



# **Review of Oregon's Property Tax Exemption for Literary, Charitable and Scientific Institutions**

**RESEARCH REPORT # 3-17**

**February 13, 2017**

**Legislative Revenue Office**  
State Capitol Building  
900 Court Street NE, Room 354  
Salem, Oregon 97301  
(503) 986-1266

<https://www.oregonlegislature.gov/lro>

---

## Table of Contents

---

<b>Introduction</b> .....	1
<b>Section I - Historical Development and Justification for Exemption</b> .....	2
History .....	2
Base-Definitional .....	4
Subsidy.....	4
<b>Section II - Federal Tax-Exempt Status</b> .....	6
Defining Charity .....	7
<b>Section III - Administration of Property Tax Exemption</b> .....	10
Role of DOR .....	10
Role of Assessors.....	11
<b>Section IV - Legal Decisions &amp; Interpretations</b> .....	12
Development of Existing Exemption and Overview of Common Law .....	12
<b>Section V - Examination of Nonprofits Receiving Exemption under ORS 307.130</b> .....	17
Special Note Regarding Data Presented in this Section.....	17
Data Sources and Preparation .....	17
Data Received from County Assessors.....	17
Oregon Health Authority & IRS form 990 Data.....	19
Results & Analysis.....	20
Concentration.....	22
Nonprofit Hospital Organizations.....	24
<b>Section VI - Department of Revenue Survey of ORS 307.130 2015 Exemption Applications</b> .....	26
Overview of the Survey .....	26
Survey Results .....	28
Application Complexity.....	30
<b>Section VII - A Brief History of Hospitals &amp; Associated Federal Legislation</b> .....	32
Hospital Development .....	32
Federal Administrative & Legislative Development .....	34
<b>Section VIII - Nonprofit Reporting and “Bright Lines”</b> .....	37

Oregon Department of Justice.....	37
Internal Revenue Service - Form 990 Reporting .....	38
Nonprofit Comparisons.....	39
Comparative Ratios.....	40
<b>Section IX - Experience of other States.....</b>	<b>44</b>
Pennsylvania .....	44
Minnesota.....	48
New Jersey .....	51
Illinois .....	52
Neighboring States.....	54
Washington .....	54
California .....	56
Idaho .....	58
Appendices.....	61
Appendix I - Listing of Nonprofit Property Tax Expenditures.....	62
Appendix II - Timeline of Changes to ORS 307.130.....	63
Appendix III - ORS 307.130.....	64
Appendix IV - Legislative Counsel Annotations to ORS 307.130 .....	68
Appendix V - Department of Revenue Rules .....	72
Works Cited .....	76

---

## Introduction

---

This report is intended to provide a general background related to Oregon's property tax exemption provided under ORS 307.130, commonly referred to as the Literary, Charitable and Scientific Organizations exemption. The 307.130 exemption is a relatively broad exemption in terms of the types of property that may qualify for exemption under the statute. This report also contains an examination of account level data provided by assessors, the presentation of which was hereto unavailable.

The impetus for this report emanates from discussions of both the Senate and House Revenue Committees, most recently relating to house bills 2690 and 2171 of the 2015 Legislative Session. The topic of property tax exemption/taxation for property owned by nonprofit charitable organizations is one that is discussed on a near annual basis. Following discussions in both revenue committees, a legislative work group was formed composed of two members each from the Senate and House Revenue Committees.<sup>1</sup> While this report was prepared in conjunction with ongoing work group discussions, and in part reflects topics discussed with or by the work group, this report is not a compilation of work group discussions and proceedings. This report does not include policy recommendations.

The report begins with a description of the historical development and justification of the exemption. As tax exemption for nonprofit organizations exist at the state and federal levels, section 2 of the report provides an overview of federal tax exempt status and a discussion of the definition of *charity*. Section 3 of the report provides background on how the exemption is administered. Section 4 of the report provides a brief overview of the foundational legal decisions that have shaped the common law interpretation of the exemption. Leveraging data received from county assessors, sections 5&6 of the report provide a categorical examination of nonprofits receiving exemption as well as analysis of an exemption survey conducted by Department of Revenue in 2015. Section 7 chronicles the development of hospital organizations. Section 8 is an examination of data made available by the Internal Revenue Service (IRS) relating to nonprofit information returns and the possibility of using such data for establishing "bright line" qualification standards for nonprofits. The final section of the report, section 9, contains backgrounds on a number of other states that have recently contended with their own property tax exemption structure as well as backgrounds of neighboring states.

---

<sup>1</sup> Work group members: Senator Boquist, Senator Riley, Representative Bentz, Representative Lininger

---

## Section I - Historical Development and Justification for Exemption

---

The review that follows is an attempt to succinctly summarize the historical development and justification presented in widely circulated literature discussing nonprofit property tax exemption in the United States. The breadth of the topic and the intent to keep this review brief allows for only a high level synopsis. Three primary theories or explanations exist for why nonprofit exemptions are in place: history, base-definitional and subsidy (Brody, 2002). Following is a discussion of each theory/explanation.

### *History*

While Oregon's property tax exemption for charitable organizations can be traced back prior to statehood to Oregon's territorial government, the general practice of exempting charitable organizations from established taxes predates colonists arriving to what would become the United States (Diamond, 2002). The exemption of church property can even be traced back to Sumerian and Babylonian times (Dessingue, 2002).

The literature suggests that the policy of exemption developed gradually over time and responded to changes in nonprofit organizations as well as tax policy.<sup>2</sup> No specific beginning point necessarily exists where a full policy review took place prior to creating the exemption structure. Prior to government's approach of levying broad universal taxation, such as the property tax, the framework for evaluating the exemption was based more upon the question of whether the continued existence of a nonprofit was desirable. A concern was and is that taxation may cause some nonprofits to cease to exist.

Reflective in part of the lack of broad universal taxation, initially, no formal institutionalized practice of exemption existed. If formally provided, exemptions were generally given via an organization's charter of incorporation. As the emphasis upon general legislation began to take hold in the mid-19<sup>th</sup> century, existing exemption practice began to be codified. At the time, codification of existing exemptions had general public support. The levying of a general property tax was often the precipitating factor in the codification of exemption (Diamond, 2002). Exemption codification focused on property that was non income producing reflective of the intent at the time of not taxing property that lacks a means with which to pay a tax.

A period of heightened discussion and review of nonprofit exemptions, particularly for churches, ensued following the American Civil War. President Grant's final State of the Union address in 1875 proposed amending the constitution to begin taxing church property. Multiple debate angles were articulated. Some argued for removing exemption from churches as providing exemption blurs the separation of church and state while others argued for maintaining the exemption as levying a tax upon church property could inhibit the free exercise of religion. Proponents of exemption also solicited support based upon self-interest, maintaining that

---

<sup>2</sup> The term nonprofit is used throughout this section even though the term nonprofit is more recent than the discussion. Philanthropic may be a more appropriate term but for consistency, the term nonprofit was used.

church property and architecture increased local land values, supported civil order, and allowed churches to concentrate on their spiritual and charitable objectives. Opponents of exemption suggested the church functioned as a social club for the rich, that exemption encouraged overbuilding of church property, and repeal of exemption could reduce the size and influence of the growing Catholic Church.

Charles Eliot, president of Harvard, took a lead role in articulating the defense of exemption for churches and secular organizations alike. His letter to the Massachusetts tax commission submitted in 1874 during that state's exemption debate became widely quoted by exemption supporters. Eliot viewed exempt organizations as being the embodiment of the highest form of civilization "churches, colleges, and hospitals serve the highest public ends" (Diamond, 2002). Stated before a Massachusetts legislative committee, Eliot argued:

the things which make it worthwhile to live in Massachusetts, to live anywhere in the civilized world, are precisely the things which are not taxed; the things exempted are the things which are in the highest degree profitable to the community. Let nobody persuade you for a moment that these invaluable reservations from taxation are a burden on the public; they are what make the common life worth living. (Eliot, 1910)

Eliot preferred exemption to subsidy arguing that exemption provided greater autonomy for organizations and provided a simple automatic approach. Eliot decried the subsidy process as one that encourages unscrupulous lobbying practices and competition between organizations for limited government largesse.

As the 19<sup>th</sup> century came to a close, little change to prior exemption policy was made. However, the property tax exemption was now generally codified in state statutes and constitutions. Generally, the exemption was narrowly tailored to qualified property used for non-commercial purposes. The justification for exemption evolved from an argument based upon direct savings to government, to a justification inclusive of the idea that exemption provided government support of actions which the government chose not to perform directly.

In the 20<sup>th</sup> century, nonprofit exemption policy was primarily focused upon the enacted income tax. Today, when nonprofit exemption is mentioned, Internal Revenue Code 501(c)(3) may be one of the first things that come to mind. Yet in many ways the income tax exemption for nonprofits was influenced by codified property tax exemption policy. The Supreme Court's decision in *Walz v. Tax Commission of City of New York* (1970), held that the legislative purpose of New York's property tax exemption of religious property used for religious purposes was not aimed at establishing, sponsoring or supporting religion but rather the exemption simply spares the exercise of religion from the burden of property taxation levied on private profit institutions. The court went on to state:

The tax exemption creates only a minimal and remote involvement between church and state, far less than taxation of churches would entail, and it restricts the fiscal relationship between them, thus tending to complement and reinforce the desired separation insulating each from the other. (*Walz v. Tax Commission of City of New York*, 1970)

The basis for the case was the contention that New York's exemption violated provisions prohibiting establishment of religion under the First and Fourteenth Amendments to the U.S.

Constitution. The court's decision found no reason to disallow the exemption on constitutional grounds, however the court did not go so far as to say whether the Constitution requires exemption for religious property.

Theory for why property tax exemptions exist for nonprofit property is based upon the historical development of the exemption. As discussed, examples of church property being exempt from taxation in some cases goes back thousands of years. Over time, the exemption has evolved based upon how the exemption was provided in the past. Theory holds that it is easier to demonstrate how an organization is like other organizations already receiving exemption, and therefore justified in benefitting from exemption as well, than it is to demonstrate without the benefit of analogous comparisons why an organization should be exempt.

### ***Base-Definitional***

The base defining theory is predicated upon the idea that charitable activity is not a component of the tax base. The theory holds, as nonprofit organizations have generally not been a historical part of the tax base, it is incorrect to view their exclusion from taxation as an exception to the rule as the rule is, nonprofits are not subject to tax. This theory is supported by the structural language of the federal corporate income tax and tax expenditure reporting. Neither at the federal or Oregon State level is the exclusion of nonprofit organizations from corporate income tax reported as a tax expenditure.

A second rationale for the outside the base interpretation rests with the comparison of nonprofits and the exemption from taxation provided to federal, state and municipal governments. The theory holds that as nonprofits provide services akin to governments, and governments generally do not subject one another to broad based taxation, nonprofits should receive similar exemptions.<sup>3</sup> In many instances governments may contract with nonprofits to provide a government service, in this way the theory holds that the nonprofit is an extension of government. Similarly to governments, nonprofits are however subject to service based utility charges.

### ***Subsidy***

The underpinnings of the subsidy theory is a quid pro quo approach between governments and nonprofits. Governments provide or allow exemption from taxation in recognition and support of the activities and services provided by nonprofits. The output of nonprofits, in at least a casual sense, is assumed to reduce the burden upon governments or provide services that governments believe are beneficial to society. Stated in 1938 by the House Ways and Means Committee during discussion regarding the decision not to allow deduction of donations made to foreign charities:

The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare.

---

<sup>3</sup> Federal law often prohibits most forms of taxation of federal property. However, the federal government may make in lieu payments. ORS 307.090 provides property tax exemption for state and local government property.

IRS Statistics of Income authors opined in *A History of the Tax-Exempt Sector* that the popularity of the nonprofit charitable sector can be traced in part to citizen support for the structures and programs provided by nonprofit organizations that effectively filled a gap in social programs not provided by federal or state governments (Arnsberger, Ludlum, Riley, & Mark, 2008).

The subsidy theory is supported in practice in that exemption from property taxation is generally available only to public-serving nonprofits, with member-serving nonprofits being subject to taxation. Public-serving nonprofits reflect the provision of a broader public good whereas member-serving nonprofits provide services or benefits to a more select group of individuals. Reflective in qualifying statutes at the federal and state level, generally, a general framework is provided by law in which nonprofits must conform in order to receive exemption but specific quantitative outcomes are generally not required.<sup>4</sup>

Critics of a literal reconciliation of the quid pro quo approach argue that no burden would be placed upon governments in the case of religious institutions as the first amendment to the U.S. constitution forbids respecting an establishment of religion. Partially for this reason, a general subsidy “public use” perspective is more prevalent than a more narrow “essential government function” perspective (Brody, 2002).

---

<sup>4</sup> Requirements of hospitals to qualify as an exempt IRC 501(c)(3) organization provide an example of more detailed qualification requirements, however, fundamentally the requirements are qualitative and do not contain strict quantitative binary qualification requirements.



---

## Section II - Federal Tax-Exempt Status

---

Qualifying for a nonprofit property tax exemption under ORS 307.130 generally begins with being recognized as an organization exempt from federal corporate taxation under IRC Section 501(c).<sup>5</sup> Section 501 contains many provisions providing for federal corporate tax exemption, with Section 501(c)(3) being most relevant for Oregon property tax exemption purposes. Section 501(c)(3) provides exemption for religious, educational, charitable, scientific and literary organizations; donations to these organizations generally qualify for income tax deduction.<sup>6</sup>

With the exception of religious organizations, organizations qualifying for exemption under Section 501(c)(3) must apply for exempt status by submitting IRS form 1023 and must annually submit IRS form 990 along with any required supplemental information. Annual information returns must be made available for public inspection and organizations failing to file for three consecutive years are disqualified from exemption.

To qualify for and maintain exempt 501(c)(3) status, an organization must be organized and operated within IRC statutory limitations. IRC requirements include:

- Organization asset distribution
  - Assets of an organization are required to be permanently dedicated to an exempt purpose
  - Requires organizations, at time of dissolution, to distribute assets for an exempt purpose; meaning assets may not be distributed to the benefit of members, private individuals, or any other purpose that does not itself qualify as an exempt purpose
- Politics & Propaganda
  - Organizations must refrain from participating in, or intervening in, any political campaign on behalf of any candidate for public office or engaging in substantial propaganda or attempts to influence legislation.<sup>7</sup>
- Other qualification criteria exist for specific organizations; details are contained in section 501 of the IRC.

Specific criteria worth mentioning are the requirements placed upon hospitals, which were expanded as part of the Affordable Care Act of 2010 (ACA). To qualify as exempt, hospitals must:

- Establish a written financial assistance policy detailing eligibility for financial assistance, basis for calculating amounts charged, method for applying for financial assistance and widely publicize policy with service community

---

<sup>5</sup> ORS 307.130 defines “nonprofit corporation” as: “Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65 or is organized and operated as described under section 501(c) of the Internal Revenue Code”. It’s important to note that qualifying for exemption from federal corporate taxation does not guarantee a property tax exemption in Oregon, but rather is a conditional step in qualifying for a property tax exemption.

<sup>6</sup> 501(c)(3) also includes organizations that test for public safety, foster national or international amateur sports competition, or prevent cruelty to children or animals.

<sup>7</sup> Certain voter education or nonpartisan activities are allowed.

- Develop a written policy requiring the organization to provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility under the financial assistance policy
- Limit amounts charged for emergency or other medically necessary care to individuals eligible for assistance to not more than the amounts generally billed to individuals who have insurance covering such care
- Make reasonable efforts to determine whether an individual is eligible for assistance prior to engaging in extraordinary collection actions
- Conduct a community health needs assessment and adopt an implementation strategy to meet the identified community health needs

### **Defining Charity**

For purposes of exemption qualification under IRC 501(c)(3) and its usage of the term *charitable*, the IRS states:

The term *charitable* is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency. (Internal Revenue Service, 2016)

The generally accepted legal sense of the term *charitable* is one of breadth and amendable to societal change. The modern U.S. legal concept of charity was derived primarily from the Elizabethan Statute of Charitable Uses (IRS, 1980). Widely accepted and nearly identical definitions of charitable purposes can be found in the Restatement of Law, Third, of Trusts, section 28 and the American Law Institute's draft Principles of the Law of Charitable Nonprofit Organizations (Fremont-Smith, 2013).

---

**Exhibit 2-1**

---

<b>Restatement of Law</b>	<b>Principles of the Law of Charitable Nonprofit Organizations</b>
All charities are subject to three basic limitations: <ol style="list-style-type: none"><li>1) Beneficiaries must constitute an indefinite class of individuals</li><li>2) Charitable purposes preclude the provision of impermissible private benefit to any individuals, and</li><li>3) An intended purpose is invalid if its purpose is unlawful</li></ol>	Charitable entity is defined as a legal entity with exclusively charitable purposes, established for the benefit of an indefinite class of beneficiaries, and prohibited from providing impermissible private benefit. A purpose is not charitable if it is unlawful.
The following purposes are charitable: <ul style="list-style-type: none"><li>• Relief of poverty</li><li>• Advancement of knowledge or education</li><li>• Advancement of religion</li><li>• Promotion of health</li><li>• Governmental or municipal purposes</li><li>• Other purposes that are beneficial to the community.</li></ul>	Charitable purposes include: <ul style="list-style-type: none"><li>• Relief of poverty</li><li>• Advancement of knowledge or education</li><li>• Advancement of religion</li><li>• Promotion of health</li><li>• Governmental or municipal purposes</li><li>• Other purposes that are beneficial to the community.</li></ul>

(Fremont-Smith, 2013)

An early and widely accepted standard definition of charity came from Jackson v. Philips, 96 Mass. 539, 556 (1867) where the court held:

A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraints, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.

(Fremont-Smith, 2013)

As previously mentioned, qualifying as a charitable entity at the federal level is a two-step process consisting of an organizational and operational test. Meeting the organizational test is generally more straightforward whereas the operational test is where the definition of charity and charitable act become crucial. By the IRS' own admission, "charity is not a static concept" and "the fact that the Service has in the past denied exemption to...organizations does not necessitate a similar result today" (IRS, 1980). As stated by the U.S. Seventh Circuit Court of Appeals:

The enforcement of charitable uses cannot be limited to any narrow and stated formula. It must expand with the advancement of civilization and the daily increasing needs of man. New discoveries in science, new fields and opportunities for human action, the differing condition, character, and wants of communities change and enlarge the scope of charity.

(Todd v. Citizens Gas Co. of Indianapolis, 1931)

The broad definition of charity or charitable purpose generally does not follow a quantitative approach. Legislation requiring quantitative limits is generally specific to certain charitable organizations. Recent federal legislative changes related to credit counseling organizations and hospitals underscore this point. Qualification as an exempt organization for credit counseling

and hospital organizations are now based upon meeting activity standards codified in law.<sup>8</sup> These codifications do not directly shape definitional interpretations of charity, but rather create organizational requirements that must be met in order to qualify as an exempt organization.

---

<sup>8</sup> See IRC 501(q) and (r) for details.

---

## Section III - Administration of Property Tax Exemption

---

### *Role of DOR*

Statute requires the Oregon Department of Revenue (DOR) to exercise general supervision and control over the property tax system in Oregon.<sup>9</sup> In addition to required assessment responsibilities for centrally assessed companies and state appraised industrial property, DOR is required to issue regulations, bulletins, manuals, instructions and directions to county assessors along with conducting continuous study of the property tax system.<sup>10</sup> Statute also provides DOR with broad volitional oversight authority of the work of county assessors.<sup>11</sup>

Within the Property Tax Division of DOR is the Finance, Tax and Exemption (FT&E) unit which provides most of the Department's oversight/support relating to property tax exemptions. The unit is comprised of four policy analysts who are available to answer questions from taxpayers and county assessment staff. Two exemption training classes are provided to county assessment staff annually. FT&E has prepared an exemption manual. The manual has not been formally updated in several years but FT&E does provide informal updates to the manual reflecting legislative, administrative and court interpretative changes. FT&E facilitates a meeting, occurring at minimum once per year, of county exemption technical staff where legislative and judicial updates are shared/discussed and a roundtable discussing pertinent exemption issues also takes place. The Department also monitors and contributes to an online networking communication site where county assessment staff can communicate with each other and the Department regarding exemption practices.

DOR has generally pursued an informal oversight and guidance support role in its interaction with county assessors regarding specific property tax exemption questions. When approached by county assessment staff regarding exemption qualification, DOR will generally provide guidance or facilitate a dialogue between other counties that may have had similar exemption qualification situations, or provide a review of the relevant case law. In some instances, DOR may provide nonbinding legal interpretive advice to counties, but generally, aiding county assessment staff in their qualification determination by explaining pertinent case law is the preferred approach. Counties are generally more likely to solicit input from DOR when an exemption application determination falls within a grey area of established case law where a clear cut interpretation of qualification may not exist, or in instances where the property owner may have similar application requests pending in multiple counties and a unified exemption determination is preferable. DOR also receives technical administrative questions from counties relating to such things as filing requirements and extensions.

DOR's involvement in exemption appeals is situational. While DOR's involvement in an appeal is required once an appeal reaches the regular division of Oregon Tax Court, the capacity of

---

<sup>9</sup> See ORS 306.115

<sup>10</sup> See ORS 306.120

<sup>11</sup> See ORS's 308.335, 309.400 & 306.220

involvement may vary.<sup>12</sup> Prior to an appeal reaching regular division of Tax Court, DOR's involvement may depend upon request for involvement received from a county or DOR's interest in becoming involved in issues of statewide importance. A primary determinant of DOR's interest in becoming involved in an appeal rests on the potential comprehensiveness that a decision may have upon established case law. Stated another way, if an appeal is more likely to establish new case law precedent, DOR is more interested in becoming involved in the appeal.

### **Role of Assessors**

Oregon's county assessors are responsible for administering assessment and taxation for all property in Oregon with exception of state appraised industrial property and property subject to central assessment which is appraised by Department of Revenue (DOR).<sup>13</sup> Assessors are responsible for nearly all administrative responsibilities related to exemptions. DOR generally has responsibility for designing exemption application forms but applications are generally processed and approvals/denials are generally determined by county assessors.

Assessor office staffing levels relating to exemption processing/qualification-determination varies between counties. This variation is in part due to varying levels of complexity and number of exemptions that are processed each year. For example, in the 2014-15 tax year, Wheeler County reported a statewide low of 68 total exemptions (excluding exemptions for federal, state or local government property) compared to a high of 25,000 in Multnomah County. These figures represent total exemptions provided, new applications for exemption are a subset of that figure.

Many of the property tax exemptions available to nonprofits, including the Literary, Charitable and Scientific Organizations exemption available under ORS 307.130, are subject to application requirements contained in ORS 307.162.<sup>14</sup> To receive exemption, applications must be submitted to assessors on or before April 1 preceding the tax year for which the exemption is claimed.<sup>15</sup> The claim is required to contain statements, verified by oath or affirmation, that list all real property claimed to be exempt and cite statutes under which exemption for personal property is claimed. Application instructions require applicant to include documents that clarify that the entity and use of the property meet the requirements for exemption. Assessors then use the filed application along with the additional documentation to determine eligibility. If the submitted information is not sufficient for exemption determination to be made, assessors may search publically available information and/or request additional information from applicant.

---

<sup>12</sup> For example, Department of Justice attorneys working on behalf of DOR may take the leading role in litigation defense, may work jointly with county legal staff, or may work in a supporting capacity to county legal staff.

<sup>13</sup> See ORS 306.126 and 308.505 - 308.681

<sup>14</sup> See appendix VI for a copy of the application.

<sup>15</sup> Late filing is available with payment of late fee or if certain conditions are met.

