

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

HAZELDEN SPRINGBROOK, INC.,)	
an Oregon nonprofit organization,)	
)	TC-MD 031037D
Plaintiff,)	
)	
v.)	
)	
YAMHILL COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This matter is before the court on Plaintiff's Motion for Summary Judgment filed January 26, 2004, seeking property tax exemption for its facility devoted to treating people with chemical dependency, alcoholism, and substance-abuse-related problems. The parties filed their Joint Statement of Undisputed Material Facts (Stip Facts) January 26, 2004. Defendant filed its reply to Plaintiff's motion for summary judgment (Reply) February 17, 2004. Plaintiff filed its response to Defendant's reply (Response) March 16, 2004. The parties did not request oral argument.

I. STATEMENT OF FACTS

Plaintiff Hazelden Springbrook, Inc. (Hazelden) is appealing Defendant Yamhill County Assessor's (the county) denial of its application, dated August 12, 2003, for a property tax exemption of its property located in Yamhill County. In its application, Hazelden requested the exemption "under ORS 307.162 as a charitable institution." (Stip Facts at ¶ 17.) In support of its request for exemption, Hazelden is an Oregon nonprofit corporation and qualified for an income tax exemption under section 501(c)(3) of the Internal Revenue Code (IRC). (*Id.* at ¶¶ 1, 2.) "Hazelden's sole member * * * is Hazelden Foundation" (the Foundation). (*Id.* at ¶ 3.)

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Since Hazelden's acquisition of the subject property in November 2002, it has been used to provide "comprehensive abstinence-based recovery services for adults who struggle with substance abuse and alcohol and drug addiction." (*Id.* at ¶ 5.) "As one of the satellite locations of the [Hazelden] Foundation," "Hazelden uses the 'Minnesota Model for Treatment' which was devised by the Foundation during its 51-year history of treating people with chemical dependency, alcoholism and substance-abuse-related problems." (*Id.* at ¶¶ 6, 8.) According to the reported interview with the facility's receptionist, "the facility caters to professionals such as doctors, nurses and others in the medical field as well as other professionals." (*Id.* at ¶ 19.) "As a provider approved by the Oregon Office of Mental Health and Addiction Services," Hazelden offers treatment programs for both in-patients and out-patients. (*Id.* at ¶ 10.)

"Hazelden's in-patient program is for people who require ongoing support, including residency for full recovery for alcohol and drug addiction." (*Id.* at ¶ 8.) In serving "approximately 500 patients annually" enrolled in its in-patient program, the subject property's facilities include: a "50-bed in[-]patient rehabilitation facility, a detoxification facility, rooms for conducting group sessions, lectures, one-on-one consultations, offices for doctors and staff, and supporting facilities." (*Id.* at ¶¶ 5, 8.) "The unimproved portion of the Property has jogging trails and landscaping for exclusive use by, and the benefit of, Hazelden's patients. No portion of the Property is used for purposes other than Hazelden's addiction recovery programs." (*Id.* at ¶ 5.)

The out-patient program with its "approximately 180 patients annually" uses some of the same facilities for its "daily lectures, peer discussion groups and an evening intensive program for people who are fighting substance abuse while continuing to work." (*Id.* at ¶¶ 8, 9.)

In conjunction with its various treatment programs, Hazelden provides a “limousine service to and from the airport and to other appointments.” (*Id.* at ¶ 20(7).)

“Hazelden charges fees for its services based upon a ‘Means Test.’” (*Id.* at ¶ 11.) The Means Test evaluates four factors, each “given a point value: family income, equity in family home, net assets of the family excluding the family home, and number of dependents in the family.” (*Id.*) Although “most patients are able to pay for the cost of treatment through insurance and personal resources,” the results of the Means Test serves to “determine[] the level of assistance that would be offered to an individual patient after consideration of any available insurance coverage.” (*Id.*) Hazelden explains its assistance as follows:

“Hazelden offers three levels of assistance: 15%, 30% and 50% discounts on the cost of the treatment. If a patient is unable to afford the discounted rates, Hazelden determines the availability of financial assistance from its ‘Lifesaver Fund,’ which is a source of gifts and low cost loans. * * * [A]pproximately 21% of Hazelden’s patients received some level of financial assistance. Also in 2003, Hazelden provided full inpatient treatment services to a patient who was unable to contribute to the cost of the services, and few others were given discounts far abo[ve] the published assistance levels.”

