

Princeton U. Settles Property Tax Exemption Challenge

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“Are You Watching the Court Rulings on Property Tax Exemptions?”

That’s the provocative question asked in 2015 by Linda M. Czipo, of New Jersey’s Center for Non-Profits. She, herself, provided the prescient answer: “Maybe You Should.”

Recently, around the nation, state and local governments have devised clever ways to pry additional revenue from their tax-exempt nonprofits to counteract severe budget constraints. New Jersey has emerged as a hotbed of this activity, and the most lucrative potential targets are the valuable property tax exemptions of that state’s biggest nonprofit institutions, including universities and hospitals.

First, the Hospitals

In a key test case in 2015, officials in Morristown, New Jersey, took aim at a major landowner in town – Morristown Medical Center. This direct attack on the applicability of the property tax exemption to a modern healthcare center was successful. In an 88-page – stinging – opinion, Chief Judge Vito Bianco of the New Jersey Tax Court ruled that the institution was not eligible for a property tax exemption on almost all of its 40-acre property.

“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.

Sure enough, 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.

Next, the Universities

Roughly the same objections about a major landowner’s entitlement to a charitable property tax exemption can be made against institutions of higher education. Modern universities have morphed into huge, varied enterprises with enormous endowments and extensive property holdings. This sets the stage for a class “town vs. gown” showdown about how the university is a voracious public-services user without paying for those services.

In an interesting twist, recently, Princeton University became the target of a property tax challenge that was brought not by the local government itself, but directly by irate residents of Princeton, New Jersey. Their arguments and standing to sue have been based on the premise that if the university escapes the obligation to pay for municipal services it uses, then the burden disproportionately and unfairly shifts to the homeowners and businesses who are required to pay property taxes.

The 27 plaintiffs are low-income, disabled or retirees in Princeton, an affluent town with a median household income of \$116,875. “Those with the least resources...were subsidizing the nonpayment of some of the wealthiest property owners, namely Princeton University,” said a former mayor of Princeton and one of the lawsuit’s plaintiffs. The lawsuit was designed to try to stabilize the tax base, “to give these more disadvantaged families a chance to keep up.”

In addition, the plaintiffs allege that the “university participated in commercial licensing and other for-profit ventures, particularly stemming from biotech research.” As such, some of the property is not used for “nonprofit academic purposes.” They also point to the university’s investments and fee-based operations like cafes.

Under New Jersey’s property tax statutes, since 2001, some proration is allowed when a property owned by a charity is used for both charitable and noncharitable purposes. In this case, though, the plaintiffs have asked the court to revoke the University’s property tax exemption entirely.

Not only has this been a high-profile test case – watched anxiously by other universities around the nation – it features a familiar name: Chief Judge Vito Bianco.

Fields v. Princeton University has been in the courts for over a year. In a major skirmish last November, Judge Bianco ruled that Princeton has the burden to prove that it is entitled to the property tax exemption. The plaintiffs are not required to prove that Princeton is not entitled to this valuable tax break. He rejected the argument that requiring the nonprofit to bear the burden of proof in third-party cases like this would invite litigation and make the charities more vulnerable to frivolous challenges.

Because of the important issues here, Princeton has received support from allies in the nonprofit world, including New Jersey's Center for Non-Profits, which filed an amicus curiae brief (with 5 co-signers) in support of Princeton's appeal of the November adverse ruling.

This lawsuit worked its way through preliminary proceedings and trial was set to begin on Monday, October 17, 2016. Seeing the proverbial "writing on its [ivy-covered] walls," the university agreed to settle the lawsuit the previous Friday. Princeton University agreed to pay \$18.2 million over six years.

The settlement has features that address the economic inequality that was a key reason for the lawsuit. For example, some \$1.25 million over the next three years will go to property-tax relief in one of the town's "historically black" communities that "has become increasingly unaffordable in recent years." Another \$10 million will go to Princeton residents "who already get property-tax relief under the state's homestead benefit program."

The "underlying issue of the school's property tax-exempt status remains unresolved, and the plaintiffs are free to bring another lawsuit in six years."

Conclusion

Although Princeton University officials have characterized the decision to settle the case as a pragmatic evaluation of the cost of a trial, instead of any concession about the merits of plaintiffs' arguments, this is a significant development that has implications for many charitable organizations and institutions around the nation.

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