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Version: 6/6/2013. Small improvements.

**Magistrate Robinson**

**Oregon Tax Court**

Case 130075C

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***Friend of the Court document for  
Case 130075C, Portland's Arts Tax***

**Magistrate Robinson,**

**The Portland Arts Tax is unconstitutional. The surrounding issues indicate a far broader disfunctionality.** Those who governed Portland when the Arts Tax was created seem to recognize no tax authority other than their own.

Two of the statements below, about retroactive taxes and taxing dead people, include dramatizations intended to help make clear the extreme nature of the issues.

An analysis of the constitutionality of the tax is presented as the last of the items below, item 17.

**Portland has defined  
its own rules of taxation.**

**Those who govern Portland apparently believe they can establish an independent tax authority.** With the Arts Tax, they have made their own unique rules of taxation:

**1) A new tax can be presented to voters with misleading description.** In numerous ads, the Arts Tax was described as money for young students to study art, to buy school arts supplies, and pay for teachers.

In fact, the intention was always that slightly less than half of the money will go to an organization called RACC, Regional Arts and Cultural Council, [racc.org](http://racc.org), according to several statements by a representative.

Measure 26-146 in the Multnomah County Voter's Pamphlet for the general election on November 6, 2012 says:

Tax can only be used for:

- Arts and Music Teachers: Funds to hire arts and music teachers for kindergarten through 5th grade students at local public schools attended by Portland students. Distribution of funds based on school enrollment.
- Arts Access: Remaining funds for grants to nonprofit arts organizations, other nonprofits and schools. Will fund grants to provide high-quality arts access for kindergarten through 12th grade students and to make arts, culture experiences available to underserved communities. Funds administered by Regional Arts and Culture Council (RACC).

PDF: [http://web.multco.us/sites/default/files/elections/documents/26-146\\_vp\\_nov\\_12.pdf](http://web.multco.us/sites/default/files/elections/documents/26-146_vp_nov_12.pdf)

**Nothing in the description above makes the real intention clear.** The [racc.org](http://racc.org) web site seems to show that RACC funds the personal projects of those who call themselves artists.

### **\$700,000: Should the Portland city government fund projects like this?**

The photo at the right shows an example of a project supervised by RACC. That \$700,000 project was paid for by a *different* Portland city arts tax, a 2% tax on publicly funded construction projects in Portland.

Voters are not allowed to help select the projects. They are not helped to understand what they will get for their money.

If voters knew that their money went to projects like that, would they have voted for the Arts Tax?

**Location:** East of the Hawthorne Bridge going west, SE Madison St. and Grand Ave, Portland, Oregon.

[http://blog.oregonlive.com/commuting/2012/11/joseph\\_rose\\_solving\\_the\\_myster.html](http://blog.oregonlive.com/commuting/2012/11/joseph_rose_solving_the_myster.html) Photo: 4/21/2013.



Portland residents pay the 2% for the “*acquisition of public art*” by RACC because they pay 2% more for each construction project. Construction companies make bids based on all their expenses, including the 2%, and businesses and governments pass that expense to whomever supports them.

Chapter 5.74 of Portland city law says that money for RACC is spent for the “*selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of Public Art*”.

The law says “*Public Art means original artwork which is accessible to the public and/or public employees, and which has been approved as public art by the Regional Arts and Culture Council, acting on behalf of the City of Portland.*” The “*Public art*”, can be art that is not public, since it can be art that is only accessible to “*public employees*”. Explore the RACC web site, [racc.org](http://racc.org), to understand what those statements mean, and how RACC defines “art”.

Retrieved April 24, 2013. See Chapter 5.74:

<http://www.portlandonline.com/auditor/index.cfm?c=28803>

**2) It is okay to lie about a new tax.** Measure 26-146 in the Multnomah County Voter's Pamphlet for the general election on November 6, 2012 says:

RESTORE SCHOOL ARTS, MUSIC EDUCATION; FUND  
ARTS THROUGH LIMITED TAX.

QUESTION: Shall Portland restore arts, music for schools  
and fund arts through **income tax** of 35 dollars per year?

