

Health Care Property Tax Exemption Issues Loom Large

Charitable Giving vs. Tax Breaks

By **Elliott Pollack**, Esq., as published by **The Commercial Record**, October 2009



It is no secret that Connecticut leans more heavily on local property taxes to support the activities of municipal government than almost any other state in the union. The recent economic downturn and lack of leadership in Hartford to achieve meaningful property tax reform has only exacerbated the situation.

Over the years, assessors in several Connecticut communities have tested entitlement to the local *ad valorem* exemption and have enjoyed a certain degree of success. Most of the cases have dealt with private schools, colleges, low income housing and fund raising organizations. A notable 1971 decision involving a staff apartment house owned by Hartford Hospital upheld the exemption even though the property had nothing to do with the direct provision of health care. A use "necessary" for an exempt use was sufficient to bring the property under the exemption tent. Judicial efforts to develop coherent rules have created confusion about just what the law requires.

Does It Make Sense?

As health care has consumed more and more of our gross domestic product, large health care organizations have become billion dollar businesses with executives who command eye-popping salaries. Assessing authorities across the country have noted that many of these behemoths are run like profit-making businesses, and, while they are exempt under federal income tax law, the rationale for their property tax exemption may no longer exist.

Most states have focused on the intrinsically charitable origin of nonprofit health care when they have awarded health care institutions the exemption. After noticing that some of these entities furnish very little charitable care, a number of assessors went on the attack. Other assessors became aware that institutional health care providers had developed a panoply of new profitable services, some of which seemed to go beyond the mission statement in their organizational documents.

Two cases, one decided by Connecticut's highest appellate tribunal in March 2009 and one now before the Illinois Supreme Court, exemplify this trend.

In the Connecticut case, Saint Joseph's Living Center in Windham lost its local tax exemption. The Windham assessor asserted that because virtually all of the Center's patients' care was being paid from public or private sources, insufficient free or charitable care was being delivered. Charitable contributions were not significant. He also claimed that the short-term rehabilitation services which the Center had instituted were totally compensated, no free care was rendered, rehab was not one of the Center's stated charitable purposes and even wealthy patients would be served. The last arguments were accepted by the Connecticut Supreme Court in what may prove to be one of our more significant property tax exemption decisions in decades.

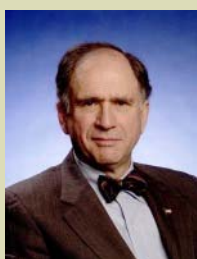
In a case which has made national headlines, Provena Covenant Medical Center in Urbana, Illinois is seeking to overturn a lower court decision denying its property tax exemption. Citing evidence that only 0.7 percent of its revenue was devoted to free or discounted care, the Illinois Attorney General urged the state's Supreme Court to uphold the revocation. Serving only 302 of 100,000 patients on a charitable basis is far short of the commitment to charitable care which is necessary to support the exemption, claimed the Illinois Attorney General. He also noted that bills sent to indigent patients failed to mention the availability of free or discounted care.

Provena's response was that the amount of charitable care actually provided is unimportant. The only relevant factor is whether the institution makes such care available to all.

The fiscal stakes could not be higher. One has only to look around Connecticut and to guesstimate about the billions of dollars in exempt real estate and personal property owned by currently exempt hospitals (we have only one for-profit hospital) and nursing homes. Millions of annual potential property tax payments may be on the line.

The federalization of health care which occurred in the mid 1960s with the passage of Medicare and Medicaid, together with the relentless growth of employer-based insurance, directed billions of dollars of new revenue to American hospitals. Those located in central cities generally support substantial charitable care to poor and lower-income citizens. Those hospitals in suburban areas may receive payment for virtually every service rendered. Does this fact justify judicial intervention to overturn local property tax exemptions in the most egregious cases? Or is this issue so basic to the fabric of our society that it should only be addressed, if at all, by legislation?

The Connecticut Supreme Court's decision in Saint Joseph's supported the denial of the health care facility's tax exemption on narrower grounds than those asserted against Provena. That is not to say, however, that other cases will not bubble up through the court system in which a Connecticut nonprofit hospital or nursing home may have to answer the challenges presented in Illinois.



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