

# Property Tax Exemptions: The New Battlefield

05.19.16 | Linda J. Rosenthal, JD



In [\*Local Governments Eager to Snag Revenue from Nonprofits\*](#), we discussed an important trend that should be grabbing the attention of the nation's 501(c)(3)s: local governments' myriad attempts to vacuum up loose dollars – or even nickels and dimes – from nonprofits in their communities.

Favorite methods include: imposing (or asking for voluntary) “payments in lieu of taxes” (PILOTs), and renaming “taxes” as “fees” so that tax-exempt organizations must pay them.

This is happening all around the nation while most organizations are (legitimately) focused elsewhere; that is, on compliance with the complex, federal income tax-exemption rules.

## *Property Tax Exemptions: The Big Target*

But the way to snag the big bucks is to tack some bulls-eyes on the major charitable institutions of a community – the “eds and meds”; that is, the universities and hospitals. They are the big property-holders in town and, as they expand, they gobble up (and remove from the property-tax base) many important valuable real estate parcels.

“[Are You Watching the Court Rulings on Property Tax Exemptions?](#)” asked a New Jersey nonprofit leader in a provocative blog post last summer. He answers his own question: “[Maybe You Should.](#)”

Recently, there have been assaults on property tax exemptions all around the nation. But one state, in particular, – New Jersey – has dominated the news headlines on this issue. A successful property tax challenge against a major medical center has put all other nonprofit hospitals in the state in immediate peril. And an upcoming, taxpayer-based, challenge to the property tax exemption of Princeton University may have serious repercussions, too, – in the Garden State and beyond.

### ***Morristown Medical Center***

In June 2015, Vito Bianco, Chief Judge of the New Jersey Tax Court [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 an unequivocal, “take-no-prisoners” blast against not only Morristown, in particular, but the modern nonprofit healthcare institution model, generally. Judge Bianco determined the hospital was not eligible for a property tax exemption on almost all of its 40-acre property. It “failed to meet the legal test that it operated as a non-profit, charitable organization [during the years in question] .... Only the auditorium, fitness center and the visitors’ garage should not be assessed for property taxes.”

“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.

While he took particular aim at the pay structure of the hospital’s executives and health-care professionals which are “competitive even by for-profit standards,” this was, by no means, the only basis for the devastating ruling.

Distilled to its essence, the judge asserted that times have changed and the longstanding tax exemption based on state law should no longer apply. He challenged the Legislature to change the law if it disagreed. The case will likely be appealed on numerous grounds, including the judge’s decision to apply a new standard on nonprofit compensation that disregards IRS procedures and safe harbors.

Notwithstanding any appeal, the Tax Court decision caused an immediate ripple effect. Judge Bianco suggested that his reasoning “could be applied to all 72 nonprofit hospitals in the state.” After the ruling, municipalities around the state initiated proceedings against their own communities’ nonprofit health centers. The New Jersey Hospital Association is fighting back, though, trying to get legislation passed. The issue is being tossed around like a football between legislators and Governor Chris Christie. The latest news is that Gov. Christie says he will support a proposed “two-year freeze” until the issue can be studied by a proposed 9-member commission.

#### ***Princeton University***

There’s another big property tax case pending right now in New Jersey, and Chief Judge Vito Bianco is, once again, presiding.

This time, though, it’s not a hospital, but a huge, prestigious university: Princeton. And it’s not the state government that is bringing the action challenging a property-tax exemption; it’s a group of irate citizens who assert they are shouldering an undue proportion of the local tax burden for necessary municipal services. They have named the municipality as a co-defendant.

Of course, as with the Morristown Medical Center case, *Fields v. Princeton University* will be decided under New Jersey law; nevertheless, it is getting significant national attention.

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. This lawsuit is based on several grounds, including the University’s investments, fee-based operations

like cafes, and payment of patent royalties to faculty.

The case 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 has filed an amicus-curiae brief (with 5 co-signers) in support of Princeton's appeal of the November adverse ruling.

### *Conclusion*

As "[f]inancially strapped cities and municipalities across the country are increasingly asking big nonprofits to pay into the local tax base," these property tax challenges have the potential to seriously affect the financial viability of the nonprofit sector nationwide.

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