



News & Types: Real Estate Update

# Recent Developments in Real Property Taxation

11/12/2018

By: Timothy J. Hammersmith

Practices: Real Estate

It is not very often that cases involving real estate taxation make the news. However, the Illinois Supreme Court recently held that a statute expressly granting real property tax exemptions to hospitals (provided certain criteria are satisfied) is constitutional. See *Oswald v. Hamer*, 2018 IL 12203 (the Opinion has not yet been released for publication but was decided September 20, 2018). This is news because, previously, real estate tax exemptions for hospitals were based on the “charitable purposes” exemption if the hospital was “used exclusively for charitable purposes” as defined under Illinois law. However, measuring whether a hospital was “charitable” became challenging as the healthcare industry has evolved.

In the past, if a hospital otherwise met the “charitable” test and did not lease any part of its property to physicians or other “for-profit” tenants, its hospital facility was exempt from real estate taxes. Note, for example, hospitals that lease parts of their facilities to doctors or other “for-profit” entities are taxed under a “leasehold” theory of taxation for that portion of the facility that is leased. That will remain the same after the *Oswald* ruling.

Several years ago, in response to a private party challenge that some hospitals were not really providing healthcare on a “charitable” basis (and that there was no objective criteria to test the same), the Illinois General Assembly amended the Illinois Tax Code to provide a specific exemption for hospitals (with some objective measuring criteria). The legislative change provided that a hospital facility would be exempt from real estate taxes if the value of the services or activities provided (which include free or discounted health services to low or underinsured individuals, treating dual-eligibility Medicare/Medicaid payments, etc.) measured at cost, meets or exceeds the estimated property tax liability for the same year. Basically then, if the value of the services and activities provided by the hospital, on an exclusive basis, exceeded its potential real estate tax liability without the exemption, the exemption would apply.

The subject statutory provision is really an extension of “charitable” exemptions, as the Illinois legislature does not have the authority to exceed expressly stated Illinois Constitutional limitations on real estate tax exemptions. Despite the Illinois Legislature not including the provision that such charitable services and activities must be provided on an “exclusive” basis, the Illinois Supreme Court found the statutory amendment to be constitutional and the “exclusive” requirement still applicable.

A hospital seeking a charitable real property tax exemption must document the services or activities provided and prove they meet the statutory criteria, as well as demonstrating that the property meets the constitutional

test of “exclusive” charitable use. From a legal standpoint, part of the court’s holding is based on the premise that under Illinois law a statute that is argued to be unconstitutional on its face will only be found unconstitutional if no set of circumstances exist where the statute could be valid. The court further stated that if any situation exists where the statute could be validly applied then a challenge to the statute on constitutional grounds will fail.

For the past several years and while this decision was making its way through the courts, many hospital organizations were concerned with potentially losing valuable property tax exemptions. The controversy in the past was always whether the hospital organizations were “charitable” under Illinois law in providing services to any person who could not afford it. Third parties argued that given hospitals were seeking collection of unpaid charges against those persons, who “may” be able to pay something, was indicative of the fact that the intent was not purely “charitable” under Illinois law. As the Illinois Supreme Court in the recent *Oswald* opinion upheld, the requirement that the real property must be used for an “exclusive” (charitable) use, medical offices owned by a hospital and leased to doctors or other professionals will still be subject to a leasehold taxation.

Practically, the Plaintiff in this case was seeking to have hospitals share part of the growing real property tax burden. Rising taxes and having others share that burden, thus decreasing one’s own proportionate share of taxes, was likely behind the filing of the lawsuit by the Plaintiff Oswald.