---

## Section IV - Legal Decisions & Interpretations

---

### *Development of Existing Exemption and Overview of Common Law*

The legal framework for property taxation in Oregon begins at a very broad level. ORS 307.030(1) states:

All real property within this state and all tangible personal property situated within this state, except as otherwise provided by law, shall be subject to assessment and taxation in equal and ratable proportion.

Courts have repeatedly declared taxation to be the rule, and exemption from taxation the exception. Exemption from taxation is only allowed if it is provided for by law. Stated in *Methodist Homes Inc. v. State Tax Commission* (1961),<sup>16</sup>

Moreover, statutes exempting property are strictly construed and an exemption is denied unless it is so clearly granted as to be free from reasonable doubt.

In their deliberation process, courts work to interpret and put into effect the intentions of the legislature, if those intentions can be discerned. However, if the court cannot discern legislative intent, statute ambiguities must be construed against taxpayers. This follows the “strict but reasonable” approach which means that statute will be construed reasonably to ascertain legislative intent, but in case of doubt will be construed against the taxpayer. This is also in keeping with the rule that it is the burden of the taxpayer to bring itself within the terms of the exemption statute (*Corvallis Neighborhood Housing Services v. Linn County Assessor*, 2013).

The exemption granted to benevolent, charitable and scientific institutions was first enacted by Oregon’s territorial legislature in 1854. The statute remained unchanged for over ninety years prior to first being modified by HB 192 in 1945. Since being enacted, the statute has been substantively amended about fifteen times.<sup>17</sup> Over the years, the underlying broad exemption statute has remained relatively intact with specificity being added for retail stores dealing primarily in donated inventory, art museums, history or science museums, volunteer fire departments and additional definitional language.<sup>18</sup>

While ORS 307.130 contains some specificity, criteria used in determining qualification are largely derived from common law. This is reflective in the statutory rules adopted by the

---

<sup>16</sup> *Methodist Homes Inc. v State Tax Commission* has been subsequently cited in numerous court decisions, specifically in reference to taxation being the rule and exemption the exception.

<sup>17</sup> Beginning in 1997, a definition of “nonprofit corporation” was added to statute. The definition was tied to the definition as described under section 501(c) of the Internal Revenue Code. This definitional connection is generally updated every year or two as part of the “federal connect” measure. Many of the recent changes reflect updating the connection date, rather than substantive policy changes.

<sup>18</sup> See appendix II for a complete timeline and description of law changes.

Department of Revenue. The DOR interpretive rules read as a summary of judicial precedent laid out in relevant case law.<sup>19</sup>

Outside of specifics for retail stores, volunteer fire departments, and museums, ORS 307.130 lists the four recipients of exemption being incorporated literary, benevolent, charitable and scientific institutions. In *Behneke-Walker v. Multnomah County* (1944), the court held the term “benevolent” to be more or less synonymous with charitable and therefore follows the parameters related to charitable institutions in determining exemption qualification. The Oregon Supreme Court defined literary and scientific societies as: “organizations for the propagation and spread of good literature”, and “organizations for the promotion of science or the pursuit of scientific studies for the purpose of developing science” (*Kappa Gamma RHO v. Marion County*, 1929). The court elaborated upon the definition of literary in *Theatre West of Lincoln City v. Dept. of Rev.* (1994) to include organizations “that are devoted to the production of plays that expose actors and audiences to those scripts” (*Theatre West of Lincoln City v. Dept. of Rev.*, 1994).

In *Behneke-Walker v. Multnomah County* (1944), the court essentially established a two-part test to be used in determining exemption status for literary and scientific institutions: 1) Institution must be a literary or scientific institution and, 2) a significant portion of the institution’s activities must have a charitable objective. In examining whether an entity qualifies as literary or scientific, the courts have expounded upon the need of the entity to more than merely participate in activities which could be or generally are considered to be literary and scientific. The literary or scientific activity must be so fundamental to the organization’s activity that it becomes apparent that the organization is inherently literary or scientific. In answering the second part of the test, the same parameters are generally referenced as those used in determining charitable entity qualification.

In determining whether a property falls within the charitable institutions exemption portion of ORS 307.130, Oregon courts first look to answer two main questions: 1) whether the entity seeking exemption is a charitable institution, and 2) whether the property is actually and exclusively occupied or used in the charitable work carried on by the organization.<sup>20</sup>

In determining whether an entity is a charitable institution, the Oregon Supreme Court references a three-part test: 1) The 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. The test is applied to an organization at its whole, not to any specific part of the operation. The specific example given in *Mercy Medical V. Dept. of Revenue* reads:

“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...Nonprofit hospitals are not private ventures designed to benefit private investors, but

---

<sup>19</sup> See appendix V for a copy of DOR’s rules relating to ORS 307.130

<sup>20</sup> This two question approach is expressed in multiple court opinions, this reference comes from (*Corvallis Neighborhood Housing Services v. Linn County Assessor*, 2013)



presumably exist for the good of the community.” (Mercy Medical Center Inc v. Dept. of Revenue, 1992).

In determining “charity as primary, if not sole, object” (test part 1) the courts seek to determine whether an organization exists to enrich the private individuals who own or operate it, or whether the entity exists to benefit society at large without an aim for private gain (Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev., 1986). The articles and bylaws of a corporation are generally accepted as prima facie evidence of the intent and character of an organization. However, the courts have been explicit in the expectation of charitable work being done by the entity, not just the laudable goal of some future charitable good. This sentiment was summed up by the Oregon Supreme Court in Methodist Homes Inc. v. State Tax Commission (1961).

Unselfish declarations of intended purpose and promises of true worthy endeavor are many times rendered meaningless by inaction and should give the declarer no preferred status unless ultimately resolved into concrete and tangible reality. (Oregon Methodist Homes, Inc., Willamette View Manor, Inc. v. State Tax Commission, 1961)

In determining whether an organization is performing in a manner that furthers its charitable goals (test part 2), courts will often look again to the articles and bylaws of a corporation to determine whether the organization is organized and operated in a manner that is meeting the charitable objectives outlined in those articles and bylaws.

The final component of the test in determining whether an entity is charitable is the requirement that the entity’s organization involve a gift or giving. As described in OAR 150-307.130-(A)(3)(d), “this element of gift and giving is giving something of value to a recipient with no expectation of compensation or remuneration”. An important distinction used by the courts when evaluating whether gift or giving is involved, is that the gift or giving is evaluated based upon whether the service or good received by a recipient was received without expectation of remuneration from the recipient, not by the provider of funding to the entity. In Southwestern Oregon Pub. Def. Services v. Dept. of Rev. (1991), the court stated:

The question becomes, not whether taxpayer (entity) gains some kind of remuneration from some source, but whether, so far as the recipient is concerned, the taxpayer’s services are given to the recipients with strings attached. (Southwestern Oregon Public Defender Services, Inc., Appellant, v. Department of Revenue, 1991)

If an entity is determined to be a charitable institution, then the applicability of the exemption depends upon two factors. The property involved must be 1) exclusively used by charitable entity in accomplishing its charitable goals, and 2) substantially contribute to furthering those goals.<sup>21</sup> Oregon courts have interpreted “exclusively used” to refer to the primary, as opposed to the incidental use of the property.<sup>22</sup> That is, a property may be used for other not for profit incidental purposes, but if the property’s primary use supports the charitable entity’s charitable goals and substantially contributes to furthering those goals, then the property meets both provisions of the test and is exempt.<sup>23</sup> The courts have also held that property must be

---

<sup>21</sup> Two part test is expressed in multiple court opinions, this reference comes from (Mercy Medical Center Inc v. Dept. of Revenue, 1992).

<sup>22</sup> This “test” was originally established in Multnomah School of Bible v Multnomah County (1959) and has been referenced numerous times in other decisions of the court following similar “exclusively occupied or used” questions.

<sup>23</sup> The incidental use must also not interrupt the “exclusive” occupation of the property

reasonably necessary to the fulfillment of the entity's charitable operations to receive exemption (Lewis Clark College v Commission, 1969).

In multiple decisions, Oregon courts have established that a charity may carry on some commercial business activity without losing its exemption. However, exemption cannot be extended to property primarily occupied and used for other commercial activities even if the entity pays no dividends or devotes its entire profits to charity.<sup>24</sup> The exemption is directed at property directly used by a charitable institution in fulfilling the charity's charitable purpose, not the destination of the income proceeds of property used to operate a commercial enterprise owned by a charitable entity.

Oregon courts have outlined six factors that are relevant in determining the charitable character of a hospital. While the six factors are primarily used for exemption determination for hospitals, courts have referenced them in other instances where the entity in question exhibits some resemblance to a hospital.

- 1) Whether the receipts are applied to the upkeep, maintenance and equipment of the institution or are otherwise employed
- 2) Whether patients or patrons receive the same treatment irrespective of their ability to pay
- 3) Whether the doors are open to rich and poor alike and without discrimination as to race, color or creed
- 4) Whether charges are made to all patients and, if made, are lesser charges made to the poor or are any charges made to the indigent
- 5) Whether there is a charitable trust fund created by benevolently and charitably minded persons for the needy or donations made for the use of such persons
- 6) Whether the institution operates without profit or private advantages to its founders and the officials in charge. (Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev., 1986)

Not all six factors must be met in order for a hospital to receive exemption, nor are the six factors all the items that may be used to determine whether the corporate hospital is charitable. Rather, the six factor list represents particulars that have been referenced in past court decisions in discovering if a given hospital is eleemosynary and qualified to receive exemption. However, factors five and six listed above have been identified by the courts as the two factors that must be present for a charitable determination to be reached (Methodist Homes Inc v State Tax Commission, 1961).

---

<sup>24</sup> See (Multnomah School of Bible v. Multnomah County, 1959) for elucidation on the subject.

**Exhibit 4-1**

**Qualifying for Exemption as Charitable Institution under ORS 307.130**

---

**Oregon courts first look to answer two main questions in determining whether property qualifies for exemption.**

**Is the entity a charitable institution?**

Three-part test used to determine charitable designation.

- 1) Organization must have charity as its primary, if not sole, object
- 2) Organization must be performing in manner that furthers its charitable object
- 3) Organization's performance must involve a gift or giving.

**Is property actually and exclusively occupied or used in the charitable work carried on by the organization?**

Two-part test used:

- 1) Property exclusively used by charitable entity in accomplishing its charitable goals
- 2) Property substantially contributes to furthering those goals.

**Six-part test used primarily for hospitals:**

- 1) Receipts are applied to upkeep, maintenance and equipment of institution
- 2) Patients and/or patrons receive same treatment irrespective of ability to pay
- 3) Doors open to rich and poor alike without discrimination
- 4) Charges made to all patients and if so, lesser or no charge made to poor or indigent
- 5) Existence of charitable trust fund for the needy
- 6) Institution operating without profit or private advantages to founders and officials in charge

Not all six factors must be met to receive exemption. Six factor list represents particulars that have been referenced in past court decisions in discovering if a given hospital is eleemosynary. Factors 5 & 6 are required to be present for a charitable determination to be reached.

---

## Section V - Examination of Nonprofits Receiving Exemption under ORS 307.130

---

A primary question that this report attempts to answer, what are the subgroups of the ORS 307.130, Literary, Charitable & Scientific Organizations property tax exemption, is presented in this section. As discussed in previous sections, the 307.130 exemption is broad and provides exemption from taxation for a diverse assortment of nonprofit organizations including hospital organizations, social welfare organizations, museums, theaters and retail stores. This section begins with a discussion of the data collection and estimation process followed by presentation and analysis of the estimates produced using the collected data.

### *Special Note Regarding Data Presented in this Section*

Most of the information presented within this section, including all tables and charts, are estimates. While the information is presented in a reporting manner, the figures presented are estimates and should be viewed as such. For reasons later discussed, estimates provided within this section should be viewed as descriptive order of magnitude estimates. The estimation processes are elaborated upon throughout this section. Readers are urged to read accompanying text related to each table and chart for contextual purposes. Due to data availability limitations, in many instances, presented data are a subset of statewide figures. While presented figures are not scaled to the entire state, discussion of data proportional representation is included.

### *Data Sources and Preparation*

The information presented in this section was primarily obtained from three sources: county assessors, Oregon Health Authority's (OHA) Hospital Reporting<sup>25</sup> and IRS form 990 returns.<sup>26</sup> Information received from county assessors and OHA's data is described in this section, for description of IRS 990 data see page 38.

### *Data Received from County Assessors*

Existing available data regarding the ORS 307.130 exemption, and the data used in preparing revenue impact estimates for the Governor's Tax Expenditure Report, comes from property tax reports annually prepared by each county assessor and submitted to Department of Revenue. The reports contain three referenceable quantities for property tax accounts that are fully or partially exempt: number of accounts exempt, taxable assessed value and real market value. While helpful in an aggregate sense, for an exemption as broad as the 307.130 exemption, this provides no information in terms of the types of properties and organizations receiving the exemption. In an effort to fill the information gap, LRO worked with a group of county assessors to develop a data request to be sent to all county assessors that would provide the necessary

---

<sup>25</sup> See <https://www.oregon.gov/oha/analytics/Pages/Hospital-Reporting.aspx>

<sup>26</sup> IRS 990 returns can be accessed from a variety of sites. For this report, returns were primarily accessed via Urban Institute's National Center for Charitable Statistics <http://nccsweb.urban.org/PubApps/search.php>.

account level information while minimizing assessor workplace time necessary to respond to the request.<sup>27</sup>

Information provided by assessors includes property descriptive variables, property value and tax variables, and exemption related descriptive variables. Twenty-six of Oregon's thirty-six assessors responded to the request for data. However, the ten counties that did not respond combined represent less than 1.5% of 307.130 exempt property.<sup>28</sup>

A crucial cautionary note regarding the data received from county assessors is that the property tax accounts in question are generally fully exempt accounts that have been exempt in many cases since the property was built (property structures) or acquired, or under ownership/lease by the exempt entity. As a result, there is little history of the account being taxable and less impetus for the account to receive the same level of time allotment in determining the exempt property's value as compared to taxable property. While room for improvement exists with the value data provided by county assessors, there is no reason to suspect systematic errors in the data. Because of this, no corrective factor was employed to adjust valuations.

As property account information requested from county assessors was requested for exempt accounts, business personal property values related to the exempt real property were not included. Estimates of personal property were made using a combination of property tax account level data and amounts reported on IRS form 990 returns. Part VI of schedule D of the IRS form 990 return contains self-reported information related to organization's land, buildings, and equipment. Unfortunately, this information is not contained within IRS statistics of income annual extract of 990 return data. To estimate personal property for all exempt accounts, a stratified sample of 990 returns were manually accessed and analyzed to gauge relationship between personal property and real property. This relationship was then used to estimate personal property of exempt organizations.

For analysis purposes, exempt organizations were assigned to one of eight descriptive categories based upon the actions of the exempt organization. Process of assigning a category to an exempt organization began with assessor reporting. In 2015, assessors responded to a survey administered by Department of Revenue (see page 26) that categorized property accounts applying for exemption under ORS 307.130 for tax year 2015-16. These category assignments were applied to the full data set received by LRO. Descriptive categories were then assigned to remaining unassigned property accounts based upon organizations primary objective or outcome. For example, while the ACME organization may be involved in pursuing "social welfare" outcomes as well as being an owner of "low-income housing", if ACME's primary objective is social welfare, then all hereto unassigned property accounts owned or leased by ACME would be assigned to the social welfare category. Primary organization objective/outcome was found in a manual review of organizations' websites and 990 returns. Due to time limitations, of the roughly 2,500 unique organizations, 1,163 were never assigned a descriptive category. However, in manually assigning organizations, priority was placed upon

---

<sup>27</sup> This "group" of county assessors included leadership of the Oregon State Association of County Assessors.

<sup>28</sup> Based upon comparison of reported exempt real market value as reported by assessors to Department of Revenue in annually reported Summary of Assessment and Levies report.

higher exempt value organizations resulting in less than five percent of exempt value residing in the non-assigned descriptive category.

### ***Oregon Health Authority & IRS form 990 Data***

Detailed analysis of the *Hospitals, Addiction & Other Medical* category is included in this section. This more extensive analysis, as compared to other categories, is primarily in response to two factors, 1) the *Hospitals, Addiction & Other Medical* category accounts for more than 60% of the total estimated revenue loss for the 307.130 exemption, and 2) the category and its exemption structure has been the subject of previously introduced legislation.<sup>29</sup> Nonprofit health organizations that operate hospitals are also subject to greater reporting requirements at both the federal and state level. Nonprofits that operate a hospital are required to submit Schedule H as part of their annual IRS form 990 return which includes reporting at cost: financial assistance, means-tested government programs and other benefits provided. ORS 442.200-205 governs Oregon's community benefit reporting requirements. Oregon Health Authority provides this reported information on its Hospital Reporting webpage.<sup>30</sup> For analysis purposes, the OHA community benefit data reports were combined with the property account level data allowing for examination of property tax exemption benefits and level of charity care or community benefit provided by nonprofit health organizations operating hospitals.

---

<sup>29</sup> See HB 3034 (2015) <https://olis.leg.state.or.us/liz/2015R1/Measures/Overview/HB3034>

<sup>30</sup> See <https://www.oregon.gov/oha/analytics/Pages/Hospital-Reporting.aspx>

## Results & Analysis

### Revenue Impact by Nonprofit Category

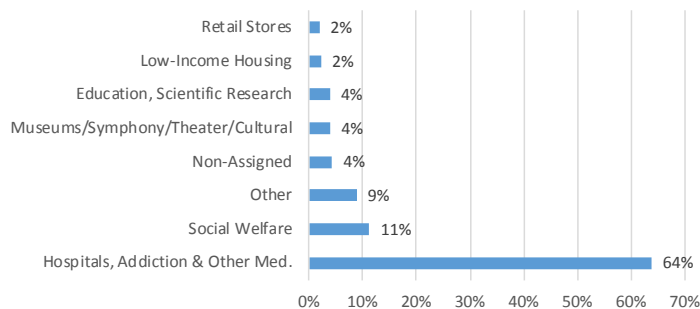
The table below displays revenue impact estimates resulting from the 307,130 property tax exemption aggregated by nonprofit category for fiscal year 2015-16. Also included are the number of unique property owners/lessees and number of property tax accounts.<sup>31</sup> The *Other* category includes organizations with mission/objectives related to: Other, Community Centers/Gardens, Recreation/Sports, Environmental, Animals, Emergency Disaster Relief and Volunteer Fire Departments. The revenue impact estimates entail two components, loss and shift. Shift refers to the property tax imposed that is “shifted” to other properties due to the exemption. Shift is primarily due to district bond levies where districts determine a certain levy amount, and then calculate the tax rate to extend to each property based upon the assessed value within the district’s boundaries. Loss estimates are different than estimates of revenue increases that would result from eliminating the exemption. This is due primarily because property receiving exemption may be able to qualify for exemption under another statute or behavioral responses by organizations to changes in exemption law.

As displayed in the table and accompanying charts, the overall estimated loss for reporting counties was \$122.4 million with total shift estimated at \$17.5 million. The *Hospitals, Addiction & Other Medical* category accounts for \$78.0 million, or 64% of the total loss.

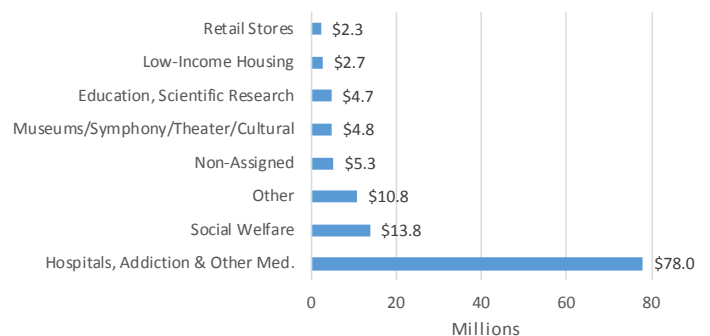
#### Exhibit 5-1a

Estimated Revenue Loss and Tax Shift by Nonprofit Category for General Government & Education Districts FY 2015-16 (\$'s in Thousands)								
Nonprofit Category	# Unique Prop Owners	# Property Accounts	General Government		Education		Total	
			Loss	Shift	Loss	Shift	Loss	Shift
Hospitals, Addiction & Other Med.	241	1,069	\$49,505	\$2,730	\$28,519	\$8,288	\$78,024	\$11,018
Social Welfare	459	1,342	\$8,650	\$489	\$5,133	\$1,398	\$13,782	\$1,887
Other	283	903	\$6,538	\$505	\$4,255	\$1,324	\$10,792	\$1,829
Non-Assigned	1,164	1,673	\$3,195	\$160	\$2,057	\$570	\$5,251	\$730
Museums/Symphony/Theater/Cultural	143	274	\$3,064	\$181	\$1,775	\$517	\$4,839	\$698
Education, Scientific Research	76	130	\$2,623	\$113	\$2,081	\$558	\$4,705	\$670
Low-Income Housing	94	324	\$1,731	\$78	\$957	\$272	\$2,688	\$350
Retail Stores	59	160	\$1,440	\$88	\$848	\$272	\$2,288	\$360
<b>Total</b>	<b>2,519</b>	<b>5,875</b>	<b>\$76,745</b>	<b>\$4,343</b>	<b>\$45,625</b>	<b>\$13,199</b>	<b>\$122,369</b>	<b>\$17,542</b>

Ex. 5-1b | Percent of Cumulative Estimated Revenue Loss by Nonprofit Category, FY 2015-16



Ex. 5-1c | Estimated Revenue Loss by Nonprofit Category, FY 2015-16



<sup>31</sup> For multiple reasons, number of unique property owners displayed in table should be viewed as a high end figure. Process used to determine unique number for table reporting purposes was based upon nearly identical naming conventions for properties included in county provided data. If county assessor data followed different naming conventions, it is possible nonprofit organizations would be counted as two distinct organizations. Also, nonprofit organizations that would generally be assumed to be a single organization, may in fact be numerous distinct nonprofits with separately filed IRS 990s and unique IRS assigned Employee Identification Numbers.

