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LICENSED IN
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AND
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RE: Testimony on HB 3034 before the House Revenue Committee

DATE: March 31, 2015

BY: Peter F. Stoloff, shareholder, Peter F. Stoloff, P.C.

Good afternoon Chair Barnhart and members of the Committee.

My name is Peter Stoloff. I am an attorney in private practice. I have been representing health care clients, primarily hospitals, for well over 30 years in transactional matters. I also represent a number of nonprofit hospital clients and health districts which operate hospitals, in matters relating to the real and personal property tax exemption under ORS 307.130. I have also litigated these tax exemption issues before the Department of Revenue and the Oregon Tax Court.

The Oregon Association of Hospitals and Health Systems (OAHHS) has asked me to provide testimony on HB 3034. The testimony I am giving today reflects my views as a practitioner who regularly practices with respect to property tax exemption matters involving hospitals.

I do have substantial concerns regarding HB 3034.

1. First, HB 3034 would overturn well over 100 years of Oregon statutes and case law relating to the real and personal property tax exemption under ORS 307.130, which nonprofit, charitable corporations in Oregon have relied on in order to provide hospital and medical care for the benefit of the communities which they serve.

An example of one such case involved Mercy Hospital in Eugene in 1927, in which the Oregon Supreme Court held that the hospital and adjoining property of Sisters of Mercy in Eugene were exempt from real and personal property taxation under the predecessor statute to ORS 307.130 because Mercy Hospital was a charitable corporation, and any surplus from its operations was used to improve the hospital, to pay off debt, and to take care of patients. The court held that despite the fact that the hospital billed all patients, the hospital was charitable and entitled to tax exemption because it took care of patients regardless of their ability to pay. Corporation of Sisters of Mercy v. Lane County, 123 Or. 144 153 (1927). The court further held that Mercy Hospital's exemption as a charitable corporation was not affected by the acceptance of paying patients, where the proceeds from paying patients were devoted to upkeep and extending free treatment to those unable to pay. Id. at 153. The holdings of the Oregon Supreme Court in the Mercy Hospital case remain the law today and are contained in the Oregon Department of Revenue's current administrative rules which interpret ORS 307.130. See, OAR 150-307.130-(A).

2. Second, in my opinion the existing statutes, administrative rules, and case law are sufficient to provide clarity to charitable hospitals, health districts, their advisors, and county assessors with respect to whether a particular use of property is charitable for purposes of ORS 307.130. For example, the applicable administrative rule in OAR 150-307.130-(A)(3)(d) requires that there be an element of gift and giving present in the organization's activities, relating to those it serves. This element of gift and giving is defined in the rule as giving something of value to a recipient with no expectation of compensation or remuneration. This rule also provides that forgiveness of uncollectible accounts does not by itself constitute a gift or giving. This rule further provides that 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, this rule provides that it is relevant to consider whether the receipts are applied to the upkeep, maintenance and equipment of the institution, whether patients receive the same treatment irrespective of their ability to pay, whether charges are made to all and, if made, whether lesser charges made to the poor or whether any charges made to the indigent. *Id.* at (3)(d)(C)(iv).

3. Third, there are two recent cases of the Oregon Tax Court, Magistrate Division, in which the court held that physician clinics acquired by tax exempt hospitals were subject to real and personal property taxation. One of the cases involved property in Douglas County and was decided on June 6, 2014. The other case was in Josephine County and was decided on February 27, 2015. In each case, the court found that there was insufficient evidence to determine that the organization had charity as its primary object and whether the organization's performance involved a gift or giving.

4. Fourth, tax exempt hospitals do pay substantial real and personal property taxes on their owned or leased property where that property does not meet the strict requirements for tax exemption in ORS 307.130. The Douglas County and Josephine County cases are two examples of this. Another example would be a hospital that acquires land to build a new hospital or additional hospital facilities. In such case, the hospital is merely holding vacant land for future use in its tax exempt activities, but on which the construction of facilities has not yet begun. The Oregon Supreme Court has held that under these circumstances, the property does not qualify for exemption. *Emanuel Lutheran Charity Board v. Dept. of Revenue*, 263 Or. 287 (1972).

5. Fifth, as I read HB 3034, it would provide that medical clinics and other activities of a nonprofit hospital which provide health services on the campus of the hospital for patients who are not primarily victims of accidents or acutely ill would not qualify for the property tax exemption unless charity care accounts for at least 15% of the gross annual patient revenue of the nonprofit corporation that provides the services. See, Section 1, subsections 3 and 4 of HB 3034. There are a number of problems with this proposal:

- The reference to "acutely ill or the victims of accidents" is very narrow, and is borrowed from the definition of hospital which was repealed in 2009 in Senate Bill 158 (2009).

- Many health services provided by nonprofit hospitals are provided to patients who are not acutely ill or the victims of accidents, such as ambulatory surgery, primary care clinics, diagnostic imaging, and sleep centers. Yet these services are essential in carrying out the hospitals' charitable mission of providing diagnosis and treatment and enhancing the health of the community on a nonprofit basis which involves an element of gift and giving.
- I respectfully submit that the 15% threshold for charity care is unrealistically high. It would mean that a typical hospital with \$100 million in gross annual patient revenue would have to provide free or discounted health services in the amount of at least \$15 million in order to obtain a 30% partial exemption for an on-campus or off-campus facility that is providing "health services" to patients who are not acutely ill or the victims of accidents. If the percentage is reduced to 7.5% and based on community benefit activities as defined in ORS 442.200(2), it would be more reasonable and realistic.
- How will the hospital and the Oregon Health Authority determine if a patient in an on-campus physician office is acutely ill or the victim of an accident?

6. Sixth, HB 3034 would adversely affect the property tax exemptions of those critical access hospitals and health districts in Oregon which happen to be tax exempt under IRC Section 501(c)(3).

For the foregoing reasons, I respectfully request that HB 3034 not be passed out of this Committee. Thank you for the opportunity to provide these comments.