
MEMORANDUM

DATE: December 16, 2013
TO: Vermont Property Tax Exemption Study Committee
FROM: Anne Cramer and Katherine Amestoy on behalf of the Vermont Association of Hospitals and Health Systems
RE: Draft Language to Change Tax Exempt Treatment of Public, Pious and Charitable Properties

On behalf of the members of the Vermont Association of Hospitals and Health Systems (“VAHHS”), we submit preliminary comments on the draft legislation to change the property tax exemption treatment of public, pious and charitable property through modifications to 32 V.S.A. § 3802(4) and 32 V.S.A. § 3833. Please note that the VAHHS’ members have not had the opportunity to fully consider this proposal and therefore we may wish to submit additional comments in the future.

In summary, VAHHS is concerned that the approach laid out in the draft will create ambiguity and subject Vermont hospitals to new and unguided interpretations of charitable status and potentially inconsistent future tax determinations. The draft legislative language would set up an elaborate process at the state and local level to determine what property may be considered to be used for public or charitable purposes exempt from statewide education taxes or municipal taxes. It could require a significant and tedious burden of proof for hospitals to prove on an annual basis that property long granted exempt status should continue to be tax exempt.

Summary of Proposed Revisions to 32 V.S.A. §§ 3802(4), 3832 and 3833

The proposed legislation seeks to strike in its entirety the current language of 32 V.S.A. § 3802(4) that grants tax exemption for “[r]eal and personal estate granted, sequestered or used for public, pious or charitable uses”, and, for hospitals, replace it with the following language:

The following property shall be exempt from taxation:

...

(E) property owned by a nonprofit hospital licensed under 18 V.S.A. chapter 43 that provides its services to all who need them without regard to their ability to pay for those services. The property must be owned and operated by the nonprofit hospital, directly connected to the hospital’s operation, and the use of the property must confer a benefit on society...

The proposed legislation further provides in 32 V.S.A. § 3832 that, to be exempt from statewide education property tax based on charitable or public use, the real and personal property must be certified under Section 3833. For municipal tax authorized under 17 V.S.A. § 2664, a town may elect to exempt real or personal property certified under Section 3833.

The provisions for certification of charitable or public use under Section 3833 require the property owner to apply in writing for certification with information required “by the certification officer.” The applicant bears the burden of proving, by a preponderance of the evidence, that the property meets requirements for certification. The certification officer shall certify the property, or a portion of it, as charitable or public use property if the officer finds that the property is:

- “both owned and operated on a nonprofit basis”;
- “dedicated unconditionally to public use”;
- “used for the benefit of an indefinite class of the public primarily for charitable or public purposes”;
- “confers a benefit on society”; and
- “is not, ..., (C) property leased for income or profit or used for general commercial purposes, or (D) property used primarily for recreational purposes.” Section 3833(a)(3).

An appeal of the certification officer’s determination may be made de novo to the Director of Property Valuation and Review. Further appeal to the Superior Court under VRCR Rule 74 shall be on the record and without a jury. A final appeal can be made to the Supreme Court.

Comments

A. Replacing the language of 32 V.S.A. § 3802(4) will create ambiguity and eliminate existing guidance for Vermont hospitals to determine whether its real and personal property is tax exempt.

Striking the language currently in force pursuant to 32 V.S.A. § 3802(4) and replacing it with the proposed legislation will effectively eliminate the existing law established by the Vermont Supreme Court and leave Vermont hospitals and health care entities with little to no guidance as the proper application of 32 V.S.A. § 3802(4) going forward. The Vermont Supreme Court has, over the course of the last few decades, extensively interpreted the language of 32 V.S.A. § 3802(4) and developed clear case law that defines the parameters of the charitable and public use exemption as it relates to nonprofit hospitals. Notably, in Medical Center Hospital of Vermont, Inc. v. City of Burlington, 152 Vt. 611 (1989), the Court discussed extensively the application of 32 V.S.A. § 3802(4), emphasizing that the crucial factor in determining an exemption under such statutory provision is the primary use to which the