(*Id.* at ¶ 12.) “Counselors, psychotherapists and social workers are not aware if a patient is receiving a discounted fee or a waiver” and “patients receiving financial aid are given the same services as other patients.” (*Id.* at ¶ 13.) An individual in a treatment program is not refused services if the patient “subsequently becomes unable to pay.” (*Id.*)

The Foundation provides financial support to Hazelden. The Foundation “is supported entirely by private donations, patients’ revenues and insurance benefits.” (*Id.* at ¶ 14.) On its website (www.hazelden.org), the Foundation “solicits donations of labor and money, stating:

“Philanthropy is at the heart of the Hazelden Foundation’s work to address the complex and enormous consequences of addiction. Thanks to our donors’ generosity, Hazelden has become the world’s foremost nonprofit

organization dedicated to understanding, preventing, and treating addiction and strengthening recovery in people's lives.”

(*Id.* at ¶ 6.) “All donated funds are used exclusively for the addiction treatment and education programs of the Foundation and its local organizations, such as Hazelden.”

(*Id.* at ¶ 14.) “In 2002, the Foundation received more than 11,600 hours of volunteer work and \$4,126,000 in private donations, which funds are held in trust for the Foundation's charitable purposes.” (*Id.*) “Receipts from the patients are applied to maintenance and improvements of the facility and equipment.” (*Id.* at ¶ 13.) The Foundation “receives no state or federal financial support.” (*Id.* at ¶ 14.)

For calendar year 2002, “Hazelden incurred an operating loss of approximately \$1 Million * * * that was funded by the Foundation.” (*Id.*) In August 2003, Hazelden employed “approximately 80 full time staff members” and treated “72 - 74 patients.” (*Id.* at ¶¶ 20(4), (2).)

In addition to its treatment programs, Hazelden “provides family program for family members and significant others * * * even if the addicted family member is not treated at Hazelden,” it offers “free confidential screenings to members of general public as part of National Alcohol Screening Day,” and “sponsors a Speakers Bureau, which provides speakers free of charge to organizations, churches and community groups educating the public on addiction, its prevention, treatment and related topics.” (*Id.* at ¶¶ 10, 8.) “Hazelden staff operates a toll-free number 24 hours a day” and the organization “distributes and publishes brochures designed to identify substance abuse problems and prevention and treatment services available.” (*Id.* at ¶ 15.) It “offers its facilities free of charge for meetings of other community support groups and nonprofit organizations fighting addictions, such as Alcoholics Anonymous, Gamblers Anonymous, and Narcotics Anonymous.” (*Id.*) Hazelden “participates in all of the

dependency research sponsored by the Foundation.” (*Id.* at ¶ 6.) As of 2003, Hazelden was “currently a sponsor for ‘Race for The Cure.’” (*Id.* at ¶ 20(6).)

“On August 12, 2003, Yamhill County denied Hazelden’s application for exemption.” (*Id.* at ¶ 21.) In response to Defendant’s denial, Hazelden filed its Complaint October 16, 2003. (*Id.* at ¶ 22.)

II. ANALYSIS

The issue before the court is whether Hazelden’s property qualifies for property tax exemption under ORS 307.130.¹ ORS 307.130(1) and (1)(a), in relevant part, provides that after making the required application, “only such real or personal property, or proportion thereof, as is actually and exclusively occupied or used in the * * * charitable * * * work carried on by such institutions” “shall be exempt from taxation.”

