



1945 SE Water Avenue
Portland, Oregon 97214-3354
503.797.4000

RECEIVED
MULTNOMAH COUNTY

AUG 22 2003

EXEMPTION SECTION
ASSESSMENT & TAXATION

August 22, 2003

Mr. Steven A. Skinner
Tax Exemption Specialist
Division of Assessment & Taxation
Multnomah County, Oregon
501 SE Hawthorne Blvd., Suite 175
Portland, OR 97214

Re: Oregon Museum of Science & Industry ("OMSI") Science Store
Notification of Status Change; Account No. R326758

Dear Mr. Skinner:

Following up on our recent conversations, this letter responds to your invitation to submit information showing that OMSI's Science Store qualifies for property tax exemption. More specifically, after receiving the Notification of Status Change referenced above, I called to your attention a decision by the Oregon Tax Court holding that a hospital gift shop substantially contributed to the healing objectives of an exempt hospital and thus was itself exempt. *Mercy Medical Center, Inc. v. Dept. of Rev.*, 12 OTR 305 (1992) (copy enclosed). OMSI strongly believes that the Science Store substantially contributes to OMSI's scientific and educational objectives and that consequently the Science Store real and personal property, like other OMSI property, is exempt from *ad valorem* taxation.

OMSI is an Oregon nonprofit corporation dedicated to improving the public's understanding of science and technology. It does this by operating a scientific, educational and cultural resource center at 1945 S.E. Water Avenue in Portland (the "Museum"), as well as science camps, outdoor science schools, after-school science clubs, outreach programs in schools, and teacher training workshops, and other science programs conducted in other locations. OMSI seeks to make science exciting and relevant through exhibits, programs and experiences presented in an entertaining and participatory fashion. Many of OMSI's exhibits and programs are designed to appeal to and educate children, as well as adults. OMSI relies on admissions, memberships and donations to accomplish its mission. OMSI is a Section 501(c)(3) organization, and its property is exempt from *ad valorem* taxation.

Mr. Steven A. Skinner
August 22, 2003
Page 2

The Science Store is located inside the Museum. It consists of approximately 2967 square feet on the first floor adjacent to the main lobby and comprises approximately 1.5% of the Museum's floor area. It is open for business the same hours as the Museum, and is not open when the exhibit halls or other parts of the Museum are not open for business. The Science Store is staffed by full time and part time employees along with volunteers.

The store sells only merchandise related to science and technology, with minor exceptions.¹ The merchandise includes such items as telescopes, chemistry kits, scientifically educational toys, books about science and nature, T-shirts and other items imprinted with scientific information such as the periodic chart of elements, Einstein's formulas or molecular structures. For example, merchandise from our telescope vendor comprises 12% of our annual sales and science books make up 14% of annual sales. Attached to this letter is a printout of the home page of the Science Store website indicating the types of merchandise. While the number of Science Store items available online is more limited than those available at the Museum, you may want to visit the website to view the types of merchandise. The Science Store website is accessible through the OMSI website at www.oms.edu.

We have been advised by our legal counsel that the relevant question, as framed by the *Mercy Medical* case, is whether the Science Store substantially contributes to OMSI's purposes. Counsel also has called to our attention a Department of Revenue regulation, apparently codifying the *Mercy Medical* case, stating that property claimed to be exempt "must substantially contribute to the furtherance of the charitable purpose and goal of the organization." OAR 150-307.130-(A)(5)(d)(A).

The Science Store substantially contributes in at least the following ways to OMSI's charitable purpose and goal of improving the public's understanding of science and technology:

- The purpose of OMSI's exhibits and programs is to excite visitors' and participants' interest in science and technology. OMSI hopes that visitors and participants will extend their learning experience at the Museum by purchasing items at the Science Store as they leave the Museum. The purchase of Science Store products is a means of sustaining and furthering their interest—for example, by purchasing and using a telescope after visiting an astronomy exhibit. Visitors' interest in science and technology—perhaps particularly children's interest—is

¹ The store sells a small volume of candy, jewelry and other items not related to science or technology, accounting for approximately 8% of the store's gross volume.

Mr. Steven A. Skinner
August 22, 2003
Page 3

more likely to develop into a long-term interest if they bring home something tangible that engages their sense of scientific curiosity and fun, rather than bringing home only an intangible memory of their visit.

