



COMMONWEALTH of VIRGINIA

Department of Taxation

July 12, 2018

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Emily M. Scott, Esq.
Hirschler Fleischer
2100 East Cary Street
Richmond, Virginia 23223

Re: Appeal of Final Local Determination
Taxpayer: Riverside Hospital, Inc.
Locality: City of Newport News
Business Tangible Personal Property Tax

Dear Ms. Scott:

This final state determination is issued upon the application for correction filed by Riverside Hospital, Inc. (the "Taxpayer") with the Department of Taxation. The Taxpayer appeals an assessment of business tangible personal property (BTPP) tax issued by the City of Newport News (the "City") for the 2015 and 2016 tax years.

The BTPP tax is imposed and administered by local officials. *Virginia Code* § 58.1-3983.1 D authorizes the Department to issue determinations on taxpayer appeals of BTPP tax assessments. On appeal, a BTPP tax assessment is deemed *prima facie* correct, *i.e.*, the local assessment will stand unless the taxpayer proves that it is incorrect.

The following determination is based on the facts presented to the Department summarized below. The *Code of Virginia* sections and public document cited are available on-line at www.tax.virginia.gov in the Laws, Rules and Decisions section of the Department's website.

FACTS

The Taxpayer is a nonstock, nonprofit charity exempt from taxation under Internal Revenue Code (IRC) § 501(c)(3). It operates as a hospital that is exempt from the BTPP tax. In 2013 and 2014, the Taxpayer acquired and operated a number of medical practices.

The City issued BTTP tax assessments for the 2015 and 2016 tax years on the tangible property located at the acquired practice sites. The Taxpayer paid the assessments and appealed, contending that it was exempt from the BTTP tax because it owned the tangible property located at the medical practice sites. The City issued a final determination denying the Taxpayer's appeal. It asserted that no ordinance had been passed exempting the tangible property located at the medical practices and the medical practices were not part of the hospital. The Taxpayer appeals the City's final local determination, contending that the tangible property at issue was exempt from the BTTP tax because it belonged to the Hospital.

ANALYSIS

Article X, § 4 of the *Constitution of Virginia* provides that all real and tangible personal property shall be segregated for local taxation in such a manner as the General Assembly provides by law. Article X, § 6 (7)(f) of the *Constitution of Virginia* states that exemptions of property from taxation as authorized under § 6 must be strictly construed. This provision has been consistently enforced in Virginia Supreme Court decisions. See, for example, *Department of Taxation v. Wellmore Coal Corp.*, 228 Va. 149, 320 S.E.2d 509 (1984).

As authorized by the *Constitution of Virginia*, the General Assembly established a number of exemptions from real and personal property taxes. Specifically, *Virginia Code* § 58.1-3606 A 5 exempts in pertinent part:

Property belonging to and actually and exclusively occupied and used by . . . hospitals . . . , conducted not for profit but exclusively as charities (which shall include hospitals operated by nonstock corporations not organized or conducted for profit but which may charge persons able to pay in whole or in part for their care and treatment).

The Virginia Supreme Court has consistently ruled that exemptions from taxation are the exception rather than the rule and as such, they must be strictly construed. If there is any doubt as to whether an exemption applies, it must be resolved in favor of the taxing authority, and the burden is upon the taxpayer to show that it comes within the exemption. See *Commonwealth v. Manzer*, 207 Va. 996, 154 S.E.2d 185 (1967).

Local Ordinance

Prior to January 1, 2003, the Constitution authorized the General Assembly to exempt from local taxation real and personal property owned by certain nonprofit organizations and used for religious, charitable, patriotic, benevolent, cultural or public park or playground purposes by classification or by designation by a three-fourths vote in each house.

The constitutional amendment that took effect on January 1, 2003 allows local governing bodies to grant by ordinance exemptions from local property taxation, subject to restrictions and conditions provided by general law enacted by the General Assembly. Although the constitutional amendment eliminated the General Assembly's authority to exempt such property, it allows the General Assembly to impose by general law restrictions and conditions on the localities' authority to exempt such property.

As such, *Virginia Code* § 58.1-3651 was passed during the 2003 session of the *General Assembly*. *Virginia Code* § 58.1-3651 A provides that:

Pursuant to subsection 6 (a)(6) of Article X of the Constitution of Virginia, on and after January 1, 2003, any county, city, or town may by designation or classification exempt from real or personal property taxes, or both, by ordinance adopted by the local governing body, the real or personal property, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes.

The City contends that pursuant to *Virginia Code* § 58.1-3651 A, any tangible property acquired by businesses after January 1, 2003 is not exempt from the BTPP tax unless it was made exempt by local ordinance. As such, because the City did not pass an ordinance exempting tangible property after January 1, 2003, the tangible property acquired through the purchase of the medical practices is subject to BTPP tax. The Taxpayer asserts that *Virginia Code* § 58.1-3651 was merely procedural and that any property exempt by statute or the *Constitution of Virginia* prior to January 1, 2003 remained exempt after such date regardless as to whether a locality passed an exemption ordinance.

