

# **Testimony on House Bill 3034**

## **House Revenue Committee**

**March 24, 2015**

**Presented by: Tom Linhares**

**Representing the Oregon State Association of County Assessors**

Mr. Chair and members of the committee, my name is Tom Linhares and my address is 740 Golden Pheasant Drive, Redmond, Oregon. I have worked in the assessment and taxation field for over 30 years and I am here today representing Oregon State Association of County Assessors (OSACA).

Thank you for this opportunity to speak to House Bill (HB) 3034. The bill is a committee bill that OSACA has a very great interest in since we believe it improves the administration of a significant aspect of the property tax system. We feel HB 3034 addresses an important public policy question that justifies this committee's consideration.

HB 3034 would make changes in the way hospitals and other medical facilities owned or leased by nonprofit corporations are granted property tax exemption. At first glance, it may appear as if HB 3034 creates a new exemption. In fact most of these facilities are already exempt from property taxes.

What HB 3034 attempts to do is clarify the legislative intent as to whether or not these facilities should continue to receive the substantial benefit of property tax exemption. Providing a clear, bright line of what should be taxable and what should be exempt would make administration of the exemption program in all 36 counties more efficient.

As you know, the property tax system in Oregon is based on the premise that all property is taxable unless there is a statute explicitly allowing an exemption. The 2015-17 Tax Expenditure Report details 132 property tax expenditures. The total estimated 2015-17 biennial revenue impact is over \$25.9 billion. This compares with \$12.4 billion estimate taxes to be imposed.

Many of these tax expenditures are for administrative necessity. In other words it would be nearly impossible to collect property taxes on intangible personal property such as stocks, bonds and bank accounts [ORS 307.030(2)] or tangible personal property owned for personal use (307.190).

Most property tax exemptions are fairly straightforward and easy for county assessors to administer – property owned by fraternal organizations (ORS 307.136), religious organizations (ORS 307.140) or state and local governments (ORS 307.090). Others such as enterprise zones (ORS 285C.050 to 285C.250) are very complex and have very detailed statutory construction that provide county assessors and others with the necessary direction to approve

or deny the exemption. Some property tax exemptions are very narrow such as crab pots (ORS 508.270) and cargo containers (ORS 307.835).

One of the largest tax expenditure, estimated at \$6.4 billion in exempted value with a revenue impact of \$194.4 million is ORS 307.130. This statute allows for an exemption of property taxes for property owned by a nonprofit corporation that "...is actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institution."

Unfortunately, none of these terms are defined in statute and despite the use of the words "exclusively occupied", the courts have interpreted the statute very loosely.

With no definitions or guidelines as to what constitutes "charity", or any of the other terms, processing exemption applications has become more and more difficult. Last year Wasco County received an application to exempt 19 acres of scrub land owned by a nonprofit associated with a Native American tribe to grow plants and herbs to give away at no cost. In Yamhill County, a water park located adjacent to the Evergreen Space Museum sought a scientific exemption.

Should those properties be exempt under legislative policy? Unfortunately, the statutes do not provide a clear-cut answer to that question.

The vast majority of properties that are being exempted under ORS 307.130 are based on the claim that the property is being used for a charitable purpose. And again, the term "charity" is not clearly defined in statute.

It has long been the position of the Oregon State Association of County Assessors that the question of whether property is taxable or exempt is strictly a matter for the Legislature to decide. We don't take a position on these policy decisions. We simply administer the policy decisions that you collectively have made.

We only ask that the decisions be based on sound public policy considerations and that the policy can be administered, accurately, fairly and efficiently.

We firmly believe that ORS 307.130, as written, does not allow county assessors to administer your policy accurately, fairly or efficiently. There is no statutory "clear, bright line" as to what qualifies under the statute. This makes administration of your policy by counties difficult.

This is causing a number of problems:

- 1) County assessors have little guidance as to what should or should not be approved for exemption.
- 2) This results in inconsistent application across the state such that property may be exempted in one county while property used similarly in another county is taxable.
- 3) Two properties similarly operated and charging similar fees for services are treated differently depending on the ownership – private or nonprofit.

- 4) In some cases the courts have determined that less than ten percent charitable use is enough to qualify a property for exemption.

While these problems persist with all exemptions that fall under ORS 307.130, HB 3034 focuses on medical facilities that currently qualify for property tax exemption. This sub-set of charitable exemptions was identified since these properties represent a significant percentage of all charitable exemptions that have been granted state-wide. Also, unlike some other charitable uses, medical services are provided by both nonprofit and for profit organizations. This complicates the administration of the exemption program.

Granting medical service facilities an exemption under the charitable statute is difficult to administer for a number of reasons:

- 1) The history of hospitals is that they were originally established to only serve the poorer populations. Rich people had private doctors. Today that distinction is no longer valid.
- 2) Nearly all of the hospitals in Oregon are owned and operated by nonprofit organizations, including large facilities such as Providence, Kaiser and Good Samaritan. With essentially no private competition there is nothing to compare to in terms of whether or not these institutions are providing a sufficient amount of charity to qualify for exemption.
- 3) One argument that these facilities use to advance their charitable status is the number of uninsured patients they serve (and indeed in many cases are required to serve). There are two problems with that argument. The first is that the facility still bills the uninsured patient, often at higher rates than those billed to insurance companies. The second problem is that under the Affordable Care Act fewer and fewer people will be left without insurance.
- 4) Part of the “charitable care” these facilities present to county assessors is the amount of bills that go unpaid. But that is simply bad debt that any business must account for. If the facility were owned by a private entity the amount of bad debt would be the same.
- 5) These facilities also argue that the difference between “normal charges” and what they are allowed to bill Medicare and Medicaid should be considered as part of their charitable work.
- 6) Anecdotally, there appears to be a construction boom and buying spree on the part of the nonprofit medical care industry. St. Charles Medical Center is spending \$30 million on a brand new replacement hospital in Prineville and hospitals across the state are buying up medical offices and other facilities from private parties. This can result in a medical office facility that is privately owned and taxable is sold to a nonprofit organization and becomes exempt even though it is operated the same way, often with the same doctors, and charging similar fees for services.

- 7) Two very similar facilities can be operated side by side where one is taxable (because it is privately owned) and the other is exempt (because it is owned by a nonprofit).

In short, it may no longer make sense to exempt hospitals and other medical facilities based on outdated, unclear and minimal definitions of charity.

The Oregon State Association of County Assessors suggests that the Legislature revisit your policy and decide which of these facilities should be taxable and which should be exempt. This can be accomplished in one of two ways: 1) amended ORS 307.130 to more clearly define the term "charity" and provide additional criteria that property needs to meet to qualify for exemption, or 2) move hospitals and other medical facilities into a new, entirely separate statute, again with clear definitions and criteria. HB 3034 takes the later approach.

Again, we take no position one way or the other. At the same time we recognize that any new statutory language can have the consequence, both intentional and unintentional, of changing the application of the current policy.

We only ask that any policy be written with a "clear, bright line" that allows for your policy to be administered accurately, fairly and efficiently. This will ensure that your policy will be applied consistently across all 36 counties. Citizens should expect nothing less from Oregon's property tax system.

Thank you for your time and consideration of this important issue.