



## Loss of Charitable Exemption Costs Hospital \$1M in Property Taxes

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Not-for-profit health care providers should ensure that their tax-exempt status is protected against scrutiny by states and other jurisdictions looking for potential tax revenues. On March 18, 2010, the Illinois Supreme Court found a Catholic-related hospital to be non-exempt under the state's property tax code despite its non-profit corporate status and exemption from federal income tax. This decision will require the hospital to pay approximately \$1 million in property taxes and may spur other states to increase challenges to not-for-profit exemptions.

Provena Covenant Medical Center (PCMC) is one of six hospitals owned by Provena Hospitals, an Illinois non-profit corporation exempt from Illinois' retailers' occupation tax, service occupation tax, and service use taxes. PCMC is a general acute care hospital servicing the Champaign/Urbana area. The PCMC complex, comprising 43 separate real estate parcels, maintains just over 260 licensed beds. It annually admits approximately 10,000 inpatients and 100,000 outpatients. PCMC services patients under private health insurance, Medicare/Medicaid, and those who are self-pay or uninsured.

The hospital has a charity care policy, under which it offers, to the extent it is financially able, admission for care or treatment regardless of ability to pay. However, patients must complete an application in order to be eligible for care. Eligibility is based upon income and assets, and PCMC uses charity care as the last resort. In 2002, PCMC waived charity care charges of \$831,724, less than 1% of its total revenues for the year.

Under Illinois law, and the laws of most other jurisdictions, taxation is the rule and exemption is the exception. In order to be eligible for the charitable exemption from property tax under Illinois law, the property must be both owned by a charitable institution and "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit." The Illinois Supreme Court found that PCMC failed both requirements.



According to the Court, a charitable institution has five characteristics: (1) it has no capital or shareholders; (2) it does not earn profits or dividends; (3) it provides charitable care to all who need and apply for it; (4) it does not provide gain or profit to any person connected with it; and (5) it does not place obstacles in the way of those needing care. Although PCMC had met the first and fourth characteristics, the court determined it could not meet the second criterion, as PCMC's funds are generated overwhelmingly by medical care services for fee. Also, PCMC did not establish its burden to satisfy the fifth criterion.

In addition to the requirement to establish charitable ownership, which the Court determined that PCMC failed to do, PCMC also failed to establish charitable use. Although the hospital provided secondary or incidental benefits, this alone is insufficient to support a charitable exemption. The characteristic of charitable status includes demonstrating that the hospital's "activities will help alleviate some financial burden incurred by the affected taxing bodies in performing their governmental functions." Because the number of uninsured patients receiving free or discounted care and the value of the charitable care received were *de minimus*, the court found that this element was not met.

This decision may signal greater scrutiny from other state and local jurisdictions of non-profit and charitable exemptions. Such entities should consult with counsel to ensure their status is protected.

*Provena Covenant Med. Ctr. v. Dep't of Revenue*, No. 107328 (Ill. Mar. 18, 2010).

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