Docket No. 107328.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

PROVENA COVENANT MEDICAL CENTER *et al.*, Appellants, v. THE DEPARTMENT OF REVENUE *et al.*, Appellees.

Opinion filed March 18, 2010.

JUSTICE KARMEIER delivered the judgment of the court, with opinion.

Chief Justice Fitzgerald and Justice Thomas concurred in the judgment and opinion.

Justice Burke concurred in part and dissented in part, with opinion, joined by Justice Freeman.

Justices Kilbride and Garman took no part in the decision.

OPINION

The central issue in this case is whether Provena Hospitals established that it was entitled to a charitable exemption under section 15–65 of the Property Tax Code (35 ILCS 200/15–65 (West 2002)) for the 2002 tax year for various parcels of real estate it owns in Urbana. The Director of Revenue determined that it had not and denied the exemption. Provena Hospitals then filed a complaint for administrative review in the circuit court of Sangamon County. Following a hearing, the circuit court determined that Provena Hospitals was entitled to both a charitable and religious exemption (35 ILCS 200/15–40(a)(1) (West 2002)). The Department of Revenue appealed. The appellate court found the Department's arguments to

be meritorious and reversed the judgment of the circuit court. 384 Ill. App. 3d 734. We granted Provena Hospitals' petition for leave to appeal. 210 Ill. 2d R. 315. We subsequently allowed the American Hospital Association, the Illinois Hospital Association, and the Catholic Health Association of the United States and related organizations to file friend of the court briefs in support of Provena Hospitals. We also granted leave to the Center for Tax and Budget Accountability and the Legal Assistance Foundation of Metropolitan Chicago to file friend of the court briefs in support of the Department of Revenue. For the reasons that follow, we now affirm the judgment of the appellate court upholding the decision by the Department of Revenue to deny the exemption.

BACKGROUND

The appellant property owner and taxpayer in this case is Provena Hospitals. Provena Hospitals is one of four subsidiaries of Provena Health, a corporation created when the Servants of the Holy Heart and two other groups affiliated with the Roman Catholic Church merged their health-care operations.[1] Provena Hospitals was formed through the consolidation of four Catholic-related health-care organizations and is organized as a not-for-profit corporation under the laws of Illinois. The articles of consolidation for Provena Hospitals state that the purpose of the corporation is to "coordinate the activities of Provena Hospitals' subsidiaries or other organizations that are affiliated with Provena Hospitals as they pursue their religious, charitable, educational and scientific purposes" and "to offer at all times high quality and cost effective healthcare and human services to the consuming public."

Provena Hospitals is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. §501(c)(3)

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[1]According to Provena Health's table of organization, its other three units are Provena Senior Services, which operates numerous nursing homes and adult care facilities; Provena Home Care; and Provena Ventures, which consists of Provena Properties and Provena Enterprises. Provena Enterprises, in turn, is comprised of Medicentre Laboratories and Bennett Operating Company.

(1988)). The Illinois Department of Revenue has also determined that the corporation is exempt from this state's retailers' occupation tax (see 35 ILCS 120/1 *et seq.* (West 2002)), service occupation tax (see 35 ILCS 115/1 *et seq.* (West 2002)), use tax (see 35 ILCS 105/1 *et seq.* (West 2002)), and service use tax (see 35 ILCS 110/1 *et seq.* (West 2002)). In addition, the Illinois Attorney General has concluded that the corporation "meets the qualifications of Section 3(a) of 'An Act to Regulate Solicitation and Collection of Funds for Charitable Purposes' [225 ILCS 460/3(a) (West 2002)] and Section 4 of 'The Charitable Trust Act' [760 ILCS 55/1 (West 2002)]" and constitutes a religious organization exempt from filing annual financial reports under those statutes.

