

BEFORE THE IDAHO BOARD OF TAX APPEALS

LATAH COUNTY ASSESSOR,	)	
	)	
Appellant,	)	APPEAL NO. 17-A-1043
	)	
v.	)	<b>AMENDED</b>
	)	FINAL DECISION
THE EVANGELICAL LUTHERAN GOOD	)	AND ORDER
SAMARITAN SOCIETY,	)	
	)	
Respondent.	)	
	)	

\*Amended to correct Appellants Representative

**CHARITABLE EXEMPTION APPEAL**

This appeal is taken from a decision of the Latah County Board of Equalization granting a partial property tax exemption for property described by Parcel No. RPM100000000HBA. The appeal concerns the 2017 tax year.

This matter came on for hearing November 30, 2017 in Moscow, Idaho before Board Member David Kinghorn. Deputy Prosecuting Attorney Bradley Rudley represented Appellant at hearing. Attorney Jason Mau represented Respondent.

Board Members David Kinghorn and Leland Heinrich join in issuing this decision.

**The issue on appeal concerns whether the subject property qualifies for a property tax exemption pursuant to Idaho Code § 63-602C; the charitable exemption.**

**The decision of the Latah County Board of Equalization is reversed.**

FINDINGS OF FACT

The Latah County Board of Equalization (BOE) granted a partial charitable exemption for the subject property, resulting in a total assessed value of \$2,657,388 for the non-exempted portion of the property. Appellant contends the property does not qualify for the charitable exemption and instead should be assessed at a full market value of \$4,261,614.

Respondent is incorporated under the laws of North Dakota and operates various types

of senior care facilities across the United States, including four (4) in Idaho. Respondent is recognized as a tax exempt organization pursuant to Internal Revenue Code (IRC) section 501(c)(3), and further as a public charity under IRC § 509(a)(2).

The subject property (Moscow Village) is a long-term care campus located in Moscow, Idaho. Moscow Village is comprised of a large elder care center which houses roughly sixty-two (62) skilled nursing beds and thirty-two (32) assisted living units. The building also contains a large dining hall and several lounges and activity areas for use by residents of the facility. Some of these “community” areas are used by residents of both the skilled nursing and assisted living units of the facility. The larger campus includes four (4) additional parcels improved with senior living apartments and duplexes. These additional parcels are assessed at market value and are not part of the current appeal.

Respondent has operated Moscow Village since 1972. The property initially consisted of a skilled nursing facility and senior living apartments. Since 1998, assisted living services have also been offered. Moscow Village was granted both religious and charitable exemptions until 1987, at which time the exemptions were removed from the senior living apartments and duplexes. The skilled nursing and assisted living portions of the main facility continued to receive both exemptions until the current 2017 tax year, when the charitable exemption was removed by the Latah County Board of County Commissioners. Respondent appealed to the Latah County BOE, which granted a charitable exemption<sup>1</sup> to the assisted living portion of the facility. Appellant appealed the BOE’s decision to grant a partial charitable exemption, arguing

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<sup>1</sup>The BOE’s decision letter pertained to the entire five-parcel campus. For 2017, the letter specified 34.03% of the campus was granted a charitable exemption and 9.59% of the campus was granted a religious exemption.

Respondent is not a charitable organization under Idaho Code § 63-602C. The BOE's grant of a partial religious exemption was not appealed.

Moscow Village's assisted living department operated at a loss of roughly \$150,000 for 2016, however the facility on an overall basis, factoring in both the assisted living and skilled nursing departments, realized a positive revenue of nearly \$800,000 for 2016. Appellant argued the BOE erred in granting the charitable exemption to the assisted living portion of the subject property. Specifically, Appellant contended Idaho Code § 63-602C does not allow a building to be split into separate parts according to whether a particular portion generates positive revenues or operates at a loss, and then granting an exemption to the portion of the building which lost revenue.

