Future of Illinois Hospital Property Tax Exemption Remains Uncertain

On March 23, 2017, in *Carle Foundation v. Cunningham Township*, the Illinois Supreme Court declined to consider the constitutionality of the Illinois property tax exemption for hospitals.¹ The Illinois Fourth District Appellate Court previously held that the hospital property tax exemption was unconstitutional, but the Illinois Supreme Court vacated this decision on the grounds that the Appellate Court lacked jurisdiction and remanded the case to the trial court for further proceedings. Also, the Illinois First District Appellate Court has issued a conflicting opinion that upheld the constitutionality of the exemption. Due to the opposing appellate decisions, it was hoped that the Illinois Supreme Court would consider the constitutional issue and resolve the controversy. The Supreme Court’s decision to remand the case on jurisdictional grounds and not consider the constitutionality of the exemption extends the uncertainty in this area.

Background

Illinois law provides a property tax exemption for property that is owned by a charity and that is “actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit[.]”² Also, Illinois offers a property tax exemption where a “charitable organization . . . uses the property exclusively for the distribution, sale, or resale of donated goods and related activities and uses all the income from those activities to support the charitable . . . activities of the owner, whether or not such activities occur on the property.”³ The charitable exemption from property tax is authorized by the Illinois Constitution.⁴

In 2010, a majority of the Illinois Supreme Court held that a religiously-affiliated Illinois hospital was not entitled to an exemption from property tax because it failed to establish that it was a charitable institution.⁵ In addition, a plurality of the Court determined that the hospital failed to demonstrate that its property was actually and exclusively used for charitable purposes. The Court listed the characteristics that are indicative of a charitable

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¹ Illinois Supreme Court, Nos. 120427, 120433, March 23, 2017.
³ 35 ILL. COMP. STAT. 200/15-65(b).
⁴ See ILL. CONST. art. IX, § 6.
⁵ *Provena Covenant Medical Ctr. v. Department of Revenue*, 925 N.E.2d 1131 (Ill. 2010).
organization. However, this decision raised questions about what sufficiently constitutes charitable use for property owned by charitable institutions, especially hospitals, in Illinois.

In response to this decision, in 2012, Illinois enacted legislation altering the property tax exemption qualification requirements for not-for-profit hospitals. Specifically, the Illinois Property Tax Code was amended to create a new category of charitable exemption for hospitals, generally referenced as Section 15-86. In order to qualify for an exemption from real property taxation under that section, a hospital must provide benefits to low-income individuals and other services that relieve the burden of government in an amount that exceeds the value of its property tax exemption. The value of this hospital property tax exemption is based on the amount of property taxes that would be due if the property were not exempt.

Carle Appellate Court Decision

On January 5, 2016, in Carle, the Illinois Fourth District Appellate Court held that the statutory exemption provided by Section 15-86 for hospital property that is based on the value of the charitable services the hospital provided is unconstitutional on its face. Specifically, the Court found that the exemption violated constitutional language limiting the available exemption from property tax to property used exclusively for charitable purposes.

Prior to addressing the merits of the case, the Fourth District Appellate Court considered whether it had jurisdiction to take the case, including jurisdiction under Rule 304(a), which is included in the Illinois Civil Appeals rules for Appeals from a Circuit Court. Specifically, the Court considered whether the declaratory judgment in the trial court decision was a final judgment on a separate claim and found that, by issuing the declaratory judgment that Section 15-86 applied to the taxpayer’s claims for a charitable exemption for the 2004 through 2011 tax years, the trial court “did not make any actual awards.” The trial court did not hold that any of the four parcels actually were exempt for any assessment year. Also, the taxpayer sought both declaratory and nondeclaratory relief, invoking two different statutes, in its claims, and filed its appeal in a timely manner. Thus, the Appellate Court found present all three necessary ingredients to indicate subject matter

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7 35 ILL. COMP. STAT. 200/15-86. The legislation set forth seven statutorily defined components of the benefits and services calculation. Included in the calculation are: (i) charity care; (ii) unreimbursed costs of services to low-income and underserved individuals; (iii) direct or indirect subsidies to state or local government; (iv) Medicaid and other means-tested subsidies (the legislation provides alternative methods of calculating this component); (v) “dual-eligible subsidy” (the amount of subsidy provided to the government by treating dual-eligible Medicare/Medicaid patients); (vi) relief of the burden of government related to health care (unreimbursed costs attributable to such items as emergency, trauma, burn, neonatal, and other special services, providing medical education, etc.); and (vii) any other activity by the hospital entity that the Department determines relieves the burden of government or addresses the health of low-income or underserved individuals.
9 Generally, Rule 304(a) addresses the factors necessary to proceed with an appeal if multiple parties or multiple claims are involved in the original action, but not all parties or claims are included in the appeal.
jurisdiction: a Rule 304(a) finding, a final judgment on a separate claim, and timely notices of appeal.

