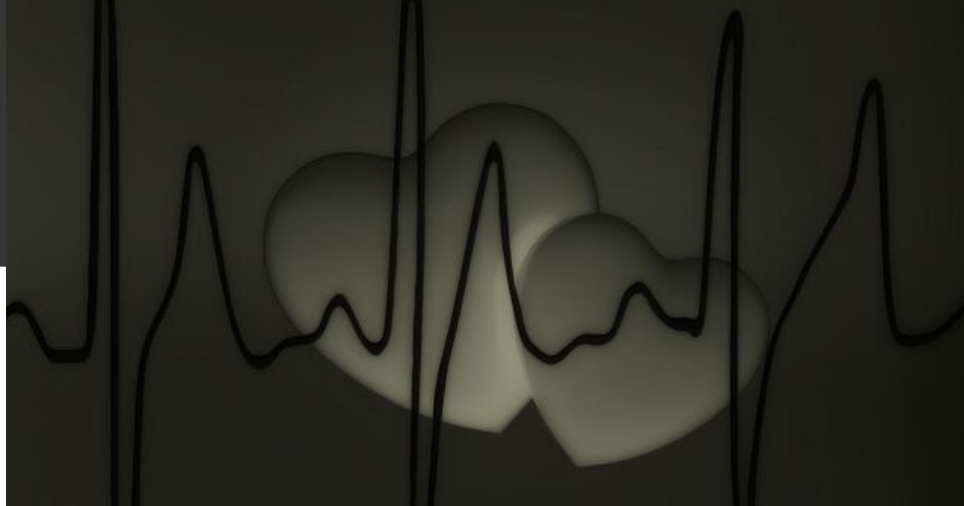


# Nonprofit Hospitals at a Crossroads

02.09.17 | Linda J. Rosenthal, JD



Nonprofit hospitals straddle two worlds: philanthropy and health care. They are key players in both sectors, and are in the crosshairs of government regulators and watchdog groups.

We have reported on the growing number of challenges by local governments around the U.S. to the long-standing and valuable property tax exemptions of nonprofits including hospitals. A recent decision from the New Jersey Tax Court “sent shock waves through the state’s nonprofit health care community.”

Not only did Chief Judge Vito Bianco yank the property tax exemption from almost all of the property of Morristown Medical Center, he suggested that “all 72 nonprofit hospitals in the state” may have cause to worry about their property tax exemptions as well. He blasted the modern non-profit hospital model as failing to achieve charitable goals and being “functionally similar to for-profit hospitals,” operating as “labyrinthine corporate structures, intertwined with both non-profit and for-profit subsidiaries and unaffiliated” entities.

Other municipalities around New Jersey have followed through on Judge Bianco’s suggestion; in the last few months, over 20 additional hospitals are facing property tax litigation.

The bottom-line issue in all of these cases is whether these nonprofit healthcare institutions are operating sufficiently in the public interest to merit the big revenue drain from municipal coffers.

## *Federal Review of Nonprofit Hospitals*

On the federal level, too, nonprofit hospitals are facing probes about whether they are meeting the charitable goals for which their income tax exemptions have been granted.

These inquiries arise not only from the general oversight authority granted to the Internal Revenue Service by reason of the section 501(c)(3) tax exemption, but also from new responsibilities

imposed under the Affordable Care Act of 2010.

Under this landmark health coverage legislation, new Section 501(r) was added to the Internal Revenue Code, imposing special requirements on 501(c)(3) organizations that operate one or more hospital facilities (hospital organizations).

Each 501(c)(3) hospital organization must meet four general responsibilities, “on a facility-by-facility basis:

- establish written financial assistance and emergency medical care policies,
- limit amounts charged for emergency or other medically necessary care to individuals eligible for assistance under the hospital’s financial assistance policy,
- make reasonable efforts to determine whether an individual is eligible for assistance under the hospital’s financial assistance policy before engaging in extraordinary collection actions against the individual, and
- conduct a CHNA [“Community Health Needs Assessment”] and adopt an implementation strategy at least once every three years.

There is also a new Internal Revenue Code section 4959, which imposes an excise tax for failure to meet the CHNA requirements.

According to a “recently released work plan of the IRS Tax Exempt and Government Entities Division,” the agency is “hard at work reviewing hospitals for compliance” with these new section 501(r) requirements.

By mid-2016, the Internal Revenue Service had completed almost 700 reviews and “referred 166 hospitals for field examination.” The agency will continue these probes throughout fiscal year 2017.

### *Conclusion*

The nonprofit hospital sector is rapidly expanding, taking in massive amounts of revenue. But these hospital organizations also receive staggering tax benefits. The “value of the tax exemption varies by state, but hospitals across the country received a collective \$24.6 billion tax break in 2011.” This “includes not only the direct savings from federal and state taxes, but hospitals’ ability to raise money through tax-exempt donations and municipal bonds.”

Nevertheless, according to a study in the journal Modern Healthcare, “most of these funds aren’t being spent on improving community health.”

The burden is now squarely on the nonprofit healthcare sector to justify these continuing, generous tax perks.

— *Linda J. Rosenthal, J.D., FPLG Information & Research Director*