

Chapter 307

Property Subject to Taxation

307.010

NOTES OF DECISIONS

Legal title to real estate alone is subject to taxation and all lesser estates are merged therein for such purpose. *Nehalem Tbr. Co. v. Columbia County*, (1920) 97 Or 100, 189 P 212, 190 P 318; *Pacific Spruce Corp. v. Lincoln County*, (1927) 21 F2d 586.

A leasehold interest is not separately assessable to the lessee. *First Nat. Bank v. Marion County*, (1942) 169 Or 595, 130 P2d 9.

Separate tax assessment of timber is void unless deed contains provision reserving or conveying all timber standing upon land. *Crook v. Curry County*, (1956) 206 Or 350, 292 P2d 1080.

The definition of "real property" in this section, rather than the agreement between the parties, is controlling. *Warm Springs Lbr. Co. v. State Tax Comm.*, (1959) 217 Or 219, 342 P2d 143.

There is no personal liability for ad valorem taxes in Oregon. *Willamette Valley Lbr. Co. v. United States*, (1966) 252 F Supp 199.

ATTY. GEN. OPINIONS: Assessment of mineral rights not previously assessed, 1920-22, p 233; assessment of water rights, 1920-22, p 260; taxation of nursery stock, 1920-22, p 545; assessment of standing timber sold under executory contract, 1920-22, p 646; assessment of building erected on leased ground, 1922-24, p 540; taxation of inchoate title in land acquired at foreclosure sale, 1922-24, p 681; classification of real and personal property of banks, 1928-30, p 304; taxation of fixtures, 1930-32, p 555; taxation of equipment and machinery of lumber company, 1934-36, p 458; trailer houses, 1946-48, p 160; meaning of word "trees" in the definition of real property, 1954-56, p 105; building which has been sold and will be removed from land, 1958-60, p 357; assessment and valuation of reservation of mineral interests, 1960-62, p 438.

LAW REVIEW CITATIONS: 36 OLR 278; 37 OLR 74; 2 WLJ 265; 4 WLJ 440, 458; 5 WLJ 679-681.

307.020

NOTES OF DECISIONS

Under prior statute, debts, notes, mortgages, cash and shares of stock were taxable. *Johnson v. Oregon City Council*, (1868) 2 Or 327; *Poppleton v. Yamhill County*, (1880) 8 Or 337; *Poppleton v. Yamhill County*, (1890) 18 Or 377, 23 P 253, 7 LRA 449; *Marshall Hdw. Co. v. Multnomah County* (1911) 58 Or 469, 115 P 150; *Endicott, Johnson & Co. v. Multnomah County* (1920) 96 Or 679, 190 P 1109; *Reid v. Multnomah County*, (1921) 100 Or 310, 196 P 394; *Michelin Tire Co. v. Hurlburt*, (1927) 121 Or 110, 254 P 196; *Dundee Mtg & Trust Inv. Co. v. Sch. Dist. 1*, (1884) 21 Fed 151; *Brotherhood Coop. Nat. Bank v. Hurlburt*, (1928) 26 F2d 957.

The definition of "intangible personal property" in this section cannot be used to define that phrase in a criminal

statute dealing with false pretenses. *State v. Miller*, (1951) 192 Or 188, 233 P2d 786.

The definition of "tangible personal property" in this section, rather than the agreement between the parties, is controlling. *Warm Springs Lbr. Co. v. State Tax Comm.*, (1959) 217 Or 219, 342 P2d 143.

FURTHER CITATIONS: *Millak v. State Tax Comm.*, (1969) 3 OTR 465.

ATTY. GEN. OPINIONS: Assessment of standing timber sold under executory contract, 1920-22, p 646; assessment of building erected on leased ground, 1922-24, p 540; classification of real and personal property of banks, 1928-30, p 304; taxation of fixtures, 1930-32, p 555; taxation of equipment and machinery of lumber company, 1934-36, p 458; steamship temporarily anchored in Coos Bay waters, 1934-36, p 515; money on deposit, 1934-36, p 808, 1940-42, p 143; trailer houses, 1946-48, p 160.

307.030

NOTES OF DECISIONS

1. Property subject to taxation
2. Exceptions
3. Equal and ratable proportion

1. Property subject to taxation

The taxable portion of imported material in manufacturer's inventory is determined by a formula for finding the manufacturer's current operational needs. *Beall Pipe and Tank Corp. v. State Tax Comm.*, (1968) 3 OTR 229, aff'd, 254 Or 195, 458 P2d 420; *Roseburg Lbr. Co. v. State Tax Comm.*, (1968) 3 OTR 323, aff'd 255 Or 13, 463 P2d 590.

Corporate property in the hands of a receiver is not relieved from taxation. *Coy v. Title Guar. & Trust Co.*, (1914) 212 Fed 520.

Notwithstanding its engagement in interstate commerce, a company's property within the state is subject to assessment and taxation. *Western Union Tel. Co. v. Hurlburt*, (1917) 83 Or 633, 163 P 1170.

A specific exemption is necessary to relieve property from taxation under this section. *Kappa Gamma Rho v. Marion County*, (1929) 130 Or 165, 279 P 555.