- A key element in OMSI's approach to science education is the learning benefit of interactive activities. Making available interactive activities that can be taken home is an extension of our educational methodology.
- Educational science resources for teachers, consisting of books, posters, classroom teaching aids, and science kits contribute to the Museum's mission by supporting science education in school classrooms and complement the teacher training programs that OMSI offers.
- Science Store merchandise is coordinated to tie in with the current visiting exhibits, again as a means of extending the experience. Our changing exhibit hall features new exhibits on a different topic every three to four months. New Science Store product that complements the subject matter of the changing exhibit is brought in for each new visiting exhibit.
- OMSI also hopes that Museum visitors and program participants will purchase merchandise to be given to or shared with family members, friends or co-workers. By selling a book or science game, for example, that a visitor shares with others, the Science Store achieves a multiplier effect in spreading to others the visitor's interest in science and technology.
- Even if a Science Store patron makes a walk-in purchase without visiting other parts of the Museum, the purchaser's interest in and understanding of science—or the interest and understanding of someone who receives the item as a gift—will be enhanced by using the item, and that use in and of itself contributes to OMSI's objectives. Sale of science and technology related merchandise is one means of furthering OMSI's objective of increasing the public's understanding of science and technology.
- Some Science Store merchandise bears the OMSI logo, thereby promoting OMSI and its scientific, technological and educational programs and purposes.
- The Science Store also supports the Museum's mission by sourcing materials and products that are used in OMSI's education programs and exhibits.

Mr. Steven A. Skinner
August 22, 2003
Page 4

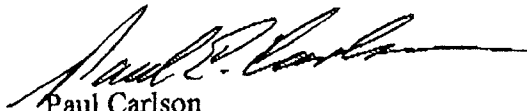
I trust that this letter will suffice to cause the Division of Assessment & Taxation to rescind the Notification of Status Change.

I note that the last date for OMSI to file a complaint in the Oregon Tax Court contesting the Notification of Status Change is on or about September 5, 2003. I respectfully request that the Division rescind the Notice before that date.

Thank you for your consideration of this letter.

Very truly yours,

OREGON MUSEUM OF SCIENCE & INDUSTRY



Paul Carlson
Chief Financial Officer

Enclosures

Oregon Tax Court.

MERCY MEDICAL CENTER, INC. an Oregon nonprofit corporation,
Plaintiff,

v.

DEPARTMENT OF REVENUE, State of Oregon, Defendant.

No. 3213.

Oct. 12, 1992.

ORDER

CARL N. BYERS, Judge.

This matter is before the court on cross Motions for Summary Judgment. The issue is whether the gift shop area in plaintiff's hospital is subject to property taxation. Defendant concedes plaintiff is a charitable organization entitled to claim exemption under ORS 307.130. Exemption of the remainder of plaintiff's hospital is not disputed. The Douglas County Assessor disallowed the exemption only for the gift shop. After hearing, defendant, in its Opinion and Order No. 90-3878, sustained the denial and plaintiff appealed.

The relevant portion of RS 307.130(1) provides:

"Upon compliance with ORS 307.162, (FN1) the following property owned or being purchased by incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:

(a) * * * [O]nly such real or personal property, or proportion thereof, as is actually and exclusively occupied or used in the literary, benevolent, charitable or scientific work carried on by such institutions."

It must be remembered that exemption statutes such as this are strictly construed. Taxation is the rule; exceptions must be expressly granted. The long-standing rule in Oregon is that "an exemption should be denied to exist, unless it be so clearly granted as to be free from reasonable doubt." *Behnke-Walker Bus. Col. v. Multnomah County*, 173 Or 510, 521, 146 P2d 614 (1944).

"Hospitals, as such, enjoy no inherent exemption from taxation; * * *." *Corporation of The Sisters of Mercy v. Lane County*, 123 Or 144, 153, 261 P 694 (1927). On the other hand, the fact that nonprofit hospitals charge for their services will not deprive them of being characterized as charitable. As this court pointed out in *Evangelical Lutheran Good Samaritan Society v. Department of Revenue*, 5 OTR 14, 20 (1972):

"Hospitals * * * have long been accorded an unusual consideration (unlike most exempt institutions) in that the entity is permitted to charge its patients reasonable fees and still be regarded as charitable."

That opinion goes on to quote from *Benton County v. Allen*, 170 Or 481, 490, 133 P2d 991 (1943), where the court stated:

"The exigencies of frontier life, however, no doubt caused western courts to take a broader and more generous view. Particularly was this true in relation to the establishment of hospitals, which, under frontier conditions, were greatly needed, and public policy encouraged their establishment by exempting their property from taxation where they could, even in a slight degree, qualify as charitable institutions. It is perhaps impossible to establish a definite yardstick; each case must be considered upon its own facts."

