 4.

Second, there is nothing in the legislative history of SB 503 -- enacted 30 years after the adoption of the relevant language in ORS 307.130 by the 1955 legislature – that ORS 307.130 was ever mentioned. Hence, there is no support for the Tax Court’s theory that the 1985 legislature must have enacted the provisions of SB 503 to grant exemption for low-income housing because no such exemption was available for low-income housing under ORS 307.130. This is particularly evident when one compares the conditions for granting an exemption to low-income housing pursuant to the provisions of SB 503 with the provisions for exemption under ORS 307.130.

ORS 307.130 provides for a mandatory exemption if the property of a charitable institution is exclusively used in furtherance of the institution’s charitable purposes. ORS 307.541 grants an exemption only if a city or county legislative body approve the exemption. ORS 307.130 applies only to property owned or being purchased by non-profit IRC 501(c) corporation. ORS 307.541 allows an exemption of property leased, or held for future development, by a nonprofit or a partnership if the non-profit corporation is a general partner in the partnership. Thus, ORS 307.541 would allow the property of both non-profit and for-profit entities to qualify for exemption. ORS 307.548 allows the

governing body to terminate the exemption immediately if the property is used for any purpose other than low income housing or that any of the provisions of the statute is not being complied with – “without right of notice or appeal.”

ORS 307.548 (4) (a). Of course, denial of exemption under ORS 307.130 is subject to judicial review by the Tax Court and this Court. The exemption under ORS 307.130 continues until ownership or use of the property changes. ORS 307.545 requires that the corporation reapply for exemption each year. Conceivably, the governing body could withhold approval of an exemption for any year in which an application for exemption is filed.

Third, the Tax Court was well aware that a number of low income housing cases have been decided by the Tax Court after SB 503 became law in 1985.⁹ In none of those cases, or in any other case before the Tax Court or this Court, was it even suggested that ORS 307.130 did not apply to low-income housing to the needy, or that SB 503 was enacted to allow low income housing to be exempt from ad valorem taxation.

⁹ E.g., *Rigas Maja v. Dept. of Rev.*, *supra*, (a church’s assisted living facility for needy Latvians found to be exempt under ORS 307.130); *Samaritan Village v. Benton County Assessor*, TC-MD No 001064C (Jan 23, 2003) (Low income assisted living facility held to be exempt under ORS 307.130); *Portland Community Land Trust v. Multnomah County Assessor*, TC-MD 040250B (April 29, 2005) (land leased to low-income families to build affordable housing found to be exempt under ORS 307.130).

IV. CONCLUSION

For all of the above reasons, this court should conclude that, by providing leased homes to needy families, the Affordable Housing Providers are “actually and exclusively [using the property in their]...charitable...work.” Therefore, the decision of the Oregon Tax Court should be overturned and this case remanded to that court to resolve the remaining issues.

DATED this 20th day of September, 2013.

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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 9,416 words.

I 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(4)(f).

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CERTIFICATE OF FILING

I hereby certify that on September 20, 2013 I filed the original and fifteen (15) copies of the **APPELLANT'S OPENING BRIEF AND EXCERPT OF RECORD** with the State Court Administrator at the following address by first-class mail:

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