Property engaged in interstate commerce, which is temporarily situated in this state on tax day, is subject to taxation if the stoppage was planned by the owner and inures to his benefit, but is not taxable if the delay is beyond his control and is detrimental to his interests. *Stebco Inc. v. Gillmouthe*, (1950) 189 Or 427, 221 P2d 914, cert. denied, 340 US 920, 71 S Ct 358, 95 L Ed 665.

Goods consigned by importer to dealer are removed from the constitutional prohibition of taxation of imports and are subject to state taxation. *Cominco Prods., Inc. v. State Tax Comm.*, (1966) 243 Or 165, 411 P2d 85, cert. denied, 385 US 830, rev'g 2 OTR 157.

Imported goods on hand and being used to meet manufacturer's current operational needs are taxable regardless of whether or not they remain in their original package.

Spear & Jackson (U.S.), Inc. v. State Tax Comm., (1965) 2 OTR 153.

The property was within the jurisdiction of the tax levying body until a charitable exemption, if any, was allowed. Sisters of Charity v. Bd. of Comms., (1967) 3 OTR 106.

2. Exceptions

National banks are agencies of the Federal Government, and their property and shares of stock cannot be taxed by the states without the consent of Congress, and then only in conformity with the restrictions of such consent. Brotherhood Coop. Nat. Bank v. Hurlburt, (1927) 21 F2d 85; First Nat. Bank v. Marion County, (1942) 169 Or 595, 130 P2d 9.

Vehicles licensed as "fixed load vehicles" are exempt. Roy L. Houck & Sons v. State Tax Comm., (1961) 229 Or 21, 366 P2d 166; Roy L. Houck & Sons v. State Tax Comm., (1963) 1 OTR 286.

Trucks purchased by out-of-state county, in taxpayer's possession for installation of parts, were not property situated in this state. Western States Fire Apparatus, Inc. v. Dept. of Rev., (1970) 4 OTR 11.

3. Equal and Ratable proportion

In valuation of property for tax purposes, relative uniformity is the basic requirement. Appeal of Kliks, (1938) 158 Or 669, 76 P2d 974.

Assessment in equal and ratable proportion requires county assessor to assess all taxable property at the same percentage of true cash value. State v. Watson, (1941) 167 Or 403, 118 P2d 107.

It would violate this section for assessor to reassess property at book value rather than true cash value. M & M Woodworking Co. v. State Tax Comm., (1959) 217 Or 161, 314 P2d 272, 317 P2d 920, 339 P2d 718.

FURTHER CITATIONS: Portland v. Portland Ry., Light & Power Co., (1916) 80 Or 271, 290, 156 P 1058; Endicott, Johnson & Co. v. Multnomah County, (1920) 96 Or 679, 190 P 1109; Reid v. Multnomah County, (1921) 100 Or 310, 196 P 394; Michelin Tire Co. v. Hurlburt, (1927) 121 Or 110, 254 P 196; Salem v. Marion County (1943) 171 Or 254, 137 P2d 977; Moe v. Pratt, (1946) 178 Or 320, 166 P2d 479; Reynolds Aluminum v. Multnomah County, (1955) 206 Or 602, 287 P2d 921; Case v. Chambers, (1957) 210 Or 680, 314 P2d 256; Weyerhaeuser Tbr. Co. v. State Tax Comm., (1960) 223 Or 280, 355 P2d 615.

ATTY. GEN. OPINIONS: Shares of stock in a foreign corporation, 1922-24, p 78; lands acquired by Federal Government subsequent to tax day, 1926-28, p 509, 1936-38, p 185; property of inmate of Oregon Institution for the Blind, 1928-30, p 286; property of park association operating for the use and benefit of the public, 1934-36, p 493; real property acquired by State of Oregon by mortgage foreclosure, 1934-36, p 509, 1938-40, p 264, 291; steamship temporarily anchored in Coos Bay waters, 1934-36, p 515; money on deposit, payable on demand, 1934-36, p 808; property deeded to state after tax day and prior to date of levy, 1940-42, p 631; state property subject to contract of sale, 1940-42, p 655; trailer houses, 1946-48, p 159; property to be taxed by rural fire protection district, 1952-54, p 206; ad valorem taxes defined, 1956-58, p 192; racing dogs kept in kennels as taxable property, (1970) Vol 35, p 292.

LAW REVIEW CITATIONS: 16 OLR 340, 20 OLR 328, 349.

307.040

NOTES OF DECISIONS

Taxpayer was not exempt as a federal instrumentality,

either per se or consequentially. R.L.K. and Co. v. State Tax Comm., (1964) 1 OTR 584.

FURTHER CITATIONS: United States v. So. Ore. Co., (1912) 196 Fed 423; Brotherhood Coop. Nat. Bank v. Hurlburt, (1927) 21 F2d 85, (1928) 26 F2d 957; Reynolds Aluminum v. Multnomah County, (1955) 206 Or 602, 287 P2d 921; Peninsula Dist. v. Portland, (1958) 212 Or 398, 320 P2d 277; South Coast Lbr. Co. v. State Tax Comm., (1964) 2 OTR 25.

