

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

CARE FOR KIDS, INC.,)	
)	
Plaintiff,)	No. 991297D
)	
v.)	
)	
YAMHILL COUNTY ASSESSOR,)	DECISION GRANTING
)	PLAINTIFF'S MOTION FOR
Defendant.)	SUMMARY JUDGMENT

Plaintiff appeals Yamhill County Assessor's disqualification of its property from exemption for tax year 1999-2000. Oral argument was held via telephone on June 12, 2000. Ms. Susan Boyd, Attorney, appeared on behalf of plaintiff. Ms. Edith Dudley, Executive Director, was present. Mr. Rick Sanai, Assistant County Counsel, appeared on behalf of defendant. Mr. Roy Reel, Commercial Appraiser, was present. The issue has been submitted to the court on plaintiff's Motion for Summary Judgment.

STATEMENT OF FACTS

The parties agree to the following facts. Plaintiff, Care for Kids, Inc. (Care) is an Oregon nonprofit corporation with a stated educational purpose of providing care for children away from their homes. "Substantially all of the care provided by the organization is for the purposes of enabling individuals to be gainfully employed, and the services provided by the organization are available to the general public* * * [.]" (Stip at ¶ 2.)

Since October 5, 1988, defendant has granted Care a property tax exemption for its property described as Yamhill County Assessor's Account No. R4421BA 03804. Care's property is improved, consisting of one building, sidewalk and small yard in the front of the building, a children's fenced playground and a parking lot. The entire

property, including all improvements, is used by Care for the operation of a children's day care with a pre-school. (Stip at ¶ 12.)

Under state law, a maximum of 32 children can be cared for at one time. (Stip at ¶ 13.) In addition to providing day care, Care permits children who are at least 30 months of age to enroll in the on-site pre-school at no additional cost. (Stip at ¶ 14.) The fees charged for day care which "are approximately 8.5% below fair market value of similar 'for profit' day care" businesses in the area are used to pay the salaries of the staff. (Stip at ¶ 15.) In addition, Care relies on charitable contributions and occasional grants to supplement the funds available to pay their operating expenses. (Stip at ¶ 17.) The fees of some of the children, approximately seven to nine, are paid by Adult and Family Services and Children's Services Division's "grandparent grant" program. (Stip at ¶ 19.) Last year, Care was unable to collect \$8,889 in fees from families receiving a subsidy from the Adult and Family Services program. (Stip at ¶ 20.) Volunteers are recruited to perform maintenance, repair and professional services, e.g., legal. (Stip at ¶ 18.)

On September 3, 1999, defendant informed plaintiff by letter that it was denying plaintiff a property tax exemption for tax year 1999-2000 because plaintiff "does not meet requirements for a charitable non profit institution or organization." (Ptf's Complaint at 1). Plaintiff appealed defendant's act of denial to the court on October 1, 1999.

COURT'S ANALYSIS

Care alleges that it should continue to receive, as it has since 1988, a property tax exemption. Care states that it meets the requirements of ORS 307.145¹

¹ All references are to the 1997 Replacement Parts of the Oregon Revised Statutes.

which reads:

“(1) If not otherwise exempt by law, upon compliance with ORS 307.162, the child care facilities, schools, academies and student housing accommodations, owned or being purchased by incorporated eleemosynary institutions or by incorporated religious organizations, used exclusively by such institutions or organizations for or in immediate connection with educational purposes, are exempt from taxation.

“* * * * *

“(3)(b) Before an exemption for a child care facility is allowed under this section, in addition to any other information required under ORS 307.162, the statement shall:

“(A) Describe the property and declare or be accompanied by proof that the corporation is an eleemosynary institution or religious organization.”

The court’s analysis is guided by taxation is the rule and property tax exemption statutes are construed strictly. *Willamette Egg Farms, Inc. v. Dept. of Rev.*, 14 OTR 337, 339 (1999). In analyzing 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 statute. *Id.*

The court’s analysis begins with the requirement that Care must be an eleemosynary institution or religious organization as required by ORS 307.145(3)(b)(A). Care does not make a claim that it is a religious organization.² Care is an Oregon

² Care incorrectly concludes that the operation of a day care facility is generally a tax exempt purpose. (Ptf’s Reply to Def’s Response to Ptf’s Motion for Summary Judgment at 2.) In quoting the court’s holding in *Christian Pre-School v. Dept. of Rev.*, 5 OTR 8, 11-12 (1972), Care overlooks the critical

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nonprofit corporation providing child care and educational services. The question is whether an eleemosynary institution is the same as a nonprofit corporation. The statute does not define eleemosynary institution. However guidance is found in ORS 128.620(1) which defines charitable corporation to be “any nonprofit corporation organized under the laws of this state for charitable or eleemosynary purposes * * *.” (Emphasis added.)³ Webster’s *New World Dictionary* defines eleemosynary: “of or for charity or alms; charitable; supported by or dependent on charity; gratuitous; free.” It is reasonable to conclude that eleemosynary and charitable are equivalent or interchangeable words. If Care is a charitable institution, then it is an eleemosynary institution.

To qualify as a charitable institution, Care must meet three tests⁴:

“(1) [T]he organization must have charity as its primary , if not sole object; (2) the organization must be performing in a manner that furthers its charitable object; and (3) the organization’s performance must involve a gift or giving.” *SW Oregon Publ. Def. Services v. Dept. of Rev.*, 312 Or 82, 89, 817 P2d 1292 (1991).

