

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

GOODWILL INDUSTRIES of the COLUMBIA)	
WILLAMETTE, INC.,)	
)	
Plaintiff,)	TC-MD 060676D
)	
v.)	
)	
BENTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the denial of its exemption from property taxation. A trial was held in the Oregon Tax Courtroom, Salem, Oregon, on Wednesday, January 31, 2007. Robert Barsocchini, Attorney at Law, appeared on behalf of Plaintiff. Cindy Weddle, Exemptions Specialist, Benton County Department of Assessment, appeared on behalf of Defendant. Douglas Gregg Hillpot (Hillpot), Benton County Assessor, testified.

Plaintiff's Exhibits 1 through 6 and Defendant's Exhibits A through D were offered and received without objection.

I. STATEMENT OF FACTS

Plaintiff, a non-profit charitable organization, operates a donation site in Corvallis, Oregon, which is located in Benton County. The site, identified as Account 049522 (previously Account 328542), is approximately 12,625 square feet. Plaintiff stated that the first exemption from property taxation was granted August 11, 1992, when the site was operated as a retail center. (Ptf's Trial Br at 2.) In October 2005, Plaintiff opened a new retail location, less than two miles from its current location, and closed its retail operation at the site under appeal. Plaintiff changed its operation to a donation center at this site. Currently, the donation center is staffed by full time attendants. Plaintiff stated that since October 2005, over 1 million pounds of

donations were received at the site from approximately 18,000 donors. (Ptf's Trial Br at 4.) After concluding the extension of its lease at the site, Plaintiff filed its application for property tax exemption. On June 16, 2006, Defendant denied Plaintiff's request to continue its exemption from property taxation, stating that "[t]he level of charitable activity at this location is insufficient to qualify for exemption." (Ptf's Ex 3.)

In support of its appeal of Defendant's determination, Plaintiff states that its "mission is '[t]o provide vocational opportunities to people with barriers to employment.' The mission is funded by the collection and processing of donated goods which are then sold at its retail locations." (Ptf's Trial Br at 1.) Of its 18 collection sites in Oregon, 13 are currently exempt from taxation with three applications for new collection sites still pending. (*Id.* at 2.) Plaintiff emphasized that "[c]onvenient donation center locations are vital to its operation." (*Id.*) The current site "is exclusively used to collect donations and employ the people served by Goodwill and for no other purpose." (*Id.* at 4.) The "[g]oods are collected for processing and sale." (*Id.*) The site "employs people with barriers to employment [which] furthers and directly contributes to the organization's mission." (*Id.*) Those who work at the site "are paid * * * with money generated from the sale of these goods." (*Id.*)

In response to Defendant's questions, Plaintiff stated that, even though it does not fully utilize the entire 12,625 square feet, the monthly rent is very nominal and donors have been "trained to go to this site." Plaintiff explained that donations can be collected and stored at this site until the donations are trucked to other retail locations for sale to the public. When asked if taking donations meets the statutory requirement of gift or gifting, Plaintiff stated its "unique model" of operation starts with the collection of donations, which are handled by individuals who face traditional "barriers to employment," followed by the retail sale of the donations by the

other individuals who face “barriers to employment.” According to Plaintiff, Goodwill, through its donation collections and retail operations, is a self-sustaining organization with little outside funding. Plaintiff stated that, at the site which is the subject of this appeal, there is little, if any, mandatory or vocational training. Employees are paid to travel to Salem or Portland for mandatory or voluntary vocational training. In addition to training, Plaintiff maintains a “job connection” service that has placed over 6,000 individuals who face barriers to employment in jobs with employers other than Goodwill.

Hillpot testified that in June 2006 he visited the site. He recalled that he observed “very little of the 12,000 square feet was in use for donations” and it “was grossly underutilized.” The center was attended by “two older gentlemen” who sat on “folding chairs.” Hillpot testified that he observed no “real training.” Hillpot stated that an exemption from property taxation requires that “each site stands on its own.” He believes his conclusion is supported by the holding in *YMCA v. Dept. of Rev.*, 308 Or 644, 655, 784 P2d 1086 (1990), which requires that the “[u]se of each specific property” be charitable. Hillpot offered that if the site was entitled to an exemption, it would only be a “partial exemption of less than 10 percent.” However, Defendant concluded its case by asking that the court deny the exemption from property taxation because this site does not meet the statutory requirements nor its own stated purpose of vocational training.