Provena Hospitals owns and operates six hospitals, including Provena Covenant Medical Center (PCMC), a full-service hospital located in the City of Urbana. PCMC was created through the merger of Burnham City Hospital and Mercy Hospital. It is one of two general acute care hospitals in Champaign/Urbana and serves a 13-county area in east central Illinois. The services it provides include a 24-hour emergency department; a birthing center; intensive care, neonatal intensive care, and pediatrics units; surgical, cardiac care, cancer treatment, rehabilitation and behavioral health services; and home health care, including hospice. It offers case management services to assist older persons to remain in their homes and runs various support groups and health-related classes. It also provides smoking cessation clinics and screening programs for high cholesterol and blood pressure as well as pastoral care.

PCMC maintains between 260 and 268 licensed beds. Each year it admits approximately "10,000 inpatients and 100,000 outpatients." Some 60% of its inpatient admissions originate through the hospital's emergency room, which treats some 27,000 visitors annually.

PCMC provides an emergency department because it is required to do so by the Hospital Emergency Service Act (210 ILCS 80/0.01 *et seq.* (West 2002)). Where emergency room services are offered, a certain level of health care is required to be provided to every person who seeks treatment there. That is so as a matter of both state (210 ILCS 80/1 (West 2002); see also 210 ILCS 70/1 (West 2002)) and federal (42 U.S.C. §1395dd) law.

Staffing PCMC are approximately 1,000 employees, 400

volunteers and 200 physicians. The physicians are not employed or paid by the hospital. They are merely credentialed to provide services there in exchange for paying $50 per year in dues to the hospital's library fund, and agreeing to serve on hospital committees and to be on call to attend patients without their own physicians. With respect to the emergency department, PCMC contracts with a for-profit private company to provide the necessary physicians. The company, not the hospital, bills patients and any third-party payors directly for emergency room services. The company likewise pursues payment of those bills independently from PCMC.

Just as PCMC relies on private physicians to fill its medical staff, it utilizes numerous third-party providers to furnish other services at the hospital. Among these are pharmacy, laundry, MRI/CT and lab services, and staffing for the rehabilitation and cardiovascular surgery programs. The company providing lab services is one of the businesses owned by Provena Enterprises, a Provena Health subsidiary. It is operated for profit.

Provena Hospitals' employees do not work gratuitously. Everyone employed by the corporation, including those with religious affiliations, are paid for their services. Compensation rates for senior executives are reviewed annually and compared against national surveys. Provena Health "has targeted the 75th percentile of the market for senior executive total cash compensation."

According to the record, PCMC's inpatient admissions encompass three broad categories of patients: those who have private health insurance, those who are on Medicare or Medicaid, and those who are "self pay (uninsured)." PCMC has agreements with some private third-party payers which provide for payment at rates different from "its established rates." The payment amounts under these agreements cover the actual costs of care. The amounts PCMC receives from Medicare and Medicaid are not sufficient to cover the costs of care. Although PCMC has the right to collect a certain portion of the charges directly from Medicare and Medicaid patients and has exercised that right, there is still a gap between the amount of payments received and the costs of care for such patients. For 2002, PCMC calculated the difference to be $7,418,150 in the case of Medicare patients and $3,105,217 for Medicaid patients.

PCMC was not required to participate in the Medicare and

Medicaid programs, but did so because it believed participation was "consistent with its mission." Participation was also necessary in order for Provena Hospitals to qualify for tax exemption under federal law. In addition, it provided the institution with a steady revenue stream.

During 2002, Provena Hospitals' "net patient service revenue" was $713,911,000, representing approximately 96.5% of the corporation's total revenue. No findings were made regarding the precise source of the remainder of its revenue. Provena Hospitals' "expenses and losses" exceeded its "revenue and gains" during this period by $4,869,000. In other words, the corporation was in the red. The following year, this changed. The corporation's revenue and gains exceeded its expenses and losses by $10,548,000.

Of Provena Hospitals' "net patient service revenue" for 2002, $113,494,000, or approximately 16%, was generated by PCMC. Unlike its parent, PCMC realized a net gain of income over "expenses and losses" of $2,165,388 for that year. This surplus existed even after provision for uncollectible accounts receivable (*i.e.*, bad debt) in the amount of $7,101,000. Virtually none of PCMC's income was derived from charitable contributions. The dollar amount of "unrestricted donations" received by PCMC for the year ending Dec. 31, 2002, was a mere $6,938.

