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Wittemyer v. City of Portland

Supreme Court of Oregon - September 21, 2017 - P.3d - 361 Or. 854 - 2017 WL 4173473

Taxpayer filed action alleging that city's so-called "arts tax," which imposed $35 tax on each income-earning city resident to support the arts in public schools, except for residents living in households at or below federal poverty line, violated constitutional provision prohibiting imposition of a "poll or head tax" and sought to enjoin city from collecting the tax

The Circuit Court granted summary judgment in favor of city. Taxpayer appealed. The Court of Appeals affirmed. The Supreme Court allowed review.

The Supreme Court of Oregon held that:

- Unconstitutional "poll or head tax" was one that applied uniformly, on per capita basis, without taking taxpayer's income, property, or other resources into account in any way, and
- City "arts tax" took income and household resources into account, and thus was not unconstitutional "poll or head tax."

City "arts tax," imposing $35 tax on each resident of city who was at least 18 years old, had income of $1,000 or more per year, and did not reside in household that was at or below federal poverty guidelines, to support the arts in public schools took income and household resources into account, and thus was not unconstitutional "poll or head tax," though income was not taken into account in determining amount of tax. Tax did not apply to individuals earning income of less than $1,000 per year, certain types of income did not count in determining income for purposes of tax, including Social Security benefits, and federal poverty guidelines, in turn, were graduated according to size of household.

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