In response, Plaintiff alleges that *Mercy Medical Center, Inc. v. Dept. of Rev.*, 12 OTR 305 (1992) is “dispositive.” “The test to determine whether an organization qualifies as a charitable institution under ORS 307.130 is applied to the organization overall and not to any specific part or operation (emphasis added). *Mercy*, 307.” (Ptf’s Trial Br at 3.) Plaintiff concludes that, because it is a charitable organization, “there is no need to apply the statutory

three part test to the organization as a whole.” (*Id.*) The applicable tests are whether the property is “ ‘exclusively used’ by plaintiff in accomplishing its charitable goals,” and if the property “substantially contribute[s] to furthering those goals.” (*Id.* at 3, 4.) Plaintiff states that the site under appeal “is exclusively used to collect donations” and “employs people with barriers to employment” which “furthers and directly contributes to the organization’s mission.” (*Id.* at 4.) Plaintiff concluded that *YMCA* does not control because Goodwill has its own board of directors, who control the entire Willamette-Columbia territory. In contrast, each *YMCA* branch was “operated by an autonomous local board” and the “facilities in Multnomah County [were] operated as separate branches, each influenced by branch boards but ultimately accountable to *YMCA-CW.*” *YMCA*, 308 Or at 648. Plaintiff concluded that the site under appeal is exempt and, if the court concludes it is only entitled to a partial exemption, the partial exemption should be between 25 and 50 percent.

II. ANALYSIS

Plaintiff alleges that its leased site¹ qualifies to be exempt from property taxation because it meets the statutory requirements of ORS 307.130(1) which provides that:

“(1) Upon compliance with ORS 307.162, the following property * * * [leased by]* * * charitable * * * institutions shall be exempt from taxation:

“(a) Except as provided in ORS 748.414, only such real or personal

¹ ORS 307.112 provides that “[r]eal or personal property of a taxable owner held under lease * * * by an * * * organization * * * granted exemption or the right to claim exemption for any of its property under ORS 307.090, 307.130, * * * is exempt from taxation if:

“(a) The property is used by the lessee in the manner, if any, required by law for the exemption of property owned or being purchased by it; and

“(b) It is expressly agreed within the lease * * * that the rent payable by the * * * organization * * * has been established to reflect the savings below market rent resulting from the exemption from taxation.”

There is no dispute that the rent paid by Plaintiff meets the statutory requirement. The parties disagree that the use of the property meets the statutory requirements for exemption, which is the subject of this appeal.

All references to the Oregon Revised Statutes (ORS) are year 2005.

property, or proportion thereof, as is actually and exclusively occupied or used in * * * charitable or scientific work carried on by such institutions.”

When looking at statutes granting exemption, the court must remember the principle that taxation is the rule, and exemption from taxation is the exception. *Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 301 Or 423, 426-27, 723 P2d 320 (1986). In its analysis, the court is guided by the rule that property tax exemption statutes are strictly but reasonably construed. *SW Oregon Pub. Def. Services v. Dept. of Rev.*, 312 Or 82, 88-89, 817 P2d 1292 (1991). “Strict but reasonable construction does not require the court to give the narrowest possible meaning to an exemption statute. Rather, it requires an exemption statute be construed reasonably, giving due consideration to the ordinary meaning of the words of the statute and the legislative intent.” *North Harbour Corp. v. Dept. of Rev.*, 16 OTR 91, 95 (2002).

In this case, the parties agree that the site leased by Plaintiff is “actually and exclusively occupied” by Plaintiff, a non-profit organization. ORS 307.130(1)(a). The issue is whether the work “carried on” at the site is “charitable.” *Id.* 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*, 312 Or at 89. All three conditions must be met to qualify for a property tax exemption. *See Mazamas v. Dept. of Rev.*, 12 OTR 414, 415 (1993).