SUMMARY: This measure creates a limited **income tax**  
of \$35 for each adult income-earning Portland resident.

Individuals in households below federal poverty level pay  
no tax. **[Emphasis added.]**

The words “*income tax*” were repeated, apparently to try to distract voters from the fact that the tax is a “head tax”, and is therefore illegal in Oregon. An “income tax” is a tax based on a percentage of income. If all taxes were levied in fixed amounts, as is the Arts tax, democracy could not exist. See item 17 at the end of this brief for a full analysis.

Saved from the Multnomah County web site on May 18, 2013 using the MAF add-on. (See p. 9)  
[http://web.multco.us/sites/default/files/elections/documents/26-146\\_vp\\_nov\\_12.pdf](http://web.multco.us/sites/default/files/elections/documents/26-146_vp_nov_12.pdf)

**3) A law can be made to pay for something that is not defined.** There is no clear definition of “art”. Portland's Arts Tax law intends that, for the spending of half the money, RACC will determine what is art; taxpayers are not allowed to choose where their money will go.

**4) A new system of taxation does not have to be fully designed before it is presented for a vote. In some cases the original Arts Tax rate was 10,000%.**

Quoting from the Arts Tax web site as it was on March 7, 2013, 5 weeks before the original April 15 due date of the tax:

*'If the non-working spouse has any income (interest, retirement income, etc.), they are "income-earning" and would need to pay the tax and \$70 would be due.'*

(Retrieved from the Arts Tax web site on March 7, 2013.)

The Arts Tax web site said "*any income*" on March 7. On April 18, 2013, the web site said "*earned more than \$999 of income*". What about people who paid their taxes early? In that case, if the non-working spouse has a small bank account, and earned 35 cents in interest in 2012, which is common now that interest rates are far lower than inflation, then the tax rate for that person was 10,000%. Someone who made \$100,000 last year is also asked to pay \$35, a tax rate of .035%.

**"This tax program is still in development."** The Arts Tax explanation is spread between two documents. One, titled "*FAQs, Arts Education and Access Income Tax, Frequently Asked Questions*", says "*This tax program is still in development. Additional information will be added as it becomes available.*"

Should a law that was not fully defined be considered valid?

Retrieved April 22, 2013. <http://www.portlandoregon.gov/revenue/article/422384>

**The Portland City Council agreed that the Arts Tax was not fair.** The original poor structure of the Arts Tax was apparently written by former Mayor Adams with the help of an arts organization called Creative Advocacy Network, CAN. In March 2013, "*The Portland City Council approved a resolution asking the Revenue Bureau to take another look at the arts tax. Specifically, the resolution cited the council's desire for the art tax 'to be as equitable and fair to all Portland residents' as possible.*" That apparently expresses the Portland City Council's opinion that the tax was not fair, and that something that is voted can be changed at any time.

CAN: <http://theartscan.org/> Oregonian story of April 2, 2013, retrieved May 20, 2013:

[http://www.oregonlive.com/portland/index.ssf/2013/04/less\\_than\\_a\\_year\\_ago\\_portland.html](http://www.oregonlive.com/portland/index.ssf/2013/04/less_than_a_year_ago_portland.html)

**5) A new system of taxation can be re-designed at any time.** As the unusual elements of the Arts Tax were considered, there have been several changes because some elements were clearly illegal, even to those who govern the city. Portland City officials have decided that, rather than invalidate a tax law, it is possible to just change the meaning of the law. In the case of the Arts Tax, that has been done more than once.

**6) City taxpayers may be taxed to give money to others outside the city.** Portland city voters apparently did not know that the money for RACC will often support very small groups of people, including people outside of Portland. RACC, *Regional Arts and Cultural Council*, is a regional organization, not a Portland organization.

The city of Portland has only 25% of the population in the center of a metropolitan area that is 75% around the boundaries of Portland. To get the normally small audiences for each art group and event, it is necessary to draw people from the entire metropolitan area. A dance group, for example, would very likely have members who live and work outside of the Portland city boundaries.

