

## Insights

### Illinois Appeals Court Upholds Denial of Property Tax Exemption for Hospice Center

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In an opinion issued on February 25, 2019, the Illinois Appellate Court confirmed that a not-for-profit hospice provider was not entitled to a charitable use property tax exemption because it was not exclusively engaged in charity care. See *Midwest Palliative Hospice and Care Center v. Constance Beard, as Director of the Illinois Department of Revenue, and the Illinois Department of Revenue*, 2019 IL App (1st) 181321 (1st Dist. 2019). The Illinois Department of Revenue (the "DOR") had denied an exemption for 2013 property taxes for a hospice center Midwest Palliative Hospice and Care Center ("Midwest") operates in suburban Chicago. The Marshak Family Hospice Pavilion, (the "Hospice Pavilion") is an inpatient care facility that Midwest constructed in 2011 on the same grounds as its existing palliative care center, which the DOR had designated as exempt from property taxes in 2008 (the "Palliative Care Center"). The DOR denied the exemption for the Hospice Pavilion because the facility was not exclusively engaged in charitable use activity.

Midwest, which now operates as JourneyCare, argued that the property tax exemption was supported by its 501(c)(3) status, its charity care policies requiring the admission of patients without regard to their ability to pay, its multiple grief counseling and support services, and its training of medical students in providing hospice services (which it provides at no cost). Midwest also pointed out that the Hospice Pavilion is located on the same plot of land as the Palliative Care Center, which it also operates pursuant to the same Articles, Bylaws and financial policies.

In affirming the lower court's opinion, and in support of the DOR's denial, the Court agreed that Midwest is a charitable organization. However, it held that the Hospice Pavilion was not "actually and exclusively used for charitable or beneficent purposes...." Instead, it was being run as a business enterprise, not a charity. The Court cited Midwest's financial records, which showed only .4% of Midwest's operating revenue came from charitable contributions, with 94% coming from billings for patient services. It noted the overwhelming majority of Midwest's operating revenue came from net patient services, with 88% of this revenue coming from Medicare and Medicaid reimbursement. Finally, the Court pointed out that Midwest's \$157,000 in charitable care represented less than 1% of the net services revenue for the tax year at issue.

The Court agreed with Midwest that revenue should not be the sole focus in determining whether a property tax exemption applies. However, it did find that the way the revenue is used is significant in determining how the property itself is being used. It was clear that the financial data was heavily considered by the Court, which

explained that an institution's willingness to provide charity care, as evidenced by its Articles and Bylaws, does not mean that institution's exclusive purpose is, in fact, to provide charity care. The Court went on to provide that the DOR is not required to find that an organization that receives the maximum amount of Medicare or Medicaid reimbursement is serving the public in such a way that it is entitled to pay no property taxes.

### **Considerations**

The Court's decision in Midwest Palliative Hospice Care Center makes clear, once again, that the key to Illinois' charitable use property tax exemption lies in an organization's ability to prove a property's exclusive use is charitable. In meeting this burden of proof, an organization must be mindful of not only its federal (and state) income tax status and charity care policies, but of the actual amount of the property's charitable revenue and activity. If a significant portion of a revenues related to a property are derived from patient service revenue, either from private or governmental payors, it's owners will likely have a difficult time qualifying for exemption from Illinois property taxes, despite their charitable intentions or potential.

If you have any questions about this decision or its impact on your organization, please contact Kendall A. Schnurpel, Robert A. Anderson, or your regular Krieg DeVault attorney.