ATTY. GEN. OPINIONS: Property acquired by United States after tax day but before tax levy, 1920-22, p 39, 1926-28, p 509; Ore.-Calif. land grants, 1924-26, p 654; materials, supplies, machinery and equipment of contractor of Federal Government, 1940-42, p 605; personal property of persons residing on lands of Federal Government, 1942-44, p 95.

LAW REVIEW CITATIONS: 15 OLR 369; 16 OLR 340.

307.050

NOTES OF DECISIONS

Prior to the enactment of this section real property owned by the United States which was under contract of sale to a nonexempt ownership was not subject to taxation. Nehalem Tbr. Co. v. Columbia County, (1920) 97 Or 100, 189 P 212, 191 P 318; Pacific Spruce Corp. v. Lincoln County, (1927) 21 F2d 586; First Nat. Bank v. Marion County, (1942) 169 Or 595, 130 P2d 9.

FURTHER CITATIONS: South Coast Lbr. Co. v. State Tax Comm., (1965) 240 Or 636, 403 P2d 714; Perry v. State Tax Comm., (1966) 2 OTR 275.

LAW REVIEW CITATIONS: 45 OLR 153-156.

307.060

NOTES OF DECISIONS

Grazing rights on United States lands held under authority of the Taylor Grazing Act were, prior to the 1961 amendment, possessory in nature and "held under lease" within the meaning of this section. Sproul v. Gilbert, (1961) 226 Or 392, 359 P2d 543.

The state may levy a nondiscriminatory ad valorem tax on a lessee of United States property. Portland Gen. Elec. Co. v. State Tax Comm., (1965) 2 OTR 222, rev'd on other grounds, 249 Or 239, 437 P2d 827.

The interest of a permittee should not be computed on a declining value over the term of the permit. R.L.K. and Co. v. State Tax Comm., (1968) 249 Or 603, 438 P2d 985, rev'g 2 OTR 368.

The interest of taxpayer in the federal lands were possessory and taxable. Portland Gen. Elec. Co. v. State Tax Comm., (1965) 2 OTR 222, rev'd on other grounds, 249 Or 239, 437 P2d 827.

FURTHER CITATIONS: R.L.K. and Co. v. State Tax Comm., (1964) 1 OTR 584; Portland Gen. Elec. Co. v. State Tax Comm., (1966) 2 OTR 356; Multnomah Falls Co. v. State Tax Comm., (1966) 2 OTR 365; R.L.K. & Co. v. State Tax Comm., (1968) 3 OTR 304.

ATTY. GEN. OPINIONS: Ad valorem taxation of federal lands leased for grazing, 1958-60, p 174; constitutionality of retroactive tax exemption, 1960-62, p 237; ad valorem tax exemption of public property, 1962-64, p 425; ad valorem taxation of state park campsites for which a charge for use is made, (1971) Vol 35, p 704.

307.070

ATTY. GEN. OPINIONS: Taxation of lands settled under Carey Act, 1920-22, p 48.

307.090

NOTES OF DECISIONS

1. In general

Where public ownership of property is involved, exemption is the rule and taxation the exception but as to private ownership of property the rule is reversed. *Portland v. Welch*, (1928) 126 Or 293, 269 P 868; *Eugene v. Keeney*, (1930) 134 Or 393, 293 P 924; *Portland v. Multnomah County*, (1931) 135 Or 469, 296 P 48; *Security Sav. & Trust Co. v. Lane Co.*, (1935) 152 Or 108, 53 P2d 33; *Benton County v. Allen*, (1943) 170 Or 481, 133 P2d 991.

2. Property of state

Property conveyed to a private person in trust for the University of Oregon was subject to taxation since the donors had a beneficial interest in property and the state's beneficial interest was not exclusive. *Security Sav. & Trust Co. v. Lane County*, (1935) 152 Or 108, 53 P2d 33.

3. Property of municipalities

This section does not exempt cities from paying the license fee on city owned motor vehicles or the excise tax on gasoline used by the cities in their motor vehicles operated on public highways. *State v. Preston*, (1922) 103 OR 631, 206 P 304, 23 ALR 414; *Portland v. Kozier*, (1923) 108 Or 375, 217 P 833.

If property owned by a municipal corporation is devoted to a public use, it is exempt though the property may be located beyond the corporate limits. *Eugene v. Keeney*, (1930) 134 Or 393, 293 P 924.

Immediate devotion to public or corporate use of its property is not required in order for a municipal corporation to claim exemption from taxation thereon. *Id.*

"Corporate purpose" means any authorized governmental or proprietary purpose. *Portland v. Multnomah County*, (1935) 151 Or 504, 50 P2d 1145.

"Public or corporate property" means, in regard to cities, all property owned by the city. *Id.*

Property of a port is tax exempt. *Chizek v. Port of Newport*, (1969) 252 Or 570, 450 P2d 749.

Platted lots, offered for sale by a city which had purchased the land with adjoining lands for park purposes, were exempt. *Portland v. Welch*, (1928) 126 Or 293, 269 P 868.

Property owned by the city of Eugene and leased to the town of Springfield for a long term at a nominal rent was not "used or intended for corporate purposes" and was not exempt. *Eugene v. Keeney*, (1930) 134 Or 393, 293 P 924.

