

PUBLICATION

Spotlight on SALT: Illinois Supreme Court Yanks Hospital's Property Tax Charitable Exemption

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On March 18, 2010, the Illinois Supreme Court held in *Provena Covenant Medical Center v. Dept. of Revenue*, No. 107328, that a non-profit hospital corporation affiliated with the Catholic Church did not qualify for the Illinois charitable exemption from real property tax. The consequences of this decision could reverberate for charitable, non-profit health care organizations in many states that also provide charitable exemptions from their state or local property taxes.

Background

Provena is a non-profit health care organization that owns and operates six hospitals, including Provena Covenant Medical Center in Urbana, Illinois, and other health care related operations on 43 separate parcels of real estate in Urbana and Sangamon County, Illinois. Provena is also tax-exempt for federal income tax purposes, as described in § 501(c)(3) of the Internal Revenue Code. As a non-profit corporation under Illinois law, Provena is a non-stock corporation and was formed for "religious, charitable, educational, and scientific purposes."

During the applicable time period, the hospital's inpatient admissions encompassed three broad categories of patients: those with private health insurance; those on Medicare or Medicaid; and "self-pay (uninsured)." "Net patient service revenue" represented over 96 percent of Provena's total revenue. While not mentioned in Provena's advertisements, a charity care policy was in place, and the hospital did pursue community outreach efforts to communicate the availability of charity care. Charity care was not self-executing; rather, a patient was required to apply and, if eligible based on income, would receive full or partial reduction in the patient portion of billed charges depending on the patient's income level. For the 2002 tax year at issue, Provena's waiver of charges related to its charity care policy represented less than one percent of its revenues.

Illinois Charitable Exemption from Property Tax

Under Illinois law, found at 35 I.L.C.S. § 200/15-65, eligibility for the Illinois charitable exemption from property tax requires (a) that the property be "actually and exclusively used for charitable or beneficent purposes," and (b) owned by a public charity. Based on Illinois case law, the Illinois Supreme Court first held that Provena was not a public charity, because its revenues were not derived mainly from private and public charity; rather, Provena's revenues were primarily derived by providing medical services for a fee, and the record was devoid of evidence of Provena's charitable expenditures. Next, the State's highest court held that Provena did not satisfy the charitable use requirement. Because the number of patients receiving free or discounted care pursuant to the charity care policy was de minimis, the hospital property was devoted to the care and treatment of patients in exchange for compensation through private insurance, Medicare and Medicaid, or direct payment from a patient. Further, the charity care policy was not advertised. All patients were billed as a matter of course and unpaid bills were referred to collection. A patient was required to apply for charity care, and charges were waived or discounted only after it was determined the patient had no insurance coverage, did not qualify for Medicare or Medicaid, lacked the resources to pay the bill, and could document he or she otherwise qualified for charity care. In this way, the Illinois Supreme Court reasoned that Provena's charity care policy was little different than a for-profit institution's policy for writing off bad debts.

Provena also argued that it qualified for the charitable exemption because of the subsidies it provided for ambulance service, a crisis nursery, donations made to other non-profit entities, volunteer initiatives, and support it provided for graduate medical education, behavioral health services and emergency services training. While these activities benefited the community, the Illinois Supreme Court ruled that community benefit is not the test to qualify for the Illinois charitable exemption from property tax. Without charitable ownership and charitable use, no exemption is permitted.

National Implications

The result in *Provena Covenant Medical Center* has national implications. A number of states and localities provide charitable exemptions from property taxes. To the extent the reasoning of the Illinois Supreme Court is adopted by state and local taxing authorities, and also by courts, *Provena Covenant Medical Center* could have severe repercussions for non-profit hospitals and health care institutions nationwide.

If you would like to discuss the issues and implications resulting from *Provena Covenant Medical Center*, please contact your Baker Donelson attorney.