

# OREGON CREDITS – CONTRIBUTIONS TO A TRUST FOR CULTURAL DEVELOPMENT

By C. Jeffrey Abbott, Abbott & Munns LLC & Neil D. Kimmelfield, Lane Powell PC

*(This article is the first in a series addressing some of the numerous Oregon tax credits.)*

Under ORS 315.675, a taxpayer is allowed a credit against income taxes for amounts contributed to the Trust for Cultural Development Account, established under ORS 359.405 (“Oregon Cultural Trust” or “Trust”). The credit is allowed for a taxable year only to the extent the taxpayer has contributed at least an equal amount to “Oregon cultural organizations” during the year. A “cultural organization” is an entity exempt from tax under section 501(c)(3) of the Internal Revenue Code and “organized primarily for the purpose of producing, promoting or presenting the arts, heritage, programs and humanities to the public” or “organized primarily for identifying, documenting, interpreting and preserving cultural resources.” ORS 315.675(1). The statute does not explain how to identify an “Oregon” cultural organization. The Oregon Cultural Trust website, however, identifies over 1,000 qualifying organizations. See [www.culturaltrust.org](http://www.culturaltrust.org). Many taxpayers may make contributions throughout the tax year to qualifying cultural organizations without knowing that it enables them to make qualifying contributions to the Trust with little or no tax cost or even, possibly, a federal income tax saving.

The credit is equal to 100% of the amount contributed to the Trust but, in the case of an individual taxpayer, cannot exceed the lesser of the taxpayer’s tax liability or \$500. The Oregon Department of Revenue (“ODR”) clarifies on page 93 of its Publication 17 1/2 (“Individual Income Tax Guide”) that married taxpayers are allowed up to a \$1,000 tax credit on a joint return. If the taxpayer is a corporation, the limit is the lesser of the tax for the year or \$2,500. The credit cannot be carried over to another year.

ORS 315.675(7) states: “The credit allowed under this section is in addition to any charitable contribution deduction allowable to the taxpayer.” A plain reading of this section suggests that a contribution to the Oregon Cultural Trust may generate a charitable contribution deduction as well as a credit. If this is the case, a \$500 contribution to the Oregon Cultural Trust may yield a \$500 Oregon itemized tax deduction (with a \$45 tax benefit at the 9% tax rate) as well as a \$500 credit.

Notwithstanding ORS 315.675(7), the ODR takes a different view. The Individual Income Tax Guide states on page 93: “If you claim your donation to the Oregon Cultural Trust as a tax credit on your Oregon return, you cannot claim a charitable contribution on your Oregon return.” Similarly, the instructions for line 39 of the Oregon Form 40 state: “Any

federal benefit due to a federal deduction must be reported as an Oregon addition.” If the donation to the Trust is treated as a payment of Oregon income tax, these statements make sense, since federal itemized deductions for Oregon income tax payments must be added back to Oregon taxable income. On the other hand, if the donation to the Trust is allowable as a charitable contribution deduction, the authority for these statements is unclear.

What, then, is the correct federal income tax treatment of contributions to the Oregon Cultural Trust? A document on the Oregon Cultural Trust website titled “Frequently Asked Questions: Cultural Tax Credit” states:

Under IRC Section 170(c)(1), contributions to the Oregon Cultural Trust qualify as deductible charitable contributions on the federal tax return.

If that is correct, a contributing taxpayer who is subject to the alternative minimum tax may obtain a federal income tax benefit for making the contribution because each dollar of contribution (up to the maximum amount creditable) will reduce Oregon income tax by one dollar and will increase charitable contributions by one dollar.

The correctness of the Trust’s statement is open to question, however. Although a thorough analysis of the deductibility of contributions to the Trust under section 170(c)(1) is beyond the scope of this article, the following passage from the IRS’ Chief Counsel Advice 200435001 nicely summarizes the relevant issues, albeit in connection with the similarly-structured Oregon Child Care Tax Credit:

[A] charitable **contribution** deduction under I.R.C. § 170 may not be allowable for a payment that qualifies for the Oregon Child Care Tax Credit, if the credit is viewed as a quid pro quo benefit that eliminates the necessary charitable intent for federal tax purposes. However, if receipt of the **credit** from the **state** is viewed as a disqualifying benefit, arguably the taxpayer’s transfer of the **credit** to the **state** to satisfy the state tax liability should be viewed as a payment of state tax, for purposes of the federal deduction for tax payments in I.R.C. § 164 or § 162.

In other words, it is possible that a contribution to the Trust is deductible as a payment of Oregon income tax, rather than as a charitable contribution. If that is the case, and there is no clear authority on this point, a taxpayer subject to the alternative minimum tax may obtain no federal income tax benefit from contributing to the Trust, because the contribution will merely replace a direct payment of state income tax.

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In essence, a taxpayer who receives a \$500 tax credit for a \$500 contribution to the Trust has effectively earmarked \$500 of state funds for use by the Trust and *may* also obtain a federal tax benefit if the contribution is deductible for federal income tax purposes as a charitable contribution *and* the taxpayer would not have obtained a federal benefit for the Oregon income payment avoided by means of the credit. Under ORS 315.675(7), it also appears that the taxpayer is entitled to an Oregon charitable contribution deduction, but the ODR clearly does not agree.

In light of the foregoing, a contributing taxpayer is likely to be interested in how the Trust uses contributed funds. The Trust's use of contributed funds is governed by rules in ORS 359.426-444. Generally, forty-two percent of the trust must be distributed in a fiscal year. Seven and one-half percent are allowed to be used for administrative activities of the Arts Program per ORS 359.426 and the remainder of the forty-two percent must be distributed equally to (a) the preservation of stabilization of an investment in Oregon's cultural resources through the Cultural Development Grant Program as provided for under ORS 359.431; (b) Oregon's counties and to nine federally recognized Indian tribes through the Community Cultural Participation Grant Program as provided for under ORS 359.436; and (c) the Core Partner's Agencies under ORS 359.441. Any further analysis of the Trust's use and accumulation of funds are beyond the scope of this article. Additional information on the Trust's use of funds may be found on the Trust's website. See [www.culturaltrust.org](http://www.culturaltrust.org).

## Notification Regarding Updated Web Site:

The Taxation Section has updated its web site, which can be found at <http://osbtaxation.homestead.com/Index.html>. The Web site has the past issues of the Taxation Newsletter along with other helpful resources. Please take a moment to review it. If you would like to see anything added to the site, please contact one of the Executive Committee members.

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Oregon State Bar  
Taxation Section  
5200 SW Meadows Road  
Lake Oswego, OR 97035