## Revenue Impact by County

The following charts display estimated loss amounts, number of exempt accounts and estimated loss as a percentage of property tax imposed by all districts within the county's boundaries in FY 2015-16. Unsurprisingly, in nominal terms most exempt accounts and associated estimated loss is located within the Portland Metro Area and Willamette Valley counties. The five most populated counties (Multnomah, Washington, Clackamas, Lane & Marion) combine for nearly 75% of the total estimated loss. As displayed in Exhibit 5-4, when comparing estimated loss as a percentage of tax imposed, results are more mixed. Greater estimated loss as a percent of overall imposed can

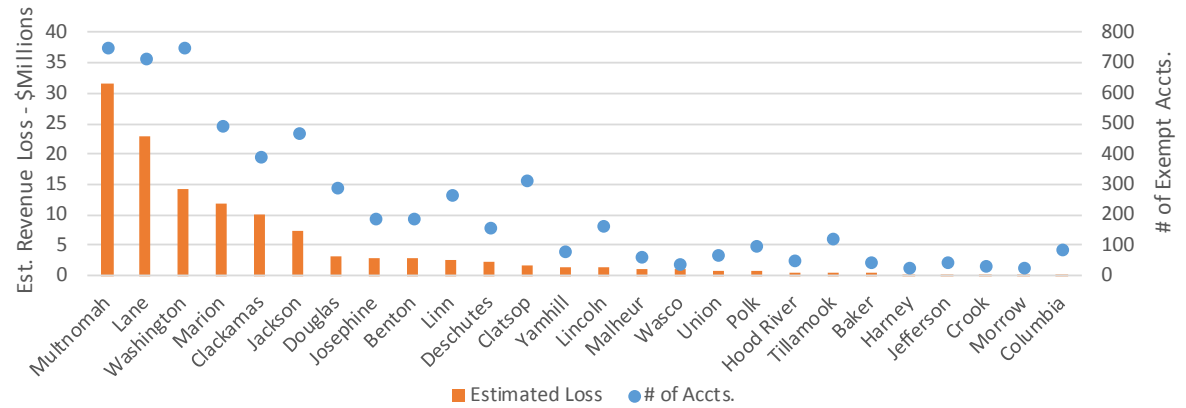
### Exhibit 5-2

Estimated Loss & Number of Exempt Accounts by County FY 2015-16

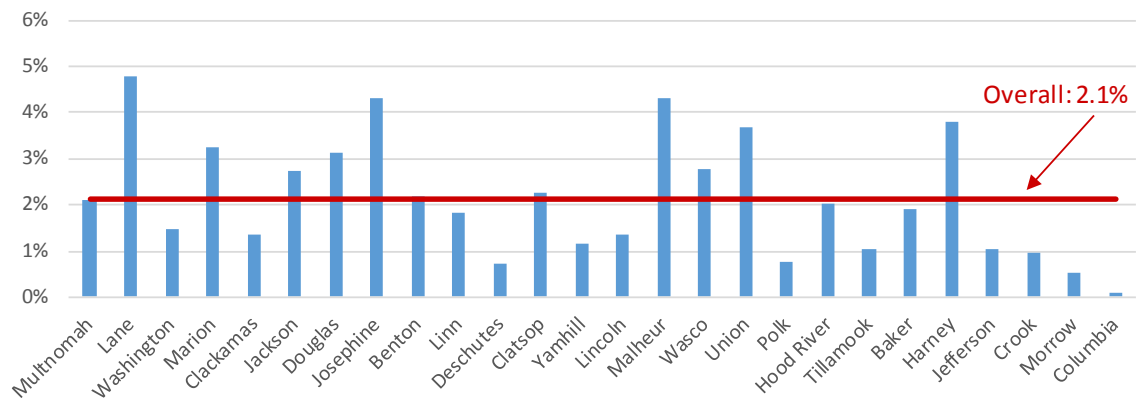
County	# of Accts.	Estimated Loss	Loss as % of Tax Imposed
Multnomah	749	31,730,000	2.1%
Lane	714	22,847,000	4.8%
Washington	752	14,305,000	1.5%
Marion	489	11,927,000	3.2%
Clackamas	389	9,966,000	1.4%
Jackson	469	7,493,000	2.7%
Douglas	289	3,077,000	3.1%
Josephine	188	2,783,000	4.3%
Benton	185	2,750,000	2.2%
Linn	267	2,677,000	1.8%
Deschutes	155	2,264,000	0.7%
Clatsop	315	1,587,000	2.2%
Yamhill	78	1,426,000	1.2%
Lincoln	162	1,366,000	1.4%
Malheur	59	1,042,000	4.3%
Wasco	39	989,000	2.8%
Union	64	928,000	3.7%
Polk	97	656,000	0.8%
Hood River	46	636,000	2.0%
Tillamook	121	528,000	1.0%
Baker	41	363,000	1.9%
Harney	24	272,000	3.8%
Jefferson	43	266,000	1.0%
Crook	33	245,000	1.0%
Morrow	24	175,000	0.5%
Columbia	83	70,000	0.1%
<b>Total</b>	<b>5,875</b>	<b>122,369,000</b>	<b>2.1%</b>

LRO 2/27/2017

Ex. 5-3 | Estimated Loss and Number of Exempt Accounts by County, FY 2015-16



Ex. 5-4 | Estimated Loss as % of Property Tax Imposed by County, FY 2015-16



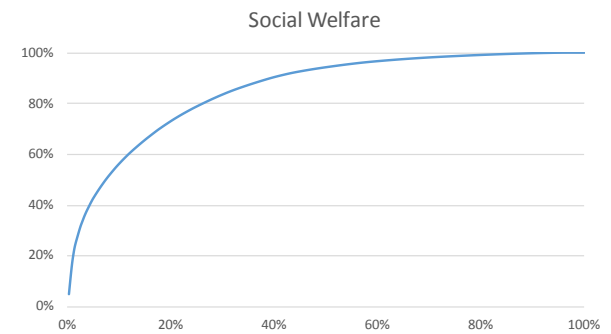
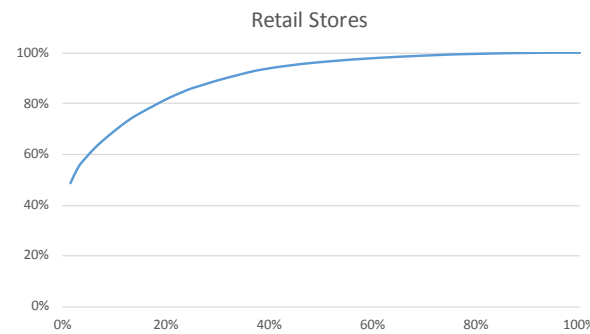
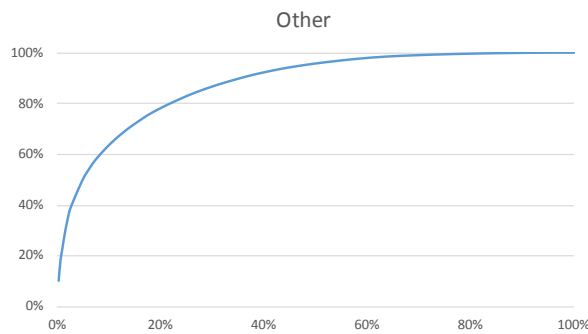
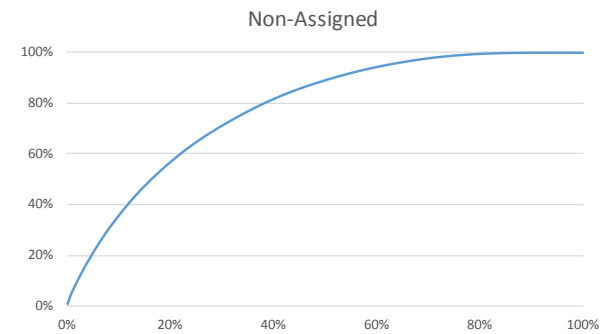
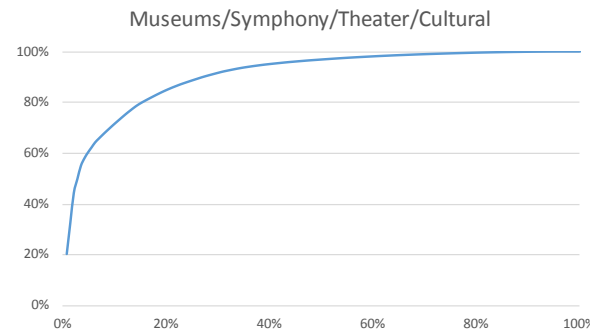
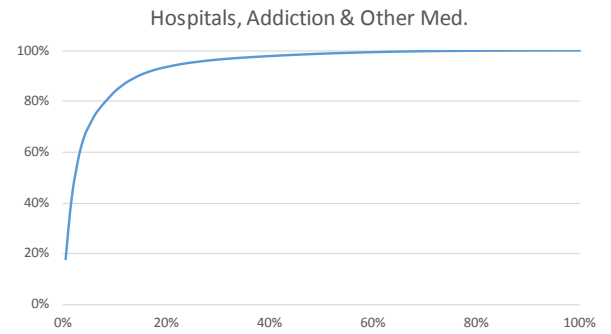
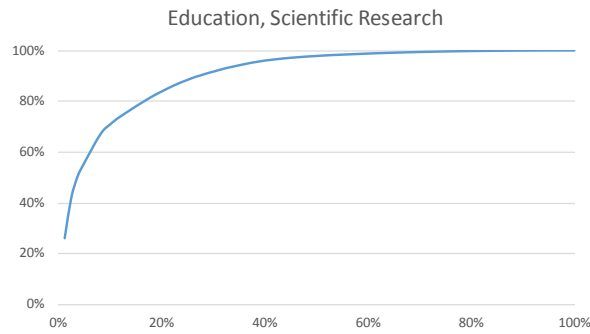
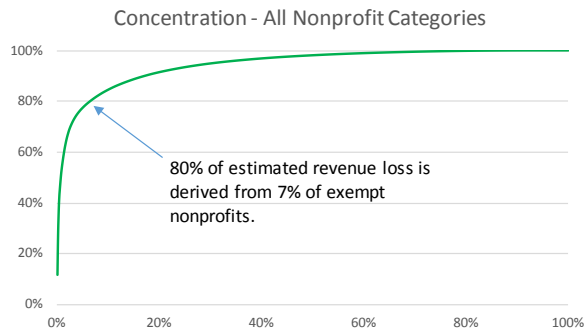


generally be explained by the existence of high-value hospital property located within the county. This is especially true in the rural counties that have a high estimated loss to imposed percentage.

### **Concentration**

The subsequent charts display the concentration of estimated revenue loss for all nonprofit categories and within each category. The charts are structured identically to those in the DOR Survey section. The vertical axis displays the percent of estimated revenue loss whereas the horizontal axis shows the percent of unique property owners. For example, the first chart, titled *Concentration - All Nonprofit Categories*, reveals that 80% of estimated revenue loss is derived from 7% of exempt nonprofits. Similar to DOR's survey results, the charts below indicate that while variation in concentration exists between categories, much of the estimated revenue loss is derived from a relatively small number of exempt nonprofits.

### **Exhibit 5-5**



## Nonprofit Hospital Organizations

The next series of tables and charts relate to nonprofit hospital organizations which are a subset of the *Hospitals, Addiction & Other Medical* category. As previously mentioned, nonprofit hospital organizations represent a majority of the estimated revenue loss under the 307.130 property tax exemption and are required to meet specific reporting requirements. Past introduced (not enacted) legislation has conditioned property tax exemption qualification upon a hospital providing specified levels of either charity care or community benefit.<sup>32</sup> While revenue impact estimates are ultimately made in regards to specific legislation, the tables and charts below are meant to provide the reader with some understanding of the relationship between estimated property tax revenue loss and provided charity care and community benefits. It is important to keep in mind that these

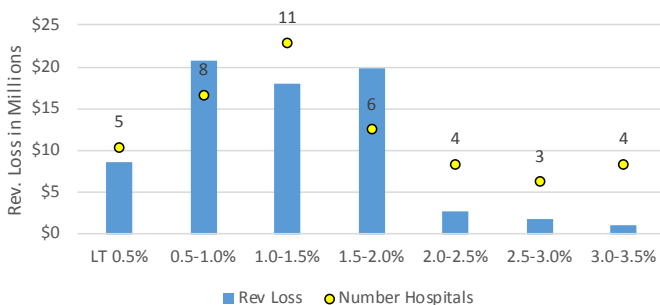
estimates are for the 2015-16 fiscal year and charity care and community benefits provided can vary from year to year. Federal changes to the Affordable Care Act being discussed at time of report publication could also impact the amount of charity care provided.

**Exhibit 5-6a**

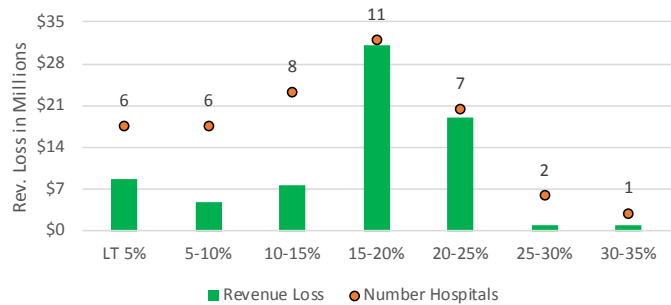
Estimated Revenue Loss & Number of Hospitals, by Charity/Community Benefit as Percentage of Reported Net Patient Revenue, FY 2015-16									
-----Charity Care-----					-----Community Benefit-----				
Charity Care	Number Hospitals	Revenue Loss	Cumulative Loss and Percentage		Community Benefit	Number Hospitals	Revenue Loss	Cumulative Loss and Percentage	
LT 0.5%	5	\$8.6	\$8.6	12%	LT 5%	6	\$8.6	\$8.6	12%
0.5-1.0%	8	\$20.8	\$29.4	40%	5-10%	6	\$4.8	\$13.4	18%
1.0-1.5%	11	\$18.0	\$47.4	65%	10-15%	8	\$7.7	\$21.1	29%
1.5-2.0%	6	\$19.9	\$67.3	92%	15-20%	11	\$31.0	\$52.1	72%
2.0-2.5%	4	\$2.6	\$69.9	96%	20-25%	7	\$18.9	\$71.0	98%
2.5-3.0%	3	\$1.7	\$71.6	98%	25-30%	2	\$0.8	\$71.8	99%
3.0-3.5%	4	\$1.1	\$72.7	100%	30-35%	1	\$1.0	\$72.8	100%
<b>All</b>	<b>41</b>	<b>\$72.8</b>			<b>All</b>	<b>41</b>	<b>\$72.8</b>		

Source: Reported charity care, community benefit and net patient revenue sourced from OHA 2015 Hospital Community Benefits Data Reports.

Ex. 5-6b | Estimated Revenue Loss & Number of Hospitals by Charity Care as % of Net Patient Revenue, FY 2015-16



Ex. 5-6c | Estimated Revenue Loss & Number of Hospitals by Comm. Benefit as % of Net Patient Revenue, FY 2015-16



OHA's 2015 Community Benefit Report Hospital Summary listed 59 hospitals. As displayed in the table above, for 307.130 exemption analysis purposes, 41 hospitals were able to be matched with assessor provided property tax data. Non matches exist for a number of reasons including: hospital qualified for exemption under statute other than 307.130 (e.g. district hospitals), hospital located in a county that did not provide data or hospital does not qualify for exemption under any statute (for profit hospitals).

<sup>32</sup> Statutory definitions of charity care and community benefit can be found in ORS 442.200. Charity care includes free or discounted health services provided to persons who cannot afford to pay. Community benefit includes: charity care, losses related to Medicaid, Medicare, State Children's Health Insurance Program, research costs and community building activities affecting health in the community.

The table and charts are intended to illustrate the relationship between hospital provided charity care/community benefit and exemption revenue loss. For example, the table reveals that \$47.4 million, or 65% of the cumulative revenue loss, stems from hospital organizations providing charity care at a level less than 1.5% of net patient revenue (NPR). Six hospitals, representing a combined estimated loss of \$8.6 million, or 12% of total estimated loss, provided community benefits less than 5% of NPR.

---

## Section VI - Department of Revenue Survey of ORS 307.130 2015 Exemption Applications

---

### *Overview of the Survey*

In 2015, the Department of Revenue (DOR) circulated to all 36 county assessors a survey intended to capture ORS 307.130 exemption application activity for the calendar year. The survey objective was to receive data from assessor offices relating to the work done in processing exemption applications. As discussed at various points in this report, existing standardized annual data relating to exemption under ORS 307.130 is available only at a very high level. The information received in survey responses helps to provide a greater understanding of the exemption. A special thanks to county assessor staff for completing the survey and to Rebecca Hall of DOR for developing, administering and compiling the survey.<sup>33</sup>

The survey requested counties to list each property tax account that applied for exemption under ORS 307.130. The table heading of the survey request form is displayed below.

Program	Account #	Year of Organization's Most Recent Application	Status	Difficulty Level of Application Review	Total RMV	Total RMV Exempted	Denial Reason
---------	-----------	--	--------	--	-----------	--------------------	---------------

The survey provided for sixteen possible program categories in which to categorize each exemption application. For reporting purposes, fourteen categories will be referenced in the analysis and exhibits contained in this report. The fourteen categories are:

- Addiction Services
- Animals
- Community Centers/Gardens
- Education
- Environmental
- Hospitals & Other Medical
- Literary
- Low-Income Housing
- Museums/Symphony/Etc.
- Recreation/Sports
- Retail Stores
- Scientific/Research
- Social Welfare Services
- Other

The column *Total RMV Exempted* provides the real market value of the property tax account specific to the portion of the account value that the exemption applies to. While in most instances the entire value of the account is exempt, there are numerous cases where only a portion of the account is exempt. While some counties provided information for more than just the 2015-16 tax year, reports and analysis contained within this paper will focus entirely on exemption applications received for the 2015-16 tax year data.

Three selections were permitted for categorizing *difficulty level of application review*. The three categories are listed below along with descriptions of each.

- 1) Easy: Reviewed application materials, may have reviewed statute or rule

---

<sup>33</sup> Thanks to DOR as an agency for agreeing to share the survey response data.

- 2) Moderate: Reviewed application materials, statutes and/or rules, researched organization or made site visit to property, requested additional information from organization, reviewed case law, other moderately difficult actions
- 3) Difficult: Reviewed materials, statutes/rules, researched organization and/or property use, requested additional information from organization, performed analysis of information provided by organization, researched case law

## Survey Results

### Exemption Category

The exemption survey was sent to all 36 county assessors, twenty responded. The results provided in the following exhibits are compiled from the data received from the 20 counties that responded.<sup>34</sup>

Exhibit 6-1a displays the number of applications approved, total amount of RMV exempt, percent each exemption category represents and the average exemption amount per account for each category. As displayed in the table, while Hospitals & Other Med. represents 11.5% of the total number of applications received, the category represents just over half of the total value of RMV exempted, this corresponds with the high average RMV exempt value for the category.

Social Welfare Services had the most applications representing 43% of the total while containing just over 20% of RMV exempted. In the survey instructions, Social Welfare Services was defined as “services for the homeless, for children, food services, services for the disabled, victim services, etc.”. In terms of RMV exempt, the Hospitals and Social Welfare Services categories combined represent over two-thirds of the overall total.

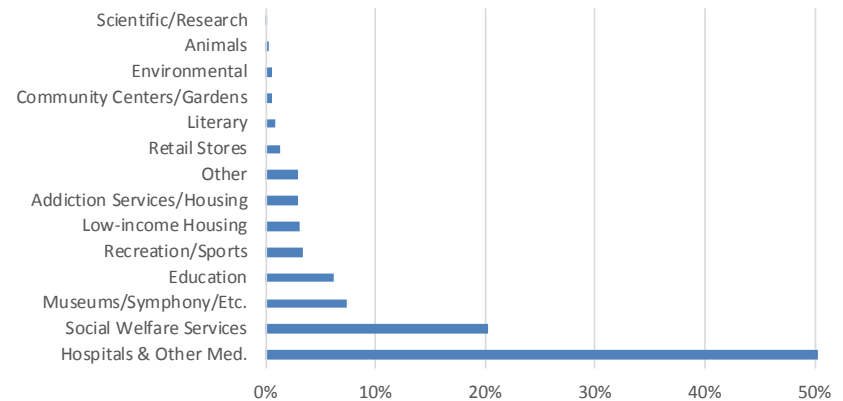
While the data only represents one year’s worth of applications, the data correlates with findings in data LRO received from county assessors for all years. A primary difference between the data presented here and that presented in the previous section of this report, is the DOR survey data does not include estimates of business personal property exempted.

## Exhibit 6-1

### Total RMV Exempt by Exemption Category | TY 2015-16 | Approved Applications

Exemption Category	# of Apps.	% of Total	RMV Exempt	% of Total	Avg. RMV Exempt
Hospitals & Other Med.	116	11.5%	642,417,190	50.2%	5,538,079
Social Welfare Services	436	43.0%	258,274,437	20.2%	592,373
Museums/Symphony/Etc.	61	6.0%	93,537,426	7.3%	1,533,400
Education	51	5.0%	79,298,719	6.2%	1,554,877
Recreation/Sports	27	2.7%	41,669,812	3.3%	1,543,326
Low-income Housing	89	8.8%	40,122,746	3.1%	450,817
Addiction Services/Housing	55	5.4%	38,703,513	3.0%	703,700
Other	63	6.2%	38,033,313	3.0%	603,703
Retail Stores	23	2.3%	17,161,850	1.3%	746,167
Literary	20	2.0%	10,894,859	0.9%	544,743
Community Centers/Gardens	21	2.1%	7,204,778	0.6%	343,085
Environmental	24	2.4%	6,520,108	0.5%	271,671
Animals	17	1.7%	4,014,138	0.3%	236,126
Scientific/Research	10	1.0%	1,852,086	0.1%	185,209
<b>Total</b>	<b>1,013</b>		<b>1,279,704,975</b>		<b>1,263,282</b>

Ex. 6-2 | Percent of Cumulative RMV Exempt by Exemption Type  
2015 Applications

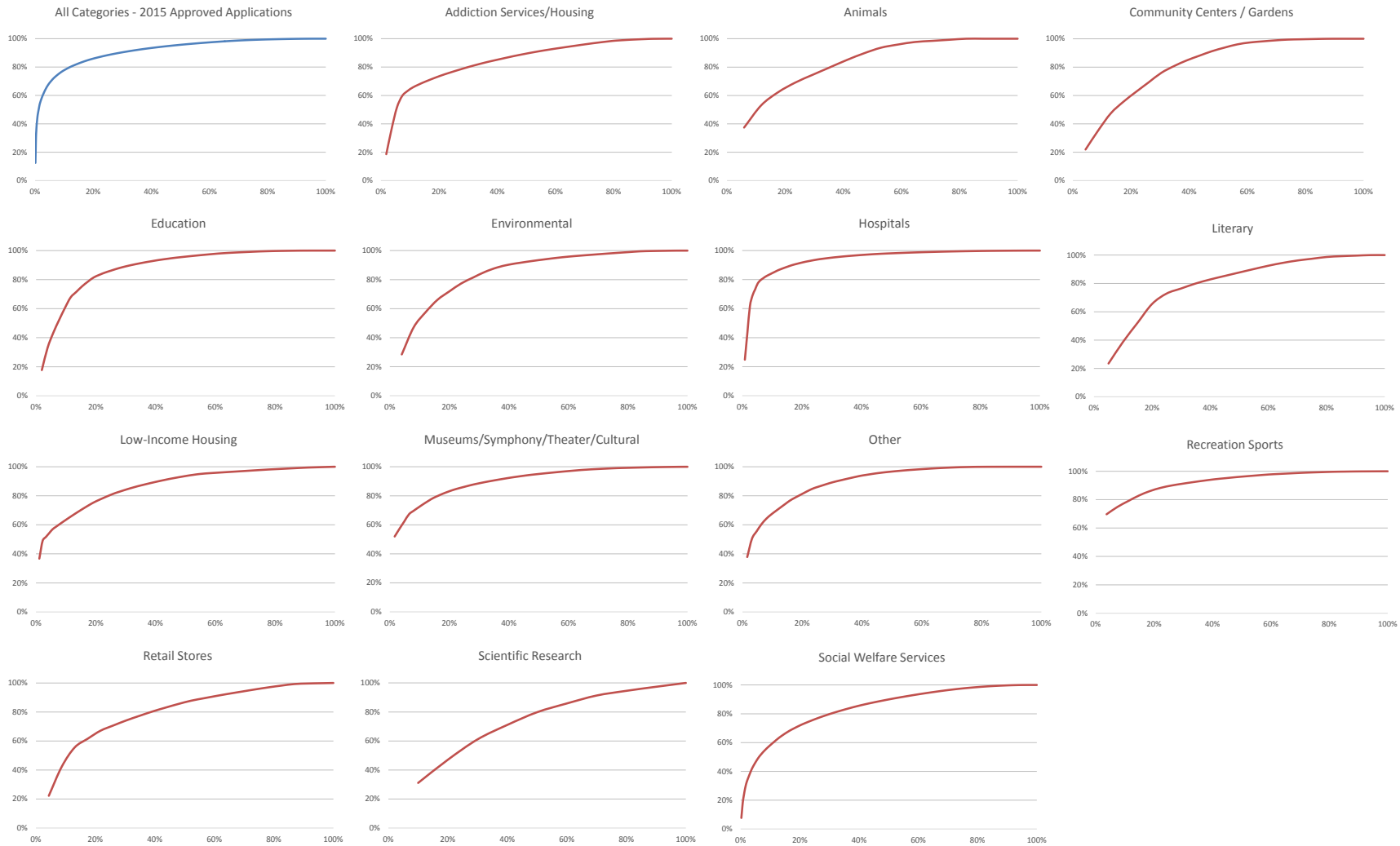


<sup>34</sup> Counties not responding: Clackamas, Crook, Gilliam, Grant, Harney, Klamath, Lake, Lincoln, Sherman, Umatilla, Wallowa and Wheeler

## Exemption Concentration

The following group of graphs illustrate the RMV exempt concentration by category. The horizontal axis displays the percent of total exemption applications approved whereas the vertical axis displays the percent of total RMV exempt. For example, for all categories combined, 80% of the total RMV exempt is derived from about 12% of approved applications. The graphs indicate that while variation in concentration exists between categories, much of the RMV exempt is derived from a relatively small number of applications.