Lease of property formerly housing the city's fire department, where authorized by charter, did not deprive the property of its character of corporate property used for such purposes even though the upper stories were vacant. *Portland v. Multnomah County*, (1935) 151 Or 504, 50 P2d 1145.

Fire trucks of municipalities, in taxpayer's possession for installation of parts, were exempt, and did not lose their exemption because they were in temporary possession of taxpayer. *Western States Fire Apparatus, Inc. v. Dept. of Rev.*, (1970) 4 OTR 11.

ATTY. GEN. OPINIONS: Property of state: Land for which state holds certificate of sale upon mortgage foreclosure, 1920-22, p 255, 1922-24, p 681, 1930-32, p 48, 1936-38, p 77, 1938-40, p 264; land held by Oregon Land Settlement Commission, 1920-22, p 447; lands owned by state university, 1926-28, p 103; lands in which state has remainder interest, 1926-28, p 278, 1928-30, p 103; property donated to state

upon condition that income be turned over to donors during lifetime, 1928-30, p 232, 1932-34, p 154, 1940-42, p 41; property of state for use of state college, 1930-32, pp 516, 770; property escheated to state, 1930-32, p 694, 1934-36, p 151; applicability to exemption from local assessments, 1940-42, p 128, 1946-48, p 24; taxation of state property by city ordinance, 1946-48, p 12; determination, payment and refund of taxes on property partly owned by state, 1958-60, p 197; statutory tax evaluation of state-owned, leased industrial park, 1962-64, p 363; construing tax provision in Boardman lease, 1966-68, p 213; ad valorem taxation of state park campsites for which a charge for use is made, (1971) Vol 35, p 704.

Property of municipalities: Land acquired by county by foreclosure of delinquent tax certificates, 1920-22, pp 137, 273, 329; lands of irrigation districts, 1920-22, p 282; railway owned by municipal corporation, 1920-22, p 480; property acquired by city through foreclosure of lien for local improvements, 1924-26, p 234; exemption of county land from irrigation district taxes, 1926-28, p 219; property of municipal utilities, 1926-28, pp 243, 474; property of park association for use and benefit of public, 1934-36, p 493; property acquired by school district by mortgage foreclosure, 1936-38, p 122; construction of term "municipal corporations", 1938-40, p 242; property acquired by municipality by foreclosure of delinquent street assessments, 1940-42, p 359; property actually acquired by city but not formally deeded to it, 1948-50, p 137; city's watershed timber located in another county, 1956-58, p 100; land leased from private corporation for public park, 1960-62, p 57; exemption of United States property turned over to county and leased to private business, 1962-64, p 425; exemption of school district land from highway lighting district taxes, 1964-66, p 391; authority of drainage districts to assess taxes on county roads, 1966-68, p 140.

LAW REVIEW CITATIONS: 15 OLR 162.

307.095

ATTY. GEN. OPINIONS: Taxation of parking facilities rented to state employes on capitol mall, (1969) Vol 34, p 749; ad valorem taxation of state park campsites for which a charge for use is made, (1971) Vol 35, p 704.

307.100

NOTES OF DECISIONS

Lands under contract subject to conditions precedent not performed are not lands held by purchaser. *Perry v. State Tax Comm.*, (1966) 2 OTR 275, aff'd, 245 Or 483, 422 P2d 578.

FURTHER CITATIONS: *Sproul v. Gilbert*, (1961) 226 Or 392, 359 P2d 543; *South Coast Lbr. Co. v. State Tax Comm.*, (1965) 240 Or 636, 403 P2d 714.

ATTY. GEN. OPINIONS: Taxation of lands owned by state prior to 1907, 1922-24, p 587; taxation of business property donated to University of Oregon where income is to be used by donors, 1928-30, p 232; taxation of real property acquired by state by mortgage foreclosure, 1934-36, p 509; effect of cancellation of contract of sale by state, 1936-38, p 98, 563, 1940-42, p 655; conveyance by state of lands on which there are delinquent taxes, 1936-38, p 581, 1938-40, p 725; taxation of land leased by state with option to lessee to purchase, 1940-42, p 320; drainage district assessments as municipal charges, 1942-44, p 219; liability of state for special improvement assessments prior to execution of contract of sale, 1946-48, p 24.

307.110

ATTY. GEN. OPINIONS: Liability for tax on leased lands owned by state, 1946-48, p 387, 1948-50, p 126; taxation of leased land owned by state where proceeds go to school fund, 1946-48, p 400; effective date of 1949 amendment, 1948-50, p 258; correcting assessment to reflect change in use, 1960-62, p 223; taxation of leased properties of port districts, 1962-64, p 59; ad valorem tax exemption of public property, 1962-64, p 425; construing tax provision in Boardman lease, 1966-68, p 213; taxation of state-owned, leased parking facilities, 1966-68, p 370; taxation of parking facilities rented to state employes on capitol mall, (1969) Vol 34, p 749; ad valorem taxation of state park campsites for which a charge for use is made, (1971) Vol 35, p 704.