In applying the statute, the court is guided by the principle that taxation is the rule and property tax exemption statutes are strictly but reasonably construed. *Willamette Egg Farms, Inc. v. Dept. of Rev.*, 14 OTR 337, 339 (1998); *Eman. Luth. Char. Bd. v. Dept. Of Rev.*, 263 Or 287, 291, 502 P2d 251 (1972). The court in *Emanuel Lutheran* explained the rule as follows: “Strict but reasonable means merely that the statute will be construed reasonably to ascertain the legislative intent, but in case of doubt will be construed against the taxpayer.” *Id.*

In construing the statute, the court follows the leading case on statutory interpretation, *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). *PGE* directs the court to accept the plain meaning of a statute and “that words of common usage typically should be given their plain, natural, and ordinary meaning.” *Id.* at 611. The legislative intent is to be determined first from the text and context of the

¹ All references to the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2001.

statute. *Id.*

The parties agree that Hazelden’s property is “actually and exclusively occupied” by Hazelden, a non-profit organization. ORS 307.130(1)(a). The question is whether the work “carried on” at the Hazelden property is “charitable.” ORS 307.130(1)(a). To qualify as a charitable institution, an organization must satisfy the following three elements: “(1) “* * * have charity as its primary, if not sole, object; (2) * * * must be performing in a manner that furthers its charitable object; and (3) * * * its “performance must involve a gift or giving.” *SW Oregon Pub. Def. Services v. Dept. of Rev.*, 312 Or 82, 89, 817 P2d 1292 (1991). Hazelden must meet all three conditions to qualify for a property tax exemption. *Mazamas v. Dept. of Rev.*, 12 OTR 414, 415 (1993).

A. *Charitable Objective*

The first element that must be met is for Hazelden to have “charity as its primary, if not sole, object.” *SW Oregon Pub. Def. Services*, 312 Or at 89. In analyzing the first element, courts have looked to an organization’s purpose as stated in its articles and bylaws. *Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 301 Or 423, 427, 723 P2d 320 (1986) (citing *Found. of Human Understanding v. Dept. of Rev.*, 301 Or 254, 722 P2d 1 (1986) (articles); *Hamilton v. Corvallis Hosp. Ass’n.*, 146 Or 168, 171-72, 30 P2d 9 (1934) (articles and bylaws).

Hazelden is organized as a charity. It is incorporated in Oregon as a non-profit corporation; operated exclusively for charitable purposes to promote social welfare and the common good; recognized by the Internal Revenue Service as income tax exempt; operated for the general public as a designated public benefit corporation and not only for the benefit of its founders and officials; and its Restated Articles of Incorporation

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provide that should it dissolve its assets will be used for charitable purposes. (Stip

Facts Ex A at 1-3; B at 1; C at 1-3.)

B. *Performance of its Charitable Objective*

Even though organized as a charity, Hazelden's activities must further its charitable objective. *SW Oregon Pub. Def. Services*, 312 Or at 90. In keeping with Hazelden's stated purpose of promoting social welfare and the common good, the Foundation's mission is "to help alcoholics and addicts who need help." (Stip Facts Ex D at 1.) The Foundation described its work as follows:

"Philanthropy is at the heart of the Hazelden Foundation's work to address the complex and enormous consequences of addiction. Thanks to our donors' generosity, Hazelden has become the world's foremost nonprofit organization dedicated to understanding, preventing, and treating addiction and strengthening recovery in people's lives."

(Stip Facts ¶ at 6.) However, it is incorrect to focus on the "parent organization," the Foundation. (Ptf's Resp at 6.) Hazelden is the sole owner of the property and seeks a property tax exemption based on its charitable use of the property. It is the activities of Hazelden that must meet the statutory requirements. To consider the activities of the parent organization, rather than the actual uses of the property by Hazelden who is seeking the exemption, would be contrary to the statute.

To further its charitable objective of promoting social welfare and the common good, Hazelden stated that it engaged in the following activities:

1. treatment for addiction;
2. "free confidential screenings";
3. "family program for family members and significant others of persons with an addiction";
4. "speakers free of charge to * * * educat[e] the public on addiction, its prevention, treatment";
5. "a toll-free number 24 hours a day";
6. free use of its facilities for "community support groups and nonprofit organizations fighting addictions";
7. "distributes and publishes brochures designed to identify substance abuse problems"; and
8. "participates in all of the community outreach programs * * * and in the chemical dependency research sponsored by the Foundation."