In its trial brief, Plaintiff acknowledges “the statutory three part test” but concludes that because “Goodwill as a whole is a charitable institution” * * * “there is no need to apply” that test. (Ptf’s Trial Br at 3.) Plaintiff’s conclusion is based on the court’s finding in *Mercy*, that “[t]he test is applied to an organization overall and not to any specific part or operation.” *Mercy*, 12 OTR at 307. In *Mercy*, the Douglas County Assessor denied a property tax exemption

for “the gift shop area in [the] hospital.” *Id.* at 306. The court held that, because the Douglas County Assessor (Assessor) conceded that Mercy Medical Center, Inc. “is a charitable organization entitled to claim exemption under ORS 307.130,” the Assessor’s “arguments with regard to the absence of a gift or giving in the operation of the gift shop are irrelevant. If plaintiff’s hospital is charitable overall, the fact that some portion of its operations makes a profit is immaterial.” *Id.* at 306-08.

Defendant rebuts Plaintiff’s argument stating that the following finding by the Oregon Supreme Court in *YMCA* is more like Plaintiff’s situation:

“[T]he question is not whether the YMCA, as an organization, is charitable. No doubts need be raised about the generally charitable nature of the YMCA nationally, in Oregon, or in metropolitan Portland in order to decide whether specific real or personal property is employed in a manner which qualifies for exemption from property taxes. * * * Reference to the statute, and to this court’s decisions construing it, demonstrate that *each specific property claimed exempt* must separately qualify as exempt.”

YMCA, 308 Or at 648-49, 655 (emphasis added). The Supreme Court cites numerous cases stating “that charitable use of a part of the property of an exempt organization or institution does not qualify its remaining property, not so used, for exemption, even if the income from the non-exempt property is used to support the organization’s charitable purpose.” *Id.* at 655 (citations omitted).

The Oregon Supreme Court holding in *YMCA* requires that, even though the overall organization is charitable, “each specific property” seeking exemption from property taxation “must separately qualify as exempt.” *Id.* In *Mercy*, there was one location for the charitable organization, and a portion of the property owned by the charitable organization seeking exemption was housed in the same location as the charitable organization. With respect to the one location, the specific property separately qualified for exemption. The Tax Court’s holding

in *Mercy* followed *YMCA*. In this case before the court, the question is whether Plaintiff's use of leased property, which is one of many locations owned or used by Goodwill Industries, a charitable institution, meets the three required elements of a charitable organization.

A. *Charitable Objective*

The first element that must be met is for Plaintiff 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. *See Dove Lewis Mem. Emer. Vet. Clinic*, 301 Or at 427 (citing *Found. of Human Understanding v. Dept. of Rev.*, 301 Or 254, 722 P2d 1 (1986) (articles)).

Plaintiff is organized as a charity. It is incorporated in Oregon as a non profit corporation and has been recognized by the Internal Revenue Service as an organization exempt from Federal income tax since November 1928. Its stated mission is: "To provide vocational opportunities to people with barriers to employment". (Ptf's Trial Br at 1.) There is no dispute that Goodwill Industries is a charitable organization.

B. *Performance of its Charitable Objective*

Even though Plaintiff is organized as a charity, Plaintiff's activities must further its charitable objective. *See SW Oregon Pub. Def. Services*, 312 Or at 90. In its application for exemption, Plaintiff stated that its purpose is to: "Provide vocational, social, education and employment services and opportunities to people with disabilities and other barriers to employment within the territory assigned by Goodwill Industries International." (Def's Ex B.) At the site, which is the subject of this appeal, Plaintiff employs four individuals who face barriers to employment. In its Post Trial Memorandum, Plaintiff states that "there is training available to those individuals, not the least of which is realistic job performance expectations,

supervision and promotion, all the way up to vocational classes and ESL training where needed. Their work in accepting and processing donations most certainly substantially contributes to the charitable mission.” (Ptf’s Post Trial Memo at 6.)