In addition to the positive operating revenues of Moscow Village, Appellant argued Respondent operated the property similar to other like-type commercial facilities. Appellant highlighted some of Respondent's administrative policies, such as the admission process, which requires potential residents to submit to credit and background checks to determine whether a payment source can be established. Respondent also helps residents who are unable to pay for services become eligible for government programs. Appellant also pointed out Respondent's collections process for residents who fail to keep their accounts current is similar to those found in other commercial operations. Respondent acknowledged it has a formal collections process, however, noted no resident has ever been discharged from Moscow Village due to an inability to pay.

Appellant further pointed to a 2016 decision issued by the Idaho Supreme Court involving a skilled nursing facility operated by Respondent in Boise, Idaho, in which the Court determined

Respondent was not a charitable organization and therefore denied the exemption. Respondent argued the 2016 case was different because the facility at issue was a skilled nursing operation, whereas the Moscow Village facility has both skilled nursing and assisted living units.

Respondent argued Appellant's focus on Moscow Village's financial performance and administrative procedures ignores the fact Respondent's mission and general operation of the property have not changed throughout the nearly forty-five (45) years it has operated the Moscow Village campus. Respondent explained its assisted living services meet a need not currently met elsewhere in the community and contended the charitable exemption exists to promote the type of services and charitable works offered at Moscow Village.

#### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value, or as applicable exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The issue in this appeal is whether the subject property qualifies for a charitable exemption pursuant to Idaho Code § 63-602C. As detailed in the ensuing analysis, the Board finds the subject property does not qualify for the charitable exemption.

Idaho Code § 63-602C provides in pertinent part:

The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable limited liability company, corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such limited liability company, corporation or society is organized; provided, that if any building or property belonging to any such limited liability company, corporation or society is leased by such owner or if such limited liability company, corporation or society uses such property for

business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property . . . .

Determining whether a property qualifies for a charitable exemption is a two-pronged inquiry. First, the property must belong to a charitable organization and second, the property must be used exclusively for the purposes for which such charitable organization exists.

The term “charitable organization” is not defined in Idaho Code, however the Idaho Supreme Court, in *Appeal of Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984), did have occasion to visit the topic. The Court explained for an organization to be considered charitable it need not be restricted solely to providing monetary relief to the needy but does need to provide a gift for public benefit. *Sunny Ridge*, 106 Idaho at 100, 675 P.2d at 815. The Court further identified the following eight (8) factors to consider when determining whether an organization is charitable:

(1) the stated purpose of its undertaking, (2) whether its functions are charitable (in the sense just discussed), (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is a general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the “charity” provided is based on need.

*Id.*

Determination of an organization’s charitable status is an individual matter to be decided on a case-by-case basis, and some of the above factors may not necessarily be applicable to all cases, while other cases may necessitate consideration of factors not listed. *Id.* “The term ‘charity’ is really a matter of description rather than a precise definition and therefore a case involving a determination of that which is charitable must be decided upon its own particular facts

or circumstances.” *Id.* The above *Sunny Ridge* factors will be examined in turn.

**1. The stated purposes of its undertaking.**

Respondent’s Amended and Restated Articles of Incorporation define the organization’s purposes as follows:

- A. To share God’s love in word and deed, believing that in Christ’s love, everyone is someone.
- B. To provide shelter and supportive services to older persons and others in need.
- C. To engage in work of a charitable and religious nature by participation in any charitable or religious activity designed and carried on to promote the general health of the community.

The parties agree Respondent satisfies the first *Sunny Ridge* factor.