The Oregon Supreme Court has set out a three-part test that must be met in order for an organization to qualify as a "charitable institution" under ORS 307.130:

"(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."

Southwestern Or. Pub. Def. Serv., Inc. v. Dept. of Rev., 312 Or 82, 89, 817 P2d 1292 (1991).

These tests are applied to an organization overall and not to any specific part or operation. For example, whether a hospital involves a gift or giving is determined on an overall basis, not by whether the cafeteria, pharmacy or laboratory involves giving. Obviously, hospitals are not free. Anyone who has ever been charged for two aspirin or a band-aid in a detailed hospital bill would, on that basis alone, be certain there is no charity involved. However, as noted above, hospitals historically have been given special consideration. Nonprofit hospitals are not private ventures designed to benefit private investors, but presumably exist for the good of the community.

Since defendant concedes plaintiff is a charitable organization, there is no need to apply the three-part test set out above. Consequently, defendant'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 operation makes a profit is immaterial. It is also immaterial that the operation of the gift shop competes with taxable businesses. See > *YMCA v. Dept. of Rev.*, 268 Or 633, 635, 522 P2d 464 (1974). If plaintiff's hospital as a whole is a charitable institution, then it is only necessary that the property involved: (1) be "exclusively used" by plaintiff in accomplishing its charitable goals, and (2) "substantially contribute" to furthering those goals. See > ORS 307.130(1)(a) and OAR 150-307.130-(A)(4)(b)(A).

In construing the phrase "exclusively used," the Oregon Supreme Court has held that it refers to the primary, as opposed to the incidental use of the property. *Multnomah Sch. of the Bible v. Multnomah County*, 218 Or 19, 29, 343 P2d 893 (1959). For example, the primary use of a building may be to house and feed the poor, which is an exempt use. The same building may also be used for other functions, such as church socials, public lectures, or travelogue

presentations. Those incidental uses will not deprive the property of its charitable exemption. Defendant does not challenge this aspect of use.

To be exempt, property must not only be "exclusively used" by the charitable organization, that use must "substantially contribute" to achieving the organization's purposes. > (FN2) Property directly used to accomplish such purposes, such as a classroom in a school or an emergency room in a hospital, raises no questions. The questions arise when property is used only indirectly by the charitable organization.

Two examples will help illustrate the concept. The purpose of a school is to educate. A building used only to house a school's employee is not directly used for education; it is used as a residence. However, if the school needs the employee to be present 24 hours a day, use of the building to house the employee substantially contributes to the overall objectives of the school. See *Multnomah School of the Bible*, 218 Or at 30. Likewise, a cafeteria in a hospital is not used to heal the sick but to provide food for the staff and visitors. Typically, providing food for staff and visitors is considered to substantially contribute to the operation of a hospital. It is not enough that revenue from the property is used to fund or promote the purposes of the organization. The actual use of the property must be related to those purposes.

In summary, the court must determine what role the use of the property plays in the institution's accomplishment of its charitable purposes. This determination must focus on the relationship of the activity or use to the institution's exempt purposes. For example, in > *YMCA v. Department of Revenue*, 268 Or 633, 522 P2d 464 (1974), the Oregon Supreme Court found that areas used for a barbershop and tailor shop did not help the YMCA accomplish its goals. However, if the YMCA had involved the tailor shop in its program by teaching young men how to fit clothing or how to dress properly, that area may have been exempt.

Although courts are required to make this determination, reason dictates they should do so with care. Individuals involved in an exempt organization's work, particularly in the area of medicine, have expertise and experience not possessed by the courts. Is making a magazine available to a patient less important than making a cup of coffee available to a visitor? It is these kinds of decisions which should make courts hesitant to substitute their judgment for that of the exempt organization.

Having said this, the question remains: What role does a gift shop play in a hospital's healing objectives? Plaintiff has submitted the affidavit of its hospital administrator who expressed her opinion that plaintiff "must maintain a gift shop such [sic] which offers flowers, candy, reading materials and other sundries desired by its employees, patients and their visitors in order that it fulfill its objective of attending to and enhancing the well-being and health of its patients." (Affidavit of Sister Jacquetta Taylor at 2.) This affidavit tends to show that the role of the gift shop is to support plaintiff's primary objective of caring for the sick and injured.