The court agrees with Plaintiff that, at this site, Plaintiff’s activities further its charitable objective, which is to train and employ individuals with disabilities or face other barriers to employment. Further, it potentially relieves “a government burden” by providing employment for those who might otherwise be recipients of unemployment or other welfare benefits from the government. OAR 150-307.130-(A)(4)(c).² Relieving a government burden “is an indicator that the institution may be charitable.” *Id.*

C. *Gift or Giving*

For an institution to be charitable, “it is essential that such conduct involve a degree of giving.” *Oregon Country Fair v. Dept. of Rev.*, 10 OTR 200, 204 (1986). The Oregon Department of Revenue adopted an administrative rule stating that “[a]n element of gift and giving must be present in the organization’s activities, relating to those it serves. This element of gift and giving is giving something of value to a recipient with no expectation of compensation or remuneration.” OAR 150-307.130-(A)(4)(d).

Defendant concludes that “[w]ithout the presence of the charitable giving, in this case the presence of ‘vocational, social, education and employment services’, the Plaintiff does not meet the test for this location.” (Def’s Post Trial Br at 4.) Plaintiff counters by stating that “[a]t the Benton County donation site, GICW provides jobs to the very people it seeks to serve: Individuals with barriers to employment. Moreover, there is training available * * *. Their work

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² All references to the Oregon Administrative Rules (OAR) are to 2005.

in accepting and processing donations most certainly substantially contributes to the charitable mission.” (Ptf’s Post Trial Memo at 6.)

“[T]he essence of charity is *giving*.” *Corp of LDS v. Dept. of Rev.*, 14 OTR 244, 251 (1997). The element of giving must be viewed from the perspective “of the recipient of the charitable giving.” *SW Oregon Pub. Def. Services*, 312 Or at 91.³ At the site under appeal, Plaintiff employs four individuals who received, and continue to receive, training and other vocational services. The training, including on-the-job training, and other vocational services provided to those individuals are given “with no expectation” that Plaintiff would be paid for or reimbursed. OAR 150-307.130-(A)(4)(d). Even though the activities of the individuals at the site may further the overall charitable mission of Goodwill Industries, the focus of giving is centered on what Goodwill Industries “gave” to them, not what they do for the organization. Because Plaintiff trained (and continues to train) individuals who face barriers to employment and then offered employment to those individuals at the site under appeal, Plaintiff’s “conduct” involved “a degree of giving.” *Oregon Country Fair*, 10 OTR at 204.

D. Use

Property or a portion of a property shall be exempt from taxation if it is “actually and exclusively occupied or used in the * * * charitable * * * work carried on by such institutions.” ORS 307.130(1)(a). “[T]he words ‘exclusively occupied or used’ * * * refer to the primary purpose for which the institution was organized and includes any property of the institution used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment and fulfillment of the generally recognized functions of such a charitable institution.” *Mult. School of Bible v. Mult.Co.*, 218 Or 19, 36-37, 343 P2d 893 (1959).

³ Referencing OAR 150-307.130-(A)(3)(d), which is now (4)(d).

The court concludes that the donation site under appeal is “incidental to and reasonably necessary for the accomplishment of such purposes.” *Mult. School of Bible v. Mult. Co.*, 218 Or 19, 30, 343 P2d 893 (1959) (construing ORS 307.130). The donation site collects goods; according to Plaintiff over 1 million pounds were collected during 2005. Those donated goods are ultimately sold to finance the mission of the organization. However, “[i]t is the actual occupancy of the property which determines its right to exemption, and not the use made of its proceeds.” *Id.* at 40 (citing *Hibernian Benevolent Society v. Kelly*, 28 Or 173, 42 P3 (1895)). Most important, the site provides employment services for those individuals it serves, specifically individuals who face barriers to employment.

Even though Plaintiff’s use is exclusive, the parties agree that the use, although actual, does not extend to all 12,625 square feet of the facility. The evidence shows that a substantial portion of the site is not in use; a portion clearly does not meet the statutory requirement of in use. The court concludes that 35 percent of the site was in use and qualifies for a partial exemption.

III. CONCLUSION

After careful review of the applicable law and case law, the court concludes that a partial exemption under ORS 307.130 has been established. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's subject property qualifies for a partial (35 percent) exemption from property taxation.

Dated this _____ day of April 2007.

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 on April 18, 2007. The Court filed and entered this document on April 18, 2007.