PCMC experienced a modest net loss in 2003. The record discloses, however, that Provena Hospitals' auditors showed accrued property tax liabilities in the amount of $1.1 million per year for both 2002 and 2003 in the accounts payable and accrued expenses portions of the 2003 balance sheet. Had only the 2003 property tax been posted against the revenue and gains for 2003, that year would also have shown a net gain for PCMC.

In years when PCMC realizes a net gain, the gain is "reinvested in order to sustain and further [the corporation's] charitable mission and ministry." No findings were made regarding how much of the reinvestment occurs at PCMC and how much is allocated to other aspects of Provena Hospitals' operations. Nor were specific findings made regarding the particular purposes to which the reinvested funds were put. The record indicates, however, that PCMC "generally needs approximately two to four million dollars in margin each year to replace broken items and fix non-operating equipment."

In 2002, PCMC budgeted $813,694 for advertising and advertised in newspapers, phone directories, event playbills, and Chamber of Commerce publications; on television and radio; and through public signage. Its also advertised using "booths, tables, and/or tents at community health or nonprofit fundraising events; sponsorship of sports teams and other community events; and banner advertisements at sponsored community events." The ads taken out by PCMC in 2002 covered a variety of matters, including employee want ads. None of its ads that year mentioned free or discounted medical care.[2]

While not mentioned in PCMC's advertisements, a charity care policy was in place at the hospital, and the parties stipulated that PCMC's staff made "outreach efforts to communicate the availability of charity care and other assistance to patients." The charity care policy, which was shared with at least one other hospital under Provena Hospitals' auspices, provided that the institution would "offer, to the extent that it is financially able, admission for care or treatment, and the use of the hospital facilities and services regardless of race, color, creed, sex, national origin, ancestry or ability to pay for these services."[3]

The charity policy was not self-executing. An application was required. Whether an application would be granted was determined by PCMC on a case-by-case basis using eligibility criteria based on federal poverty guidelines. A sliding scale was employed. Persons whose income was below the guidelines were eligible for "a 100%

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[2]In subsequent years, Provena Hospitals altered its advertisements and increased its efforts to communicate the availability of charity care to patients. The case before us is concerned only with the situation as of 2002. With respect to that time period, the Director of Revenue bluntly concluded that "the record does not show that [PCMC] made any material effort to publicize the availability of charity care to those who were most in need of it."

[3]Of course, to the extent this policy addresses racial and other forms of noneconomic discrimination, it does not concern "charity" at all as we use that term today. Treating all persons equally regardless of such factors as race, religion or gender is no longer considered a matter of grace. In most situations, it is a legal requirement.

reduction from the patient portion of the billed charges." Persons whose income was not more than 125% of the guidelines could qualify for a 75% reduction. With an income level not more than 150% of the guidelines the discount fell to 50%. At an income level not more than 200% of the guidelines, the potential reduction was 25%.[4] Eligibility was also affected by the value of an applicant's assets. Patients who qualified based on low income might nevertheless be rendered ineligible if the equity in their principal residence exceeded $10,000 or they held other assets valued at more than $5,000.

PCMC's policy specified that the hospital would give a charity care application to anyone who requested one, but it was the patient's responsibility to provide all the information necessary to verify income level and other requested information. To verify income, a patient was required to present documentation "such as check stubs, income tax returns, and bank statements."

PCMC believed that its charity care program should be the payer of last resort. It encouraged patients to apply for charity care before receiving services, and if a patient failed to obtain an advance determination of eligibility under the program, normal collection practices were followed. PCMC would look first to private insurance, if there was any; then pursue any possible sources of reimbursement from the government. Failing that, the hospital would seek payment from the patient directly.