307.120

CASE CITATIONS: Holman Transfer Co. v. Portland, (1952) 196 Or 551, 249 P2d 175, 250 P2d 929.

ATTY. GEN. OPINIONS: Taxation of leased properties of port districts, 1962-64, p 59.

307.130

NOTES OF DECISIONS

1. Constitutionality
2. Real property occupied or used
 - (1) Actually occupied or used
 - (2) Actually and exclusively occupied and used
 - (3) Parking lots
3. Property owned or being purchased
4. Literary or scientific institutions
5. Benevolent or charitable institutions
 - (1) In general
 - (2) Hospitals
 - (3) Religious institutions

1. Constitutionality

This section did not violate Ore. Const. Art. I, §32 and Ore. Const. Art. IX, §1, requiring uniformity of taxation, by granting exemption to corporations but not individuals. Corporation of Sisters of Mercy v. Lane County (1927) 123 Or 144, 261 P 694.

This section did not violate U.S. Const. Am. 14, §1 or Ore. Const. Art. I, §20, requiring equal privileges and immunities, by granting exemptions to corporations but not individuals. Id.

This section did not violate U.S. Const. Am. 14, §1, requiring equal protection of the laws, by granting exemption to domestic corporations but not foreign corporations. Methodist Book Concern v. State Tax Comm., (1949) 186 Or 585, 208 P2d 319.

This section did not violate Ore. Const. Art. I, §32 and Ore. Const. Art. IX, §1, requiring uniformity of taxation, by granting exemption to domestic corporations but not foreign corporations. Id.

2. Real property occupied or used

Before 1955 amendment to this statute, right to tax exemption for real property turned upon actual occupation for purposes of institution, but after amendment test to be applied was whether real or personal property was actually and exclusively occupied or used for such purpose. Multnomah School of the Bible v. Multnomah County, (1959) 218 Or 19, 343 P2d 893.

(1) **Actually occupied or used.** Where only a part of the real property owned by an exempt institution is occupied for the purposes of the institution, only that part is exempt from taxation even though the revenue derived from the remainder is devoted to the objects of the institution. *Hibernian Benevolent Socy., v. Kelly*, (1895) 28 Or 173, 42 P

3, 52 Am St Rep 769, 30 LRA 167; *Willamette Univ. v. Knight*, (1899) 35 Or 33, 56 P 124.

Though improvements are to be made on the grounds of an educational institution as part of the consideration for a lease of a portion of its campus, the portion leased is not "actually occupied" for educational purposes and is not exempt. *Willamette Univ. v. Knight*, (1899) 35 Or 33, 56 P 124.

Ground adjacent to the building of a charitable institution which is reasonably necessary or appropriate to the purposes and objects in view, and used directly for the promotion and accomplishment thereof, is exempt. *Corporation of Sisters of Mercy v. Lane County*, (1927) 123 Or 144, 261 P 694.

(2) **Actually and exclusively occupied and used.** The words "exclusively occupied or used" 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 an institution. *Multnomah School of the Bible v. Multnomah County*, (1959) 218 Or 19, 343 P2d 893; *Willamette University v. State Tax Comm.*, (1965) 2 OTR 246, aff'd, 245 Or 342, 422 P2d 260; *Lewis & Clark College v. State Tax Comm.*, (1969) 3 OTR 429; *Emanuel Lutheran Charity Bd. v. Dept. of Rev.*, (1971) 4 OTR 410.

Property utilized in mercantile activity in selling goods and services to the general public is not exempt from taxation even though the profits are returned to the institution and used by it for charitable purposes. *Multnomah School of the Bible v. Multnomah County*, (1959) 218 Or 19, 343 P2d 893.

Key words of this section require present and current use. *Emanuel Lutheran Charity Bd. v. Dept. of Rev.*, (1971) 4 OTR 410.

A charitable institution is not entitled to an exemption for vacant land held for future development. Id.

Buildings in the course of construction and the use of parking lots in connection therewith amounted to an actual and exclusive use of the property in the work carried on by the institution. *Willamette University v. State Tax Comm.*, (1965) 2 OTR 246, aff'd, 245 Or 342, 422 P2d 260.

(3) **Parking lots.** Parking lots are exempt only if the areas they serve are exempt. *Emanuel Lutheran Charity Bd. v. Dept. of Rev.*, (1971) 4 OTR 410.

3. Property owned or being purchased

The words "being purchased by" do not cover property held under an agreement which constitutes a true lease. *Oregon Research Institute, Inc. v. Dept. of Rev.*, (1971) 4 OTR 433.

Property "leased" with an option to purchase was not "being purchased by" taxpayer. Id.

4. Literary or scientific institutions

Literary societies are societies organized for the propagation and spread of good literature rather than for one's own individual education. *Kappa Gamma Rho v. Marion County*, (1929) 130 Or 165, 279 P 555.

Scientific societies are societies organized for the promotion of science or the pursuit of scientific studies for the purpose of developing science, rather than for one's own edification. Id.

A college fraternity was not exempt from taxation as a literary or scientific institution. Id.

Literary or scientific institutions organized and operated for the profit of individual stockholders are not exempt from taxation. *Behnke-Walker Business College v. Multnomah County*, (1944) 173 Or 510, 146 P2d 614.

