

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

GEORGE WITTEMYER,)	
)	Case No. 1303-04234
Plaintiff,)	
)	
v.)	ORDER GRANTING
)	DEFENDANT’S MOTION FOR
CITY OF PORTLAND)	PARTIAL SUMMARY
)	JUDGMENT AND DENYING
Defendant.)	PLAINTIFF’S PARTIAL
)	MOTION FOR SUMMARY
)	JUDGMENT
)	

This matter came before the court on the motions of Defendant City of Portland and Plaintiff George Wittemyer. Oral Argument regarding Defendant’s Partial Motion for Summary Judgment and Plaintiff’s Partial Cross-Motion for Summary Judgment was held on June 21, 2013. Plaintiff challenges the recently adopted City of Portland’s (“the City”) Arts Education and Access Income Tax (“Arts Tax”) as unconstitutional under both the State and Federal Constitution. Plaintiff’s claims unrelated to the Arts Tax have been bifurcated. Only the claims of unconstitutional taxation are at issue for these motions.

Defendant’s Motion for Partial Summary Judgment is granted and Plaintiff’s Motion for Partial Summary Judgment is denied because there are no genuine issues as to any material fact and the Defendant is entitled to prevail as a matter of law.

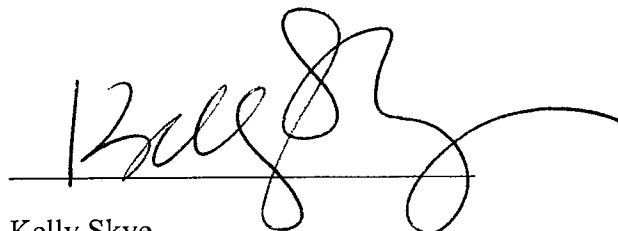
The Arts Tax is not a Poll or Head tax as prohibited by the Oregon Constitution. Article IX, section 1a of the Oregon Constitution provides: “No poll or head tax shall be levied or collected in Oregon.” A poll or head tax is “a fixed tax assessed on each eligible person.” *City of*

Portland v. Cook, 170 Or. App. 245, 250 (2000). The Arts Tax is not a head or poll tax because it is not assessed per capita. In assessing the tax, the City considers a person's income in three distinct provisions: the tax applies only to (1) income exceeding \$1,000, (2) non-exempt income sources, and (3) income of individuals residing in households with income above the federal poverty guidelines. Taxpayers who are under the age of 18 are exempt from the tax. The practical effect of the tax is to tax income of certain City residents within a certain income range and is therefore not a poll or head tax.

Defendant conceded that the Arts Tax does not violate the Equal Protection Clause of the 14th Amendment to the U.S. Constitution by acting as an "election standard."

Plaintiff raises new constitutional challenges in the cross-motion for summary judgment not discussed in the Complaint by alleging the Arts Tax violates Article I, Section 9, Clause 4 of the U.S. Constitution as well as Article XI, section 11b, of the Oregon Constitution ("Measure 5"). As these issues were not properly raised in the Complaint, the issues are not properly before the court for these motions. Even if the court were to consider these arguments, they are still unpersuasive as Article I, Section 9, Clause 4 of the U.S. Constitution does not apply to state or city taxes and Measure 5 only limits the way in which property taxes are assessed, not income taxes.

Dated this 21 day of June, 2013.

A handwritten signature in black ink, appearing to read "Kelly Skye", written over a horizontal line.

Kelly Skye

Circuit Court Judge