### Exhibit 6-3

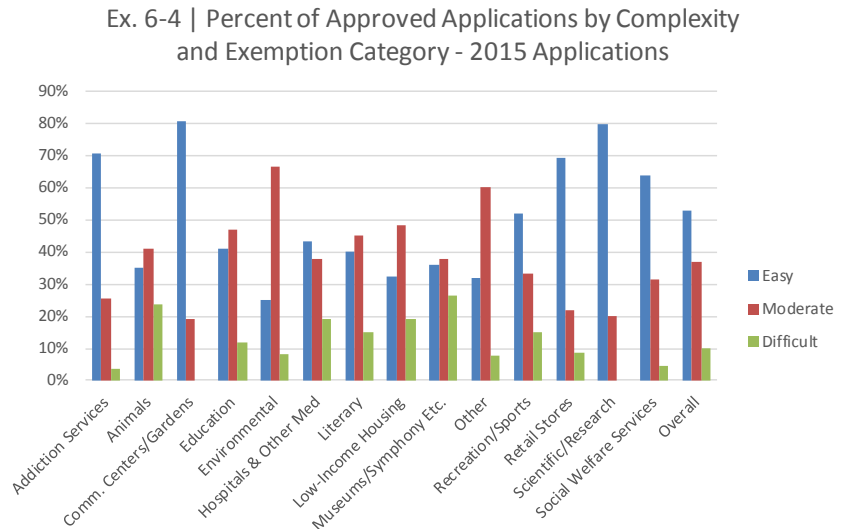




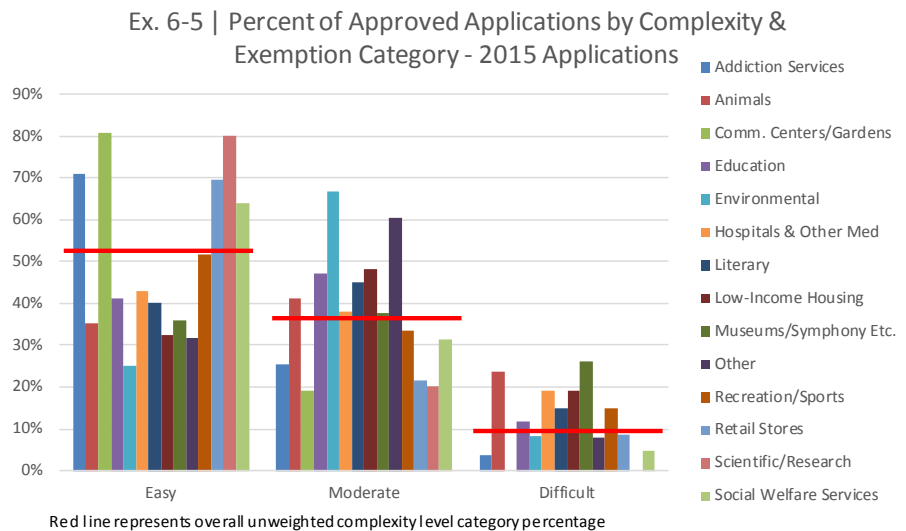
## Application Complexity

The survey asked assessors to report on the complexity in determining exemption qualification. As previously described, the three possible categorical responses were: easy, moderate and difficult.

The chart to the right displays the percent of approved applications by category grouped into easy, moderate and difficult. As an example, for the addiction services category, roughly 71% of applications were categorized as easy, 25% moderate and 4% difficult. The chart illustrates the variation by category in terms of complexity in approving an exemption application. It is important to note that sample size by category was in some cases relatively small, three categories had 20 or fewer applications.



The next chart contains the same information as the chart above but presented in a slightly different format. The chart provides a quick visual comparison of the three complexity groups with each bar representing a different exemption category. The horizontal red line represents the unweighted overall percentage of applications. For all approved applications, about 53% were easy, 37% moderate and 10% difficult.



No statistical significant difference between the amount of RMV exempted and complexity in approving exemption was immediately apparent. Each of the three categories displayed a strong positive skew, meaning there were a number of large RMV exempt accounts in each of the three categories that affect the distribution. For example, the largest RMV exempt account in each category was \$160 million, \$118 million and \$120 million for the easy, moderate and

difficult categories. This compares with averages of \$1.1 million, \$1.1 million and \$2.5 million respectively. After removing large outliers from each category, the lowest average RMV exempt was the *difficult* category.

---

## Section VII - A Brief History of Hospitals & Associated Federal Legislation

---

### *Hospital Development*

In the previous two-hundred years, hospitals experienced a great deal of change and today display little resemblance to their early western world beginnings as monastic wards. Generally, preindustrial hospitals were primarily religious and charitable institutions for tending to the sick rather than institutions providing treatment or cures. Beginning in the mid to late nineteenth century, multiple forces interacted to augment the hospital institution transition from the periphery to the center of medical education and practice. Hospitals were redefined as institutions of medical science rather than social welfare, reorganized with business interests rather than charity in mind and with a focus on professional development as well as treatment of patients (Starr, 1982).

American hospitals were first established in the mid-eighteenth and early nineteenth centuries as charitable institutions serving the poor and mentally ill. Hospitals of that period included houses of religious support where nursing personnel cared for the sick or infirm,<sup>35</sup> as well as direct government supported almshouses where many patients were without homes or the necessary family/social support to receive treatment outside of the almshouse. Generally, middle and upper-class individuals sought medical treatment in their own homes. Physicians and nurses routinely visited patients in their homes where even surgery was routinely performed. Surgical mortality rates were actually higher in hospitals than those performed in the patient's home (Starr, 1982). For these reasons and more, individuals of affluence often viewed hospitals with disdain and as places people went to die (*AHS Hospital Corp v. Town of Morristown*, 2015).

An array of forces led to the development of hospitals including: urbanization of the population and change in family structure, professionalization of nursing, the development of antisepsis/asepsis and its impact upon surgical mortality rates, and developments in response to injuries during military conflicts (Wall, 2016). As hospitals began to provide more specialized and professionalized care, perception of hospitals began to change. For example, by 1900, most surgery was performed within hospitals (Starr, 1982).

A key component of the hospital's development into a trusted provider of medical/surgical care came from both the professionalization of the nursing profession as well as the hospital's role in advancing medical education and science. By 1920, the modern hospital's basic shape had been established. The hospital was central to medical education and physician/nursing career patterns. In urban settings, the hospital had replaced the family as the site for treating serious illness, performing surgery and managing death (Rosenberg, 1987).

---

<sup>35</sup> These early hospitals were referred to as "voluntary" hospitals in that they were financed by voluntary donations rather than by taxes.

As the social origin of hospital patients changed, so too did the services and facilities hospitals offered. While patients of lower socioeconomic status continued to receive care in wards, a shift to include care provided in private or semi-private rooms began to occur for treating middle and high socioeconomic patients. Hospitals also began to emphasize surgery and relief of acute illness which coincided with a reduction in average duration of stay. Recuperating patients began to be discharged earlier, some to newly developing convalescent homes. Emphasis upon surgery and acute care increased employee specialty, thereby increasing operating costs beyond the capacity that charity alone could meet leading to a shift in funding sources (Starr, 1982).

Funding for early American hospitals was primarily charity based. The first American Hospital, the Pennsylvania Hospital, was one-hundred percent charitable and staffed by volunteer physicians. Funding for the hospital was derived from donations from Pennsylvania's elite along with matching funds from the Pennsylvania Assembly (AHS Hospital Corp v. Town of Morristown, 2015). By 1923, for U.S. hospitals as a whole, receipts from patients represented 65.2% of the income of general hospitals with hospitals in the east generally relying to a greater extent upon patient receipts (Starr, 1982).

As funding for hospital operating expenses shifted from charity based to fee based, charitable funding continued to represent the vast majority of the funding required for capital expenditures and other investments. Capital investment allowed hospitals to expand and furnish paying patients with advanced medical facilities; thereby increasing hospital income by increasing demand for hospital services from patients with the ability to pay for such services (AHS Hospital Corp v. Town of Morristown, 2015).

With the advent of the Great Depression, most privately financed hospital construction ceased along with nearly eight hundred hospitals closing in the ensuing decade. Following the release of a nationwide survey that found the number of hospitals in the U.S. to be inadequate and distribution haphazard, the Hospital Survey and Construction Act of 1946 (commonly referred to as the Hill-Burton Program) was enacted (Maryland Law Review, 1979). Hill-Burton provided a formulaic funding allotment from the federal government to the states to be used for financing capital expenditures related to construction, additions, and remodeling of health care facilities.<sup>36</sup> Ultimate recipients of federal funds included states, local governments, public agencies and non-profits (Chung, Gaynor, & Richards-Shubik, 2012). To receive funding, recipients were required to meet two obligations termed the "community service" and "uncompensated care" components which required facilities to be available to all persons residing in the territorial area of the facility and to make available a reasonable volume of hospital services to persons unable to pay (Maryland Law Review, 1979). Specifics regarding the two obligations remained undefined for the twenty-five years following enactment. More formal language was eventually adopted following litigation by indigent persons who had been denied services at Hill-Burton financed hospitals. Over the life of the program, the federal government allocated over \$3.7 billion nominally or \$21 billion in 2010 dollars (Chung, Gaynor, & Richards-Shubik, 2012).

---

<sup>36</sup> The formula was designed to provide lower income states with a relatively larger share of the funds.

The institutional development of the hospital in many ways mirrors general societal and cultural shifts in relations from communal, to associative (Starr, 1982). Communal relations refer to those based upon family or other bonds of loyalty as compared to associative relations which are relations based upon economic exchanges of shared interests. This shift from societal to associative, benevolence to professionalism, has put pressure on hospital exemption qualifications generally. While the underlying legal structure providing for exemption from property taxes has often been broad and lacking in specificity, hospitals and the type of service and medical care they provide has changed greatly over time. This divergence has necessitated an incremental common law approach to industry vicissitudes.<sup>37</sup>

### ***Federal Administrative & Legislative Development***

This section details some of the primary federal administrative and legislative developments regarding hospital exemption from federal income tax. The aforementioned changes and institutional developments of hospitals required the Internal Revenue Service (IRS) to interpret charitable exemption qualification requirements of hospital institutions. As a result, the IRS released multiple formal rulings contributing to continued expansion of hospital exemption case law. In the late 80's - early 90's, formal legislation was introduced and contemplated although not adopted. More recently, the Affordable Care Act (ACA) of 2010 included specific provisions that hospitals are required to meet in order to qualify for tax exemption.

In 1956, the IRS issued its first formal ruling listing the conditions required to be met in order for a nonprofit hospital to be recognized as a tax-exempt charitable organization under IRC 501(c)(3). IRS ruling 56-185 stated that a hospital would be exempt as a charitable organization if it met the following four conditions:

- 1) Organized as a nonprofit charitable organization for the purpose of operating a hospital for the care of the sick
- 2) Operate to the extent of its financial ability for those not able to pay for the services rendered and not exclusively for those able and expected to pay
- 3) Not restrict the use of its facilities to a particular group of physicians and surgeons to the exclusion of all other qualified doctors
- 4) Net earnings must not inure directly or indirectly to the benefit of any private shareholder or individual.

In elaborating upon the second requirement, generally referred to as the “financial ability” requirement, the IRS ruling stated:

It is normal for hospitals to charge those able to pay for services rendered in order to meet the operating expenses of the institution, without denying medical care or treatment to others unable to pay. It may furnish services at reduced rates which are below cost, and thereby render charity in that manner. Furthermore, if it operates with the expectation of full payment from all those to whom it renders services, it does not dispense charity merely because some of its patients fail to pay for the services rendered. (Internal Revenue Service, 1956)

---

<sup>37</sup> The core of Oregon’s charitable property tax exemption, ORS 307.130, dates back pre-statehood.

Three years following IRS ruling 56-185, Treasury's income tax regulations interpreting IRC section 501(c)(3) were significantly revised. The amended regulations stated in part:

The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions.<sup>38</sup> (Joint Committee on Taxation, 1991)

Following the Treasury ruling in 1959 and the creation of Medicare and Medicaid in 1965, the IRS released Revenue Ruling 69-545 in 1969. The 1969 ruling reflected in part the evolving concept of charity as well as the changing dynamic between hospitals and individuals receiving charity care following the creation of Medicare and Medicaid. Ruling 69-545 added a new test known as the "community benefit standard". In light of Treasury's charitable interpretation, Ruling 69-545 focused charitable qualification on a number of factors indicating that the operation of a hospital itself was a benefit to the community. As Treasury defined "charitable" using its generally accepted legal sense, and being that the promotion of health is a generally accepted definition of "charitable", Revenue Ruling 69-545 essentially accepted organizations, whose purpose and activity is providing hospital care, to be organizations promoting health and thus qualified for exemption (Internal Revenue Service, 1969).

During the late 80's and early to mid 90's, multiple pieces of federal legislation regarding hospital exemption qualification were introduced and discussed in committee. Themes of the legislation and discussion included:

- Establishing basic requirements for hospitals to meet such as requiring:
  - Adequate emergency medical services
  - Service to reasonable number of Medicaid/Medicare patients in nondiscriminatory manner
  - Minimum provision levels of charity care or other community benefits
- Requirement of specified level of charity care and/or community benefit provided in relation to a hospital's tax exemption (e.g. - provide 50% or more of the value of the hospital's tax exemption for the tax year on unreimbursed charity care<sup>39</sup>)
- Require hospital to operate a full-time emergency room providing emergency medical services to all members of the public regardless of their ability to pay, with some exceptions
- Require tax exempt hospitals to have Medicaid provider agreement with state in which located
- With exceptions for rural hospitals and hospitals identified as treating a disproportionate share of low income individuals, requirements of devoting at least 5% of gross revenues to charity care or devoting at least 10% of gross revenues to "qualified services and benefits"
- Various reporting requirements relating to required outputs (description of community benefits provided, description of nature and costs of provided uncompensated care, etc.)

---

<sup>38</sup> This language continues to be part of Treasury regulations pertaining to 501(c)(3)

<sup>39</sup> Charity care in this example was defined to include bad debt expenses, care to indigents or near-indigents, costs in excess of Medicaid reimbursements, and if the community had too few charity patients requiring charity hospital care, the costs associated with providing health services designed to improve the health of underserved members of the community.

- Requirement of annual assessments of community healthcare needs and development of plans by hospital to meet those needs
- Rather than disqualifying hospital from exemption, impose an excise tax equal to the charity care/community benefit shortfall.

(Joint Committee on Taxation, 1991) / (Rubinstein, 1997)

While the proposed pieces of legislation were not enacted, similar legislation relating to reporting requirements and community assessment/response plan requirements did become law as part of the ACA of 2010.

As part of the legislative discussion, the House Select Committee on Aging asked the General Accounting Office (GAO)<sup>40</sup> to assess the role of nonprofit hospitals in providing acute medical care to those unable to pay and other provisions of community services. Following an analysis of nonprofit hospitals in five states, GAO concluded:

If the Congress wishes to encourage nonprofit hospitals to provide charity care to the poor and uninsured and other community services, it should consider revising the criteria for tax exemption. Criteria for exemption could be directly linked to a certain level of 1) care provided to Medicaid patients, 2) free care provided to the poor, or 3) efforts to improve the health status of underserved portions of the community. (General Accounting Office, 1990)

---

<sup>40</sup> Name changed to Government Accountability Office in 2004.

---

## Section VIII - Nonprofit Reporting and “Bright Lines”

---

A consistent theme when discussing Oregon’s property tax exemption provided by ORS 307.130 - Literary, Charitable and Scientific Organizations, is the lack of “bright lines” applicable in determining exemption qualification. As discussed in other sections of this report, the qualification standards and interpretations for the 307.130 exemption are articulated in common law and have been refined/developed over time through a case-by-case judicial process.

This section provides a background and examination of nonprofit reporting as required on IRS form 990, the IRS nonprofit Business Master File and Oregon Department of Justice’s form CT-12. The forms are sources of publically available information that is reported in standardized formats under established reporting requirements and guidelines. The examination is intended to provide the reader with some context regarding the applicability of using this publically available information as a reference for establishing “bright line” exemption requirements.

### *Oregon Department of Justice*

The Charitable Activities Section of the Department of Justice (DOJ) supervises and regulates charitable organizations in Oregon. DOJ’s responsibilities include registering new charitable organizations, overseeing annual reporting requirements of charities, closing and dissolving of charities and enforcing statutory requirements. DOJ duties also include investigating and taking legal action to enforce violations of state laws governing charitable organizations.

A primary function of DOJ is maintaining a registry of charitable organizations. Charitable organizations that solicit funds, hold assets, or otherwise do business in Oregon are required to register with DOJ and annually file financial reports with the Department. Annual reporting is met by filing DOJ form CT-12.<sup>41</sup> Form CT-12 includes calculation of two fees paid to DOJ, one based upon a nonprofit’s total revenue for the year and another based upon an organization’s assets or fund balances. Fee revenue is used to fund DOJ charitable organization administrative responsibilities.

Enacted during the 2013 Regular Session, HB 2060 provided the Attorney General with authority to issue an order disqualifying a charitable organization from receiving contributions that are deductible as charitable donations for the purpose of Oregon income tax and corporate excise tax if the Attorney General finds that the organization has failed to expend at least thirty percent of the organization’s total annual functional expenses on program services when those expenses are averaged over the most recent three fiscal years. In addition, organizations receiving a disqualification order may not qualify for exemption from property taxation under ORS 307.130, the Literary, Charitable and Scientific Organizations exemption. However, organizations not subject to the thirty percent threshold include organizations that receive less than fifty percent of the organization’s total annual revenues from contributions or grants, and

---

<sup>41</sup> Depending upon charitable organization’s corporate location/structure, form CT-12, CT-12F, or CT-12S is filed.



certain organizations not required to file IRS 990 returns.<sup>42</sup> Organizations that primarily rely upon fee income, such as health care organizations and private nonprofit universities, will generally not be subject to the thirty percent threshold.

DOJ makes available for download a charitable organizations database that includes organization descriptive information, and select reporting from the CT-12 form and a small number of relevant IRS form 990 lines.<sup>43</sup> Included in the DOJ downloadable database is an organization's employer identification number (EIN) which is a unique identifier that can be used to link Oregon DOJ data with other datasets containing EINs such as the IRS form 990 return data. An exploration of this combined dataset between DOJ and IRS data is presented in this section following the brief description of the available IRS form 990 data.

### *Internal Revenue Service - Form 990 Reporting*

Form 990 is an annual information return required to be filed with the Internal Revenue Service (IRS) by most organizations exempt from the federal income tax under section 501(a) of the Internal Revenue Code. An organization's gross receipts and total assets determine which form an organization is required to file, the 990 being the most comprehensive.<sup>44</sup> Various schedules may be required as part of 990 filing depending upon the characteristics of the nonprofit organization. For example, hospitals are required to file schedule H which includes information specific to hospital organizations. Certain organizations are not required to file annual 990 returns including certain: religious,<sup>45</sup> governmental, political, foreign, or organizations with limited gross receipts. Completed form 990 returns are required to be made publicly available in their entirety.

The IRS statistics of income unit provides downloadable annual extracts of selected financial data reported on forms 990, 990-EZ and 990-PF. The IRS extract files contain selected return information from nearly all large nonprofit organizations (measured by gross receipts / assets) plus a random sample of smaller organizations stratified and weighted by asset level. While the extract files do not contain comprehensive listings of all individual line items on the return or associated schedules, a substantial amount of information is still available allowing for comparison and analysis.

The final source of information used in the analysis of this section of the report is the IRS exempt organizations business master file (BMF) extract. The BMF includes cumulative information on exempt organizations extracted monthly and available by state and region. Included in the downloadable BMF, and referenced in the following analysis, is the national taxonomy of exempt entities (NTEE) code which is a categorization variable allowing for the categorization of organizations into such categories as: Arts, Culture and Humanities, Housing,

---

<sup>42</sup> These organizations often own/lease greater amounts of real and personal property than other nonprofit organizations and subsequently receive a greater direct benefit from property tax exemption.

<sup>43</sup> Relevant to computing the HB 2060 (2013) thirty percent threshold requirement.

<sup>44</sup> Organizations with gross receipts  $\geq$  \$200,000 or total assets  $\geq$  \$500,000 at the end of the tax year are required to file the full 990 return.

<sup>45</sup> Such as: a church, interchurch organization, church-affiliated organization engaged in managing funds or retirement programs and church affiliated or operated schools below college level.

Shelter, Health - General and Rehabilitative, etc. In the following analysis, NTEE category codes were further categorized into the categories used in the other sections of this report.

### **Nonprofit Comparisons**

Foundational data for the following discussion, including the presented charts, figures and examples, is the aforementioned IRS 990 return filings, IRS BMF data and Oregon DOJ data.<sup>46</sup> The intent of the following examination of IRS and DOJ nonprofit data is to explore similarities and differences between various nonprofit organizations viewed categorically, and to some extent, at the individual nonprofit level. The following examination of nonprofits is limited to those nonprofit organizations included in DOJ's database that were able to be matched, using the employment identification number, with IRS data. As previously described, this process emphasizes structure of larger nonprofits as larger nonprofits are subject to greater reporting requirements.<sup>47</sup>

While values reported on 990 returns provide the ability to quickly compare reported figures between individual nonprofits and categories of nonprofits, debate exists in regards to whether reported values provide a valuable basis for computing universal performance metrics.<sup>48</sup> The nonprofit community expresses current limited availability of performance measurements and the need to further develop such metrics.<sup>49</sup> The following information is meant to illustrate the variability in sources of revenue, expenditure allocations, and comparative ratios between categories and individual nonprofit organizations. The presentation of this information is not intended to reflect organization performance.

---

<sup>46</sup> Links to downloadable data: [IRS 990 data](#), [IRS BMF data](#) and [DOJ](#)

<sup>47</sup> As this report is focused upon property tax exemption/taxation of nonprofits, underrepresentation of the smallest nonprofits is not too concerning as most of the property valuation that receives exemption is owned/leased by larger nonprofit organizations.

<sup>48</sup> See (Moving Toward an Overhead Solution, 2016) at [overheadmyth.com](#) for an example of the discussion.