A literary or scientific institution to be exempt must be a nonprofit, charitable institution performing a literary or

scientific activity which relieves the state of a burden which would involve a larger amount of taxation than waived. Oregon Stamp Socy. v. State Tax Comm., (1963) 1 OTR 190.

The literary or scientific activity must be a primary function of the institution. Id.

A nonprofit corporation which performed and furthered basic psychological research and made its research programs available to public on a nondiscriminatory basis was a scientific institution. Oregon Research Institute, Inc. v. Dept. of Rev., (1971) 4 OTR 433.

5. Benevolent or charitable institutions

(1) **In general.** The rule of strict construction does not foreclose the application of a reasonable construction in order to ascertain the legislative intent. Multnomah School of the Bible v. Multnomah County, (1959) 218 Or 19, 343 P2d 893; Willamette Univ. v. State Tax Comm., (1966) 245 Or 342, 422 P2d 260; Lewis & Clark College v. State Tax Comm., (1969) 3 OTR 429.

Statutes exempting property are strictly construed against the one claiming the exemption. Oregon Methodist Homes, Inc. v. State Tax Comm., (1961) 226 Or 298, 360 P2d 293; Emanuel Lutheran Charity Bd. v. Dept. of Rev., (1971) 4 OTR 410. **But see** Willamette Univ. v. State Tax Comm., (1966) 245 Or 342, 422 P2d 260.

Charities in this state have no inherent right to exemption and are taxable except only in so far as they may be specifically exempt. Oregon Methodist Homes, Inc. v. State Tax Comm., (1961) 226 Or 298, 360 P2d 293; Friendsview Manor v. State Tax Comm., (1965) 2 OTR 130, aff'd, 247 Or 94, 420 P2d 77.

Though it restricts its benefactions to its own members and their families, a benevolent corporation may be "charitable." Hibernian Benevolent Socy. v. Kelly, (1895) 28 Or 173, 42 P 3, 52 Am St Rep 769, 30 LRA 167.

Benevolent societies are societies organized with the dominant purpose of doing good to others rather than for the convenience of their members. Kappa Gamma Rho v. Marion County, (1929) 130 Or 165, 279 P 555.

A college fraternity was not exempt from taxation as a benevolent society. Id.

Personal property of foreign charitable corporations is not exempt from taxation. Methodist Book Concern v. State Tax Comm., (1949) 186 Or 585, 208 P2d 319.

If an institution is entitled to the privilege of exemption, the property must fall strictly within the statute. Oregon Methodist Homes, Inc. v. State Tax Comm., (1961) 226 Or 298, 360 P2d 293.

The property must be donated by others and not purchased by the users to be entitled to the charitable exemption. Friendsview Manor v. State Tax Comm., (1966) 247 Or 94, 420 P2d 77, aff'g 2 OTR 130.

The property was within the jurisdiction of the tax levying body until a charitable exemption, if any, was allowed. Sisters of Charity v. Bd. of Comms., (1967) 3 OTR 106.

(2) **Hospitals.** Hospitals, as such, are not exempt from taxation, and to be exempt they must classify as charitable institutions. Corporation of Sisters of Mercy v. Lane County, (1927) 123 Or 144, 261 P 694; Benton County v. Allen, (1943) 170 Or 481, 133 P2d 991; Oregon Methodist Homes, Inc. v. State Tax Comm., (1961) 226 Or 298, 360 P2d 293.

The fact that patients able to pay are required to do so does not deprive a hospital, otherwise eligible to be classed as a charitable institution, of its charitable character. Corporation of Sisters of Mercy v. Lane County, (1927) 123 Or 144, 261 P 694; Benton County v. Allen, (1943) 170 Or 481, 133 P2d 991.

The articles of incorporation are prima facie evidence of the character of a corporation as a charitable institution, but such prima facie evidence may be rebutted by evidence

that in fact the corporation has not lived up to its chartered objects. Benton County v. Allen, (1943) 170 Or 481, 133 P2d 991; Oregon Methodist Homes, Inc. v. State Tax Comm., (1961) 226 Or 298, 360 P2d 293.

"Benevolent" used in connection with the word "charitable," as used in this section, is synonymous therewith. Behnke-Walker v. Multnomah County, (1944) 173 Or 510, 146 P2d 614; Oregon Methodist Homes, Inc. v. State Tax Comm., (1961) 226 Or 298, 360 P2d 293.

If the dominant and controlling motive of the taxpayer is primarily to benefit the taxpayers membership economically and it has no services or means of furthering works of charity, it is not entitled to the exemption in this section. Oregon Methodist Homes, Inc. v. State Tax Comm., (1961) 226 Or 298, 360 P2d 293; Santiam Fish & Game Assn. v. State Tax Comm., (1962) 229 Or 506, 368 P2d 401.

Property of a charitable hospital purchased by a bank on a mortgage foreclosure was not exempt from taxation after the date of sale. Waller v. Lane County, (1936) 155 Or 160, 63 P2d 214.

