

THE
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Challenge to School Facility Occupation Tax Allowed to Proceed--

As school districts struggle in financial crisis, the Illinois Appellate Court has allowed a lawsuit to proceed challenging the constitutionality of the legislation creating the *County School Facility Occupation Tax*.

In *P&S Grain, LLC v. County of Williamson, et al.*, No. 5-09-0079 WL 1374925 (5th Dist. Apr. 2, 2010), two retailers filed a lawsuit to challenge a 1% school facility occupation tax imposed by Williamson County.

The retailers argued that the tax unconstitutionally violated municipal home-rule status and also argued that the county failed to follow the neces-

sary procedures for implementing the tax.

The appellate court agreed with the retailers and found that the retailers were corporate entities that were adversely affected by the taxes, which was enough to establish their right to bring the lawsuit.

Accordingly, the trial court may now consider the constitutionality and propriety of the school facility occupation tax in this case.

If you have any questions regarding this case or regarding the school facility occupation tax, please contact Steve Richart or Heather Brickman.

Illinois Supreme Court Upholds Denial of Property Tax Exemption for Religiously-Affiliated Hospital--Protecting a school district's property tax base is critical. In this regard, the Illinois Supreme Court has finally decided a closely-watched case regarding a hospital property tax exemption application. In *Provena Covenant Medical Center v. Department of Revenue*, 2010 WL 966858 (Mar. 18, 2010), the Illinois Supreme Court upheld the decision of the Illinois Department of Revenue to deny charitable and religious property tax exemption to a religiously-affiliated hospital.

The hospital had applied for property tax exemption for the 2002 tax year claiming that the property was used for charitable and religious purposes.

Although exempt from federal income and state sales taxes, the Department ultimately found that the hospital had failed to meet its burden of establishing that the property qualified for property tax exemption, in part because the cost of charity care at the hospital amounted to less than 1% of the hospital's revenues and was even less than the \$1.1 million in property tax benefits which the hospital was seeking.

The Illinois Supreme Court reaffirmed its previous decisions setting forth the distinctive

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Consumer Price Index

Percent change for the month of **March, 2010**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly 12 Mth	0.2 2.6	0.4 3.1
St. Louis-6 Mth 12 Mth	1.1 0.2	1.6 0.3
U.S. Mthly 12 Mth	0.4 2.3	0.5 3.0

April CPI figures will be released May 18, 2010. For the most recent CPI, visit our website at: www.hlerk.com

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Reminders & Notes

- **Adopt and publish your Board's prevailing wage resolution. Contact Bob Kohn with questions.**
- **HLEK has updated its Student Handbook Checklist. Send in the attached Order Form to purchase your copy today.**
- **Visit www.hlerk.com for the dates for the October IASA Conferences: *The Year in Review: The Highlights and Lowlights of Illinois School Law 2010*. Save the date for the location nearest you. We anticipate extraordinary demand for these vital conferences.**

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Tax Exemption Cont. characteristics of charitable institutions (the so-called *Korzen* factors) and found that the hospital failed to prove that these factors weighed in favor of a finding that the hospital was a charitable institution.

Specifically, the hospital had failed to prove that its funds were derived mainly from private and public charity, that charity was dispensed to all who needed and applied for it and that obstacles were not placed in the way of those who needed and would have availed themselves of the hospital's charitable benefits. Moreover, the court found that the hospital's use of the property was primarily non-charitable, in that the amount of charity care was small in proportion to the hospital's revenues and there was little evidence (if any) that the hospital lessened any burdens of local taxing bodies.

Finally, the court rejected the hospital's claim to religious exemption. The court found that the hospital had failed to prove that its dominant corporate purpose was

religious as opposed to charitable, educational or scientific. Although the provision of medical services may have provided the opportunity for various individuals affiliated with the hospital to express and share their religious principles and beliefs, the court stated that medical care was not intrinsically (or even normally) religious in nature and concluded that the primary purpose of the property was to provide medical care to patients for a fee.

A number of hospital property tax exemption applications have been stalled at the Department of Revenue while the Department was awaiting the court's ruling in *Provena*. Now that the Illinois Supreme Court has affirmed the Department's denial of exemption to the hospital in *Provena*, the Department is expected to proceed on a number of other hospital exemption applications that could affect many school districts' EAV.

For more information regarding this case or concerning property tax exemption issues, please contact Steve Richart or Vanessa Clohessy.

Young Adult Dependent Insurance Tax Change--

Last year, the Illinois *Young Adult Dependent Coverage Law* expanded the definition of a "dependent" under the *Illinois Insurance Code* for purposes of coverage under health insurance plans to include an unmarried dependent up through age 26. Unfortunately, unless that dependent also qualified under the *Internal Revenue Code* as a "dependent" for tax purposes, adding these young adult dependents to a policy could cause tax consequences to the employee.

Last month, the new federal health care legislation made certain modifications to federal laws whereby all individual and group insurance policies will need to provide dependent coverage for children until they reach age 26, and the IRS issued a [Notice](#) providing clarification as to how it will be implemented for tax purposes. In summary, the IRS will now consider dependents up through age 26 as meeting the IRS definition of "dependent" for health coverage tax purposes. The IRS Notice states that the IRS *intends to amend its regulations* to include dependents up through age 26 under both Code Sections 106 and 125. In the meantime, however, and retroactive to March 30, 2010, the IRS says that taxpayers may rely on this stated intent

and proceed to treat as nontaxable any insurance premiums for dependents up through age 26 whether paid for by the employer or paid for by the employee through a Code Section 125 Cafeteria plan. The Notice states that employers may apply this new rule to its existing Section 125 Cafeteria plans *immediately* even if the Plans have not yet been amended to provide the benefit, *provided such plans are amended by December 31, 2010.*

Please note that these federal developments do not completely resolve the insurance taxation issue in Illinois because dependents over age 26 who fall within the Illinois military service category are still not covered by the federal definition of "dependent" for health coverage purposes; thus, providing coverage of such individuals under an employee's family insurance arrangement will result in retroactive taxation of both the value of the premiums *and* any benefits paid under the coverage unless the value of that portion of the premiums is taxed to the employee when paid.

If you have any questions regarding required coverage of dependents or related tax implications, please contact Heather Brickman or Barbara Erickson.

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