Retrieved April 20, 2013. [http://en.wikipedia.org/wiki/Portland\\_metropolitan\\_area](http://en.wikipedia.org/wiki/Portland_metropolitan_area)

The RACC website home page says, "RACC serves the Portland, Oregon Metropolitan Region, including Multnomah, Clackamas and Washington counties." Retrieved 5/20/2013. [racc.org](http://racc.org)

**7) Retroactive taxes are okay.** The Arts Tax was passed in November of 2012, but expects to collect a yearly tax for the entire year in which it was passed.

Portland city officials have not defined how retroactive a law can be. If a law can be retroactive for months, can a law be retroactive for years?

While a retroactive tax seems unusual, it does raise an interesting possibility. If a Portland city tax law can be retroactive before 1776, it would be possible for the city to tax the British Empire. That's fair, since back then the British taxed us. "Taxation without representation" guaranteed.

**8) It is acceptable to tax the dead.** Since the Arts Tax system taxes residents of Portland retroactively, a resident who died, even before the law was passed, must file an Arts Tax tax return. If the dead person didn't earn any money in 2012, he or she must still file a return claiming to have had income below the poverty level.

It seems that anyone would agree that under ground in a grave is below the poverty level. But, will the dead rise to the occasion?

**9) It is not necessary to know who will be taxed.** Arts tax notices were sent to "Portland Resident" at every Portland address. The new Arts Tax authority says it does not know who lives at each address, or how many in each residence had an income.

**10) Portland city officials can harvest IRS form 1040 tax returns from residents.** The new tax form ARTX 2012 says: "Attach your 2012 Form 1040".

**11) City officials may disclose harvested information.** The new Arts Tax arrangement specifically allows "Disclosure of the names and addresses of any persons that paid the Tax". Retrieved April 22, 2013. See 5.73.100 Confidentiality, Item B at <http://www.portlandonline.com/auditor/?c=60467>

**12) It is acceptable to tax people who moved out of Portland before the Arts Tax law was passed.** That presents huge problems, since they may not have left a forwarding address. Will the city of Portland engage in legal pursuit of people who have moved to other states, or other countries?

**There are numerous other quirky issues.** The new Arts Tax form ARTX 2012 says: "File this form every year if one or more people in the household earn income above the federal poverty level (tax due); ..." What is a "household"? If 5 unrelated people renting rooms in a house have a

total income that is below the poverty level for that number of people can all the residents avoid paying the tax?

The tax form says “For each additional person add \$3,960” to the poverty level. In that case the minimum income for payment of the tax is \$3,960, not the \$1,000 that applies to everyone else who don't fit into the other exceptions.

**Live chat:** In a “live chat” on the Oregonian newspaper web site on April 2, 2013, Eric Fruits said, “I cannot think of any other tax in the U.S. in which one person's tax bill depends on how much money another person is making” and “The head tax is harder to collect because it is levied on people who do not pay (or have to pay) income taxes.”

Ryan Kost of the Oregonian said, “... the city had to create its own collection system.” and “... there is one legal challenge pending, asserting the tax is an unconstitutional head tax. Everything I've heard from sources at City Hall sounds as though they're confident the challenge will not succeed.”

Retrieved May 20, 2013.

[http://www.oregonlive.com/portland/index.ssf/2013/04/arts\\_tax\\_online\\_discussion.html](http://www.oregonlive.com/portland/index.ssf/2013/04/arts_tax_online_discussion.html)

**13) City officials can arrange new tax authorities.** The Arts Tax agency is a permanent new tax authority with an unprecedented structure. Can any county, town, or city create its own tax authority, without supervision or rules of any kind?

**14) Spending tax money doesn't require professional management.** Spending may be supervised by volunteers.

The Portland city government web site says,

**Citizen Oversight Committee**

This committee is charged with reviewing the expenditures, progress and outcomes of the Arts Education & Access Fund and reporting their findings annually to City Council.

