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Lessons from Landmark *Provena* Ruling:

Property Tax Exemptions for Nonprofit Organizations in Illinois

On March 18, 2010, the Illinois Supreme Court denied charitable property tax exemption to a large health care provider in *Provena Covenant Medical Center v. Department of Revenue*. This much-anticipated ruling carries broad implications for other exempt property owners. Indeed, the legal landscape for property tax exemptions has changed significantly in recent years, resulting in increased scrutiny of previously unquestioned exemptions. Nonprofit organizations should proceed carefully and plan wisely, particularly those with fee-based programs, and take note of the following lessons from *Provena*.

First, a plurality of justices (that is, 3 out of 7 justices, with 2 not participating) determined that an organization *must* relieve “burdens of government” in order to qualify for charitable exemption. In other words, if a nonprofit organization does not relieve government burdens via property tax payments, then it should do so instead through providing a significant quantum of services and goods. But as one of the two dissenting justices stated, relief of government burdens has never been a prerequisite for charitable exemption (even though it has long been an underlying policy rationale). Thus, for example, fine arts organizations and cultural institutions have consistently been accorded charitable property tax exemption without any clear evidence of direct relief of government burden. The *Provena* plurality indicated, however, that relief of government burdens is a precondition of charitable exemption.

Second, the Court determined that government contracts for programs such as Medicaid and Medicare do not amount to “charity.” Rather, they amount to compensation for services rendered. In other words, true “charity” means actually *giving away* services and goods to needy people. The Court further found demographic evidence notable that the number of poor and uninsured persons near the hospital was far higher than those who received free care.

Third, the Court strongly disapproved of the hospital’s nearly complete reliance on revenues from fees and insurance (public and private), and not more substantially on gifts, grants, and other contributions. Indeed, the hospital’s financial policies had significant problems that serve as a clear warning of what nonprofits should *not* do. Among other things, the hospital initially charged all users the same high established rates, used collection agencies, made a profit from later discounted rates, and did not advertise charity care. In short, the hospital functioned as a for-profit commercial venture and therefore was ultimately denied the privilege of property tax exemption.

The main lesson from *Provena* is clear: nonprofit organizations that charge fees must actually use their property to *give* their services and goods away in visible, substantial, and widespread ways to qualify for charitable property tax exemption.

For more information on the *Provena* case and property tax exemption trends, please visit our website at www.mosherslaw.com. Click under “Featured Articles” - Commercial Real Estate - “Recent Policy Changes Affecting Property Tax Exemptions.” The article provides both legal analysis and practical guidance for obtaining and preserving property tax exemptions. The Illinois Institute of Continuing Legal Education (www.iicle.com) has also just published an extensive article on state property and sales tax exemptions, authored by Sally Wagenmaker. For more specific guidance, please contact an attorney in our office.