property is put. *Id.* at 615. In its Medical Center Hospital opinion, the Court reviewed a tax assessment against the Medical Center Hospital of Vermont, Inc., analyzing the Medical Center’s use of the property in question and ultimately concluding that the Medical Center Hospital of Vermont, Inc.’s operations constituted a charitable use under 32 V.S.A. § 3802(4) entitling it to an exemption because the Medical Center “is a not-for-profit institution with a recognized charitable purpose whose services are available regardless of ability to pay and whose excess revenues are devoted to the maintenance of its purpose.” *Id.* at 621. This case remains good law and, accordingly, the analysis set forth by the Court in its opinion provides—and has provided since 1989—a baseline for determination of the tax exempt status of hospital property under 32 V.S.A. § 3802(4). Undermining this guidance and creating ambiguity in what is currently a relatively well-defined area of law likely will result in extensive tax exempt property application review proceedings to re-establish the exempt status of hospital property.

In summary, the proposed legislation is a distinct step backwards, in that it would replace a well-defined body of law with one fraught with ambiguities that will invite years of expensive litigation to clarify the ambiguities.

B. The proposed amendments to 32 V.S.A. § 3833 substantially alters the structure of the current tax procedure, creating an onerous burden on hospitals to prove the charitable status of their property.

The proposed amendments to 32 V.S.A. § 3832 and addition of 32 V.S.A. § 3833 creates a procedurally onerous burden for Vermont hospitals and health care entities to apply for, obtain state certification, seek municipal election of charitable status, and maintain tax exempt status from year to year. The proposed amendments to 32 V.S.A. § 3832 contemplate that, prior to exemption from the statewide education property tax, charitable organizations must first be certified under the new provisions of 32 V.S.A. § 3833, which would require that the charitable organization apply for and prove, by a preponderance of the evidence, as determined by a certification officer, that it meets the listed requirements which include subjective determinations, such as “confers a benefit to society.”

To be exempt from municipal tax, charitable organization must, under the proposed language, not only be certified under 32 V.S.A. § 3833, but unlike the current law as it pertains to charitable hospital property, must also undergo further consideration by each town. The proposed amendments for Section 3832 would permit a town to elect, or not, to exempt the property of a certified charitable organization at a regular or special meeting, thereby subjecting an exempt organization to unpredictable local decisions and tax repercussions. A town’s vote could be based on anything. A favorable vote in one year could be reversed for no particular reason in the next year. This local process adds to what will be an ongoing tedious administrative maze that charitable hospitals must navigate to prove that their real and personal property should be exempt from tax.

Charitable hospitals own a lot of property and provide a diverse array of services to the public. Because of the inherent complexity involved in the operation of a hospital entity, the proposed certification language will impose a huge evidentiary burden for hospitals and health care entities to meet with supporting information in the application and thereby establish by a preponderance of the evidence that each aspect of the property in question meets these requirements to remain exempt. Such evidentiary production could feasibly require production of in-depth documentation and sensitive information, which may not be suitable for public disclosure and, as such, should not, through such disclosure to the certification officer, be considered to have waived confidentiality, as proposed by the draft legislation. Without promulgation of extensive guidelines to determine at least some basic parameters for exemption, the application process will be daunting and expensive, especially as it will cover numerous unique holdings. The State infrastructure for this certification process will need to be extensive and charitable hospitals may end up devoting significant resources to re-prove exemptions long established.

In summary, again, the proposed legislation is a distinct step backwards as it imposes yet another expensive regulatory burden on nonprofit health care entities which will be obligated to consume precious resources on battles which lessen the resources available to fulfill their charitable missions.

Conclusion

We appreciate your consideration of the concerns we raise on behalf of VAHHS. Please let us know if additional or clarifying information would be helpful.