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HEALTH LAW NEWS

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ILLINOIS SUPREME COURT UPHOLDS CONSTITUTIONALITY OF PROPERTY TAX EXEMPTION STATUTE FOR HOSPITALS

Hospitals in Illinois received good news last week when, after years of litigation in state court, the Illinois Supreme Court in *Oswald v. Hamer*[i] upheld the constitutionality of Section 15-86 of the Illinois Property Tax Code, which addresses tax exemptions for hospitals. While this decision allays recent uncertainty surrounding hospital property tax exemptions and gives important guidance to the Illinois Department of Revenue as it evaluates exemption applications under Section 15-86, the *Oswald* court left the door open to future challenges to the statute on other grounds. Hospitals in other states should anticipate and prepare for similar challenges, which have surged in popularity in recent years.

In *Oswald*, an Illinois taxpayer brought a facial constitutional challenge to the Illinois statute granting hospital-based property tax exemptions.[ii] In particular, Section 15-86 states that the Illinois Department of Revenue ("IDOR") "shall" grant a not-for-profit hospital a property tax exemption so long as the hospital can show it provides certain charitable services in excess of the hospital's potential tax liability.[iii] In effect, Section 15-86 requires a hospital applying for exemption to prove to IDOR that the hospital is truly relieving "the State's burden to care for and advance the interests of its residents."[iv]

The taxpayer-plaintiff argued this statutory test was inconsistent with the directive set out in the Illinois Constitution.[v] The Illinois Constitution permits property tax exemptions only where the property is used "exclusively" for "charitable purposes."[vi] Although the statutory and constitutional tests serve similar, if not identical, policy interests, the taxpayer-plaintiff argued the statutory test departed from the constitutional standard by not requiring an "exclusively" charitable purpose in addition to the balancing test described above.[vii]

The Illinois Supreme Court upheld the constitutionality of Section 15-86, holding that it was complementary to the constitutional exclusive use test.[viii] To obtain exemption under Section 15-86, a hospital applicant must meet the requirements of the statute *and* the "exclusively" charitable purpose standard set out in the Illinois Constitution.[ix]

KEY TAKEAWAYS FROM *OSWALD* FOR HOSPITALS IN ILLINOIS AND ELSEWHERE

Oswald Is Unlikely to Reduce the Amount of Taxpayer Litigation Regarding Property Tax Exemptions.

Despite the result in *Oswald*, taxpayer challenges to property tax exemption statutes and to applications for tax exemption are unlikely to go away. *Oswald* is only persuasive precedent in other states, and taxpayers in Illinois could still argue Section 15-86 is facially unconstitutional for other reasons. Moreover, several other states face a similar distinction between their constitutional and statutory standards, and other states' courts may not impose the same significant burden on plaintiffs making facial challenges to statutes. Even where a state does not have a similar constitutional standard, hospital exemptions are increasingly in the crosshairs of cash-strapped legislatures and concerned taxpayers who shoulder a heavier tax burden if hospitals are exempt.

Oswald Does Not Protect Hospitals from Challenges to *Specific* Tax Exemption Applications.

Since *Oswald* was a facial challenge to Section 15-86, the taxpayer-plaintiff was not challenging the specific grant of an exemption. Instead, the taxpayer-plaintiff challenged the constitutionality of the *entire* statute, requiring her to prove "no set of circumstances" existed under which Section 15-86 could be constitutional. The court relied, in part, on this high standard of review to affirm the constitutionality of Section 15-86. However, the court left open the possibility for future litigants to challenge the constitutionality of the grant of an exemption to a *specific hospital* or to challenge the types of charitable activities that are considered as part of the balancing test under Section 15-86. Accordingly, while this ruling may be favorable for hospitals, it will not provide an absolute shield for these entities in future lawsuits.

Hospitals Should Be Prepared to Justify Their Tax-Exempt Status.

As taxpayers around the country continue to see their property tax bills rise and as local municipalities look for ways to expand their budgets, hospitals located in other states should expect to see more resistance to their property tax exemptions. Hospitals in states with or without a requirement to quantify charitable care should be prepared to demonstrate the free and discounted services they provide to their

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community and the ways in which they alleviate the burden on state and local governments to provide such services.

If you have questions regarding *Oswald* or have other issues involving the applicability of property taxes to health care entities, please contact:

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[i] Oswald v. Hamer, No. 122203, 2018 WL 4500969 (Ill. Sept. 20, 2018).

[ii] *Id.* ¶ 4.

[iii] 35 ILCS 200/15-86.

[iv] *Oswald*, No. 122203 at ¶ 22.

[v] *Id.* at ¶ 30.

[vi] Ill. Const. art. IX § 6.

[vii] *Oswald*, No. 122203 at ¶ 30.

[viii] *Id.* ¶ 39.

[ix] *Id.*

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