<sup>49</sup> As stated in the Oregon Nonprofit Association's State of the Nonprofit Sector in Oregon 2011 report, "The overwhelming majority of Oregon's nonprofits do not use existing tools and methods to describe and measure their contribution to society at large, neither in qualitative nor in quantitative or monetary ways." (Schroer, Medora, Mukerjee, & Wallinger, 2011)

**Exhibit 8-1**

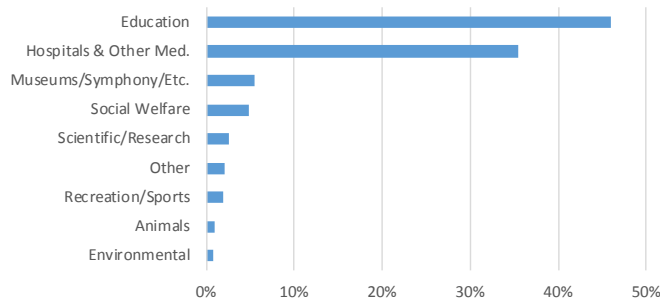
**Comparisons of Nonprofit Revenues and Expenses by IRS Nonprofit Categorization**

	Animals	Education	Environme ntal	Hospitals & Other Med.	Museums/ Symphony /Etc.	Other	Recreation /Sports	Scientific/ Research	Social Welfare	
<b>Revenues (%'s of Total Revenue)</b>										
Contributions & Grants	70%	26%	79%	12%	56%	85%	26%	66%	67%	
Program Service Revenue	21%	61%	15%	79%	25%	7%	55%	17%	21%	
Investment Income	4%	10%	4%	5%	13%	7%	14%	16%	6%	
Other Revenue	5%	2%	2%	3%	6%	1%	5%	1%	6%	
<b>Expenses (%'s of Total Expenses)</b>										
Grants & Similar Amts. Paid	8%	19%	17%	5%	4%	59%	16%	22%	37%	
Benefits Paid to or for Members	0%	0%	0%	0%	0%	0%	0%	0%	0%	
Salaries, Compensation, Emp. Benefits	41%	46%	32%	43%	45%	16%	38%	38%	28%	
Professional Fundraising Fees	1%	0%	0%	0%	0%	0%	0%	0%	0%	
Other Expenses	50%	34%	51%	52%	50%	24%	45%	39%	34%	
<b>Comparative Ratios</b>										
(Revenue - Expenses) / Total Expenses	18%	14%	12%	10%	16%	26%	18%	12%	17%	
Prgm. Serv. Expense as % of Tot Funct. Expense	82%	88%	84%	86%	79%	89%	88%	82%	89%	
Prgm. Serv. Expense as % of Tot Revenue	70%	75%	75%	82%	70%	74%	75%	72%	79%	
Prgm. Serv. Expenses as % of Net Assets	48%	33%	47%	85%	22%	39%	26%	34%	53%	
Land, Buildings & Equipment <sup>1</sup> (\$ millions)	\$1,064	\$54,088	\$841	\$41,575	\$6,480	\$2,482	\$2,262	\$3,001	\$5,747	
% of Total Land, Buildings & Equipment	1%	46%	1%	35%	6%	2%	2%	3%	5%	

<sup>1</sup>Book value as reported on IRS 990: basis - accumulated depreciation

Source: Amounts sourced from IRS Statistics of Income form 990 Extract, Represents Most Recent Year's Nonprofit Reporting

Ex. 8-2 | Booked Value of Land, Buildings & Equipment: Categorical % of Total



displayed.

**Comparative Ratios**

The four rows of the table listed under the heading “comparative ratios” reflect common ratios used in analyzing nonprofits. Row 1: *(Revenue - Expenses) / Total Expenses* is similar to profit margin and reflects in percentage terms the amount of revenue remaining after expenses divided by total expenses. A higher percentage reflects higher levels of net revenue as a percentage of total expense. Row 2: *Program Service Expense as % of Total Functional Expense*<sup>51</sup> reflects the percentage of expenses that are dedicated to activities that

**Reading the Table**

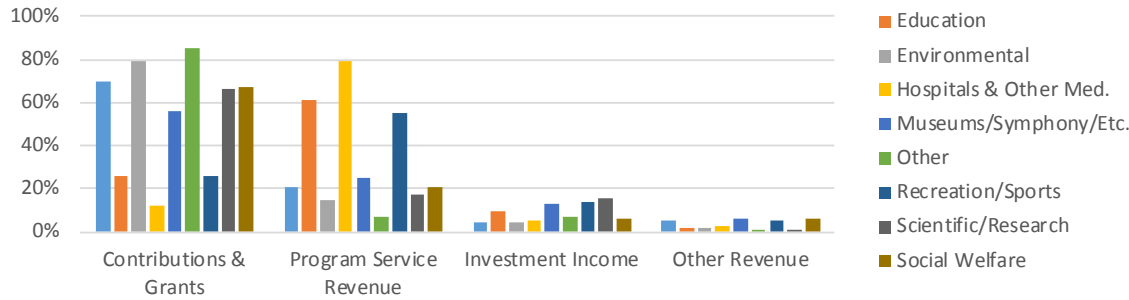
The table to the left details percentage of total figures related to revenues and expenses of nonprofits by nonprofit category as categorized in IRS BMF dataset. The first grouping of rows displays percentage of total revenues by row category. For example, the first figure reported in the upper left column/row, 70%, reflects that 70% of total summed revenue for all nonprofits in the “Animals” category are derived from “contributions & grants”.<sup>50</sup> Information in the table reflect sum totals for all values by category, that is, the percentages are not weighted in any way and as a result larger nonprofit organizations may exert greater influence upon the percentages

<sup>50</sup> See *IRS Instructions for Form 990 Return of Organization Exempt From Income Tax* for explanation of terms <https://www.irs.gov/pub/irs-pdf/i990.pdf>

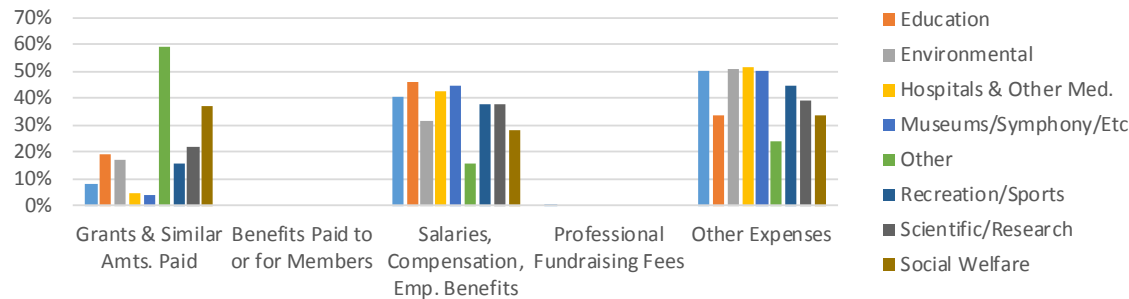
<sup>51</sup> Eligibility ratio used by Oregon Department of Justice to determine eligibility for an organization to receive tax deductible donations.

further the organization's exempt purposes as a percentage of total organization expenses. Row 3 is self-explanatory. Row 4: net assets reflects total assets minus total liabilities.

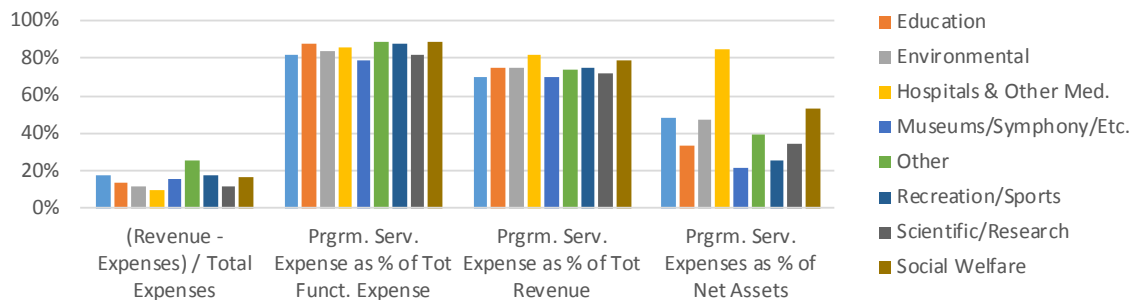
Ex. 8-3a | Revenues



Ex. 8-3b | Expenses



Ex. 8-3c | Comparative Ratios

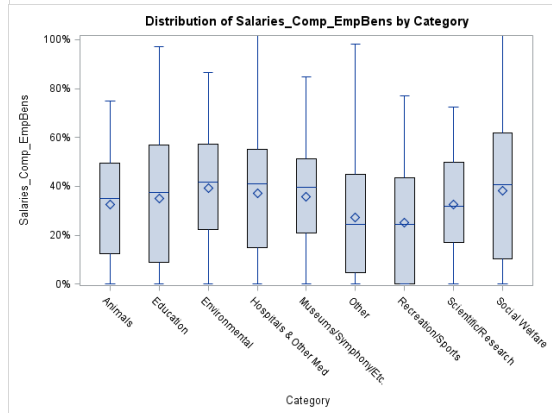
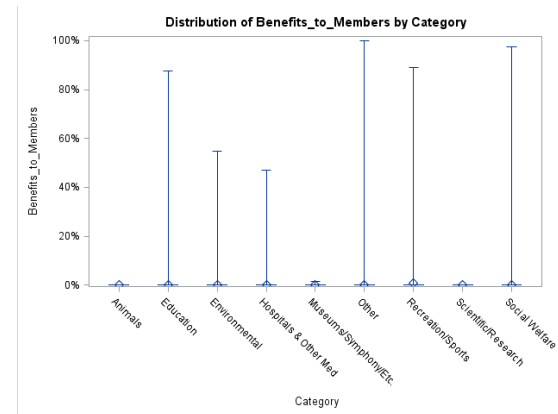
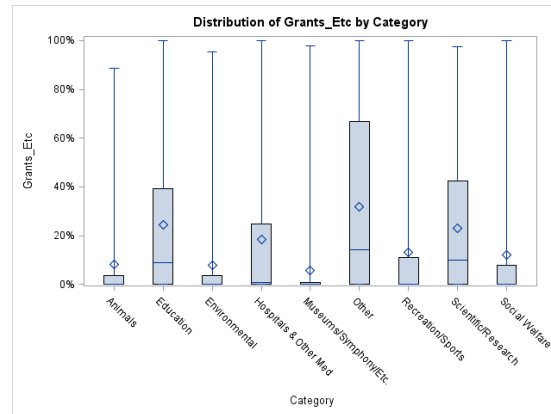
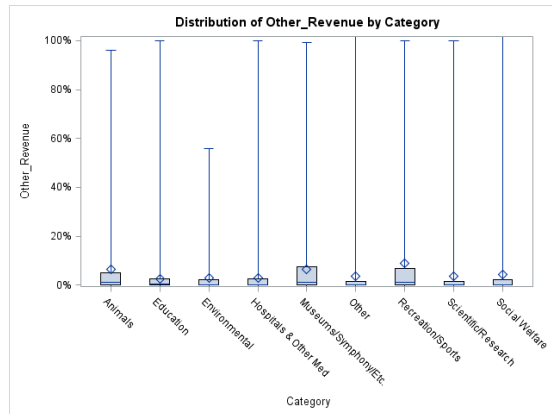
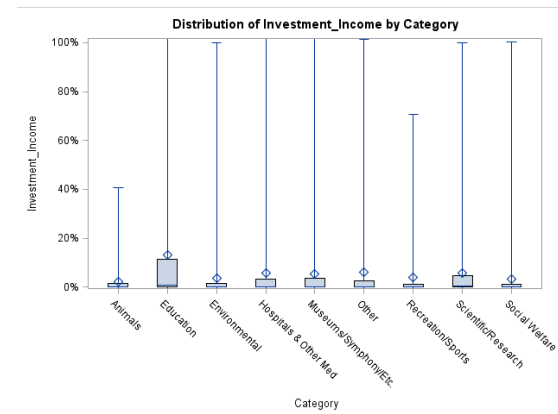
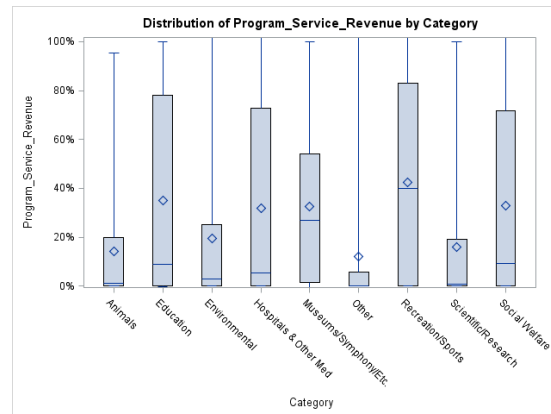
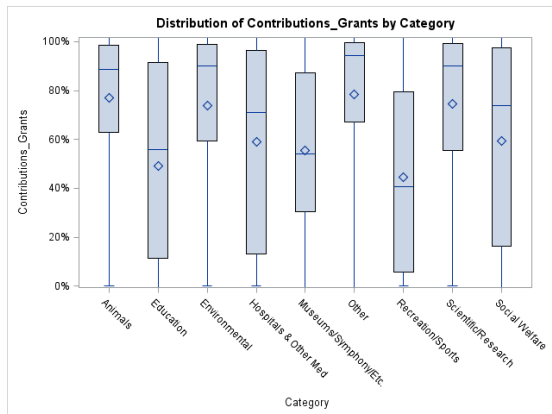


The table also includes a row listing (\$millions) reported land, buildings and equipment. It is important to note that the land, buildings and equipment amount reported are booked values which reflect an organization's basis in the property and accumulated depreciation. Booked value does not necessarily correspond with valuation of property for tax purposes and thus should be used for comparison purposes between categories, but not for estimation of assessed value exempted. Also of note, religious organizations are generally not required to file form 990 so are not reflected in the table. The column charts to the left are visual representations for the information contained within the table.

General themes that can be identified through a quick visual analysis of the column charts include:

- Variation exists between categories in terms of where revenues are derived, and expenses
- Revenue is primarily sourced from contributions and grants or program services, however, different categories rely more heavily on one or the other
- Investment income and other revenue combined generally make up less than 20% of revenues
- Generally, most expenses are classified as other expenses or are related to salaries, compensation and benefits for employees
- At the categorical level, the comparative ratios reflect a greater level of consistency with the greatest amount of variability existing when including net assets in the ratio.

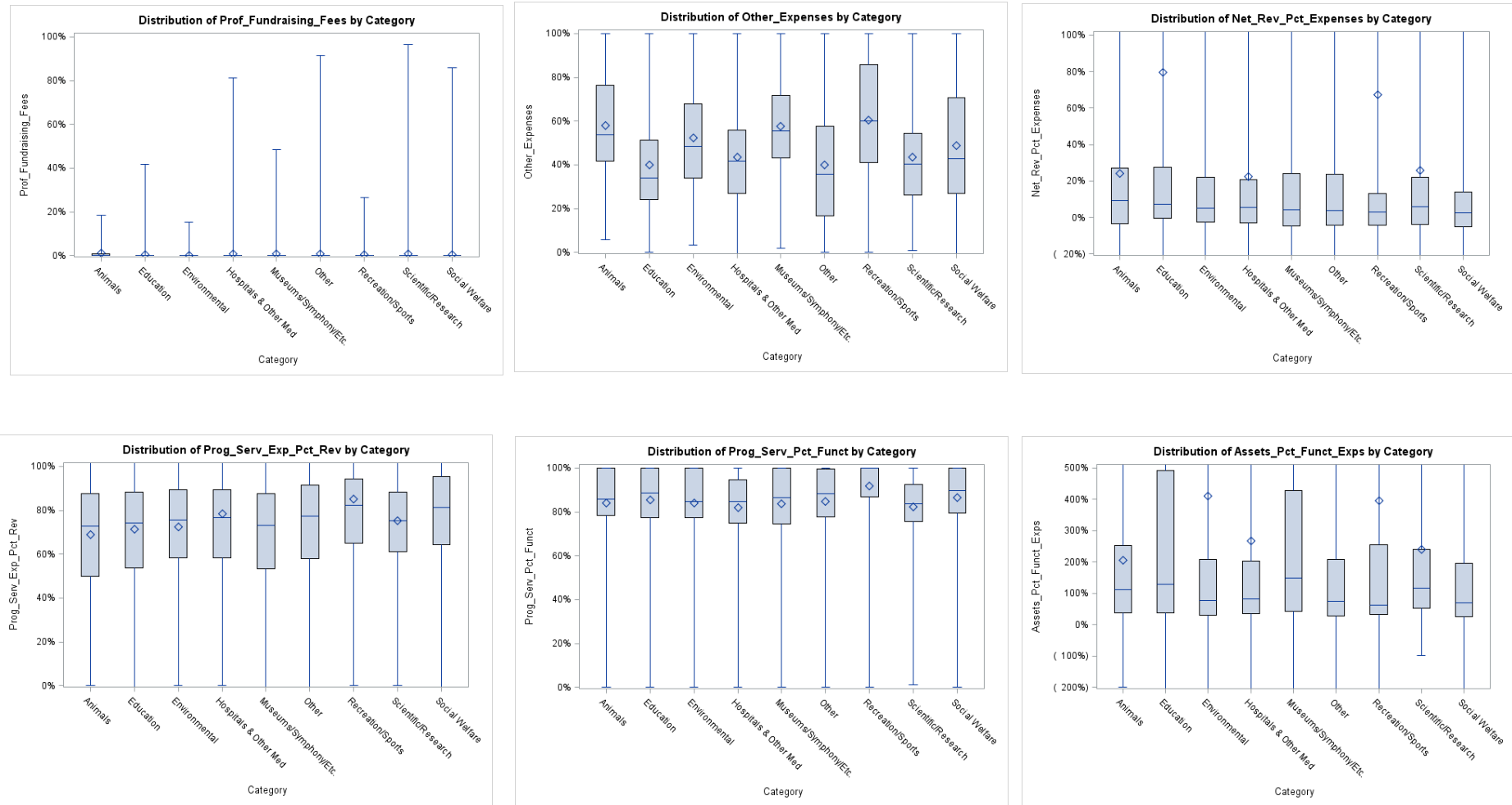
**Exhibit 8-4**



While the table and charts displayed on the previous two pages display summed results at the category level, the boxplots on this page offer a quick visual analysis of the distribution of each percentage ratio contained within the aforementioned table for each nonprofit organization within each category. As displayed in the boxplots, some variables display less variation by nonprofit organization whereas greater variation exists for other variables, both between and within categories. The category median is represented by the line dividing the box, the mean is represented by the rhombus. To increase visualization ability, extreme outliers may fall outside of the vertical axis which is fixed at 0-100% for nearly all the tables. The box of the boxplot represents interquartile groups 2 and 3, or said another way, 50% of the nonprofit organizations within the category listed, have values within the box portion of the boxplot with the other 50% residing within space between the lower or upper whisker and the box.

One of the consistent themes in discussions regarding Oregon’s nonprofit charitable property tax exemption has been the desire for “bright lines” to be established that would determine exemption qualification. As displayed in this section’s tables and charts, variation of values reported on IRS 990 returns exists between and within categories of nonprofits. This contributes to the complexity in identifying clear exemption eligibility bright lines using data reported on IRS form 990.

**Exhibit 8-5**



---

## Section IX - Experience of other States

---

Oregon is not unique in exempting charitable nonprofit organizations from property taxation. All 50 states have, in some form, a property tax exemption available to nonprofit charitable organizations. Some exemptions are available through clauses in their state constitution, whereas others have codified the exemption in statute. Breadth of exemption varies by state but nonprofit status alone is generally not sufficient to qualify for exemption. In most instances, property must be owned and used by a charitable organization in the organization's charitable work to qualify for exemption with property being held for non-charitable use generally not exempt. Oregon is also not unique in encountering administrative difficulties relating to a charitable property tax exemption. Following is a description of four states that have encountered administrative and policy issues with their property tax exemption structure, and each state's effort to address the issue. Also included is exemption background for states surrounding Oregon.

### *Pennsylvania*

The development of Pennsylvania's exemption from property taxation for charitable entities shares some similarities with Oregon's policy and structure. An examination of Pennsylvania's relatively recent experience, both judicially and legislatively, relating to the exemption may be helpful in Oregon's own examination. As will be described in greater detail, Pennsylvania's legislature is engaged in an ongoing process that is attempting to balance the revenue needs of local governments, while supporting the intent and outcomes of nonprofit charitable organizations.

Authority to provide property tax exemption is derived from Pennsylvania's constitution. Article VIII, Section 2 (a) & (v) state:

The General Assembly may by law exempt from taxation:

(v) Institutions of purely public charity, but in the case of any real property tax exemptions only that portion of real property of such institution which is actually and regularly used for the purposes of the institution.

Prior to the 1874 Constitution the Legislature, by special act, had the authority to relieve from taxation what property it saw fit, regardless of whether the property was organized for charitable, religious or corporate and/or private gain (*Mesivtah Eitz Chaim of Bobov Inc v Pike County Board of Assessment Appeals*, 2012). Relevant court cases of the late 19th century describe an environment in which "legislative habit [of providing exemption] had grown into a great abuse" and provided exemptions representing an "obnoxious feature of favoritism" (*Mesivtah Eitz Chaim of Bobov Inc v Pike County Board of Assessment Appeals*, 2012). The 1874 constitutional language had the effect of limiting legislative authority to create tax exemptions.

The Pennsylvania constitution provides the legal basis for exemption and can be fundamentally separated into two questions, 1) is the organization an institution of purely public charity and 2)

is the real property of such institution actually and regularly used for the purposes of the institution. In subsequent years following the constitutional language, multiple court decisions led to the case law development on interpreting what qualifies an institution as being purely public charity. Case law culminated with the court's development of a five-part test referred to as the HUP test in recognition of the underlying 1985 court case Hospital Utilization Project v. Commonwealth. The court concluded that an entity qualifies as a purely public charity if it possesses the following characteristics:

- a) Advances a charitable purpose
- b) Donates or renders gratuitously a substantial portion of its services
- c) Benefits a substantial and indefinite class of person who are legitimate subjects of charity
- d) Relieves the government of some of its burden and
- e) Operates entirely free from private profit motive.

Commentators following the court's instituting of the HUP test describe a period of increased litigation by taxing bodies and confusion among nonprofit organizations (Zateeny, 2012). The general consensus was that the HUP test reflected a more stringent interpretation of what it means to be a purely public charity. Series of court decisions and higher court corrective decisions created an atmosphere of uncertainty that prompted the Pennsylvania Legislature to develop and enact the Institutions of Purely Public Charity Act (Act 55) in 1997. Act 55 codified the HUP test but added statutory standards for meeting each of the test's five components. Act 55 also created new procedural provisions for challenging the tax exempt status of nonprofit organizations.

Act 55's codification of the HUP test was extensive. Nearly 3,000 words were dedicated to defining qualification standards for the five components. The act in its entirety was just under 8,000 words (over 20 pages). A recent Supreme Court decision limited much of Act 55's authority over exemption qualification. In *Mesivtah Eitz Chaim of Bobov Inc v. Pike County Board of Assessment Appeals*, 2012, the Supreme Court held that:

Legislation may codify what is intended to be exempted, but it cannot lessen the constitutional minimums by broadening the definition of "purely public charity" in the statute...While the General Assembly necessarily must attempt to interpret the Constitution in carrying out its duties, the judiciary is not bound to the "legislative judgment concerning the proper interpretation of constitutional terms."

This decision effectively required nonprofit organizations to first meet the HUP test as established by the court and informed by case law, and then subsequently meet the requirements of Act 55. In practice, if an organization meets the court's HUP test, it is expected the organization will also meet the Act 55 statutory requirements as they are more lenient. A proposed constitutional amendment providing the Legislature with authoritative power in defining institutions of purely public charity stalled during the 2015 legislative session.