Retrieved May 18, 2013. <http://www.portlandoregon.gov/revenue/60089>

The Creative Advocacy Network, [theartscan.org](http://theartscan.org), lists the 20 part-time volunteers chosen to be members of the committee. Only 2 seem to be connected with elementary school arts education. There are dancers and musicians, for example. Even if they are good managers of artistic efforts, the concerns and focuses of the members of the committee may be very different than the concerns of city managers concerned with spending taxpayer money wisely.

The author of this review has often noticed that such groups of volunteers are largely a social group, in which it would be socially unacceptable to say anything negative. Volunteers are there to enjoy themselves; difficult issues tend to get not effective attention.

Retrieved April 20, 2013:

<http://theartscan.org/2013/01/28/launching-portlands-new-arts-education-access-fund/>

Is a yearly “*reporting their findings*” by volunteers, 2 of whom have already resigned from the committee, considered by city officials to be sufficient management of taxpayer money? What is the definition of “*finding*”? It seems possible that the definition may be “anything someone wants to say”. Taxpayer money will be managed “*annually*” instead of daily.

**15) It is okay to use the kind of web address that is available to anyone.** The new tax authority uses the [ArtsTax.net](http://ArtsTax.net) web address. That invites fraud. Anyone in the world can get an ArtsTax web address. Someone engaging in fraud could register artstax.biz, for example, and send cards asking for money. (The author of this review did not check what artstax web addresses are available.)

Taxes in the U.S. must be collected through a .gov government agency because the .gov web addresses are available only to government authorities in the United States.

Anyone going to the artstax.net web address is re-directed to a .gov address, <http://www.portlandoregon.gov/revenue/60076>. However, only a very small percentage of Portland city residents would know to look for a .gov internet address, and some people have re-direction turned off in their browsers to avoid malware attacks. Retrieved May 20, 2013.

**16) City officials may defend in court an interpretation of the Oregon Constitution very different from what voters have long understood.** City officials apparently believe that the meaning of a law is for city officials, lawyers, and courts to decide, at any time, possibly long after the law is passed.

If citizens are not allowed to have an understanding of law on which they can depend, there is no democracy. Law would then be what those in power say it is, and we would have a dictatorship.

**17) “Head Tax”:** It is not necessary to explain important issues to voters. There is considerable misunderstanding concerning the meaning of the phrase “head tax”. A head tax is a tax amount that is charged per person rather than being proportional to income, or money spent. In the past, head taxes have been levied on those who vote, to discourage poor people from voting, for example. The idea was that if poor people would have to pay a high percentage of their income, they wouldn’t be able to afford to vote, and the rich would have control. That’s why head taxes are sometimes also confusingly called “poll taxes”.

If, for example, a sales tax were a head tax, shoppers would be charged a fixed fee every time they bought something at a store. That would make the rich richer because it would shift most of the sales taxes to the poor. Rich people could send a servant to buy things, spend huge amounts every time, and not shop often.

If property taxes were head taxes, the cost of the average person’s house would be so enormously increased that most would not be able to afford owning houses, and property taxes of houses bought by the rich would be lower.

A country that got its tax money from head taxes would not be a democracy.

Often the phrase “poll tax” is used by people who want to avoid encouraging the understanding that might be caused by using the phrase “head tax”.

Why did those who designed the Arts Tax decide to ask the voters for a head tax? It seems likely that was because they realized that getting a new income tax passed would be impossible.

The Arts Tax is a head tax. It is, absolutely without doubt, illegal in Oregon because Article IX, section 1a of the Oregon Constitution says that head taxes are not legal.

Oregon Constitution: <http://www.leg.state.or.us/orcons/orcons.html>

However, there is considerable government corruption in the United States, and part of that corruption involves trying to change the nature of taxation by confusing the issues, even on a federal level. The book by Ken Cuccinelli, *The Last Line of Defense: The New Fight for American Liberty*, is poorly edited, but there is discussion of the fact that government leaders now feel comfortable arguing for a head tax for health care because they call it a “penalty”. See page 93, the 1st page of the chapter, *Because I said so, and other profound legal arguments*. Government officials avoid calling it a tax because that would be unpopular, and they avoid the impossibility of a huge head tax for poor people by arranging to give some of the money back to those who don't have much money. (Universal health care can be excellent when sensibly arranged.)