**2. Whether its functions are charitable.**

In examining this second factor, the relevant inquiry is whether the organization is fulfilling a need which might otherwise be the obligation of the government. *Housing Southwest, Inc. v. Washington Cnty.*, 128 Idaho 335, 339, 913 P.2d 68, 72 (1996). In *Housing Southwest*, the Court determined the functions of the organization, which were to provide low-income housing to senior citizens and disabled persons, were not charitable because the organization received funds from the government to offset the costs of providing the housing. *Id.* The Court similarly found Respondent, in the case from 2016 involving its Boise facility, did not perform a function which would otherwise be the obligation of the government because, “[Respondent] is compensated for all the services it provides by either the resident or by the government in the case of residents who cannot afford the care themselves.” *Evangelical Lutheran Good Samaritan Soc’y v. Bd. of Equalization of Ada Cnty.*, 161 Idaho 378, 382, 386 P.3d 901, 905

(2016). The facts in the instant case are similar to those in the recent Supreme Court decision in that Respondent is dependent on government programs and private pay residents of the facility, who pay market rates. Indeed, the revenue associated with Respondent's skilled nursing and assisted living units for 2016 came nearly 67% from government programs and roughly 31% from private pay residents, with the remaining 2% coming from unrestricted gifts and "other". It is also worth noting that while approximately 31% of the revenues generated by the assisted living services for 2016 were from government funding, the total revenue of the assisted living unit represented only approximately one-sixth (1/6) of the facility's overall revenue.

Respondent argued the current case is different than the 2016 case concerning the facility located in Boise because it is not compensated for "all" the assisted living services provided at Moscow Village. This argument is flawed because it ignores the reality that Moscow Village on the whole operates at a substantial profit. The Board does not find where the statute or prevailing case law permits segregation of a facility into revenue-generating and revenue-losing portions, with each considered separately for purposes of the charitable exemption. "Exemptions are never presumed; nor can a statute granting tax exemption be extended by judicial construction so as to create an exemption not specifically authorized." *Sunny Ridge*, 106 Idaho at 101, 675 P.2d at 816. While the exemption applies to the real property, the *Sunny Ridge* analysis focuses on whether the organization itself is charitable, which in the Board's view requires the organization as a whole must be examined, not just the property in question, or portions of such property. In the current case, the totality of the services provided at Moscow Village, supported almost entirely by government funding and private pay residents, generate positive annual revenues. As Respondent is compensated by the government and private pay

residents for its services, the Board is strained to find how Respondent is performing a function which would otherwise be the obligation of the government.

### **3. Whether it is supported by donations.**

This factor focuses on whether an organization is supported by donations. In *Owyhee Motorcycle Club, Inc. v. Ada Cnty.* the Idaho Supreme Court stated, “[t]his Court considers outside donations to be an important charitable factor because it reduces the cost to the general public.” 123 Idaho 962, 965, 855 P.2d 47, 50 (1993). The Court in *Owyhee Motorcycle Club* found this factor weighed against the organization because while it received donations, the general public did not benefit from such donations.

Respondent explained the Moscow Village facility received roughly \$76,500<sup>2</sup> in gifts and bequests during 2016. One (1) of these gifts was \$50,000 to fund an endowment for the Resident Beautification Fund, which residents can utilize for grooming and styling services. It was also noted there were other funds to which donations could be made, including; the Anchor Fund, the Staff Healthcare Endowment Fund, the Project Outreach fund, and the Hoeger Nursing Education Program and Staff Educational Loan Program fund. Though the Board recognizes the good intentions behind these various funds, some of which are not for the benefit of the facility’s residents at all but rather staff and volunteers, nothing in the record demonstrated donations made by the general public to these funds reduced the cost of services provided to the residents at Moscow Village or the general public. This factor weighs against Respondent.

### **4. Whether the recipients of its services are required to pay for the services they receive.**

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<sup>2</sup>The donations received at Moscow Village represented 1.2% of Respondent's local revenues for 2016, and only .3% the organization’s local revenues from January 1, 2017 through August 31, 2017.