Short-term collection matters were handled by Provena Hospitals' "Extended Business Office." Staffed by a small group of employees in Joliet, the Extended Business Office would typically make three or four phone calls and send three or four statements to patients owing outstanding balances.[5] If a balance remained unpaid following such

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[4]Uninsured patients appear to have been billed for services at PCMC's full "established" rates. Using Provena Hospitals' figures, its actual cost of service was only about 47% of the price it charged such patients. As a result, the corporation could still garner a surplus in cases where it conferred discounts at the 25% and 50% levels.

[5]Provena Hospitals' explanation for utilizing collection agencies was that its own financial system "[did] not have a mechanism for sending statements

efforts, which typically did not extend beyond three months, Provena Hospitals would treat the account as "bad debt" and refer it to a collection agency. From time to time, the collection agencies would seek and were given authorization to pursue legal action against an account "on which, over the course of several months, the agency had not received any response, cooperation or payment from the patient." Provena Hospitals' decision as to whether to pursue legal action against a patient depended on review of the particular account. During 2002, it did not have a blanket policy requiring referral to a collection attorney in every case.

The fact that a patient's account had been referred to collection did not disqualify the patient from applying to the charity care program. Applications would be considered "[a]t any time during the collection process." PCMC had financial counselors to assist patients with paying outstanding balances and review all payment options with them. The counselors helped patients seek and qualify for financial assistance from other sources. Where a patient was given an application for charity care but failed to return it, the counselors would send letters and call the patients to remind them to do so.

During 2002, the amount of aid provided by Provena Hospitals to PCMC patients under the facility's charity care program was modest. The hospital waived $1,758,940 in charges, representing an actual cost to it of only $831,724. This was equivalent to only 0.723% of PCMC's revenues for that year and was $268,276 less than the $1.1 million in tax benefits which Provena stood to receive if its claim for a property tax exemption were granted.[6]

The number of patients benefitting from the charitable care program was similarly small. During 2002, only 302 of PCMC's

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to patients on a long-term basis."

[6]The disparity between the amount of free or discounted care dispensed and the amount of property tax that would be saved through receipt of a charitable exemption is in no way unique to the case before us here. Excluding bad debt, "the amount of uncompensated care provided by as many as three-quarters of nonprofit hospitals is less than their tax benefits." J. Colombo, *Federal and State Tax Exemption Policy, Medical Debt and Healthcare for the Poor*, 51 St. Louis L.J. 433, 433 n.2 (2007).

10,000 inpatient and 100,000 outpatient admissions were granted reductions in their bills under the charitable care program. That figure is equivalent to just 0.27% of the hospital's total annual patient census.

The PCMC complex is comprised of 43 separate real estate parcels. The main PCMC hospital building consists of parcels bearing the parcel identification numbers 91-21-07-404-001 through 91-21-07-404-010 and measures 395,685 square feet. Of this, 795 square feet (0.2% of the total) are used for the outpatient pharmacy; 1,592 square feet (0.4%) are devoted to the gift shop; 3,933 square feet (0.99%) are leased to the Board of Trustees of the University of Illinois; and 9,319 square feet (2.4%) are occupied by the hospital's emergency department. An additional 22,065 square feet (5.6%) is leased to for-profit entities or otherwise used for purposes which, the parties agree, render the space ineligible for any real estate tax exemption.

In addition to the main hospital building, the PCMC complex includes a parking garage, which consists of parcels numbered 91-21-07-408-001 through 91-21-07-408-011; a cancer center, consisting of parcels 91-21-07-403-006 through 91-21-07-403-009; the cancer center's parking lot, which includes parcels 91-21-07-403-001 through 91-21-07-403-005; the Crisis Nursery of Champaign/Urbana, which occupies parcels 91-21-07-407-001 through 91-21-07-407-003; and the Crisis Center's parking lot, situated on parcel 91-21-07-407-004. The complex also includes six additional parking lots: B, which is on parcel 46-21-07-336-001; C, which consists of parcel 46-21-07-338-006; D, which is located on parcel 46-21-07-337-006; E, which is on a parcel identified as 91-21-07-408-012; H, which includes parcels numbered 46-21-07-336-002 and 46-21-07-336-003; and a lot for PCMS employees covering parcels 91-21-07-409-18, 91-21-07-409-19, and 91-21-07-409-23.