Book: <http://www.amazon.com/The-Last-Line-Defense-American/dp/0770437095>

Re-interpretation of laws is happening in other areas. The U.S. government has decided that it can kill anyone anywhere, without prior notice or later disclosure to the citizens. See for example, the PBS *Frontline* video, *Top Secret America*.

<http://www.pbs.org/wgbh/pages/frontline/topsecretamerica/>

A Multnomah County judge, Judge John A. Wittmayer, ruled that a slight modification of the arrangements of a head tax made the Arts Tax an income tax, not a head tax, even though wealthy people will pay a far smaller percentage of their income than people who earned \$1,000 in 2012, who are asked to pay 3.5% of their gross income for the Arts Tax alone.

All records of the case, including the Judge's ruling (See Measure 26-146, under “Status”.):

Retrieved 5/23/2013. <http://www.portlandonline.com/auditor/index.cfm?a=409128&c=53963>

So, it is possible that words re-defining the meaning of head tax will be found that a judge will accept. In the U.S. the re-definition of laws has become a profound social breakdown.

**Note:** Portland's tax rules above were established before the present mayor, Charlie Hales, was elected. The Arts Tax passed in the same election in which voters chose Mayor Hales.

**Recommendation:** The Oregon state government could establish rules for taxation for Oregon counties, cities, and towns. The state government could supervise the design of new tax laws.

**Supporting the arts is a good cause.** Poor design and insufficient management of that support damage the long-term prospects.

Supporting artistic efforts is fundamentally complicated. Often those interested in art are heavily influenced by complicated social and psychological issues that distract them from success. To avoid some of the issues mentioned here, each art organization could publish a complete plan for each project at least 6 months in advance of receiving funding, and those who are asked to pay for the projects could be able to vote whether they are acceptable.

**Comment:** The wildly fictitious TV show, *Portlandia*, about extreme experiments in living by Portland residents, might be considerably upgraded by making it a documentary.

Portlandia, retrieved May 25, 2013: <http://www.hulu.com/watch/448219#i1,p0,d1#i1,p0,d1>

There is plenty of material. There are 2 arts taxes, but taxpayers can't approve the art. Apartment buildings can be built with no parking.

The Portland city government passed a law against plastic bags. The result of the law has been that a local paper bag manufacturer sells more *paper* bags. Paper bags are far worse for the environment. Paper bags are much heavier and more fragile. To make paper, trees must be cut and hauled and processed with chemicals. Paper bags cost the stores about 10 times more than plastic bags; the added cost is paid by those who shop in the city of Portland. It is not known whether people connected with the Portland government accepted money to pass the law.

Another example is that the city of Portland sells its own patented kind of toilet. It's good to research how to make better public toilets. It is awkward that the city is involved with design and sales. For example, see this May 15, 2013 Willamette Week article:

[http://www.wweek.com/portland/article-20644-money\\_bucket.html](http://www.wweek.com/portland/article-20644-money_bucket.html)

**The author is interested in art and artists.** The author of this review has associated with artists and art gallery owners for 30 years, has often discussed art with artists, and has sometimes taken photos, written publicity material, and helped organize events for artists, as a volunteer.

**Opinion:** Everything written here represents the opinion of the author. However, a lawyer familiar with the case looked at an earlier version and said he found nothing objectionable.

**Comments and corrections are welcome.** The author of this review is happy to receive additional material and any corrections.

**Doing online research?** Here's how to save exact copies of important material. The free Firefox browser with the free MAF add-on, Mozilla Archive Format, makes it easy to save exact copies of web pages. Exact copies are often needed to preserve original documents. Web pages can be changed at any time.

Disclosure: The author helped Paolo Amadini, an Italian and the maintainer of the MAF add-on, write some of the documentation.

Firefox: <https://www.mozilla.org/en-US/firefox/all/>

MAF add-on: <https://addons.mozilla.org/en-us/firefox/addon/mozilla-archive-format/>

**Michael Jennings**

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