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Hospital Tax Exemptions: Major Developments But No Resolution

In three opinions issued within days of each other, the Illinois Supreme Court and the Illinois Appellate Court signaled that the ongoing controversy concerning whether hospitals owned by non-profit corporations are entitled to exemption from local property taxes will continue for some time to come.

The vast majority of hospitals in Illinois are owned by corporations without shareholders, and are thus classified as “non-profit” for federal and state income tax purposes. But that classification alone does not mean that these are charitable institutions which may be granted exemption from property taxes under the Illinois Constitution. Nonetheless, in 2012, the Illinois General Assembly created a special category for non-profit hospitals under the Property Tax Code. Section 15-86 of the Code now provides that hospital owners avoid property taxes entirely if they can demonstrate that the value of certain defined “beneficial services” are greater than the value of the property taxes the hospital owners would have to pay if the

property were taxable. As a practical matter, this standard has been very easy for hospitals to meet, even where truly charitable services have been just a small part of their business.

Several challenges have arisen to the legislature's favorable treatment for hospitals. In the case of *Carle Foundation v. Cunningham Township*, local assessment officials in Champaign County have been trying to tax the Carle Foundation Hospital, but hospital owners went first to court to fight that effort. In January 2016, as we reported in a previous Priority Briefing, the Illinois Appellate Court ruled that Section 15-86 was unconstitutional and invalid. However, on March 23, 2017, the Illinois Supreme Court vacated the Appellate Court's ruling, not on the merits of the dispute, but because it decided that the issue of the constitutionality of Section 15-86 should not have been decided by the Appellate Court while the underlying claim was still to be decided in the circuit court. The effect of this decision by the Supreme Court, besides sending the parties in that case back to the lower court, is to leave the validity of Section 15-86 still in doubt and without providing any guidance to local and state property tax officials, at least not



yet.

Next, in the case of *Oswald v. Hamer*, a taxpayer sought a declaration by the courts that Section 15-86 is invalid on its face because it contradicts the charitable tax exemption provision of the Illinois Constitution. In December 2016, the Illinois Appellate Court issued an opinion that the statute is facially valid, but only because it interpreted Section 15-86 as not removing the constitutional requirement that hospitals also demonstrate that they are charitable in order to qualify for property tax exemption. The taxpayer sought rehearing in the *Oswald* case, but on March 31, 2017, the Appellate Court declined to reconsider its opinion. While it is not yet known whether the taxpayer will seek Supreme Court review of this case, some of the Supreme Court justices during the oral argument of the *Carle Foundation* case indicated an awareness of *Oswald* and an opinion that it presented a more suitable vehicle to reach the merits of the validity of Section 15-86. Keep in mind that should the Appellate Court's interpretation of the statute in *Oswald* prevail in the Supreme Court, very few hospitals would likely retain their exempt status.

In a third case, a tax exemption granted to NorthShore

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University Healthsystem is being challenged in the Illinois Department of Revenue by Niles Township High School District 219. In an effort to circumvent the Department's proceedings, NorthShore went to court, arguing that the District's hearing requests were insufficient for failure to specify the Department's errors in issuing exemption certificates, even though the Department had not stated its bases for issuing those certificates in the first place. The Circuit Court dismissed NorthShore's case and, on March 28, 2017, in the case of *NorthShore University Healthsystem v. Illinois Department of Revenue*, the Appellate Court agreed with the Department and the Circuit Court that NorthShore had to complete Department's hearing procedure before going to court. That ruling will allow the Department to rule first on the NorthShore tax exemption.

Hauser Izzo, LLC attorneys are deeply involved in each of those cases. John M. Izzo and Eugene C. Edwards are representing District 219 in the NorthShore litigation. Further, John and Eugene submitted an *amicus curiae* brief on behalf of the Illinois Association of School Boards, the Illinois Association of School Administrators, and the Illinois Association of School Business Officials in the *Carle Foundation* appeal to the Supreme



Court. Finally, John and Eugene also submitted an *amicus curiae* brief to the Appellate Court on behalf of IASA and IASBO in the *Oswald* case.

If you have questions regarding the recent developments of these cases, please contact one of our attorneys in Flossmoor (708) 799-6766 or Oak Brook (630) 928-1200.