



GENERAL

## More N.J. Nonprofit Hospitals With Property Tax Troubles

09.22.16 | Linda J. Rosenthal, JD



In “[Local Governments Eager to Snag Revenue from Nonprofits](#),” we quoted the [warning](#) from the late Rick Cohen back in 2010: “If Congress tried to take away the tax exemption from nonprofit 501(c)(3) organizations, our sector would be united and up in arms. But instead we are besieged with hundreds of local attacks on the tax exemption from cities, counties, and states.”

While some measures by these government entities are directed at stopping outright abuses, many others are being [mounted by financially starved](#) local and state governments to leave no stone unturned in the search for additional revenue.

One creative trend is tweaking the terminology for money owed to a municipality; that is, charging nonprofits “for ... [anything ... they can think of](#)” like turning “[the local hydrant tax into a fee](#).” Another popular idea is a “[payment in lieu of taxes](#)” (PILOT) to fund important public services like police, fire, and public works. Local governments are demanding them or – at least – asking for voluntary payments.

The biggest prize, though, is the property tax exemption itself – particularly of the [major charitable institutions of a community](#) – the “eds and meds”; that is, the universities and hospitals. As major property-holders, they gobble up many key real estate parcels – removing these valuable assets from the property-tax base.

An early – and widely publicized – victory was in 2010 in Illinois; Downstate Provena Covenant Medical Center lost its tax exemption by failing to prove it was “used for exclusively charitable purposes.” Key factors in the decision were the sources of revenue and the failure to provide



enough charity care.

More recently, the State of New Jersey has become a focus of attention because of two key property tax challenges; first, against Morristown Medical Center (decided in the municipality's favor last year) and an upcoming contest with Princeton University. The same New Jersey tax court judge, Vito Bianco, who ruled against the hospital, will preside over the university lawsuit.

### *Morristown Property Tax Challenge*

In June 2015, Chief Judge Bianco issued a decision that “sent shock waves through the state’s nonprofit health care community.” He ruled that Morristown Medical Center was not eligible for a property tax exemption on almost all of its 40-acre property.

The 88-page opinion was a harsh blast against not only this Morristown facility but more generally against the modern nonprofit health-care institution model. “Non-profit hospitals have changed significantly,” he wrote, “from their early origins as charitable alms houses providing free basic medical treatment to the infirm poor....” The [modern] “medical center appears functionally similar to for-profit hospitals,” operating as “labyrinthine corporate structures, intertwined with both non-profit and for-profit subsidiaries and unaffiliated” entities.

Asserting that “times have changed and the longstanding tax exemption based on state law should no longer apply, Judge Bianco challenged the Legislature to change the law if it disagreed.” He also suggested that “all 72 nonprofit hospitals in the state” may have cause to worry about their property tax exemptions.

The New Jersey Hospital Association is putting up a fight – trying to get legislation passed, but the issue is being tossed around like a football between legislators and Governor Chris Christie. Earlier this year, the Governor indicated he supports a proposed “two-year freeze” until the issue can be studied by a proposed 9-member commission.

### *The Other Shoe Has Dropped*

Nevertheless, in late August 2016, news broke that 35 New Jersey hospitals have been sued by their local communities, based on Morristown’s success in attacking the property tax exemption of Morristown Medical Center. While a few of those hospitals have already settled with their municipalities, the remaining defendant-hospitals are in jeopardy.

### *Conclusion*

“[W]hile most organizations are (legitimately) focused elsewhere; that is, on compliance with the complex, federal income tax-exemption rules, these widespread attacks on property tax exemptions around the nation should be a wake-up call. “It’s been clear for several years that this is a trend that the philanthropy community should ignore at its peril.”

**Update (10/18/16):** The Princeton University property tax trial was scheduled to begin yesterday. Last Friday, Princeton settled the claim against it, promising to pay substantial amounts to the local community. We’ll cover this important development in an upcoming post.



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