Defendant does not dispute that items from the gift shop can bring cheers and smiles to plaintiff's patients; they provide diversion from the boredom and anxiety attending those awaiting operations or recovering from an illness. Flowers and cards lift the spirits and touch the

hearts of the depressed and hurting. This transcendental aspect of the healing arts is gaining greater recognition of its importance for the recovery of full health. > (FN3)

Defendant contends the gift shop does not contribute in a substantial way to plaintiff's charitable objectives. Defendant argues that other businesses, such as a rental television shop, could fall into the same category. However, this argument misses the point. Perhaps hospitals of the future will have an in-house movie theater or athletic club. The question is not what activity is being conducted, but how that activity relates to the charitable organization's purposes. Does it substantially contribute to the purposes of the charitable organization?

In this day and age, the therapeutic effects of activities such as reading, television and being cheered by visitors may be viewed as reasonably necessary for the welfare of the patient. (FN4) The emotional "medicine" afforded a patient or family members may be as important in some cases to a successful recovery as any drug or other medication. Defendant has not submitted any affidavits to the contrary. While this is a factual question, defendant has not opposed the exemption on that ground. Rather, defendant's opposition is on legal or theoretical grounds which the court has found not applicable. The court finds that the gift shop area is exempt from property taxation. Now, therefore,

IT IS HEREBY ORDERED that plaintiff's Motion for Summary Judgment is granted;
and

IT IS FURTHER ORDERED that defendant's Motion for Summary Judgment is denied.

Costs to neither party.

(FN1.) All citations to Oregon Revised Statutes and Oregon Administrative Rules are to the 1989 Replacement Part.

(FN2.) The test applied by the courts is not a precise concept. It has even been expressed in the alternative:

"To qualify for a charitable exemption under > ORS 307.130, the taxpayer must show first that 'the activity undertaken on the property substantially contributes to the furtherance of the charity's goals.' [O]r, stated another way, that such a use 'is incidental to and reasonably necessary for the accomplishment and fulfillment of the generally recognized functions of such a charitable institution.' "

German Apostolic Christ. Church v. Dept. of Rev., 279 Or 637, 641, 569 P2d 596 (1977)
(citations omitted) (emphasis added).

Since the defendant has used "substantially contributes" in OAR 150-307.130-(A)(4)(b)(A), the court will use that term.

(FN3.) See generally Norman Cousins, *Anatomy of an Illness as Perceived by the Patient* (1979).

(FN4.) One may speculate that indiscriminate use of such gifts, such as a heart patient reading a scary book or a diabetic patient eating candy, may not be beneficial.



- SCIENCE TOYS FOR KIDS AT HEART
- SCIENCE TOYS FOR YOUNGER KIDS
- TICKLE YOUR BRAIN
- BUILD IT!
- EXPERIMENT!
- ASTRONOMY
- CHEMISTRY
- EARTH SCIENCE
- LIFE SCIENCE
- PHYSICS
- WEATHER
- VIDEOS
- T-SHIRTS
- SUBMARINE MERCHANDISE
- BECOME A MEMBER!

- VIEW ORDER
- CUSTOMER SERVICE
- PRIVACY POLICY
- SEARCH
- SITEMAP




OMSI Science Store



A galaxy of gifts for everyone!

Welcome to the home page of the Oregon Museum of Science and Industry's online Science Store!

Current Science Store Specials

 A UNIQUE GIFT THAT CAPTURES YOUR IMAGE WITH FULL DIMENSION
REGULARLY: \$10.95
\$7.95



COOL MUGS FOR CHOCOHOLICS AND COFFEE LOVERS!
REGULARLY \$5.95
\$3.50



DIVE INTO THE DEPTH OF YOUR BAY WITH THIS SUBM
SUBMARINE
REGULARLY:
\$4.50

Science Store Departments

Science Toys for Kids at Heart

Science Toys for Younger Kids

Tickle Your Brain

Build It!

Experiment!

Astronomy

Chemistry

Earth Science

Life Science

Physics

Weather

Videos

T-Shirts

Submarine

Become a Member

Not sure what to get? Give an OMSI Gift Certificate! (Gift Certificates can be used for Science Store merchandise, camps, classes, memberships, tickets, or any of OMSI's other great products.)

Inspire our children with the wonder of science with a donation to OMSI!

OMSI Members: enter your member ID at checkout to receive your discount!