(Stip Facts at ¶¶ 10, 8, 15, and 6.) Hazelden alleges that “by operating its facility and providing prevention and treatment services to addicts and alcoholics” it assists the State of Oregon in addressing and treating “the problem of substance abuse,” by reducing “state spending in areas of corrections, health and welfare and” improving the “emotional and economic health of its citizens.” (Ptf’s Br in Supp of Mot at 13-14.) Although Hazelden’s assertions may be true, there is no data, only a listing of activities, to support its conclusions. The court was not provided with a list of speakers with the dates and locations of their presentations, a list of the community outreach programs Hazelden participated in, or how its use of the property contributed to research. In looking at the activities without additional information, it is evident that some of those activities, specifically the treatment, 24-hour hot-line, and family programs, benefit the patient who is paying for the services. Those activities do not further Hazelden’s charitable objective of promoting social welfare and the common good for others not paying for the services. Without more information, it is unclear to the court how the distribution and publication of brochures and participation in various community outreach programs meet Hazelden’s charitable objectives.

C. *Gift or Giving*

In reviewing Hazelden’s purpose and activities, the focus is placed on its “performance” involving “a gift or giving.” *SW Oregon Pub. Def. Services*, 312 Or at 89 (citation omitted). The Oregon Department of Revenue adopted a rule, OAR 150-307.130-(A), “that established criteria to be used in determining qualification for an exemption under ORS 307.130.” *Id.* at 86. Specifically with respect to gift or giving for a “fee-charging operation,” like Hazelden, OAR 150-307.130(c) lists four factors considered by the Oregon Supreme Court in its holding in *Methodist Homes, Inc. v. Tax Com.*, 226 Or 298, 309-310, 360 P2d 293 (1961):

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“The fact that an organization charges a fee for its services does not necessarily invalidate its claimed status as charitable. It is a factor to be considered in the context of the organization’s manner of operation. In determining whether a fee-charging operation is charitable, it is relevant to consider the following:

“(I) Whether the receipts are applied to the upkeep, maintenance and equipment of the institution or are otherwise employed;

“(ii) Whether patients or patrons receive the same treatment irrespective of their ability to pay;

“(iii) Whether the doors are open to rich and poor alike and without discrimination as to race, color or creed;

“(iv) Whether charges are made to all and, if made, are lesser charges made to the poor or are any charges made to the indigent.”

In its Response, Hazelden specifically listed statements from the joint stipulated facts in support of its compliance with each of the listed factors. (See Ptf’s Resp at 2-3.)

However, the court disagrees with Hazelden’s conclusion that its “doors are open to rich and poor alike.” Hazelden “was founded to provide addicted professionals a high quality, effective recovery experience addressing their unique needs.” (Ptf’s Ex D at 15.) Rather than serving the general public, Hazelden has limited its services to “addicted professionals.” (*Id.*) Hazelden states that the “price of” its “intensive treatment program is admittedly high.” (Ptf’s Resp at 5.) In most cases, the cost of the treatment is paid “through insurance and personal resources.”² (Stip Facts at ¶ 11.) Generally, the poor and indigent are not “professionals” and have neither insurance nor personal resources. Hazelden agreed that its treatment program is “neither suitable for, nor sought out by, indigent street people with addictions.” (Ptf’s Resp at 5.) Further, the ratio of staff to patients, which in August 2003 was greater than one-to-one, suggests that the facility selectively limits those receiving its services.