A hospital created as a charitable corporation by reorganization of a non-charitable hospital, was not exempt from taxation since the stockholders of the non-charitable hospital became bondholders of the charitable hospital, which issued no stock, and the payment of such bonds would represent a profit to the original stockholders. Benton County v. Allen, (1943) 170 Or 481, 133 P2d 991.

(3) **Religious institutions.** Business conducted by nonprofit corporation school, which came into direct competition with businesses of like nature carried on elsewhere by other persons, was taxable. Multnomah School of the Bible v. Multnomah County, (1959) 218 Or 19, 343 P2d 893.

Building owned by nonprofit corporation school was exempt even though the superintendent of buildings and the school's dining hall supervisor lived in the building. Id.

FURTHER CITATIONS: Oregon Physicians' Serv. v. State Tax Comm., (1960) 220 Or 487, 349 P2d 831; Unander v. U.S. Nat. Bank, (1960) 224 Or 144, 355 P2d 729; Lane County Labor Temple Benevolent Assn. v. State Tax Comm., (1964) 1 OTR 511; Plywood & Veneer Workers Local 2554 v. State Tax Comm., (1967) 2 OTR 520.

ATTY. GEN. OPINIONS: Masonic lodge, 1922-24, p 263; hospital association, 1922-24, p 666; dwelling at beach resort owned by Y.W.C.A., 1922-24, p 696; college fraternity, 1922-24, p 812; Knights of Pythias lodge, 1924-26, p 254; effect of benevolent institution's occasional renting to others, 1924-26, p 466; Elks lodge, 1926-28, p 251; tennis club, 1926-28, p 522; church schoolyard and playground, 1934-36, p 102; livestock association, 1936-38, p 444; effect of charitable hospital issuing interest-bearing bonds, 1944-46, pp 180, 219; exemption of building constructed by a corporation for hospital purposes when not being used as a hospital, 1954-56, p 32; exemption of building for which equitable title has been acquired, 1956-58, p 144; taxes against property entitled to exemption, 1960-62, p 303.

LAW REVIEW CITATIONS: 23 OLR 215; 42 OLR 318; 1 WLJ 175; 4 WLJ 505, 514.

307.134

CASE CITATIONS: Oregon Stamp Socy. v. State Tax Comm., (1963) 1 OTR 190; Lane County Labor Temple Benevolent Assn. v. State Tax Comm., (1964) 1 OTR 511; Plywood & Veneer Workers Local 2554 v. State Tax Comm., (1967) 2 OTR 520.

307.136

NOTES OF DECISIONS

Plaintiff did not qualify for this exemption. Plywood & Veneer Workers Local 2554 v. State Tax Comm., (1967) 2 OTR 520. Overruling Lane County Labor Temple Benevolent Assn. v. State Tax Comm., (1964) 1 OTR 511.

FURTHER CITATIONS: Oregon Stamp Socy. v. State Tax Comm., (1963) 1 OTR 190.

307.140

NOTES OF DECISIONS

The word "owned" refers to the holding of the legal title. First EUB Church v. State Tax Comm., (1963) 1 OTR 249.

FURTHER CITATIONS: Foy v. State Tax Comm., (1968) 3 OTR 307; Oregon Research Institute, Inc. v. Dept. of Rev., (1971) 4 OTR 433.

ATTY. GEN. OPINIONS: Church parsonage and convent, 1934-36, pp 102, 613; building owned by religious organization used for residential purposes, 1958-60, p 387.

LAW REVIEW CITATIONS: 15 OLR 152; 4 WLJ 509.

307.162

NOTES OF DECISIONS

The property was within the jurisdiction of the tax levying body until a charitable exemption, if any, was allowed. Sisters of Charity v. Bd. of Commrs., (1967) 3 OTR 106.

FURTHER CITATIONS: Willamette University v. State Tax Comm., (1965) 2 OTR 246, aff'd, 245 Or 342, 422 P2d 260; Friendsview Manor v. State Tax Comm., (1966) 247 Or 94, 420 P2d 77; Emanuel Lutheran Charity Bd. v. Dept. of Rev., (1971) 4 OTR 410.

ATTY. GEN. OPINIONS: Exemption of building for which equitable title has been acquired, 1956-58, p 144; taxes against property entitled to exemption, 1960-62, p 303; time limit for filing application, 1966-68, p 605.

LAW REVIEW CITATIONS: 4 WLJ 505, 514.

307.180

NOTES OF DECISIONS

A tax against a taxpayer's interest in the Indian lands was not a tax against the Indians or the Indian lands. Portland Gen. Elec. Co. v. State Tax Comm., (1965) 2 OTR 222, rev'd on other grounds, 249 Or 239, 437 P2d 827.

FURTHER CITATIONS: Portland Gen. Elec. Co. v. State Tax Comm., (1966) 2 OTR 356.

ATTY. GEN. OPINIONS: Taxation of property of Indians, 1922-24, p 365, 1944-46, p 328.

307.190

NOTES OF DECISIONS

Prior to 1917 amendment of Ore. Const. Art. IX, §1, the legislature could not exempt household goods from taxation. Wallace v. Bd. of Equalization, (1906) 47 Or 584, 86 P 365.