This factor has been characterized by the Court as one “of great importance and should be weighted accordingly.” *Sunny Ridge*, 106 Idaho at 102, 675 P.2d at 817. Recipients of the services provided at Moscow Village are required to pay for the services received. As Respondent correctly noted, cost-free assistance is not required and an organization can still be considered charitable for collecting fees to help cover operating expenses. *Id.* at 101, 675 P.2d at 816. That being said, the Court has also held “there is nothing charitable in providing housing at the same or comparable rates as housing available from the private sector or commercial retirement centers.” *In re Evangelical Lutheran Good Samaritan Soc’y*, 119 Idaho 126, 132, 804 P.2d 229, 305 (1990).

Respondent explained the fees charged for its assisted living services do not fully cover the cost of the assisted living services provided and further argued because there are no other assisted living facilities in Moscow or Latah County, there is nothing to compare its rates with to determine whether such rates are at market levels. Appellant countered by providing rate information from several other assisted living facilities located in nearby Lewiston, Idaho, which showed the rates charged at Moscow Village were comparable to the rates charged at these other similar-type facilities. As for the skilled nursing services, Appellant provided information showing Moscow Village’s rates were higher in seven (7) out of (10) levels of care compared to the only other skilled nursing facility located in town. Based on the rate information in record, it is apparent to this Board the recipients of Respondent’s services pay rates comparable to those charged by other commercial skilled nursing and assisted living facilities. As such, this factor weighs against Respondent.

**5. Whether there is a general public benefit.**

In evaluating this fifth factor, an organization must demonstrate it provides a general public benefit. *Sunny Ridge* 106 Idaho at 100, 675 P.2d at 815. Respondent argued it satisfied this factor because the assisted living services provided to the poor, elderly, and infirm directly benefit the public by relieving the government of the burden of providing such services. Respondent also noted it is not fully reimbursed by the government for the assisted living services it provides. Appellant contended this factor was not satisfied because Respondent's services are only provided to residents at Moscow Village, who are required to pay for the services received, either with personal funds or money from government programs.

General public benefit was explained by the High Court in *Housing Southwest* as follows:

For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit. If the general public does not receive a direct benefit from a corporation's donations, then the question presented by the "general public benefit" factor is whether the corporation fulfills a need which the government might otherwise be required to fill. While the requirement that a corporation lessen the burden of the government is but one factor to be considered in determining tax exempt status, it is nevertheless an important one.

*Housing Southwest*, 128 Idaho at 339, 913 P.2d at 72 (citations omitted).

In examining the public benefit factor in *Housing Southwest*, the Court found the organization did not provide a general public benefit because it received funds from government housing programs. *Id.* "While discussing the organization's argument that it fulfilled an obligation that the government would otherwise need to fulfill, this Court noted that that argument was circular because the government was in fact fulfilling that obligation by paying for it." *Evangelical Lutheran Good Samaritan Soc'y*, 161 Idaho at 384, 386 P.3d at 907.

In the instant case, Respondent receives a notable portion of its funding from government programs. Roughly 66.9% of Moscow Village's total funding for 2016 came from government

programs and 31.27% from private pay residents at market rates. These figures are similar to Respondent's national organization, which was supported approximately 59% by government programs and 38.6% by private pay residents. Respondent argued the analysis should be restricted only to the assisted living portion of the operation, however, as stated above, the Board does not find support for splitting the facility in such a manner.

Respondent further argued it provided other benefits to the local community including; opportunities for members of the community to volunteer and assist in the organization's ministry, providing events for the community, and allowing the facility to be used by various nonprofit organizations and educational institutions free of charge. While allowing the facility to be used by other local organizations provides some benefit to the community, such benefit is not the direct result of the services provided by Respondent. Because only residents at Moscow Village benefit from the services provided, and the other community benefits referenced by Respondent are not the direct result of the services provided at Moscow Village, there is no direct benefit to the general public. As a result, the Board finds Respondent does not satisfy this *Sunny Ridge* factor.

