

curiae Morrow County Unified Recreation District.

Jeffrey G. Condit, Miller Nash LLP, Portland, filed the brief on behalf of amicus curiae Portland School District No 1J, Multnomah County (Portland Public Schools).

Beth Ann Lori, City of Ashland, Medford, filed the brief on behalf of amicus curiae City of Ashland.

Joe B. Richards, Luvass Cobb PC, Eugene, filed the brief on behalf of amici curiae Eugene School District and Bethel School District.

DE MUNIZ, C.J.

\*248 This property tax case is before the court on direct appeal from an Oregon Tax Court judgment. The issue presented is whether the City of Eugene's (city) categorization of revenues raised by a local option levy pursuant to ORS 310.155(3) was consistent with the tax limitations set out in Article XI, section 11b, of the Oregon Constitution (hereafter, Measure 5<sup>FN1</sup>). The Tax Court concluded that the city's revenue categorization was not consistent with Measure 5 requirements. In so holding, the Tax Court declared ORS 310.155(3) unconstitutional and held that Measure 5 required that revenues be categorized according to their intended use and the purpose for which those revenues were raised. *Urhausen v. City of Eugene*, 18 OTR 395 (2006). For the reasons that follow, we affirm the Tax Court judgment.

FN1. The voters adopted Measure 5 as an amendment to the Oregon Constitution in 1990.

The relevant facts are undisputed. Taxpayers *Urhausen*, *McVickar*, and *Rice* (collectively, taxpayers) are resident taxpayers of the city. In 2002, the Eugene City Council

passed a resolution calling for a four-year local option tax levy (levy) within the city and referred the levy to city voters for approval. The proposed levy was designed to institute a new property tax of \$0.86 per \$1,000 of assessed real-market property value within the area. Over its proposed four-year duration, the levy was expected to raise a total of \$31.5 million. Under the levy's terms, seven percent of those proceeds, approximately \$2.2 million, would be used by the city to provide services for youth. The remaining 93 percent, approximately \$29.3 million, was slated to go to the Eugene and Bethel school \*\*1025 districts (school districts) for a number of specific purposes: school-based instruction in music and physical education; school-based counseling; school-based nurse services; school-based library services; and high school or middle school athletics and student activities. The resolution referring the levy to voters made clear that the amount of the levy would be proportionately reduced if the Oregon Legislative Assembly acted to increase the amount of funding \*249 for students within the school districts beyond the amount anticipated for the four-year period of the levy.<sup>FN2</sup>

FN2. Specifically, Resolution No. 4737 provided, in part:

"It is the Council's intent that if the Legislature increases the amount of funding for students within the Eugene and Bethel school districts beyond the amount anticipated as of June 2002 for the four-year period, the amount of the levy should be proportionately reduced. Therefore, should the Legislature increase that funding, the City, as part of the annual budget process, shall levy less than \$0.86 per \$1,000 of assessed value."

By its terms, the bulk of the levy was aimed at school funding. However, the city did