Provena Hospitals applied to the Champaign County board of review to exempt all 43 of the parcels in the PCMC complex from property taxes for 2002. Exemption was requested under section 15–65(a) of the Property Tax Code (35 ILCS 200/15–65(a) (West 2002)) on the grounds that the parcels were owned by an institution of public charity and that the property was "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise

used with a view to profit." The board of review recommended this application be denied. The Illinois Department of Revenue agreed and denied the application in February of 2004, ruling that the property "was not in exempt ownership" and "not in exempt use."

As suggested earlier in this opinion, the tax to which the disputed property was subject totaled approximately $1.1 million. In March of 2004, PCMC paid that sum, under protest, to the treasurer of Champaign County.[7] It then filed a timely petition for a hearing on the exemption decision pursuant to section 8–35(b) of the Property Tax Code (35 ILCS 200/8–35(b) (West 2002)). The parties subsequently realized that because PCMC itself is not a legal "person," the exemption request should be treated as if it had been submitted by Provena Hospitals, which holds title to the 43 parcels at issue here. Because the parties agree that Provena Hospitals is the proper party to seek the exemption, we shall consider it to be the true applicant, as did the appellate court. 384 Ill. App. 3d 734.

In requesting a hearing on denial of the exemption, counsel for Provena Hospitals asserted that it could provide "clear evidence that it is a charitable organization entitled to charitable exemptions for the subject properties in accordance with section 15–65 of the Property Tax Code (35 ILCS 200/15–65 (West 2002)), Illinois case law and exemption determinations made by [the Department of Revenue] for other charitable institutions." Initially, no claim was made that any of the 43 subject properties might also qualify for exemption under section 15–40 of the Property Tax Code (35 ILCS 200/15–40 (West 2002)), which pertains to property used exclusively for "religious purposes," "school and religious purposes," or "orphanages," or that they might be exempt from property tax under any other provision of Illinois law. Later in the proceedings, however, Provena Hospitals asserted that the evidence "also conclusively establishes that [the] property also qualifies for exemption based on religious use."

After a lengthy hearing at which voluminous evidence was

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[7]Provena Hospitals subsequently managed to obtain a refund of the tax pending this appeal. The propriety of that refund is the subject of a separate appeal, and Provena has acknowledged that it could be ordered to repay any taxes legally levied against it.

presented, the administrative law judge (ALJ) assigned to the case recommended that 94.4% of the subject parcels be granted a charitable exemption. She did not address and made no findings regarding Provena Hospitals' alternate claim for a religious exemption.

The Director of Revenue rejected the ALJ's recommendation. He believed that under the evidence and the law, Provena Hospitals had failed to meet its burden of establishing that the property at issue here qualified for a charitable exemption. The Director further concluded that the property did not qualify for a religious exemption under section 15–40 of the Property Tax Code (35 ILCS 200/15–40 (West 2002)).[8]

The circuit court of Sangamon County disagreed with the Director on both counts. In a written order entered on administrative review pursuant to the Administrative Review Law (735 ILCS 5/3–101 *et seq.* (West 2002)), the circuit court held that Provena Hospitals was entitled to both a charitable tax exemption and a religious tax exemption for the subject parcels. As noted earlier in this opinion, the appellate court subsequently reversed. Rejecting the circuit court's view, it held that the Director's decision to deny Provena Hospitals either a charitable or religious exemption for the disputed property was not clearly erroneous. 384 Ill. App. 3d 734. It is in this posture that the matter now comes before our court.