#### **6. Whether the income received produces a profit.**

In examining the sixth *Sunny Ridge* factor, the Idaho Supreme Court in its most recent *Evangelical Lutheran Good Samaritan Soc'y* decision, stated:

While an organization is not required to operate at a deficit, accrual of profits is still a factor to consider. "[T]he accrual of substantial positive net revenue year after year, excluding donations, is suspect." In finding that an organization was not charitable in *Evangelical Lutheran Good Samaritan*, this Court found that the accrual of substantial profits weighed against the organization.

*Evangelical Lutheran Good Samaritan Soc'y*, 161 Idaho 378, 384, 386 P.3d 901, 908

(2016), *citing Evangelical Lutheran Good Samaritan Soc’y*, 119 Idaho at 132, 804 P.2d at 305.

Respondent pointed to the operational loss experienced by the assisted living portion of the Moscow Village facility for 2016 in arguing this factor was satisfied. Appellant highlighted the fact Moscow Village as a whole realized a substantial profit for 2016. Appellant further noted the assisted living department has historically operated at a profit. From 2010 through 2013, the assisted living unit generated a profit of more than \$1 million, and it has only been the period from 2014 through 2016 during which the assisted living unit has experienced operational losses. The combined losses from this recent period amount to less than one-fifth (1/5) of the revenue generated during the prior profitable period from 2010 through 2013. In other words, the assisted living unit has generated a notable overall profit since 2010. While the Board has already found the Moscow Village facility should be examined as a whole, the evidence shows the assisted living department itself has been profitable over the past six (6) years. This factor is a close call, however, because tax exemptions must be construed against the taxpayer, we find this factor weighs against Respondent.

**7. To whom the assets would go upon dissolution of the corporation.**

The Amended and Restated Articles of Incorporation specify upon dissolution Respondent’s assets will be distributed to Internal Revenue Code section 501(c)(3) nonprofit social ministry organizations as designated by the Evangelical Lutheran Church in America and the Lutheran Church-Missouri Synod. Respondent satisfies this factor.

**8. Whether the “charity” provided is based on need.**

Respondent does not satisfy this final *Sunny Ridge* factor. The Court in *Owyhee*

*Motorcycle Club* noted, “[w]e have indicated that to maintain tax exempt status, an organization should provide charitable assistance in the form of reduced costs for those who need it.” 123 Idaho at 966, 855 P.2d at 48. The record in the case at bar is clear, Respondent does not provide services based on need. Residents are required to pay for services received at Moscow Village either through government programs or by private pay. Moscow Village does not utilize a sliding fee scale and only considers granting a charitable allowance after failure to secure an alternate payment source for a resident or after attempting normal collection procedures. Not only is there no sliding fee scale in place, but Respondent has actually increased the daily private pay rates over the past several years for its assisted living services in response to a decreasing number of private pay residents and an increase in the number of Medicaid-recipient residents.

Having found Respondent does not satisfy the *Sunny Ridge* factors, we need not address the second requirement of whether the subject property is used exclusively for the purposes for which the organization exists.

“Statutes granting tax exemptions must be strictly construed against the tax payer and in favor of the state.” *Cnty. Action Agency, Inc. v. Bd. of Equalization of Nez Perce Cnty.*, 138 Idaho 82, 85, 57 P.3d 793, 796 (2002). “Exemptions are never presumed, nor can a statute granting tax exemption be extended by judicial construction to create an exemption not specifically authorized.” *Housing Southwest* 128 Idaho at 339, 913 P.2d at 72. Though Respondent satisfied some of the *Sunny Ridge* factors, the law regarding tax exemptions requires strict compliance with the statute. In this case, we did not find Respondent clearly established entitlement to the charitable exemption provided for in Idaho Code § 63-602C.

Based on the above, the decision of the Latah County Board of Equalization is reversed, thereby removing the charitable exemption from the subject property and reinstating the full market value assessment of \$4,261,614.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Latah County Board of Equalization concerning the subject parcel be, and the same hereby is, REVERSED, as detailed above.

DATED this 29<sup>th</sup> day of March, 2018.