While Pennsylvania differs from Oregon in terms of exemption language being part of Pennsylvania's constitution, the statutory changes contained in Act 55 reflect the unanimous support of the Pennsylvania legislature in its attempt to establish a more consistent manner in



which the case law established HUP factors would be applied. For brevity sake, a brief overview describing the legislative codification for each of the five HUP factors is presented. The purpose of the overview is to provide context for what has been done in Pennsylvania in an effort to establish a more consistent qualification system for nonprofit charitable entities.

- 1) Charitable purpose - Requires institution to advance a charitable purpose. To satisfy criterion, institution must be organized and operated primarily to fulfill any one of the following purposes:
  - a. Relief of poverty
  - b. Advancement and provision of education (includes postsecondary)
  - c. Advancement of religion
  - d. Prevention and treatment of disease or injury, including mental retardation and mental disorders
  - e. Government or municipal purpose
  - f. Accomplishment of a purpose which is recognized as important and beneficial to the public and which advances social, moral or physical objectives.
- 2) Private profit motive - Requires institution to operate entirely free from private profit motive. Criterion is satisfied if institution meets all of the following:
  - a. Neither net earnings nor received donations may inure to the benefit of private shareholders or other individuals
  - b. Institution applies or reserves all revenue in excess of expenses in furtherance of its charitable purpose or to funding of other charitable institutions
  - c. Compensation and benefits of any director, officer or employee is not based primarily upon the financial performance of the institution
  - d. Institution adopts as part of its articles of incorporation provision prohibiting use of any surplus funds for private inurement in event of a sale or dissolution.
- 3) Community service - Requires institution to donate or render gratuitously a substantial portion of its services. Criterion is satisfied if institution meets any of seven specified requirements. The seven requirements are rather complex but are generally based upon various quantification schemes to determine whether sufficient benefit is being received by recipients of institution's provided goods or services.
- 4) Charity to persons - Requires the institution to benefit a substantial and indefinite class of persons who are legitimate subjects of charity.
  - a. Defines "legitimate subjects of charity" as individuals who are unable to provide themselves with what the institution provides them
  - b. Defines "substantial and indefinite class of persons" as persons who are not predetermined in number. Specifically recognizes that the use of admissions criteria and enrollment limitations by educational institutions does not constitute predetermined membership or arbitrary restrictions on membership.
- 5) Government service - Requires institution to relieve the government of some of its burden. Criterion is satisfied if institution meets any of the six specified requirements:
  - a. Provide a service to the public that the government would otherwise be obliged to fund or to provide directly or indirectly

- b. Provide services in furtherance of its charitable purpose which are either the responsibility of the government by law or by which historically have been assumed or offered or funded by the government
- c. Receives on a regular basis payment for services rendered under a government program if payments are less than the full costs incurred by institution
- d. Provides a service to the public which directly or indirectly reduces dependence on government programs or relieves or lessens the burden borne by government for advancement of social, moral, educational or physical objectives
- e. Advances or promotes religion and is owned and operated by a corporation or other entity as a religious ministry
- f. Has a voluntary payment in lieu of tax agreement (PILOT)

In addition to the statutory codification and elaboration of the HUP test, Act 55 included language limiting lobbying and campaign activities of qualified purely public charity institutions. These limitations share some similarity with IRS 501(c)(3) specifications. Act 55 also included language limiting purely public charity institutions from unfairly competing with small businesses and required disclosure of specified information applicable to specified institutions over a certain size.

## Minnesota

The experience in Minnesota provides a recent example of a state codifying in statute what was previously a case law interpretation regarding how property tax exemption for organizations of purely public charity was administered. From an administrative viewpoint, Minnesota also offers insight into other possible ways in which to structure the on-going administration of a charitable exemption. Following is a brief discussion of Minnesota's exemption policy both before and after statute codification and Minnesota's administration of the exemption.

Similar to many states including Oregon, the base for Minnesota's property taxation is broad, taxation being the rule and exemption the exception. To receive exemption, the property qualifying for exemption must be owned by an exempt institution, used for an exempt purpose and ownership must be reasonably necessary to further the mission of the exempt organization (Minnesota Department of Revenue, 2016).

Minnesota's codification (with modification) of case law was signed into law in May of 2009. The impetus for the legislative changes can largely be traced back to the December 2007 decision of the State Supreme Court in *Under the Rainbow Childcare Center v. Goodhue County* (Minnesota Council of Nonprofits, 2016). Nonprofit advocates described the decision as a decision that "narrowed the definition of charity that developed in case law throughout the previous 35 years, since the North Star decision" (Minnesota Council of Nonprofits, 2016). However, an examination of the text of the *Rainbow Childcare v. Goodhue County* decision describes a more nuanced interpretation.

In the 1975 decision, *North Star Research Institute v. Hennepin County*, the Supreme Court of Minnesota presented what would become interpreted and referenced as a six factor test used to determine whether an organization was designated as "purely public charity" and thus able to qualify for property tax exemption of the same name.<sup>52</sup> The court described the six factors as factors having been assessed in previous cases but emphasized the factors did

not establish six mandatory elements that must be considered and satisfied in every charitable exemption case (Under the *Rainbow Childcare Center v. Goodhue County*, 2007).

In this way, none of the six factors were viewed as individual requirements of which all had to be met in order for an organization to receive exemption. The six factors were:

- 1) Whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward
- 2) Whether the entity involved is supported by donations and gifts in whole or in part
- 3) Whether the recipients of the "charity" are required to pay for the assistance received in whole or in part
- 4) Whether the income received from gift and donations and charges to users produces a profit to the charitable institution

---

<sup>52</sup> An important distinction between Minnesota's charitable property tax exemption and Oregon's is that Minnesota has a specific separate exemption for hospitals. In Oregon's case, roughly 64% of real market value exempted under ORS 307.130 is derived from Hospitals, Addiction and other Medical nonprofit organizations.

- 5) Whether the beneficiaries of the “charity” are restricted or unrestricted and, if restricted, whether the class of persons of whom the charity is made available is one having a reasonable relationship to the charitable objectives
- 6) Whether dividends, in form or substance, or assets upon dissolution are available to private interests.

In *Rainbow Childcare Center v. Goodhue County* (2007), the court held that factor three was indeed an essential factor that must be met in order for an organization to be designated as purely public charity and receive exemption. This decision led to concern from nonprofits regarding exemption qualification whereas the Minnesota Department of Revenue viewed the decision as rather inconsequential in that the decision represented little to no change from what had been existing standard assessment practices (Minnesota Department of Revenue, 2016).

Following the 2007 court decision, the legislature passed legislation providing a moratorium on assessment practices for institutions of purely public charity and required a survey of county assessment practices in regards to institutions of purely public charity. The 2008 survey found “it... very clear that there are many inconsistencies with regards to assessment practices of institutions of purely public” (Minnesota Department of Revenue, 2009). In response, discussion between nonprofit organizations and Department of Revenue ensued with the intent of providing bill language to the Legislature that would clarify eligibility and uniformity standards for the exemption. Various groups subsequently worked to develop bill language including House and Senate Legislative staff, Department of Revenue staff, representation from Minnesota Association of Assessing Officers, and numerous groups and organizations representing the nonprofit community. The developed legislative language ultimately became part of omnibus legislation passed in 2009.<sup>53</sup>

The new language modified and codified the six factors developed by case law with the intent of providing clarity and consistency in the administration of the purely public charity exemption. As stated in the measure

The purpose of ... is not to contract or expand the definition of “institutions of purely public charity” but to provide clear standards that can be applied uniformly to determine eligibility for exemption from property taxation.

The new law requires an organization to satisfy all six of the factors, however, the legislation allows an organization that fails to satisfy factors 2, 3 or 5 to still qualify for exemption so long as the organization provides “reasonable justification” for its failure in meeting the factors. The burden of proving “reasonable justification” is placed upon the nonprofit applying for exemption with authority provided to the assessor to request additional information needed in determining “reasonable justification”. Factors 1, 4 and 6 are required to be met in all cases and are assumed to have been met if an organization is organized as a qualified IRS 501(c)(3). Factors 1, 5 and 6 are substantively the same as those developed in case law, factors 2, 3 and 4 were modified by the legislation and read as follows:

---

<sup>53</sup> Minnesota Laws 2009, Chapter 88, Article 2, section 4.

- 2) Whether the institution of public charity is supported by material donations, gifts, or government grants for services to the public in whole or in part
- 3) Whether a material number of the recipients of the charity receive benefits or services at reduced or no cost, or whether the organization provides services to the public that alleviate burdens or responsibilities that would otherwise be borne by the government
- 4) Whether the income received, including material gifts and donations, produces a profit to the charitable institution that is not distributed to private interests.

As required in the omnibus legislation, in March of 2010, the Minnesota Department of Revenue released a bulletin citing relevant terminology and providing examples of what may qualify as “reasonable justification” for failure to satisfy factors 1, 4 or 6. The legislation requires assessors to “give due consideration to the bulletin in assessing property requesting an exemption”.<sup>54</sup> Each case for “reasonable justification” is to be examined individually based upon the unique facts of the case leading to some degree of ambiguity in determining “reasonable justification”. The DOR bulletin explains reasonable justification to be viewed in terms of a choice not to do something (Minnesota Department of Revenue, 2010). That is, if the organization chooses not to satisfy a factor, then “reasonable justification” is not met, however, if the organization is unable to satisfy the factor due to some reason other than organization choice, then “reasonable justification” is reached.

Following the enactment of the legislative changes in 2009, the Minnesota Department of Revenue formed an advisory review board to provide nonbinding advisory opinions on purely public exemption cases. Decisions of the review board are nonbinding in that the review board has no formal authority to grant or deny exemptions. The advisory board is comprised of members of the Minnesota Council of Nonprofits, the Department of Revenue and the Minnesota Association of Assessing Officers. Board members serve voluntarily and are not compensated or reimbursed for their expenses.

Either the assessor or applicant for exemption may request that the board review the application. All documentation appropriate to the organization’s application must accompany written review requests. Based on each review request, the Department of Revenue then determines which application reviews will be heard before the board. The board meets quarterly to discuss and review requests. Assessor and applicant are not typically asked to appear in person before the board. Within 60 days following board discussion and review, and the informal opinion of the board is released. Assessors are encouraged to carefully consider the board’s decision when making a determination in whether to follow the board’s advice in either accepting or denying the organization’s application for exemption. Again, the board has no authority to approve or deny exemption applications, that authority rests with the assessor and the courts.

To date, the advisory review board is still active and generally reviews about two to three application cases per quarter. The board reviews organizations application documents to determine whether the organization meets the six factors and if not, whether “reasonable justification” for not meeting the factors is provided. The board also determines whether the

---

<sup>54</sup> See Chapter 88, Article 1, Section 53 of 2009 Laws of Minnesota

property meets the ownership and use tests. Some of the areas the board has reviewed in the past include:

- Membership fees and whether or not they are considered “donations”
- Use of property fulfilling the organization’s mission
- In cases of property being leased, how tenant uses the property
- Whether anyone is benefiting from the organization’s use of the property.

(Minnesota Department of Revenue, 2016)

### *New Jersey*

New Jersey is included in the discussion of other states because the state represents a growing theme in the nonprofit property tax exemption discussion relating to nonprofit hospitals/medical groups and their property tax exemption status. As was discussed in hospital history section of this report, the organizational structure, services provided, revenue stream, marketplace, and compensation of employees for hospitals has changed considerably in the previous 100 years. These incremental changes have over time led to more discussion and friction regarding hospital qualifications for charitable property tax exemptions.

Hospital exemption from property tax and definitional language is provided under N.J.S.A 54:4-3.6. To qualify for exemption, relevant case law requires the meeting of a three prong test:<sup>55</sup>

- 1) The owner of the property must be organized exclusively for the exempt purpose
- 2) Its property must be actually and exclusively used for the tax-exempt purpose, and
- 3) Its operation and use of its property must not be conducted for profit

In June of 2015, the Tax Court of New Jersey decided against AHS Hospital Corp v. Town of Morristown. The court’s decision to rule against exemption qualification was predicated upon its interpretation of AHS hospital failing prong three of the three prong test. Stated in the decision:

Here, the court is unable to discern between the non-profit activities carried out by the Hospital on the Subject Property, and the for-profit activities carried out by private physicians. Accordingly, the Hospital’s application for tax exemption must be denied.

The court went on to question the qualification for property tax exemption of all nonprofit hospitals in the state assuming other hospitals were organized and operated similarly to the hospital in question.

Accordingly, if the property tax exemption for modern nonprofit hospitals is to exist at all in New Jersey going forward, then it is a function of the Legislature and not the courts to promulgate what the terms and conditions will be. Clearly, the operation and function of modern nonprofit hospitals do not meet the current criteria for property tax exemption under [applicable statute] and the applicable case law.

Following the ruling, tax appeals from more than a dozen municipalities were filed. Partially in response to the decision and appeals, in January of 2016 the New Jersey Legislature passed S

---

<sup>55</sup> Three prong test was originally described by the New Jersey Supreme Court in Paper Mill Playhouse v. Millburn Township (1984) but is referenced here from AHS Hospital Corp v. Town of Morristown (2015).

3299. The legislation was designed to preserve property tax exemption for all nonprofit hospitals, require specified in lieu of property tax fees to be paid,<sup>56</sup> and establish the Nonprofit Hospital Community Service Contribution Study Commission which would study the implementation of the bill and submit reports. However, New Jersey Governor Chris Christie pocket vetoed the legislation. Governor Christie is proposing a two-year moratorium on property tax litigation against nonprofit hospitals and the establishment of a Property Tax Exemption Study Commission to undertake comprehensive review of New Jersey's tax exemption law.

### *Illinois*

Like New Jersey, Illinois is included here due to Illinois' relatively recent experience regarding property tax exemption for hospital related property. In the past fifteen years, Illinois' property tax exemption provided to qualifying hospitals has experienced and continues to experience uncertainty. A recent appellate court decision reignited the uncertainty in finding SB 2194 (2012) unconstitutional. SB 2194 (2012) created a procedure for granting exemptions to hospitals based upon specified criteria and was the legislature's response to previous court decisions upholding decisions by the Illinois Department of Revenue (DOR) to deny exemption for Provena Hospitals.

Following questioning from the Champaign County Board of Review regarding charitable property tax exemption status for two major hospitals in the Champaign/Urbana Illinois area, the Illinois Department of Revenue made a determination that Provena Covenant "was not in exempt ownership" and "not in exempt use" and was thus not meeting the qualifying requirements for property tax exemption under section 15-65 of the Illinois Property Tax Code (Provena Covenant Medical Center v The Department of Revenue, 2010). Following the denial of exemption, "voluminous" evidence was presented to the administrative law judge assigned to the case who recommended that 94.4% of the subject parcels of property should be granted charitable exemption. DOR rejected the administrative law judge's recommendation and again did not qualify the property for exemption under either charitable or religious exemption statutes. Circuit court subsequently disagreed with DOR and ruled Provena did qualify for exemption under both charitable and religious tax exemptions. The Illinois Appellate Court disagreed with the Circuit court, ruling in favor of DOR's decision to deny exemption. The Appellate Court's decision to deny exemption was upheld by the Illinois Supreme Court in its 2010 decision denying exemption under both charitable and religious statutes.

While Illinois' structure of judicial review differs in some ways from Oregon's,<sup>57</sup> an examination of the court's reasoning in upholding DOR's decision to deny exemption does provide examples of the pivotal questions being discussed regarding hospital property tax exemption qualification.

---

<sup>56</sup> Fees were to equal \$2.50 a day for each licensed bed at acute care hospital property and \$250 a day for each satellite emergency care facility. Fee was required to grow by 2% per year. Hospitals in "financial distress" were exempt from fee.

<sup>57</sup> "Judicial review of administrative decisions is subject to important constraints regarding the issues and evidence that may be considered." The Supreme Court of Illinois has held that "it is not a court's function on administrative review to reweigh evidence or to make an independent determination of the facts." "If an argument, issue, or defense was not presented in the administrative proceedings, it is deemed to have been procedurally defaulted and may not be raised for the first time before the circuit court." (Provena Covenant Medical Center v The Department of Revenue, 2010)

Similar to Oregon, in Illinois taxation is the rule and exemption is the exception; it is the burden of the property owner to bring the property or organization within exemption requirements and eligibility for a charitable exemption requires the property to be actually and exclusively used for charitable or beneficent purposes. Case law provides a five-point test used to identify charitable institutions. The Supreme Court found Provena met factors one and four but failed factors two, three and five. Excerpts from the decision elucidate the court's decision:

“both the number of uninsured patients receiving free or discounted care and the dollar value of the care they received were de minimis.”

“With very limited exception, the property was devoted to the care and treatment of patients in exchange for compensation”

“there was little to distinguish the way in which Provena Hospitals dispensed its “charity” from the way in which a for-profit institution would write off bad debt.”

“undermining Provena Hospitals’ claims of charity is that even where it did offer discounted charges, the charity was often illusory...uninsured patients were charged [Provena’s] “established” rates, which were more than double the actual costs of care.”

“when a “charitable” discount was granted or full payment for a bill was otherwise not received, the corporation expected the shortfall to be offset by surpluses generated by the higher amounts it was able to charge other users of its facilities and services. Such “cross-subsidies” are a pricing policy any fiscally sound business enterprise might employ.”

It was for the reasons described, among others, that the court found Provena failed to meet its burden of establishing that it is a charitable institution. The court also found no error in DOR’s rejection of exemption under religious exemption statutes.

In 2012, following the Supreme Court’s decision in *Provena v DOR*,<sup>58</sup> the Illinois legislature passed SB 2194 which contained language creating a property tax exemption available to hospitals that provided specified services in an amount greater than the hospital’s estimated property tax liability.<sup>59</sup> The expectation at the time of law passage was that nearly all nonprofit hospitals would qualify for exempt status, while those not immediately qualifying, would be able to qualify in future years once the hospitals had sufficient time to arrange their finances in such a way as to qualify for exemption (Metcalf & Dalianis, 2012). In *Carle Foundation v Cunningham Township* decided in January of 2016, the Illinois Appellate Court found the hospital exemption unconstitutional premised on language in Illinois’ constitution stating<sup>60</sup>

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and

---

<sup>58</sup> While exemption qualification is determined on a case-by-case basis, *Provena v. DOR* did provide guidance in how exemption statute could be interpreted in other similar situations opening up the possibility of other like hospital organizations failing to qualify for property tax exemption.

<sup>59</sup> See

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2194&GAID=11&DocTypeID=SB&SessionID=84&GA=97>

<sup>60</sup> Article IX, Section 6 <http://www.ilga.gov/commission/lrb/conent.htm>



horticultural societies, and for school, religious, cemetery and charitable purposes. (Carle Foundation v. Cunningham Township, 2016)

According to the court's decision, while a qualifying hospital must be owned by a not for profit corporation, the hospital exemption did not require hospitals receiving the exemption to be used exclusively for charitable purposes. It is likely an appeal will be brought to the Supreme Court, but for the time being, uncertainty remains.

While Illinois' hospital exemption ran afoul of constitutional limitations, a brief examination of the law is nonetheless worthwhile. To qualify, a hospital must be licensed in the state and be owned by a not for profit corporation. Qualification for exemption is premised upon the hospital providing qualified services or activities, as specified in the legislation, in amounts equal to or exceeding the relevant hospital's estimated property tax liability.<sup>61</sup> The seven specified qualifying services or activities are:

- 1) Free or discounted services measured at cost
- 2) Health services to low-income and underserved individuals
- 3) Direct or indirect financial or in-kind subsidies of State or local governments
- 4) Support for State health care programs for low-income individuals
- 5) Subsidy provided to government by treating dual-eligible Medicare/Medicaid patients (unreimbursed costs calculation as calculated in Schedule H of IRS Form 990)
- 6) Relief of burden of government related to health care provided to low-income individuals
- 7) Any other activity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.<sup>62</sup>

The calculations are done based upon each specific hospital rather than a summing across hospitals in cases of hospitals owned by the same corporate parent. Services and activities qualifying under multiple categories may be counted only once.

## ***Neighboring States***

### ***Washington***

Before summarizing differences in property tax exemptions for nonprofit organizations provided by Oregon's neighbor to the north, a brief description of the underlying differences in property tax structure is warranted. Washington's property tax can be described as a limited levy based system. Washington's constitution limits the regular combined property tax rate applied to individual properties to one percent of market value (\$10 per \$1,000). Washington also limits district levy amount increases to not more than one percent for non-voted levies.<sup>63</sup> The importance of Washington's district levy limits and the interaction of those limits with property

---

<sup>61</sup> The hospital may use either the previous hospital year or an average of the three previous hospital years in calculating whether services equal or exceed estimated property tax liability.

<sup>62</sup> These represent high level descriptions of the seven categories. The seven categories are explained in detailed language in the bill.

<sup>63</sup> This is an oversimplification of Washington's levy limits. District population, new construction, annexations, voter approved levies and "banked capacity" can cause actual district revenue increases of greater than one percent. See <http://www.dor.wa.gov> for details.

tax exemptions is explained in Washington's 2012 Exemption Study (Washington State Department of Revenue, 2012):

...if repealed, they [property tax exemptions] would not result in an actual gain of state revenue. The state and most local taxing jurisdictions are forecast to be at their maximum levies under the current limit on growth in levies; therefore, repeal of these exemptions would merely represent a broader tax base and thus lower tax rates for other taxpayers.

Contrary to Oregon, where both a loss and shift in revenue occurs, Washington's nonprofit property tax exemptions largely do not affect total revenue imposed from a district perspective. Rather, property tax exemptions in Washington cause a narrowing of the tax base resulting in increased imposition of tax upon non-exempt properties.

Washington's property tax exemptions are contained in Title 84 chapter 36 of the Revised Code of Washington. Similarities in policy exist between Oregon and Washington. Washington defines nonprofit in statute and, while overlap may exist between Washington's definition and IRC 501(c)(3) language, qualifying as a IRC 501(c)(3) organization does not guarantee qualification for property tax exemption. To qualify for exemption, property must be used exclusively for the actual operation of the activity for which exemption is granted and not exceed an amount reasonably necessary for that purpose. Some inadvertent use of the property is allowed without jeopardizing the exemption so long as a pattern of inadvertent use does not exist. Property may be used for non-exempt use and maintain exemption so long as non-exempt use is limited to less than 50 days in a calendar year and the property is used for pecuniary gain or to promote business activities fewer than 15 of the 50 days.

Washington's property tax exemption for nonprofits is more specified than Oregon's but Washington does have broad nonprofit exemption language relating to exemption for property used for character building, benevolent, protective or rehabilitative social services. Specific statutory exemption language exists for such things as: churches & parsonages, day care centers, hospitals, medical research facilities, cancer treatment clinics, homes for the aging, private K-12 schools & colleges, art collections & museums and low-income rental housing.<sup>64</sup> Generally, exemption qualification is based upon the structure of the organization qualifying for the exemption and the use of the property. In some instances, specific benefit requirements being inured to nonprofit organization or recipients of nonprofit organization's aid are required to qualify for exemption.<sup>65</sup> Some exemptions require specific thresholds to be met, such as percentages of dwelling units occupied by low-income individuals.<sup>66</sup>

Nonprofits must file an initial application for exemption and an annual renewal notice to maintain exemption. Both the initial and renewal notice are submitted to Washington Department of Revenue (WDOR). WDOR is required to review and determine approval or denial of exemption. The department is allowed to request additional necessary relevant information from nonprofit

---

<sup>64</sup> This is only a partial list, but represents types of property that may in some cases be exempt in Oregon under ORS 307.130 - Literary, Charitable and Scientific Organizations.