In *Rapidam Baptist Camp & Conf. Ctr. v. Madison County*, 70 Va. Cir 309 (2006) and Attorney General Opinion 03-049 (8/5/2003), both the Circuit Court and Attorney General opined that neither the amendment to subsection 6 (a)(6) of Article X of the *Constitution of Virginia* nor *Virginia Code* § 58.1-3651 repeal any property tax exemptions that existed prior to January 1, 2003. The City argues that the tangible property at issue could not be exempt because it was not in existence as of January 1, 2003. The exemption as it existed prior to January 1, 2003 is not for specific property; rather, it applies to classification or designation exemptions. See *Virginia Code* § 58.1-3651 D. Property that was exempt as of beginning of 2003 property belonging to and exclusively used by non-profit hospitals is a classification exemption. See *Virginia Code* § 58.1-3606 A 5. As such, any tangible property acquired by non-profit hospitals exempt from property tax after January 1, 2003 would be exempt from the BTPP tax.

Hospital Acquisitions

A taxpayer seeking the hospital exemption under *Virginia Code* § 58.1-3606 A 5 must satisfy three requirements: (1) the facility at issue must be a hospital; (2) the property at issue must belong to and be actually and exclusively occupied and used by the hospital; and (3) the hospital must operate on a not-for-profit basis and exclusively as a charity. See *Smyth County Community Hospital v. Town of Marion*, 259 Va. 328, 527 S.E.2d 401 (2000); Op. Va. Att’y Gen. 13-041, 2013 WL 4039923 (August 2, 2013) and Public Document (P.D.) 15-17 (2/4/2015). To establish that its operations are not-for-profit and charitable, the hospital must satisfy the “dominant purpose test.” This test determines whether the property in question promotes the purpose of the group seeking an exemption. The property is entitled to the exemption regardless of any revenue created on the land, so long as the dominant purpose of the revenue generating property is not to obtain revenue or profit, but to promote the purposes for which the charity was established and is incidental thereto. Each requirement is a question of fact and, therefore, the determination of property tax exemption is reserved for the local commissioner of the revenue or other appropriate taxing official.

In *Smyth County Community Hospital*, the Virginia Supreme Court held that tangible property in a nursing home that was wholly owned by an exempt hospital was exempt because the property was owned by the hospital and the nursing home promoted the hospital’s charitable purpose of providing nursing care to the community. The Taxpayer contends that the medical practices it acquired became departments within the hospital, which wholly owned and exclusively used the subject tangible property. The City contends that the medical practices are distinct separate legal entities from the Hospital and the facilities are not licensed and certified as hospitals as required under *Virginia Code* §§ 32.1-123 *et seq.*

The definitions for a hospital as provided in *Virginia Code* §§ 32.1-123 *et seq.* are limited to the *Code of Virginia* sections addressing hospital and nursing home licensure and inspection. As such, these definitions do not apply to the BTPP tax.

In *Smyth County Community Hospital*, the Virginia Supreme Court states, “To come within the exemption . . . the [hospital] has the burden of showing that the [nursing home] belonged to the hospital and ‘was actually and exclusively occupied and used by’ the [exempt hospital].” The Court held that the property located at the nursing home was exclusively occupied and used by the hospital because it was wholly owned by the hospital and was staffed by hospital employees in accordance with the policies imposed by the hospital’s board of trustees.

The Taxpayer also asserts that it meets the dominant purpose test because it owns the property and the property was used in furtherance of its charitable purpose of providing care of the sick and injured. The test is whether the property promoted the purpose of the institution seeking the tax exemption. See *Smyth County Community Hospital*. The

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Articles of Incorporation for the hospital in *Smyth County Community Hospital* included as one of its purposes the “establishment and maintenance of medical facilities of “all descriptions for the care of persons suffering from illnesses or disabilities which require in or outpatient care or attention.” Accordingly, the Virginia Supreme Court found that the nursing home directly promoted this purpose.

In this case, the Taxpayer’s Articles of Incorporation require it to “operate exclusively for charitable purposes as required by IRC § 501(c)(3).” It further states that the Taxpayer “acquire, own, manage and oversee and support the operation of hospitals, mental health centers, clinics, nursing homes, supporting services, and other healthcare institutions and services” in order to “provide hospital and other institutional facilities and services to the general public. . . .”

DETERMINATION

The Taxpayer has met the requirement of the dominant purpose test because it acquired, owned, and managed medical practices that provided health programs and medical services to the general public. Because tangible property acquired by non-profit hospitals after January 1, 2003 would be exempt from BTPP tax, I find that the tangible property at issue was exempt from the BTPP tax. As such, I am remanding this case back to the City to adjust the assessments for the 2015 and 2016 tax years in accordance with this determination.

If you have any questions regarding this determination, you may contact Noel M. Sabel in the Office of Tax Policy, Appeals and Rulings, at (804) 371-6597.

Sincerely,



Craig M. Burns
Tax Commissioner

c: The Honorable Tiffany M. Boyle
Commissioner of the Revenue
City of Newport News