_Oswald v. Hamer_

On December 22, 2016, in _Oswald v. Hamer_, the Illinois First District Appellate Court held that the property tax exemption provided by Section 15-86 was constitutional on its face. This decision directly contradicts _Carle_.

**Carle Vacated on Jurisdictional Grounds**
Following the determination in _Oswald_, the Illinois Supreme Court vacated the _Carle_ decision on jurisdictional grounds and remanded the case to the trial court. The issue was whether the trial court's order granting the taxpayer's motion for summary judgment disposed of a “claim” that was separate from and unrelated to the taxpayer's exemption claims or whether merely a single “issue” that was a part of or ancillary to those claims. The Supreme Court concluded that the trial court resolved an “issue” rather than a “claim.” As a result, the ruling was not subject to review under Rule 304(a). Finally, the Supreme Court rejected the request to use its supervisory authority to consider the merits of the case even though Rule 304(a) jurisdiction did not exist. In doing so, the Supreme Court noted that the “point of last resort” in this matter had not yet been reached, where a ruling from the Supreme Court concerning the constitutionality of Section 15-86 would be the only way to decide the case. The Supreme Court did not specifically reference the _Oswald_ decision in its _Carle_ opinion.

**Controversy Surrounding Exemption**
The controversy surrounding the Illinois property tax exemption for hospitals hinges on one word in the statute: “shall.” Specifically, the statute provides:

> A hospital applicant satisfies conditions for an exemption under this Section with respect to the subject property and _shall_ be issued a charitable exemption for that property, if the value of services or activities listed in subsection (e) for the hospital year equals or exceeds the relevant hospital entity’s estimated property tax liability, as determined under subsection (g) for the year for which exemption is sought.\(^{11}\)

As _Carle_ and _Oswald_ have progressed through the court system, the constitutionality of the property tax exemption for hospitals has been treated in an inconsistent manner. In _Carle_, the interpretation results in ruling the Illinois property tax exemption unconstitutional. It reasons that the statute’s use of the word, “shall,” creates a mandatory exemption, which is not allowed by the Illinois Constitution. The Illinois Constitution provides that a tax exemption can only be given to property that is used primarily for charitable purposes, and must be granted on a discretionary basis.\(^{12}\) By including the word, “shall,” the statute has been interpreted to require a property tax exemption for hospitals. Therefore, the statute would be considered unconstitutional by providing a property tax exemption for a hospital

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\(^{11}\) 35 ILL. COMP. STAT. 200/15-86(c) (emphasis added).

\(^{12}\) ILL. CONST. art. IX, § 6.
on its face, without evaluating whether the property is used primarily for charitable purposes.

In Oswald, the conclusion that the property tax exemption statute is constitutional was based on the interpretation that the statute, read as a whole, permits a hospital to qualify for an exemption once it meets the threshold test of primarily providing charitable services. If this is the case, the property tax exemption falls under one of the designations provided in the Illinois Constitution, and would be constitutional and remain in effect.

**Commentary**

It had been hoped that the Supreme Court would have resolved the split between the two Illinois appellate courts and the overall uncertainty regarding the constitutionality of Section 15-86 once and for all, but the Court’s decision to vacate Carle appears to have negated that possibility for a significant amount of time. The uncertainty surrounding the constitutionality of the Illinois property tax exemption for hospitals has a major impact on Illinois hospitals in terms of planning and budgeting. Hospitals in Illinois do not know whether to plan for the removal of the property tax exemption or stay the current course. Likewise, the state of Illinois is unable to determine whether the income that would be generated from the removal of the property tax should be expected in the future. Unfortunately, until a final ruling on the merits is released, the constitutionality of the exemption is unknown. For now, however, the Illinois hospital property tax exemption remains in effect.