ANALYSIS

The parcels of real estate at issue in this case are all located in Champaign County, which has fewer than 3 million inhabitants. In such counties, applications for exemption from property tax are made,

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[8]In turning down Provena Hospitals' claim for a religious exemption, the Director wrote that he was concurring "with the ALJ's recommendation that the property does not qualify for the religious purpose exemption." Because the ALJ did not address the religious purpose exemption, this was obviously a misstatement by the Director. It is evident, however, that the Director did not believe that the hospital complex was entitled to a property tax exemption under any of the bases claimed, including use for religious purposes, and his decision is the one under review.

in the first instance, to the county board of review or board of appeals. See 35 ILCS 200/15–5, 16–70 (West 2002). The county board's decision, however, is not final except as to homestead exemptions. With applications for all other exemptions, the matter is forwarded to the Department of Revenue for a determination as to "whether the property is legally liable to taxation." 35 ILCS 200/16–70 (West 2002). The Department of Revenue's procedures with respect to exemption decisions are governed by section 8–35 of the Property Tax Code (35 ILCS 200/8–35 (West 2002)), and such decisions by the Department are subject to judicial review in accordance with the Administrative Review Law (735 ILCS 5/3–101 *et seq.* (West 2002)). 35 ILCS 200/8–40 (West 2002).

When an appeal is taken to the appellate court following entry of judgment by the circuit court on administrative review, it is the decision of the administrative agency, not the judgment of the circuit court, which is under consideration. See *Anderson v. Department of Professional Regulation*, 348 Ill. App. 3d 554, 560 (2004). Similarly, when we grant leave to appeal from a judgment of the appellate court in an administrative review case, as we did here, it is the final decision of the administrative agency, not the judgment of the circuit court or the appellate court, which is before us. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007); *Sangamon County Sheriff's Department v. Illinois Human Rights Comm'n*, 233 Ill. 2d 125, 136 (2009).

Judicial review of administrative decisions is subject to important constraints regarding the issues and evidence that may be considered. If an argument, issue, or defense was not presented in the administrative proceedings, it is deemed to have been procedurally defaulted and may not be raised for the first time before the circuit court. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 213 (2008). In addition, "[t]he findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct" and "[n]o new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court." 735 ILCS 5/3–110 (West 2002). Consistent with these statutory mandates, we have held that "it is not a court's function on administrative review to reweigh evidence or to make an independent

determination of the facts." *Kouzoukas v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 234 Ill. 2d 446, 463 (2009). When an administrative agency's factual findings are contested, the court will only ascertain whether such findings of fact are against the manifest weight of the evidence. *Cook County Republican Party v. Illinois State Board of Elections*, 232 Ill. 2d 231, 244 (2009).

The standard of review is different when the only point in dispute is an agency's conclusion on a point of law. There, the decision of the agency is subject to *de novo* review by the courts.[9] Yet a third standard governs when the dispute concerns the legal effect of a given set of facts, *i.e.*, where the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard. In such cases, which we have characterized as involving a mixed question of law and fact, an agency's decision is reviewed for clear error. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 273 (2009).

In the case before us now, the historical facts are not disputed and the governing legal principles are well established. The sole question is whether, under the facts present here, the real property at issue in this case qualifies for an exemption from taxation under the Property Tax Code (35 ILCS 200/1–1 *et seq.* (West 2002)). Under the standards just discussed, this presents a mixed question of law and fact and will therefore be set aside only if clearly erroneous. See *Swank v. Department of Revenue*, 336 Ill. App. 3d 851, 861 (2003); *Metropolitan Water Reclamation District of Greater Chicago*, 313 Ill. App. 3d at 475. This standard is "significantly deferential." See *LeaderTreks, Inc. v. Department of Revenue*, 385 Ill. App. 3d 442, 446 (2008). An administrative decision will be set aside as clearly erroneous only when the reviewing court is left with the definite and

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[9]Even where review is *de novo*, an agency's construction is entitled to substantial weight and deference. Courts accord such deference in recognition of the fact that agencies make informed judgments on the issues based upon their experience and expertise and serve as an informed source for ascertaining the legislature's intent. See *Metropolitan Water Reclamation District of Greater Chicago v. Department of Revenue*, 313 Ill. App. 3d 469, 475 (2000).

firm conviction that a mistake has been committed. *Exelon Corp.*, 234 Ill. 2d at 273. For reasons we shall now explain, this is not such a case.