Beginning with the third test, this court has held that “the essence of charity is giving; [g]iving to the poor and needy.” *Corp. of LDS v. Dept. of Rev.*, 14 OTR 244, 249, 251 (1997). Care argues that it is a charity because the fees charged for its day care are

fact that in order for the property tax exemption to be granted to a child care provider the educational purpose of the organization must be under the ownership and direction of an incorporated religious organization. Care’s property is not under the ownership and direction of an incorporated religious organization and therefore the educational purpose alone does not make its property exempt from taxation.

³Plaintiff suggests that the court look to ORS 128.315(1) for the definition of eleemosynary institution set forth in ORS 307.145(3)(b)(A). ORS 128.315 provides the definitions for ORS 128.310 to 128.355, entitled Uniform Management of Institutional Funds Act. The subject matter of these statutes has no relevance to the issue before the court.

⁴ The court notes that the three part test used in this analysis may not always be the bright line test used to define an eleemosynary institution for purposes of ORS 307.145.

less than the fair market value of similar “for profit” day care in the same area, it does not additionally charge for the on-site pre-school and some families participating in the Adult and Family Services program do not pay any out-of-pocket costs.

The court has previously held that when an organization gives to the extent of its resources, the requisite giving is present in its operations. *Rigas Maja, Inc. Dept. of Rev.*, 12 OTR 471, 475 (1993). In *Rigas*, the court concluded that an assisted-care facility for elderly Latvians was a charitable organization. In analyzing the required element of gift or giving, the court held that *Rigas* applied the limited donations of cash and materials and relied on substantial volunteer labor to provide the services. *Id.* at 474. *Rigas Maja, Inc.* gave to the extent of its limited resources.

The majority of children receiving day care pay a fee. The fee is slightly less than the average fair market fee charged by other “for profit” day cares in the area. Children enrolled in the day care program who are 30 months or older are enrolled in the on-site pre-school at no additional cost. The operating costs are paid from the fees, donations and occasional grants. Volunteers maintain the facility, serve on the board and provide professional services. A small number of families receive assistance from the Adult and Family Services (AFS) in the form of payment for a portion of the fee. Care provided services to these families and only received partial payment, specifically from AFS and nothing from the families. Plaintiff applied its fees, donations and volunteer labor to care for the children. Like *Rigas*, plaintiff gave to the extent of its limited resources. *Id.* The court finds the requisite giving is present in plaintiff’s operations.

Defendant argues that plaintiff’s reduced fees are discounts similar to Walmart’s or Target’s discount pricing and suggests that if plaintiff’s actions qualify as a

gift or giving then Walmart and Target should be classified as charitable organizations. Defendant's example overlooks the profit versus nonprofit motive of each. Walmart and Target set their prices to make a profit for their shareholders. While Walmart or Target may reduce the price on items to attract core discount shoppers in the expectation that customers will buy more of the discounted items or make it their store of choice, overall Walmart's and Target's goal is to make a profit. In contrast, Care did not operate for the profit or private advantage of its founders, directors, officers or any other individual. (Stip at ¶ 2.) Upon dissolution of Care, all of its assets must be used for charitable purposes. (Stip at ¶ 3.) Plaintiff's fees are set to cover most but not all of its operating costs. It is incorrect to conclude that plaintiff's charity is solely based on charging less than market fees for its services. (Def's Response to Ptf's Motion for Summary Judgment at 2.) Plaintiff's fees are but one factor as previously discussed in evaluating the charitable performance of Care.

Defendant also argues that plaintiff's inability to collect fees from some of its customers is not "voluntarily giving away its services." *Id.* at 3. The Oregon Administrative Rule (OAR) 105-307.130(A)(3)(d)(A) states that "[f]orgiveness of uncollectible accounts does not by itself constitute a gift or giving." (Emphasis added.) The OAR sets forth a comprehensive checklist and as stated above cautions that the forgiveness of uncollectible accounts cannot be the only factor in evaluating the element of a gift or giving. However, the OAR does not support defendant's conclusion that it should not be considered along with other factors in evaluating the organization's element of gift or giving. Plaintiff has shown that its activities fall squarely within the guidelines set forth in the OAR checklist for a charitable organization. See Ptf's Motion for Summary Judgment at 7 - 8.

Having met the third test, Care must satisfy the first and second tests. Care must have charity as its primary, if not sole, object and must perform in a manner that furthers its charitable object. *SW Oregon Publ. Def. Services v. Dept. of Rev.*, 312 Or 82, 89, 817 P2d 1292 (1991). Care's services must be for the good or benefit of human beings and their conduct should "relieve suffering, uplift, enlighten, build or enhance people." *Oregon County Fair v. Dept. of Rev.*, 10 OTR 200, 204 (1986).

Plaintiff's corporate articles state that its educational purpose is "the providing of care of children away from their homes" with the ancillary benefit of "enabling individuals to be gainfully employed." (Stip at ¶ 2). The parties agreed that Care was fulfilling its corporate purpose. Care's use of its facility is solely devoted to the purpose of educating and caring for children who otherwise might be left alone or placed in unsafe surroundings with no or limited intellectual stimulation. The court considers the supervised care and education of children to be legitimate objects of charity. Plaintiff is a charitable nonprofit organization and its property is exclusively used in furtherance of its educational purpose.

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CONCLUSION

IT IS THE DECISION OF THIS COURT that plaintiff's Motion for Summary Judgment is granted.

Dated this _____ day of July, 2000.

JILL A. TANNER

MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 MAGISTRATE JILL A. TANNER ON JULY 10, 2000. THE COURT FILED THIS DOCUMENT ON JULY 10, 2000.