<sup>65</sup> For example, see - RCW 84.36.560, nonprofit organizations that provide rental housing or used space to very low-income households.

<sup>66</sup> For example, see - RCW 84.36.050, schools and colleges.

organization. Reasons for denying application must be clearly stated in written notification to applicant. WDOR then annually prepares a list of exempt properties and forwards the list to county assessors. Nonprofit applicant is required to file with WDOR a statement certifying that the income and receipts thereof, including donations, have been applied to the actual expenses of operating and maintaining the nonprofit or its capital expenditures, and to no other purpose. The statement is also required to include the receipts and disbursements of the nonprofit organization. Upon disqualification from exemption, in some instances property may be subject to three or seven years of back taxes. If property has been granted an exemption for more than ten consecutive years, back taxes are not assessed.

The initial application for exemption requires the following documents to be submitted in addition to information required on the application. Additional documentation may be required for specific exemptions.

- Copy of Articles of Incorporation
- Copy of IRS letter (if organization has been granted exemption under IRC 501(c))
- Copy of most recent IRS Form 990 or copy of most recent annual income and expense statement
- Copy of deed for real property or copy of lease agreement
- Parcel map and legal description
- Site plan which identifies the location of buildings, parking, landscaping and undeveloped areas
- Pamphlets, brochures, and/or letter explaining use of property claiming exemption.

### **California**

Section 4(b)<sup>2</sup> of article XIII of the California Constitution provides the Legislature with the authority to exempt property:

- 1) Used exclusively for religious, hospital, or charitable purposes and
- 2) Owned or held in trust by nonprofit organizations operating for those purposes.

The exemption is known as the Welfare Exemption and was constitutionally adopted in 1944. To qualify for exemption, an organization's primary purpose must be either religious, hospital, scientific or charitable. Purpose of an organization is based upon its activities. Qualifying organization property may be fully or partially exempt from property taxes depending upon use of property for qualifying activities. Since constitutional adoption in 1944, the Welfare Exemption has been expanded by both legislative action and judicial decisions (California State Board of Equalization, 2004).

Similar to Oregon's Literary, Charitable and Scientific Organizations exemption, California's Welfare Exemption is predicated upon an organization first being determined to be an organization operated exclusively for qualifying purposes and where use of property is exclusively for those qualifying purposes.<sup>67</sup> Exemption qualification determination is administered by both the California Board of Equalization (BOE) and county assessors. BOE is responsible for determining whether an organization is a qualifying organization (e.g. - determining whether organization is a charitable organization), whereas county assessors are

---

<sup>67</sup> Some incidental use unrelated to the qualifying use is allowed without disqualifying property for exemption. Partial exemption may be provided where part of qualifying organization's property is used for non-qualifying use.

responsible for determining whether the property is exclusively used for qualifying purposes. Request for BOE determination is required only once, however, BOE maintains authority to withdraw determination at any time.<sup>68</sup> Assessor use determination is made using an application for exemption specific to the first year of exemption while a more streamlined annual application is used in subsequent years.

California does not have a statutory definition of charitable. Rather, the term charity has developed through case law and has been summarized by the State Supreme Court as:

a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education, or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life or by erecting, or maintaining public buildings or works, or otherwise lessening the burdens of government. (California State Board of Equalization, 2004)

In determining charitable status, California courts have also examined whether an organization provides community benefit. The primary test is whether ultimate recipients are the community as a whole or an unascertainable and indefinite portion thereof.

The term hospital as it is used in California's Welfare Exemption has been defined by the California Supreme Court, no statutory definition exists. The definition in part reads:

A hospital is primarily a service organization. It serves three groups: the patients, its doctors, and the public. It furnishes a place where the patient, whether poor or rich, can be treated under ideal conditions...Essential to the administration of these techniques is the corps of highly-trained nurses and student nurses who are on duty twenty-four hours per day...In addition, the hospital...must have administration to see that its services function properly and are coordinated, and that patients are received and cared for regardless of the hour or the patient's condition. (California State Board of Equalization, 2004)

The California Supreme Court has also interpreted property used exclusively for hospital purpose to qualify for exemption. This allows property of nonprofit organizations that are not hospitals but which provide support services to hospitals (e.g. - purchasing, food services, laundry, collections, waste disposal) to qualify for exemption.

California's primary requirement to qualify as an exempt organization is that the owner/operator of the property must not be organized or operated for profit. An organization's articles of incorporation are often used to determine whether the organization is a nonprofit. Qualifying for IRC 501(c)(3) nonprofit designation does not guarantee an organization will qualify for the Welfare Exemption. Net earnings of the organization may not inure to the benefit of any private shareholder or individual and upon liquidation or dissolution, the property may not inure to the benefit of any private person except to a fund, foundation or organization operating for qualified exempt purposes.

Prior to 1953, an organization was unable to qualify for exemption if the property operated for a profit. Following a court decision, the Legislature in 1953 revised the requirement that property must be used in the actual operation of the exempt activity. This change eliminated the restriction on an individual property operating at a profit. The Legislature also expanded the

---

<sup>68</sup> As an example of reviewing previous determinations, since 2000, BOE has performed two comprehensive reviews of hospital organizations. See <http://www.boe.ca.gov/proptaxes/pdf/HospitalReview033012.pdf> for most recent review.

exemption allowing hospitals to make an annual surplus of up to 10 percent of total operating expenses in the prior fiscal year. Hospitals with surplus revenues above the 10 percent threshold may still qualify for exemption if the surplus revenue is used for allowable purposes such as debt retirement, plant and facilities expansion and operating cost contingencies.

Step one in qualifying for exemption is to be a qualifying organization, the secondary step is based upon the use of the property. California's use requirements are described in a five-point test:

- 1) Property must be used exclusively for exempt purposes
- 2) Property must be used for the actual operation of an exempt activity
- 3) Property is not to exceed an amount reasonably necessary for the accomplishment of the exempt purpose
- 4) Property is not to be used to benefit any person through distribution of profits, compensation or the more advantageous pursuit of his or her business or profession
- 5) Property is not to be used for fraternal, lodge, or social club purposes except when that use is clearly incidental to the primary exempt purpose. (California State Board of Equalization, 2004)

The California Supreme Court has rejected a literal interpretation of "exclusive use" and construed the exclusive use requirement to mean that a qualified organization's primary use of the property must be for exempt purposes. Exemption is allowed only for property used for the actual operation of exempt activity and the property must be in an amount reasonably necessary to accomplish the exempt purpose (California State Board of Equalization, 2004). Occasional use of property not within an organization's exempt purpose is allowed. If property happens to be operated at a net profit, to remain exempt, such profit must be devoted to the exempt purposes of the institution. Examples of hospital property that would not qualify for exemption due to use restrictions include offices leased to physicians for use in private practice, commercial space leased to retail businesses, and space used for managing a managed care health plan.

### **Idaho**

Idaho property tax exemptions are detailed primarily in Title 63, Chapter 6 of Idaho's statutes. Property tax exemptions available to nonprofit organizations can be categorized into five statutory subchapters:

- 1) Religious
- 2) Fraternal, Benevolent or Charitable
- 3) Hospitals
- 4) School or Educational
- 5) Low-Income Housing

A brief description of each of the five categories follows. Unless otherwise specified in the relevant statute, Idaho statute requires property to be used exclusively for one or more or any combination of the exempt purposes provided in exemption statute. Generally an annual application for exemption is required to be submitted to the county commissioners in which the property is located.<sup>69</sup>

Property belonging to any religious limited liability company, corporation or society of Idaho, used exclusively or in connection with any combination of religious, educational, or recreational purposes or activities is exempt. Property leased by the exempt organization or used for

---

<sup>69</sup> Exemption appeals are to the county board of equalization.

commercial purposes from which revenue is derived is subject to taxation. However, if the value of the part of the property leased or used for commercial purposes is three percent or less than the value of the entire property, then property in its entirety is exempt. If the value of the non-exempt property is greater than three percent, then the property is partially exempt.

Idaho's Fraternal, Benevolent or Charitable institution exemption is a broad exemption. The exemption is limited to property used exclusively for the purposes for which such exempt organization is organized for. Similarly to the religious exemption, property leased or used for commercial purposes is not exempt from taxation unless the non-exempt portion of the property is three percent or less than the value of the exempt portion.

Idaho's hospital exemption begins with the statutory definition of hospital which describes a hospital as a facility which:<sup>70</sup>

- 1) is primarily engaged in providing:
  - a. concentrated medical and nursing care on a twenty-four-hour basis to inpatients experiencing acute illness
  - b. diagnostic and therapeutic services for medical diagnosis and treatment, psychiatric diagnosis and treatment, and care of injured, disabled, or sick persons
  - c. rehabilitation services for injured, disabled, or sick persons
  - d. obstetrical care
- 2) Provides for care of two or more individuals for twenty-four or more consecutive hours
- 3) Is staffed to provide professional nursing care on a twenty-four basis.

Idaho exempts real and personal property owned or leased by a hospital which is operated as a hospital. Related acute care, outreach, satellite, outpatient, ancillary or support facilities of a qualified hospital are also exempt regardless of whether such property would qualify for exemption as an individual facility. To qualify for exemption, the hospital must be organized as a nonprofit pursuant to Idaho code and receive exemption from taxation from the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code. Hospital property used for business purposes unrelated to the hospital's exempt purposes does not qualify for exemption. If the value of the property used for unrelated business purposes is three percent or less than the exempt value of the property then the property is fully exempt, otherwise a partial exemption exists. Exempt hospitals consisting of 150 or more patient beds are required to prepare an annual community benefits report. The report itemizes:

- The hospital's amount of unreimbursed services for the prior year
- Special services and programs the hospital provides below its actual cost
- Donated time, funds, subsidies and in-kind services
- Additions to capital such as physical plant and equipment
- Indication of the process the hospital has used to determine general community needs which coincide with the hospital's mission.

The report is provided as a matter of community information and the contents of the report are not used as a basis for approval or denial of exemption.

Property is exempt from taxation if used exclusively for nonprofit school or educational purposes, charter school purposes, or held or used exclusively for endowment, building or maintenance purposes of schools or educational institutions. Property is taxable if use of property is for business purposes unrelated to education purpose of exempt institution.

---

<sup>70</sup> See Title 39, Chapter 13 of Idaho Code for full definition of hospital

Qualifying low-income housing property owned by a nonprofit organization is exempt from property taxation. Low-income housing property may qualify for exemption under any statute if the property meets the specific statutory requirements. The following described exemption is specific to low-income housing. In order to qualify a nonprofit must:

- 1) Be organized as a nonprofit per Idaho code
- 2) Have received an exemption from taxation under IRC 501(c)(3)
- 3) No proceeds or tax benefits of organization may inure to any individual or for-profit entity.

In addition to nonprofit ownership requirements, Idaho statute limits, to some extent, eviction proceedings from qualified property. To qualify for exemption, all housing units must be dedicated to low-income housing meeting the following parameters:

- 55% of units rented to those earning  $\leq$  60% of median county income
- 20% of units rented to those earning  $\leq$  50% of median county income
- 25% of units rented to those earning  $\leq$  30% of median county income.

---

## Appendices

---

- I. Listing of Nonprofit Property Tax Expenditures
- II. Timeline of Changes to ORS 307.130
- III. Statute of ORS 307.130
- IV. Legislative Counsel Annotations to ORS 307.130
- V. Department of Revenue Rules for ORS 307.130
- VI. Exemption Application
- VII. Works Cited



## Appendix I - Listing of Nonprofit Property Tax Expenditures

### Nonprofit Property Tax Exemptions

TE #	Oregon Statute	Statute Name	2017-19 Revenue Loss
2.086	307.130	<i>Property of art museums, volunteer fire departments or literary, benevolent, charitable and scientific institutions</i>	\$190.7
2.088	307.140	Property of religious organizations	\$123.9
2.001	307.145	Certain child care facilities, schools and student housing	\$45.9
2.111	307.541	Nonprofit corporation low income housing	\$26.1
10.001	308.805	Mutual and cooperative electric distribution systems subject to tax on gross earnings	\$25.6
2.087	307.136	Property of fraternal organizations	\$15.5
2.026	307.242	Property of nonprofit corporation providing housing to elderly persons	\$3.7
2.098	307.471	Student housing exempt from school district taxes	\$0.5
2.070	307.210	Property of nonprofit mutual or cooperative water associations	\$0.4
2.009	307.485	Farm labor camp and child care facility property	\$0.3
2.061	307.115	Property of nonprofit corporations held for public parks or recreation purposes	\$0.3
2.113	307.370	Property of nonprofit homes for elderly persons	\$0.3
2.008	307.513	Land Held by Nonprofit Corporation for Building Residences for Low Income Individuals	\$0.2
2.007	307.147	Senior services centers	\$0.2
2.002	307.195	Household furnishings owned by nonprofit organization furnishing housing for students attending institutions of higher education	\$0.1
2.082	307.197	Equipment used for certain emergencies in navigable waters	<\$.1
2.050	307.118	Wastewater and sewage treatment facilities	<\$.1
2.089	307.157	Cemetery land acquired by eleemosynary or charitable institution	<\$.1
2.125	308.490	Determining value of homes for elderly persons	<\$.1
2.072	307.220	Property of nonprofit mutual or cooperative telephone associations	\$0.0
2.095	307.022	Status of limited liability companies owned by nonprofit corporations	Incl. in other TEs
2.093	307.112	Property held under lease, sublease or lease-purchase by institution, organization or public body other than state	Incl. in other TEs
2.094	307.166	Property leased by exempt institution, organization or public body to another exempt institution, organization or public body	Incl. in other TEs
2.080	554.320	Corporations for irrigation, drainage, water supply or flood control	Incl. in other TEs

Note: TE # and revenue loss estimates sourced from 2017-19 Tax Expenditure Report

*Appendix II - Timeline of Changes to ORS 307.130*

**ORS 307.130 - Law Changes**

<b>Legislative Session</b>	<b>Oregon Law Chapter &amp; Section</b>	<b>Bill #</b>
2015	CH. 701 § 46-48	HB 2171
2015	CH 442 § 22	SB 63
2014	CH. 7	HB 4039
2013	CH. 377 §14	HB 2492
2012	CH. 31 §14	SB 1531
2011	CH. 7 §14	SB 301
2010	CH. 82 §14	SB 1016
2009	CH. 5 §14	HB 2157
2009	CH. 909 §14	HB 2078
2008	CH. 45 §4	SB 1081
2007	CH. 694 §1	HB 3537
2007	CH. 614 §4a	HB 2235
2007	CH. 70 §75	SB 83
2005	CH. 832 §16	SB 31
2003	CH. 77 §4	HB 2186
2001	CH. 660 §26	HB 2272
1999	CH. 773 §1	HB 2732
1999	CH. 90 §31	HB 2137
1997	CH. 599 §1	HB 2332
1995	CH. 470 §4	HB 2642
1993	CH. 655 §3	HB 2176
1991	CH. 93 §4	SB 92
1989	CH. 224 §50	SB 368
1987	CH. 490 §49	HB 3081
1987	CH. 391 §1	HB 3018
1979	CH. 688 §1	SB 166
1974	CH. 52 §3	HB 3325
1971	CH. 605 §1	HB 1836
1969	CH. 342 §1	SB 533
1959	CH. 207 §1	SB 240
1955	CH. 576 §1	HB 57
1945	CH. 296 p 441	HB 192
1854	Instituted Territorial Government	

Red highlights denote IRC connection update.

### **Appendix III - ORS 307.130**

(Institutional, Religious, Fraternal, Interment Properties)

#### **307.130 Property of certain museums, volunteer fire departments or literary, benevolent, charitable and scientific institutions.** (1) As used in this section:

(a) “Art museum” means a nonprofit corporation organized to display works of art to the public.

(b) “History museum or science museum” means a nonprofit corporation organized to display historical or scientific exhibits, or both, to the public.

(c) “Nonprofit corporation” means a corporation that:

(A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65; or

(B) Is organized and operated as described under section 501(c) of the Internal Revenue Code as defined in ORS 305.842.

(d) “Volunteer fire department” means a nonprofit corporation organized to provide fire protection services in a specific response area.

(2) Upon compliance with ORS 307.162, the following property owned or being purchased by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:

(a) Except as provided in ORS 748.414, only 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.

(b) Parking lots used for parking or any other use as long as that parking or other use is permitted without charge for no fewer than 355 days during the tax year.

(c) All real or personal property of a rehabilitation facility or any retail outlet

thereof, including inventory. As used in this subsection, “rehabilitation facility” means either those facilities defined in ORS 344.710 or facilities which provide individuals who have physical, mental or emotional disabilities with occupational rehabilitation activities of an educational or therapeutic nature, even if remuneration is received by the individual.

(d) All real and personal property of a retail store dealing exclusively in donated inventory, where the inventory is distributed without cost as part of a welfare program or where the proceeds of the sale of any inventory sold to the general public are used to support a welfare program. As used in this subsection, “welfare program” means the providing of food, shelter, clothing or health care, including dental service, to needy persons without charge.

(e) All real and personal property of a retail store if:

(A) The retail store deals primarily and on a regular basis in donated and consigned inventory;

(B) The individuals who operate the retail store are all individuals who work as volunteers; and

(C) The inventory is either distributed without charge as part of a welfare program, or sold to the general public and the sales proceeds used exclusively to support a welfare program. As used in this paragraph, “primarily” means at least one-half of the inventory.

(f) The real and personal property of an art museum that is used in conjunction with the public display of works of art or used to educate the public about art, but not including any portion of the art museum’s real or personal property that is used to sell, or hold out for sale, works of art, reproductions of works of art or other items to be sold to the public.

(g) All real and personal property of a volunteer fire department that is used in conjunction with services and activities for providing fire protection to all residents within a fire response area.

(h) All real and personal property, including inventory, of a retail store owned by a nonprofit corporation if:

(A) The retail store deals exclusively in donated inventory; and

(B) Proceeds of the retail store sales are used to support a not-for-profit housing program whose purpose is to:

(i) Acquire property and construct housing for resale to individuals at or below the cost of acquisition and construction; and

(ii) Provide loans bearing no interest to individuals purchasing housing through the program.

(3)(a) Upon compliance with ORS 307.162, real and personal property owned or leased by a history museum or science museum shall be exempt from property taxes if the property:

(A) Is used to fulfill the mission of the museum as provided in the articles of incorporation and bylaws of the museum; and

(B) Is used or occupied for one or more of the following purposes:

(i) As a food service facility or concession stand selling food and refreshments to museum visitors, volunteers or staff within the museum buildings or on museum grounds.

(ii) As a retail store selling inventory, at least 90 percent of which is museum-related, within the museum buildings or on museum grounds.

(iii) As a parking lot, the use of which is permitted without charge for not fewer than 355 days during the property tax year, for museum visitors, volunteers or staff employed by the museum.

(iv) As a theater located in a museum building showing entertainment or

educational features, at least 75 percent of which are museum-related.

(v) As unimproved land that is not specially assessed and that is contiguous with the land on which the museum is situated.

(vi) For displays, storage areas, educational classrooms or meeting areas.

(b) The exemption granted under this subsection does not apply to property used or occupied as a hotel, water park or chapel or for any commercial enterprise.

(4) An art museum or institution shall not be deprived of an exemption under this section solely because its primary source of funding is from one or more governmental entities.

(5) An institution shall not be deprived of an exemption under this section because its purpose or the use of its property is not limited to relieving pain, alleviating disease or removing constraints. [Amended by 1955 c.576 §1; 1959 c.207 §1; 1969 c.342 §1; 1971 c.605 §1; 1974 c.52 §3; 1979 c.688 §1; 1987 c.391 §1; 1987 c.490 §49; 1989 c.224 §50; 1991 c.93 §4; 1993 c.655 §3; 1995 c.470 §4; 1997 c.599 §1; 1999 c.90 §31; 1999 c.773 §1; 2001 c.660 §26; 2003 c.77 §4; 2005 c.832 §16; 2007 c.70 §75; 2007 c.614 §4a; 2007 c.694 §1; 2008 c.45 §4; 2009 c.5 §14; 2009 c.909 §14; 2010 c.82 §14; 2011 c.7 §14; 2012 c.31 §14; 2013 c.377 §14; 2014 c.52 §16; 2015 c.701 §46]

**Note:** The amendments to 307.130 by section 48, chapter 701, Oregon Laws 2015, apply to property tax years beginning on or after July 1, 2019. See section 49, chapter 701, Oregon Laws 2015. The text that applies to property tax years beginning on or after July 1, 2019, is set forth for the user's convenience.

**307.130.** (1) As used in this section:

(a) "Art museum" means a nonprofit corporation organized to display works of art to the public.

(b) “Nonprofit corporation” means a corporation that:

(A) Is organized not for profit, pursuant to ORS chapter 65 or any predecessor of ORS chapter 65; or

(B) Is organized and operated as described under section 501(c) of the Internal Revenue Code as defined in ORS 305.842.

(c) “Volunteer fire department” means a nonprofit corporation organized to provide fire protection services in a specific response area.

(2) Upon compliance with ORS 307.162, the following property owned or being purchased by art museums, volunteer fire departments, or incorporated literary, benevolent, charitable and scientific institutions shall be exempt from taxation:

(a) Except as provided in ORS 748.414, only 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.

(b) Parking lots used for parking or any other use as long as that parking or other use is permitted without charge for no fewer than 355 days during the tax year.

(c) All real or personal property of a rehabilitation facility or any retail outlet thereof, including inventory. As used in this subsection, “rehabilitation facility” means either those facilities defined in ORS 344.710 or facilities which provide individuals who have physical, mental or emotional disabilities with occupational rehabilitation activities of an educational or therapeutic nature, even if remuneration is received by the individual.

(d) All real and personal property of a retail store dealing exclusively in donated inventory, where the inventory is distributed without cost as part of a welfare program or where the proceeds of the sale of any inventory sold to the general public are used

to support a welfare program. As used in this subsection, “welfare program” means the providing of food, shelter, clothing or health care, including dental service, to needy persons without charge.

(e) All real and personal property of a retail store if:

(A) The retail store deals primarily and on a regular basis in donated and consigned inventory;

(B) The individuals who operate the retail store are all individuals who work as volunteers; and

(C) The inventory is either distributed without charge as part of a welfare program, or sold to the general public and the sales proceeds used exclusively to support a welfare program. As used in this paragraph, “primarily” means at least one-half of the inventory.

(f) The real and personal property of an art museum that is used in conjunction with the public display of works of art or used to educate the public about art, but not including any portion of the art museum’s real or personal property that is used to sell, or hold out for sale, works of art, reproductions of works of art or other items to be sold to the public.

(g) All real and personal property of a volunteer fire department that is used in conjunction with services and activities for providing fire protection to all residents within a fire response area.

(h) All real and personal property, including inventory, of a retail store owned by a nonprofit corporation if:

(A) The retail store deals exclusively in donated inventory; and

(B) Proceeds of the retail store sales are used to support a not-for-profit housing program whose purpose is to:

(i) Acquire property and construct housing for resale to individuals at or below the cost of acquisition and construction; and

(ii) Provide loans bearing no interest to individuals purchasing housing through the program.

(3) An art museum or institution shall not be deprived of an exemption under this section solely because its primary source of funding is from one or more governmental entities.

(4) An institution shall not be deprived of an exemption under this section because its purpose or the use of its property is not limited to relieving pain, alleviating disease or removing constraints.

**Note:** Sections 1 and 2, chapter 7, Oregon Laws 2014, provide:

**Sec. 1.** (1) For purposes of ORS 307.130 (2)(a), real or personal property of a nonprofit corporation is actually and exclusively occupied or used in the benevolent or charitable work carried on by the nonprofit corporation, and is exempt from ad valorem property taxation, if, for the tax year beginning on July 1, 2012, the property was actually:

(a) Offered, occupied or used as low-income housing; and

(b) Granted exemption under ORS 307.130 (2)(a) by the county in which the property is located.