Under Illinois law, taxation is the rule. Tax exemption is the exception. All property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto. Statutes granting tax exemptions must be strictly construed in favor of taxation (*Board of Certified Safety Professionals of the Americas, Inc. v. Johnson*, 112 Ill. 2d 542, 547 (1986)), and courts have no power to create exemption from taxation by judicial construction (*City of Chicago v. Illinois Department of Revenue*, 147 Ill. 2d 484, 491 (1992)).

The burden of establishing entitlement to a tax exemption rests upon the person seeking it. *City of Chicago v. Illinois Department of Revenue*, 147 Ill. 2d at 491. The burden is a very heavy one. The party claiming an exemption must prove by clear and convincing evidence that the property in question falls within both the constitutional authorization and the terms of the statute under which the exemption is claimed. See *Streeterville Corp. v. Department of Revenue*, 186 Ill. 2d 534, 539-40 (1999) (Harrison, J., dissenting, joined by McMorrow, J.). A basis for exemption may not be inferred when none has been demonstrated. To the contrary, all facts are to be construed and all debatable questions resolved in favor of taxation (*Follett's Illinois Book & Supply Store, Inc. v. Isaacs*, 27 Ill. 2d 600, 606 (1963)), and every presumption is against the intention of the state to exempt property from taxation (*Reeser v. Koons*, 34 Ill. 2d 29, 36 (1966)). If there is any doubt as to applicability of an exemption, it must be resolved in favor of requiring that tax be paid. *Streeterville Corp. v. Department of Revenue*, 186 Ill. 2d at 539 (Harrison, J., dissenting, joined by McMorrow, J.).

As noted earlier in this opinion, Provena Hospitals has been granted a tax exemption by the federal government. There is no dispute, however, that tax exemption under federal law is not dispositive of whether real property is exempt from property tax under Illinois law. See *Eden Retirement Center, Inc. v. Department of Revenue*, 213 Ill. 2d 273, 291 (2004). Similarly, the fact that Provena Hospitals is exempt from state retailers' occupation, service occupation, use and service use taxes does not mean that the

corporation must likewise be granted an exemption from paying tax on the real property it owns. *People ex rel. County Collector v. Hopedale Medical Foundation*, 46 Ill. 2d 450, 464 (1970); *Willows v. Munson*, 43 Ill. 2d 203, 209 (1969); see *Institute of Gas Technology v. Department of Revenue*, 289 Ill. App. 3d 779, 785 (1997).

Authority to exempt certain real property from taxation emanates from article IX, section 6, of the 1970 Illinois Constitution (Ill. Const. 1970, art. IX, §6). Section 6 provides that the General Assembly may, by law, exempt from taxation property owned by "the State, units of local government and school districts" and property "used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes." Ill. Const. 1970, art. IX, §6.

Section 6 is not self-executing. It merely authorizes the General Assembly to enact legislation exempting certain property from taxation. *Chicago Patrolmen's Ass'n v. Department of Revenue*, 171 Ill. 2d 263, 269 (1996). The General Assembly is not required to exercise that authority. Where it does elect to recognize an exemption, it must remain within the limitations imposed by the constitution. No other subjects of property tax exemption are permitted. The legislature cannot add to or broaden the exemptions specified in section 6. *Chicago Bar Ass'n v. Department of Revenue*, 163 Ill. 2d 290, 297 (1994).

While the General Assembly has no authority to grant exemptions beyond those authorized by section 6, it "may place restrictions, limitations, and conditions on [property tax] exemptions as may be proper by general law." *North Shore Post No. 21 of the American Legion v. Korzen*, 38 Ill. 2d 231, 233 (1967). In accordance with this power, the legislature has elected to impose additional restrictions with respect to section 6's charitable exemption. Pursuant to section 15–65 of the Property Tax Code (35 ILCS 200/15–65 (West 2002)), eligibility for a charitable exemption requires not only that the property be "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit," but also that it be owned by an institution of public charity or certain other entities, including "old people's homes," qualifying not-for-profit health maintenance organizations, free public libraries and historical societies. *Chicago Patrolmen's Ass'n v. Department of Revenue*, 171

Ill. 2d at 270.

