



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

December 21, 2006

George Pernsteiner, Chancellor
Oregon University System
PO Box 3175
Eugene, OR 97403-0175

Dave Frohnmayer, President
President's Office
110 Johnson Hall
1226 University of Oregon
Eugene, OR 97403-1226

Edward J. Ray, President
Office of the President
Oregon State University
600 Kerr Administration Building
Corvallis, OR 97331-2128

Re: Opinion Request OP-2006-3

Dear Chancellor Pernsteiner and Presidents Frohnmayer and Ray:

Introduction

To provide funding to develop research by Oregon's public universities into commercially viable products, services and enterprises, the legislature has established a venture grant program. Under that program, Oregon Health and Science University (OHSU) and any university in the Oregon University System (OUS) may elect to establish a venture development fund for the deposit of private donations and the disbursement of grants for the purpose of developing university research into commercial ventures. ORS 351.692 to 351.697 govern OUS venture development funds, and ORS 353.445 governs the OHSU fund.

To encourage donations, institutions that establish funds may issue tax credit certificates to donors. ORS 315.521. The cumulative value of the certificates issued by OHSU is effectively capped at \$4 million, and the cumulative value of those issued by universities in the OUS at \$10 million. ORS 353.445(2); ORS 351.692(3). OAR 580-043-0070 allocates the \$10 million among the individual institutions.

The legislature has provided for the potential recovery of lost tax revenue as follows. Participating universities are to monitor the use of grants and identify all income that they receive as a result of that use, such as licensing and royalty revenues. ORS 351.692(2); ORS 353.445(3). They then must transfer 20 percent of that income to the General Fund until it has been fully reimbursed for revenue lost due to the tax credits. ORS 351.697(4); ORS 353.445(3).

You seek our advice about the proper interpretation of ORS 315.521, which governs the tax credit available to donors. Specifically, you ask whether the total tax credit for an individual donor is limited to \$50,000 and whether a donor has only three tax years within which to take the credit.

We conclude, based on the analysis that follows, that the maximum total tax credit available to an individual donor is not limited to \$50,000. We further conclude that a taxpayer is not necessarily required to take the tax credit over a three year period. Instead, a taxpayer must take an annual credit equal to 20 percent of the taxpayer's contribution, \$50,000, or the taxpayer's total tax liability for the year, whichever is least, until the total credit is exhausted.

Discussion

1. Method for Interpreting Statutes

Your question requires us to interpret a statutory provision. In doing so, we apply the methodology prescribed by the Oregon Supreme Court in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). Our task is to discern legislative intent and to do so we start with the text of the statutory provision, because the text itself is the best evidence of legislative intent. *Id.* at 610; ORS 174.010. To help us determine what the text means, we apply rules of construction concerning how to read text, such as not to read anything into the text or to delete anything that is there and to give words of common usage their plain, natural and ordinary meaning. ORS 174.010; *PGE* at 610-11. We do not read the text in isolation, but in the context of other provisions of the same statute and other related statutes and we apply rules of construction that bear on how to interpret context. *Id.* If the meaning of the statute is unclear after examining its text and context, we consult legislative history for guidance about legislative intent. If the legislative history also fails to provide a clear interpretation, we may apply maxims of statutory construction, such as to assume that the legislature did not intend an absurd result. *Id.*

2. Total Amount of Tax Credit Allowed under ORS 315.521

ORS 315.521 provides, in relevant part:

(1) There shall be allowed a credit against the taxes that are otherwise due * * * for amounts contributed to a university venture development fund * * * to the extent that the university that established the fund issued a tax credit certificate to the taxpayer.

(2) The *total amount* of the credit allowed to a taxpayer shall equal 60 percent of the amount stated on the tax credit certificate. *Except as provided in subsection (3) of this section*, the *amount of the credit allowed in any one tax year* shall equal 20 percent of the amount actually contributed to the fund.

(3) The credit allowed under this section may not exceed \$50,000 or the tax liability of the taxpayer for the tax year.

(Emphasis added). Under ORS 315.521(1), a taxpayer is allowed a tax credit “for amounts contributed to a university venture development fund * * * to the extent the university * * * issued a tax credit certificate to the taxpayer.” The tax credit certificate states the total amount of the donation, ORS 351.697(3), but that is not the amount of the tax credit. The first sentence of subsection (2) limits the “total amount” of the allowed tax credit to “60 percent of the amount stated on the tax credit certificate,” *i.e.*, 60 percent of the total donation. That is the *only* language in ORS 315.521 that explicitly limits the “total amount” of the tax credit.

3. Tax Credit Allowed in Any One Year

The second sentence of subsection (2) expressly addresses the amount of tax credit allowed “in any one tax year.” It states that “[e]xcept as provided in subsection (3) of this section, the amount of the credit allowed *in any one tax year* shall equal 20 percent of the amount actually contributed to the fund.” (Emphasis added.) In other words, the taxpayer may not take his or her total tax credit in one year, but must spread the credit out over time. Ignoring subsection (3) for the moment, the phrase “shall equal 20 percent of the amount actually contributed to the fund” would mean that, in any one tax year, a taxpayer *must* take a tax credit of 20 percent of the amount contributed and must continue doing so until reaching the 60 percent maximum. We must also consider the effect of subsection (3), however.

Subsection (3) provides that “[t]he credit allowed under this [statute] may not exceed \$50,000 or the tax liability of the taxpayer for the tax year.” The subject of that sentence is singular, but the statute allows two credits, total and annual. The former is unqualified, however, while the latter expressly incorporates the limitations imposed by subsection (3). That context makes clear that the legislature intended the limitations in subsection (3) to be limitations on the “amount allowed in any one year,” rather than limitations on the total amount allowed.

4. Period of Time to Take Tax Credit

We next consider whether a tax credit can only be taken within three tax years of the date of contribution. ORS 315.521(2) prohibits a taxpayer from taking more than one-third the total credit in any one year, but imposes no express requirement for the taxpayer to take the credit within three years. It is true that a taxpayer who takes a credit for 20 percent of his or her total contribution for each of the following three tax years will have used up the total credit by the end of that period. But a donor is not necessarily required or permitted to take a 20 percent credit in each of the three years. If, by virtue of subsection (3), a taxpayer is required to take a lesser credit in any one year, there simply is no language in ORS 315.521(2) that calls for the taxpayer

to forfeit his or her right to the "total amount of the credit" allowed by the statute, *i.e.*, 60 percent of the total donation. In that situation, ORS 315.521(2) does not prohibit a taxpayer from taking the credit over a period that exceeds three years until the taxpayer has claimed the total tax credit allowed. So, for example, if a donor contributes \$500,000 to a university's venture development fund, the donor's total allowed tax credit would be \$300,000 (60 percent of \$500,000) and the donor would be required/permitted to take that credit over the next six tax years at a rate of \$50,000 per year, provided the donor had at least \$50,000 in tax liability in each of those years. If not, the donor would be required/permitted to take the credit over more than six years.

Conclusion

We conclude that the limitations in ORS 315.521(3) are limitations on the amount of tax credit that a taxpayer may claim in any one tax year and not limitations on the total amount allowed. We further conclude that, ORS 315.521(2), read in the light of ORS 315.521(3), requires a taxpayer to claim an annual credit equal to 20 percent of the taxpayer's contribution, \$50,000, or the taxpayer's total tax liability, whichever is least, until the total credit is exhausted.

Sincerely,

Donald C. Arnold
Chief Counsel
General Counsel Division