(2) The exemption provided under subsection (1) of this section continues until the end of the earliest tax year in which the property described in subsection (1) of this section:

(a) Is no longer actually offered, occupied or used as low-income housing;

(b) Changes ownership other than by sale or transfer to a nonprofit corporation under whose ownership the property continues to be offered, occupied or used as low-income housing; or

(c) Is leased in its entirety by the nonprofit corporation claiming the exemption, other than by leases for occupancy of individual units as low-income housing. [2014 c.7 §1]

**Sec. 2.** (1) Section 1 of this 2014 Act applies to property tax years beginning on or after July 1, 2012.

(2) The exemption provided under section 1 of this 2014 Act may not be granted for tax years beginning on or after July 1, 2018. [2014 c.7 §2]

## Appendix IV - Legislative Counsel Annotations to ORS 307.130

307.130

### NOTES OF DECISIONS

#### Real property occupied or used

##### Actually occupied or used

A farm owned by a church, from which the profits flowed to the benefit of the church's charity, was not exempt from property taxation. Corporation of Presiding Bishop v. Dept. of Rev., 6 OTR 268 (1975), **aff'd** 276 Or 775, 556 P2d 685 (1976)

This section grants tax exemption only to such real or personal property as is actually used in charitable work carried on. Golden Writ of God v. Dept. of Rev., 9 OTR 475 (1984), **aff'd** 300 Or 479, 713 P2d 605 (1986)

In determining whether property is tax exempt pursuant to this section, test is use to which property is put. State ex rel. NW Medical Lab. v. Wilcox, 10 OTR 181 (1985)

Charitable organization's *de minimis* use of property does not qualify property for exemption where use is not reasonably necessary for carrying out charitable purposes. Multnomah County v. Dept. of Rev., 13 OTR 339 (1995)

Storage of material to ensure availability in case of future charitable need is actual use of storage facility for charitable purpose, notwithstanding lack of distribution from facility. Corporation of the Presiding Bishop, LDS v. Dept. of Revenue, 14 OTR 244 (1997)

##### Actually and exclusively occupied and used

Where the plaintiff had a completed building and initiated its occupancy thereof prior to July 1, the property was actually and exclusively occupied within the meaning of this section. Soc. St. Vincent DePaul v. Dept. of Rev., 272 Or 360, 537 P2d 69 (1975)

Where evidence did not demonstrate which portion of entire parcel was devoted to exempt activities, no partial exemption could be allowed. Golden Writ of God v. Dept. of Rev., 300 Or 479, 713 P2d 605 (1986)

Phrase "exclusively used" refers to primary, as opposed to incidental, use of property. Mercy Medical Center, Inc. v. Dept. of Rev., 12 OTR 305 (1992)

#### Property owned or being purchased

Property held under a lease agreement with the United States Government did not qualify for an exemption under this section. Eugene Yacht Club v. Dept. of Rev., 6 OTR 35 (1975)

Incorporation of leased property into real property of charitable organization did not alter requirement that application for exemption of leased property be made separately under ORS 307.112. Garten Foundation v. Dept. of Rev., 12 OTR 554 (1993)

#### Benevolent or charitable institutions

##### In general

Statutes exempting property are strictly construed against the one claiming the exemption. Emanuel Lutheran Charity Bd. v. Dept. of Rev., 4 OTR 410

(1971), **aff'd** 263 Or 287, 502 P2d 251 (1972)

Property, both real and personal, was held, occupied and actually used for charitable, benevolent purposes of the organization, and was exempt. *Parkhurst v. Dept. of Rev.*, 4 OTR 586 (1971)

A charitable enterprise does not lose its exemption merely because it engages in competition with taxable businesses. *YMCA v. Dept. of Rev.*, 268 Or 633, 522 P2d 464 (1974)

If the activity undertaken on the property substantially contributes to the furtherance of the charity's goals, the property will be exempted. *YMCA v. Dept. of Rev.*, 268 Or 633, 522 P2d 464 (1974); *Mercy Medical Center, Inc. v. Dept. of Rev.*, 12 OTR 305 (1992)

An exemption is not lost because the property is not required to carry out the goals of the charity. *YMCA v. Dept. of Rev.*, 268 Or 633, 522 P2d 464 (1974)

Owner of apartment complex used exclusively by retired persons, though nonprofit organization, is not a charity as implicitly required by this statute. *Salem Non-Profit Housing, Inc., v. Dept. of Revenue*, 9 OTR 265 (1983)

Although purposes of organization were to promote arts and crafts, exchange of ideas and establishment of community feeling of unity and were unquestionably worthwhile and beneficial, they could not be said to be charitable as used in this section. *Oregon Country Fair v. Dept. of Rev.*, 10 OTR 200 (1986)

Activities of emergency veterinary clinic founded with private donation and formed as

nonprofit organization met some requirements of charitable organization but did not meet taxpayer burden of qualifying as charitable institution under this section. *Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev.*, 301 Or 423, 923 P2d 320 (1986)

Property must qualify on its own merits to receive tax exemption and plaintiff failed to prove its right to charitable exemption under this section for either of two properties appealed. *YMCA v. Dept. of Rev.*, 11 OTR 101 (1988), **aff'd** 308 Or 644, 784 P2d 1086 (1989)

Personal property of public defender service is property of charitable organization and public defender service is involved in gift or giving, even though public defender service has contractual obligation to perform indigent defense and is compensated by state. *Southwestern Oregon Public Defender Services, Inc. v. Dept. of Rev.*, 312 Or 82, 817 P2d 1292 (1991)

Test to qualify as "charitable institution" is applied to organization overall, not to specific part or operation. *Mercy Medical Center, Inc. v. Dept. of Rev.*, 12 OTR 305 (1992)

Retail store stocked by donated goods does not meet requirements of this statute, even if income is used for charitable purposes. *Kiwanis Club v. Dept. of Rev.*, 12 OTR 318 (1992)

Directing charitable efforts toward particular ethnic group did not rob facility of charitable character. *Rigas Maja, Inc. v. Dept. of Rev.*, 12 OTR 471 (1993)

Requirement that retail store deal exclusively in donated property applies both to distributed inventory and to any inventory



sold to public. Assistance Guild of Bend v. Dept. of Rev., 13 OTR 236 (1995)

Scientific institution is not required to have charity as primary purpose to qualify as charitable. Math Learning Center v. Dept. of Revenue, 14 OTR 62 (1996)

Educating public on particular ideology advanced by tax exempt organization as means for indirectly achieving public good does not qualify as charitable work. Native Forest Council v. Lane County Assessor, 17 OTR 30 (2003)

Mutual benefit corporation cannot have sufficient charitable attributes for property of corporation to qualify for exemption. Rogue Gem and Geology Club, Inc. v. Josephine County Assessor, 17 OTR 446 (2003)

### **Hospitals**

The fact that patients able to pay are required to do so does not deprive a hospital, otherwise eligible to be classed as a charitable institution, of its charitable character. Ev. Lutheran Good Samaritan Soc. v. Dept. of Rev., 5 OTR 14 (1972)

The tax-exempt hospital did not qualify for property tax exemption for property it leased to the county health department. Albany Gen. Hosp. v. Dept. of Rev., 6 OTR 446 (1976), **aff'd** 277 Or 727, 561 P2d 1029 (1977)

### **Religious institutions**

Land merely being held for future use is not being actually occupied or used for benevolent or charitable work. Emanuel Lutheran Charity Bd. v. Dept. of Rev., 263 Or 287, 502 P2d 251 (1972)

Advancement of religion is a charitable purpose within the meaning of the statute. Archdiocese v. Dept. of Rev., 5 OTR 111 (1973), **aff'd** 266 Or 419, 513 P2d 1137 (1973); Diocese of Ore. v. Dept. of Rev., 5 OTR 126 (1973), **aff'd** 266 Or 419, 513 P2d 1138 (1973)

Determination by church officers regarding what lands are reasonably required and what uses will further religious purposes are to be given deference absent clear indication of bad faith or fraud. Multnomah County v. Dept. of Revenue, 6 OTR 325 (1976)

Building owned by incorporated religious organization housing members of organization, who lived communally by dictates of their religion, was exempt from real property taxation under this section. House of Good Shepherd v. Department of Revenue, 300 Or 340, 710 P2d 778 (1985)

### **Literary organizations**

Organization devoted to production of plays is literary organization. Theatre West of Lincoln City, Ltd. v. Dept. of Rev., 319 Or 114, 873 P2d 1083 (1994)

Nonprofit literary organization qualifies for exemption if operating for public good, which is revealed by considering: 1) membership base; 2) property ownership and use; 3) administration; 4) activities; and 5) promotion of public welfare. Oregon Writer's Colony v. Dept. of Revenue, 14 OTR 69 (1996)

ATTY. GEN. OPINIONS: Exemption of property owned by nonprofit corporation and leased to State Commission for Blind, (1977) Vol 38, p 1592

LAW REVIEW CITATIONS: 2 EL 164  
(1971)

307.134

NOTES OF DECISIONS

Allowing tax exempt status for fraternal organizations which practice racial discrimination is a violation of the Fourteenth Amendment Equal Protection Clause. Falkenstein v. Dept. of Rev., 350 F Supp 887 (1972)

307.136

NOTES OF DECISIONS

Allowing tax exempt status for fraternal organizations which practice racial discrimination is a violation of the Fourteenth Amendment Equal Protection Clause. Falkenstein v. Dept. of Rev., 350 F Supp 887 (1972)

Where plaintiff's operations did not require an on-site caretaker, residential property provided for the caretaker was not exempt under this section. American Legion v. Dept. of Rev., 5 OTR 706 (1975)

Fraternal organization's mere holding of property for sale does not constitute actual occupancy or use of property by organization. Perkins v. Dept. of Revenue, 15 OTR 381 (2001)

Where taxpayer rented to nonfraternal person third-floor of building that was eligible for property tax exemption under this section and rent was within limits under this section, because rental was for nonexempt commercial uses and not for entertainment or recreational uses, rental did not qualify for property tax exemption. Dept. of Revenue v. Oregon City BPOE #1189, 21 OTR 500 (2014)

## *Appendix V - Department of Revenue Rules*

### **150-307-0120**

#### **Review Required in Determining Exempt Status of Property for Charitable Institutions**

The following criteria shall be used in determining the qualification for property tax exemption under ORS 307.130 when an application is made by a charitable organization as required in 307.162, 307.112, or 307.166:

(1) Purpose. The purpose of this rule is to set forth, as a guide for assessors, those tests that are commonly applied by the Oregon courts in determining whether property qualifies for exemption under ORS 307.130. This rule does not include all of the principles that have been used by the courts. The assessor must recognize that evaluation of an application for charitable exemption must be made on a case-by-case basis in light of the specific fact situation presented.

(2) Organization:

(a) Applicant must be an incorporated institution;

(b) The corporation must be organized as a nonprofit corporation. This is a mandatory first step for an organization; however the status of an institution as a nonprofit corporation does not conclusively endow it with the attributes of a charity. For example, an organization is recognized by the Internal Revenue Service as income tax exempt within IRC (1954) Section 501(c)(3). However, the standards for determining whether the income of an organization is subject to federal income taxes and the question of whether property is exempt from property taxes are separate and distinct.

Thus, whether a corporation is a charity is to be determined not only from its charter, but also from the manner in which it conducts its activities;

(c) The organization must separately account for funds and donations committed to charitable use;

(d) The organization must not operate for the profit or private advantage of the organization's founders and officials; and

(e) The organization's articles of incorporation or bylaws must require that its assets be used for charitable purposes when the organization dissolves.

(3) Property Interest:

(a) If application is made under ORS 307.162 the organization must be the owner or purchaser of the property.

(b) If application is made under ORS 307.112 the organization must be the lessee.

(c) If application is made under ORS 307.166 the organization must be the lessee or entity in possession.

(d) Any organization claiming the benefit of property tax exemption in subsection (3)(a), (b), or (c) under ORS 307.130, must have possession of and be using the property for the stated exempt purpose by June 30 of the year in which the exemption is claimed.

(4) Purpose and Activity:

(a) Any organization claiming the benefit of property tax exemption under ORS 307.130, as a charitable institution, must have charity as its primary, if not sole, object and must

be performing in a manner that furthers that object.

(b) The activity conducted by the charitable institution must be for the direct good or benefit of the public or community at large. Public benefits must be the primary purpose rather than a by-product. An organization that is established primarily for the benefit of its members, is not a qualifying charity. For example, a rifle club formed primarily for the pleasure of its members also provides safety information and instruction. Since the club's primary purpose is not to provide a direct benefit to the public, its property is not exempt. An organization that performs a service to a professional organization of private persons (example: teachers, physicians or architects) is not a charity.

(c) If the activity of the charitable institution relieves a government burden, it is an indicator that the institution may be charitable. Failure to relieve a government burden will not disqualify an organization as charitable.

(d) An 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. Often, a charitable organization's product or service is delivered to recipients at no cost or at a price below the market price or price to the organization of the product or service. Declarations of worthwhile purpose and charitable endeavors must be manifested in concrete endeavors and tangible reality which benefits the recipient. Unless this element of a gift or giving is present promises of future worthy endeavors are meaningless by inaction, and give the applicant no preferred status.

(A) Forgiveness of uncollectible accounts does not by itself constitute a gift or giving.

(B) The fact that a business activity actually operates at a loss does not make it charitable.

(C) 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.

(D) The fact that individuals provide volunteer labor to assist the organization in performing its activities may indicate that the organization is charitable. However, it is not a standard in determining whether an organization is charitable per se.

(E) An institution shall not be denied exemption solely because:

(i) Its primary source of funding is from one or more government entities; or

(ii) The purpose or use of the property is not limited to relieving pain, alleviating disease or removing constraints.

(5) Use. The property must be used primarily for charitable purposes.

(a) There must be an actual charitable use of the property rather than just a charitable use of the income derived from the operation of the property. "Destination of income" theory does not qualify the property for exemption. For example, use of property by a charitable organization as a bingo parlor to raise money for a charitable activity is not an actual charitable use of the property, and does not qualify the property for exemption.

(b) A retail store operated by volunteers of a qualified organization may receive exemption if at least one-half of the inventory is donated and consigned. One-half of the inventory refers to the number of items. The total number of donated and consigned items must be at least equal to the total number items that constitutes new merchandise.

(c) To be eligible for a property tax exemption as a charitable institution, the applicant must be primarily eleemosynary in nature. Such an institution will demonstrate two elements of charity. First, the institution must perform a function or act which is good or beneficial for humans and other living things. The second part entails a gift or act of giving. The words "gift" and "giving" imply a voluntary act. While an institution shall not be deprived of an exemption as a charitable organization solely because its primary source of funding is one or more governmental agencies.

(d) The property shall be actually used or occupied for the benevolent and charitable work carried on by the organization.

(A) The use of the property must substantially contribute to the furtherance of the charitable purpose and goal of the organization. For example, a gift shop is located in a hospital qualifying for exemption as a benevolent and charitable institution. The gift shop sells candy and flowers and may be subject to ad valorem taxation, unless it furthers the charitable purpose and goal of the organization. As another example, a cafeteria is located in a hospital qualifying for exemption as a benevolent and charitable institution. The cafeteria is operated primarily for the use of the hospital staff and is incidentally used by the general public. The cafeteria is being used to contribute to the charitable goal of the hospital, and is exempt from ad valorem taxation.

(B) Only the portion of a property used for literary, benevolent, charitable or scientific purposes shall be granted exemption from ad valorem taxation under ORS 307.130. Property may be in part taxable and exempt. For example, a property otherwise qualifying for exemption, has a barber shop operating within the facility. The portion of the building in which the barber shop is located is subject to ad valorem taxation, unless the barbershop furthers the charitable purpose and goal of the organization.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.130

Hist.: RD 6-1986, f. & cert. ef. 12-31-86; RD 2-1988, f. 1-11-88, cert. ef. 1-15-88; RD 3-1988, f. & cert. ef. 4-15-88; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 1-1995, f.

12-29-95, cert. ef. 12-31-95; Renumbered from 150-307.130-(A), REV 53-2016, f. 8-13-16, cert. ef. 9-1-16

### **150-307-0130**

#### **Literary Institution Defined**

(1) A literary institution is an organization that is devoted to propagation and spread, or live performance of literature, study or use of books and body of writings in prose or verse, and scripts of plays both contemporary and classic.

(2) A literary institution must operate in a manner in which a significant portion of its activities are charitable. Property tax exemption must be denied when charitable activities are not present. OAR 150-307-0120 is the appropriate guideline for determining whether an organization is charitable.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 307.130

Hist.: RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; Renumbered from 150-307.130(1), REV 53-2016, f. 8-13-16, cert. ef. 9-1-16

---

## Works Cited

---

- AHS Hospital Corp v. Town of Morristown, 010900-2007 (Tax Court of New Jersey June 25, 2015).
- Arnsberger, P., Ludlum, M., Riley, M., & Mark, S. (2008). *A History of the Tax-Exempt Sector: An SOI Perspective*.
- Brody, E. (2002). Legal Theories of Tax Exemption: A Sovereignty Perspective. In E. Brody, *Property Tax Exemptions for Charities* (pp. 145-172). Washington DC: Urban Institute.
- California State Board of Equalization. (2004). *Assessors Handbook - Welfare, Church, and Religious Exemptions*.
- Carle Foundation v. Cunningham Township, 8-L-202 (Illinois Appellate Court January 5, 2016).
- Chung, A., Gaynor, M., & Richards-Shubik, S. (2012). *Subsidies and Structure: The Lasting Impact of the Hill-Burton Program on the Hospital Industry*. University of Illinois  
[http://igpa.uillinois.edu/system/files/HBCrowdOutpaper\\_AEAs.pdf](http://igpa.uillinois.edu/system/files/HBCrowdOutpaper_AEAs.pdf).
- Corvallis Neighborhood Housing Services v. Linn County Assessor, 21 (OTR February 27, 2013).
- Dessingue, D. (2002). The Special Case of Churches. In E. Brody, *Property Tax Exemptions for Charities* (pp. 173-189). Washington DC: Urban Institute.
- Diamond, S. (2002). Efficiency and Benevolence: Philanthropic Tax Exemptions in 19th Century America. In E. Brody, *Property Tax Exemption for Charities* (pp. 115-144). Washington DC: Urban Institute.
- Dove Lewis Mem. Emer. Vet. Clinic v. Dept. of Rev. (Oregon Supreme Court August 5, 1986).
- Eliot, C. (1910). Remarks before the Recess Committee on Taxation. In E. Brody, *Property Tax Exemption for Charities* (p. 129). Washington DC: Urban Institute.
- Fremont-Smith, M. R. (2013). *Do We Need a New Legal Definition of Charity?* Washington D.C.: Urban Institute.
- General Accounting Office. (1990). *GAO/HRD-90-84 Nonprofit Hospitals: Better Standards Needed for Tax Exemption*. Washington D.C.: GAO.
- Internal Revenue Service. (1956). Revenue Ruling 56-185, 1956-1 C.B. 202.
- Internal Revenue Service. (1969). Revenue Ruling 69-545, 1969-2 C.B. 117.
- Internal Revenue Service. (2016, 5 31). *Exempt Purposes - Internal Revenue Code Section 501(c)(3)*. Retrieved from IRS.gov: <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501-c-3>
- IRS. (1980). *The Concept of Charity*. Washington D.C.: IRS.

Joint Committee on Taxation. (1991). *Proposals and Issues Relating to the Tax-Exempt Status of Not-For-Profit Hospitals*. Washington DC: Joint Committee on Taxation.

Kappa Gamma RHO v. Marion County, 130 Or. 165 (Oregon Supreme Court July 16, 1929).

Lewis Clark College v Commission (Oregon Tax Court May 20, 1969).

Maryland Law Review. (1979). The Hill-Burton Act, 1946-1980: Asynchrony in the Delivery of Health Care to the Poor. University of Maryland.

Mercy Medical Center Inc v. Dept. of Revenue, 12 (OTR October 21, 1992).

Mesivtah Eitz Chaim of Bobov Inc v Pike County Board of Assessment Appeals (Supreme Court of Pennsylvania April 26, 2012).

Metcalf, S., & Dalianis, A. (2012, July 13). *After Years of Judicial and Legislative Uncertainty Hospitals Receive Their Own Property Tax Exemption Under New Law*. Retrieved from Franczek Radelet Attorneys & Counselors: [http://www.franczek.com/frontcenter-Property\\_Tax\\_Exemptions\\_Illinois\\_hospitals.html](http://www.franczek.com/frontcenter-Property_Tax_Exemptions_Illinois_hospitals.html)

Methodist Homes Inc v State Tax Commission (Oregon Supreme Court March 1, 1961).

Minnesota Council of Nonprofits. (2016, 3 28). *Charitable Property Tax Exemption Redefined*. Retrieved from Minnesota Council of Nonprofits: <http://www.minnesotanonprofits.org/mcn-at-the-capitol/past-successes/charitable-property-tax-exemption-redefined>

Minnesota Department of Revenue. (2009). *Assessment and Classification Practices Report: Institutions of Purely Public Charity*.

Minnesota Department of Revenue. (2010). *Bulletin Property Tax Exemptions for Institutions of Purely Public Charity*.

Minnesota Department of Revenue. (2016, March 29). *Property Tax Administrator's Manual*. Retrieved from Minnesota Department of Revenue: [http://www.revenue.state.mn.us/local\\_gov/prop\\_tax\\_admin/Pages/ptamannual.aspx](http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/ptamannual.aspx)

Multnomah School of Bible v. Multnomah County, 218 (OR Supreme Court September 9, 1959).

Oregon Methodist Homes, Inc., Willamette View Manor, Inc. v. State Tax Commission, 226 Or. 298 (Supreme Court of Oregon March 1, 1961).

Provena Covenant Medical Center v The Department of Revenue, 107328 (Illinois Supreme Court March 18, 2010).

Rosenberg, C. E. (1987). *The Care of Strangers*. New York: Basic Books.

Rubinstein, H. G. (1997). Nonprofit Hospitals and the Federal Tax Exemption: a Fresh Prescription. *The Journal of Law-Medicine*, 381-427.



- Schroer, A., Medora, D., Mukerjee, A., & Wallinger, G. (2011). *Oregon Nonprofit Sector Report: The State of the Nonprofit Sector in Oregon*. Portland: Nonprofit Association of Oregon.
- Southwestern Oregon Public Defender Services, Inc., Appellant, v. Department of Revenue, 817 P.2d 1292 (Supreme Court of Oregon September 19, 1991).
- Starr, P. (1982). *The Social Transformation of American Medicine*. New York: Basic Books Inc.
- Theatre West of Lincoln City v. Dept. of Rev., 319 Or. 114 (Oregon Supreme Court May 26, 1994).
- Todd v. Citizens Gas Co. of Indianapolis, 46 F.2d 855 (U.S. Court of Appeals for the Seventh Circuit January 16, 1931).
- Under the Rainbow Childcare Center v. Goodhue County, A07-468 (Supreme Court of Minnesota December 6, 2007).
- Wall, B. M. (2016, June 27). Retrieved from Nursing: U. Penn.:  
<http://www.nursing.upenn.edu/nhhc/welcome%20page%20content/history%20of%20hospitals.pdf>
- Walz v. Tax Commission of City of New York, 135 (U.S. Supreme Court May 4, 1970).
- Washington State Department of Revenue. (2012). *2012 Tax Exemption Study*.
- Zateeny, D. (2012). *Purely Public Charity Status*. Pennsylvania Bar Institute.