In *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149, 156-57 (1968), we identified the distinctive characteristics of a charitable institution as follows: (1) it has no capital, capital stock, or shareholders; (2) it earns no profits or dividends but rather derives its funds mainly from private and public charity and holds them in trust for the purposes expressed in the charter; (3) it dispenses charity to all who need it and apply for it; (4) it does not provide gain or profit in a private sense to any person connected with it; and (5) it does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefits it dispenses. *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d at 157. For purposes of applying these criteria, we defined charity as "a gift to be applied *** for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare–or in some way reducing the burdens of government." *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d at 156-57.

This court has held, on several occasions, that a "hospital not owned by the State or any other municipal corporation, but which is open to all persons, regardless of race, creed or financial ability," qualifies as a charitable institution under Illinois law provided certain conditions are satisfied. See *People ex rel. Cannon v. Southern Illinois Hospital Corp.*, 404 Ill. 66, 69-70 (1949). There is, however, no blanket exemption under the law for hospitals or health-care providers. Whether a particular institution qualifies as a charitable institution and is exempt from property tax is a question which must be determined on a case-by-case basis. See *Coyne Electrical School v. Paschen*, 12 Ill. 2d 387, 394 (1957).

Provena Hospitals clearly satisfies the first of the factors identified by this court in *Methodist Old Peoples Home v. Korzen* for determining whether an organization can be considered a charitable institution: it has no capital, capital stock, or shareholders. Provena Hospitals also meets the fourth *Korzen* factor. It does not provide gain or profit in a private sense to any person connected with it. While the record focused on PCMC rather than Provena Hospitals, it was assumed by all parties during the administrative proceedings that Provena Hospitals' policies in this regard were the same as those of PCMC, and it was stipulated that PCMC diverted no profits or funds

to individuals or entities for their own interests or private benefit.

The Director correctly points out that PCMC subcontracted many of its operations to third-party providers, including pharmacy, laboratory, laundry and MRI/CT services; the entire emergency department; and the management, administration, and staffing of rehabilitation and cardiovascular surgery programs. One of those third-party providers, the one which furnished lab services to PCMC, was actually owned by Provena Health, Provena Hospitals' parent, and was operated on a for-profit basis. While all of the third-party providers were subject to a conflict of interest policy designed "to prevent private inurement and other conduct that may be inimical to [the organization's] mission," no evidence was presented that any of them were themselves charities or operated on anything other than a for-profit basis. This, however, is not dispositive.

The fact that an organization contracts with third-party, for-profit providers for ancillary services does not, in itself, preclude the organization from being characterized as an institution of charity within the meaning of section 15–65 of the Property Tax Code (35 ILCS 200/15–65 (West 2002)). Virtually all charities must contract with for-profit vendors to one degree or another in order to carry on their operations and perform their charitable functions. See J. Colombo, *Hospital Property Tax Exemption in Illinois: Exploring the Policy Gaps*, 37 Loy. U. Chi. L.J. 493, 521-22 (2006). The real concern is whether any portion of the money received by the organization is permitted to inure to the benefit of any private individual engaged in *managing* the organization. The authority cited by the *Korzen* case with respect to the prohibition against private gain or profit so holds. See *Sisters of the Third Order of St. Francis v. Board of Review*, 231 Ill. 317, 321 (1907). No private enrichment of that type is evident in this case.

While *Korzen* factors one and four thus tilt in favor of characterizing Provena Hospitals as a charitable institution, application of the remaining factors demonstrates that the characterization will not hold. Provena Hospitals plainly fails to meet the second criterion: its funds are not derived mainly from private and public charity and held in trust for the purposes expressed in the charter. They are generated, overwhelmingly, by providing medical services for a fee. While the corporation's consolidated statement of operations for 2002