In support of its giving, Hazelden stated that it provided financial assistance for 21 percent of its resident patients. (Stip Facts at ¶ 12.) That statistic does not give a

² “Hazelden’s financial staff are experts at gaining maximum insurance coverage and working with families to identify financial sources.” (Ptf’s Ex D at 8.)

complete picture of the limited financial assistance provided. According to Hazelden, 475 resident patients were treated in 2003. (*Id.*) Hazelden accepted one patient “who was unable to contribute to the cost of the services.” (*Id.*) With an average fee of \$17,750 per patient, Hazelden generated \$8,431,250. (*Id.* at ¶ 20(5).) Of the total amount of receipts generated, it “distributed \$326,000 in financial aid.” (*Id.* at ¶ 12.) In relation to the cost of the treatment, Hazelden’s financial aid is less than four percent of the total revenue generated. Although a bright line test for giving has not been determined, the Oregon Supreme Court held that the required giving is absent when the scholarships or reduced fee in relation to the fee charged is less than eight percent. See *YMCA v. Dept. of Rev.*, 308 Or 644, 654, 784 P2d 1086 (1989).

The distribution of discounts offered (financial assistance) to patients was not provided; however, based on the percentage of financial aid to total revenue generated, there are few patients receiving substantial discounts. Because the reduced fee paid by most patients does not represent a substantial discount, the court finds little significance in the fact that “all patients receive the same treatment irrespective of their ability to pay.” (Ptf’s Br in Supp of Mot at 12.) Further the court is not persuaded that Hazelden “relieves a significant governmental burden” because, with only one exception, all patients rely on their own personal resources and insurance to fund the cost of the treatment. (*Id.*) Further, the segment of society Hazelden serves is highly motivated and self-sufficient. Hazelden alleged that its charitable activities are similar to those of an adult foster home, Rigas Maja. (*Id.* at 9.) In that case, the Tax Court concluded that Rigas Maja was a charity entitled to a property tax exemption because the rents charged were below market, rents were not increased as patient needs increased, some patients received a substantial discount, and donations of time and material were substantial. *Rigas Maja, Inc. v. Dept. of Rev.*, 12 OTR 471, 474-75, (1993). In contrast

to *Rigas Maja*, no evidence was submitted by Hazelden to show that the fees it charged were below market. Hazelden alleged that it “enjoys significant donations from individuals of labor and money.” (Ptf’s Br in Supp of Mot at 14.) Unfortunately, there is a lack of details to support that assertion. In addition, there is no information concerning the amount of funds held in trust for Hazelden. That gives an incomplete picture of what, if any, charitable gift or giving Hazelden actually provided.³

Hazelden alleged that “other acute care non-profit hospitals in Yamhill County are exempt from property taxes” and it “deserves equal treatment.” (Ptf’s Resp at 6.)

The Oregon Supreme Court has previously stated:

“* * * [T]he mere fact that an organization is either a hospital or a charity does not establish any inherent right to exemption.”

Dove, 301 Or at 427 (citations omitted). To be exempt, the organization “must have charity as its primary, if not sole, object, and must be performing in a manner that furthers that object.” *Id.*

Based on the stipulated facts presented, the court finds that Hazelden’s activities do not promote charity as its primary object. Hazelden charges a substantial fee for its services; there is no evidence that the fee is below market. Although fee alone is not dispositive of gift or giving, it must be balanced against other relevant factors. In this case, gift or giving was absent because Hazelden charged a substantial fee for its services and less than four percent of the total fees generated were distributed to patients to reduce their treatment fees. Hazelden’s doors were not open to the poor alike because all but one person had access to insurance and personal resources. Indigents were not offered a reduced fee because none were encouraged to apply.

³ Although that information was submitted for the Foundation, the charitable exemption is for property owned by Hazelden, not the Foundation. (See Stip Facts at ¶ 14.)

With respect to the performance of its charitable objective, the court finds that a substantial portion of Hazelden's activities were provided to those paying for the services or to seek new patients. The number of volunteer hours and amount of donations, including the existence of an endowment or trust fund, directed solely to Hazelden and not the Foundation were not provided to the court.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Motion for Summary Judgment is denied, and the property is not exempt from taxation. .

Dated this _____ day of May 2004.

JILL A. TANNER
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY PRESIDING MAGISTRATE JILL A. TANNER MAY 11, 2004. THE COURT FILED THIS DOCUMENT MAY 11, 2004.