A pledgor's exempt wearing apparel or personal effects were not taxable to the pledgee while in the pledgee's possession. Weinstein v. Watson, (1948) 184 Or 508, 200 P2d 383.

FURTHER CITATIONS: Allen v. Multnomah County, (1946) 179 Or 548, 173 P2d 475.

ATTY. GEN. OPINIONS: Racing dogs kept in kennels as taxable property, (1970) Vol 35, p 292.

307.200

ATTY. GEN. OPINIONS: Authority of drainage districts to assess taxes on county roads, 1966-68, p 140.

307.250

NOTES OF DECISIONS

A World War I veteran must have served between April 6, 1917, and November 11, 1918. Jarvie v. State Tax Comm., (1962) 1 OTR 1.

ATTY. GEN. OPINIONS: Constitutionality of section, 1920-22, p 74; applicability to fire patrol charges on timber lands, 1920-22, p 444; effect of veteran dying before July 1, 1956-58, p 238.

307.260

CASE CITATIONS: Reynolds v. State Tax Comm., (1969) 3 OTR 408.

ATTY. GEN. OPINIONS: Time limit for filing application, 1966-68, p 605.

307.290

ATTY. GEN. OPINIONS: Effect of acquisition of veteran's property by Veterans' State Aid Commission, 1936-38, p 688.

307.300

ATTY. GEN. OPINIONS: Applicability to widow otherwise eligible for exemption who holds homestead property under recorded contract of purchase, 1936-38, p 572.

307.320

CASE CITATIONS: Doerner v. State Tax Comm., (1966) 2 OTR 377; Lake County Bd. of Equalization v. State Tax Comm., (1968) 3 OTR 221; Carmen v. Dept. of Rev., (1969) 3 OTR 516; Lake County Bd. of Equalization v. Dept. of Rev., (1970) 257 Or 244, 478 P2d 377, modifying (1970) 4 OTR 25.

ATTY. GEN. OPINIONS: Application of this section to holly trees, 1962-64, p 494.

LAW REVIEW CITATIONS: 37 OLR 74; 4 WLJ 440, 448; 5 WLJ 671-682.

307.325

CASE CITATIONS: Mrs. Smith's West Coast Pie Co. v. Dept. of Rev., (1971) 4 OTR 398.

LAW REVIEW CITATIONS: 4 WLJ 438.

307.330

CASE CITATIONS: Multnomah County v. Dept. of Rev., (1971) 4 OTR 383.

LAW REVIEW CITATIONS: 39 OLR 130.

307.405

NOTES OF DECISIONS

Until taxpayer has a certificate from the department, he is not entitled to any tax relief under this section. *Hayden Island, Inc. v. Dept. of Environmental Quality*, (1970) 4 OTR 69, aff'd, 258 Or 597, 484 P2d 1106.

307.810 to 307.850

NOTES OF DECISIONS

Prior to the 1965 amendment to ORS 307.820 nothing in this free port law prevented taxpayer from following the percentage method of reporting exempt merchandise. *Riviera Motors, Inc. v. State Tax Comm.*, (1966) 2 OTR 241.

A taxpayer claiming the freeport exemption must affirmatively show that the property is in transit through this state and meets all the qualifications set forth in the statute. *Hyster Corp. v. Dept. of Rev.*, (1971) 4 OTR 351.

307.810

NOTES OF DECISIONS

The purpose of this section is to promote Oregon as a storage and distribution center for goods brought into this state for transshipment out of state. *Freightliner Corp. v. Dept. of Rev.*, (1969) 3 OTR 528; *Hyster Corp. v. Dept. of Rev.*, (1971) 4 OTR 351.

Logs destined for manufacture and sale out of state were

exempt under this Act. *Weyerhaeuser Co. v. State Tax Comm.*, (1966) 244 Or 561, 419 P2d 608, rev'g 2 OTR 253.

This section was not intended to provide an exemption for goods shipped into Oregon for the purpose of manufacturing them into a finished product in Oregon. *Freightliner Corp. v. Dept. of Rev.*, (1971) 258 Or 478, 483 P2d 1307, aff'g 3 OTR 528.

A taxpayer claiming the freeport exemption must affirmatively show that the property is in transit through this state and meets all the qualifications set forth in the statute. *Hyster Corp. v. Dept. of Rev.*, (1971) 4 OTR 351.

Creation of a new product through design, engineering, skill and labor from many fabricated parts by assembling and connecting such parts is manufacturing and manufacturing is not the assembling, binding and joining contemplated by this section. *Id.*

Plaintiff was entitled to the exemption provided by this section. *Gunderson Bros. v. State Tax Comm.*, (1968) 3 OTR 315, aff'd sub nom. *Gunderson Bros. Engr. Corp. v. State Tax Comm.*, (1970) 256 Or 98, 471 P2d 802.

The total process of building trucks went beyond the assembling, binding or joining contemplated by this section. *Freightliner Corp. v. Dept. of Rev.*, (1969) 3 OTR 528, aff'd, 258 Or 478, 483 P2d 1307.

FURTHER CITATIONS: *Emanuel Lutheran Charity Bd. v. Dept. of Rev.*, (1971) 4 OTR 410.