New Jersey Bill Would Kill Third-Party Property Tax Appeals

New Jersey is one of a handful of states where it is possible to appeal the tax assessment of somebody else’s property—challenges that could soon be eliminated under a proposal winding through the state Senate.

Hospitals and nonprofits strongly support the measure, saying they can’t afford the risk of third-party challenges to their tax exempt status, also legal under current law.

“Organizations like charities, hospitals, and educational institutions operate on very thin margins,” Mary Beaumont, vice president for health and legal affairs at the New Jersey Business & Industry Association (NJBIA), told Bloomberg BNA Feb. 28. For many nonprofits, having to litigate a third-party tax appeal “could cause some of them to go under.”

The proposed legislation, S.B. 2212, is the result of litigation in Princeton and Morristown, N.J., that led to multi-million dollar settlements and put hospitals and nonprofits throughout the state on edge. Sponsored by Sen. Robert W. Singer (R), the bill would prevent third-party challenges of tax assessments as well as third-party challenges to a taxpayer’s tax exempt status. It would also protect financial agreements that taxpayers reach with their local taxing district.

The Senate Community and Urban Affairs Committee approved the bill 4-0 on Feb. 27. Amendments approved by the Senate Feb. 27 make the bill identical to its companion bill, A.B. 3888. The bill is now on second reading in the Senate.

Third-Party Mess. Third-party appeals of another property owner’s valuation are unusual, Fred Nicely, senior tax counsel for the Council On State Taxation (COST), told Bloomberg BNA. Tax appeals are usually between the assessor and the property owner, he said. “Adding a third party into the mix just makes a mess of things.”

Nonprofits Vulnerable. Such a legislative fix is needed to protect vulnerable nonprofits from the risk of “arbitrary third-party challenges,” Linda M. Czipo, president and chief executive officer of the Center for Non-Profits, told Bloomberg BNA.

The risks for nonprofits increased after a procedural ruling in 2015, when New Jersey Tax Court Judge Vito L. Bianco held that a group of township property owners had standing to challenge Princeton University’s tax exempt status, and Princeton had the burden of proving it should remain tax exempt.

“Princeton University had the burden of essentially re-proving its property tax exemption,” Czipo told Bloomberg BNA. “That’s the part in particular that makes us extremely concerned.”

Princeton Challenge. In that case, the property owners challenged Princeton’s tax exempt status for tax years 2011, 2014, 2015 and 2016, asserting that the school’s profit-generating businesses such as concert halls, restaurants, intellectual property licensing and real estate rentals negated the school’s tax exemption. Princeton announced in October 2016 that it had settled the case just before it went to trial, agreeing to pay more than $18 million over several years to the borough, a nonprofit housing group, and 896 homeowners (Fields v. Trs. of Princeton Univ., N.J. Tax Ct., No. 005907-2014, settlement 10/14/16).

S.B. 2212 would prevent such third-party challenges, although it would still allow local governments to appeal the assessment or exempt status of properties in their county.

Are Hospitals Nonprofits? The legislation also specifically says that taxpayers and taxing districts can’t challenge a financial agreement negotiated between a municipality and a nonprofit entity, Susan A. Feeney, a partner in McCarter & English LLP’s tax and employee benefits practice group who focuses on state and local property tax matters, told Bloomberg BNA.

This is especially important for nonprofit hospitals in New Jersey, which have been on shaky ground since a third-party challenge in Morristown, N.J., called into question their exemption from local property taxes.

In, AHIS Hospital Corp. v. Town of Morristown, the court found that Morristown Medical Center was operating as a for-profit hospital, rather than as the nonprofit it claimed to be. The hospital’s parent corporation, Atlantic Hospital System, settled the case by...
agreeing to pay the town $10 million in back taxes and $5.5 million in penalties and interest and penalties over 10 years (AHS Hosp. Corp. v. Town of Morristown, N.J. Tax Ct., No. 010900-2007, settlement 11/10/15).

The Morristown case has since spurred a number of hospitals in the state to enter into financial agreements with their local tax authority to help stabilize budgets and avoid potential litigation.

The bill would ensure those agreements won’t be challenged, Feeney said. “Without a bill like this, you could question these agreements.”

**Mutual Agreements.** “We don’t want to see those types of mutual agreements derailed,” Kerry McKean Kelly, spokeswoman for the New Jersey Hospital Association, told Bloomberg BNA in an email. The association supports the bill.

There are now 38 lawsuits on the books between hospitals and municipalities, she said. “The legal bills are mounting for both sides and we need legislation, not endless litigation.”

The New Jersey League of Municipalities agreed, noting an increasing number of financial agreements between nonprofit hospitals and municipalities.

If not protected, “these agreements are at risk of being challenged and bottled up in the court system,” Michael F. Cerra, the group’s assistant executive director, wrote in a letter to the Senate Community and Urban Affairs Committee Feb. 27.

“We want to encourage these agreements,” which help budgeting for both the hospital and the municipality, Cerra told Bloomberg BNA. “When you can reach an agreement like this, it doesn’t really serve anybody’s purposes to have that being challenged.”

**BY LESLIE A. PAPPAS**

To contact the reporter on this story: Leslie A. Pappas in Philadelphia at LPappas@bna.com

To contact the editor responsible for this story: Ryan C. Tuck at rtuck@bna.com

[Text of S.B. 2212 is at http://src.bna.com/mC9.]