

Are Hospital Clinics Tax Exempt in Arkansas? Court of Appeals Weighs in on the Bounds of the Public-Charity Tax Exemption

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It is widely recognized that the public-charity tax exemption in the Arkansas Constitution covers charitable hospitals, provided they meet certain criteria established by Arkansas Supreme Court case law. But what about a free standing clinic owned and operated by a charitable hospital? And does such a clinic have to prove that a certain amount of the healthcare provided within the clinic is provided free of charge? These issues recently surfaced in a protracted legal battle when a county assessor in north Arkansas denied a hospital the exemption for its outpatient clinics.

After the county assessor denied entitlement to the tax exemption, the hospital took the assessor to court and won. The assessor appealed to the Arkansas Court of Appeals, but the hospital still came out on top.

At issue were seven parcels that were used exclusively by hospital employees to operate outpatient healthcare clinics. The clinics were not physically attached to the hospital, but were directly across the street. The county assessor based her denial on training materials and a guide provided by the Arkansas Assessment Coordination Department (AACD). The assessor claimed that unless the hospital proved that more than half of the healthcare provided by the clinics was free of charge, then the clinics would not be eligible for the public-charity tax exemption because they were no different than other medical clinics in the county. The Court of Appeals rejected these misstatements of the law, and instead affirmed that the Arkansas Supreme Court's *Burgess* test still controls application of the exemption. Of importance was evidence of the dollars of free patient care that had been provided not only at the hospital proper, but also at the hospital's outpatient clinics. In this case, the hospital had complied with the *Burgess* test, and that is where the Court of Appeals rested its conclusion.

This case is certainly a win for the hospital in question, as it can now claim the public-charity tax exemption for not only its hospital proper (which was already classified as exempt) but also its employee-operated clinics that are part of the hospital organization. More broadly, this case sets an important precedent that the exemption is not limited to the real property on which the hospital proper (and its specific number of licensed beds) is located, but it can reach to all property on which a hospital operates, so long as the *Burgess* test is satisfied.

The law instead focuses on whether all profits from paying patients are applied to maintaining the hospital and extending and enlarging its charity. The Court of Appeals seemed to adeptly understand that hospitals today often desire to increase their capacity for patient care by having their physicians practice from clinics that may be ancillary to actual hospital beds. In this case, such expansion was consistent with

the organization's constitution and in line with its 501(c)(3) mission. For other similarly situated hospitals, this case provides a basis for claiming the exemption of property beyond that traditionally considered exempt.

The actions of the county assessor in this case were consistent with a growing trend that we've seen in Arkansas. Whether to simply tidy up county tax records, or pursued more aggressively with the desire to strip tax exempt status so as to fill the county tax coffers, the public-charity tax exemption as applied to healthcare providers has been under attack. Appropriately using the above identified precedent, and pursuing all other legal arguments available, can make a crucial difference in the budgets of Arkansas hospitals. Such strategic legal planning keeps the charitable dollars where they belong: in the hands of hospitals, where they can be used to maintain, extend, and expand access to healthcare, and improve patient health both in hospital beds and beyond.

Case References:

- *Brandi Diffey v. N. Ark. Reg'l Med. Servs., Inc.*, No. CV-18-949 (Ark. Ct. App. Sept. 25, 2019)
- *Burgess v. Four States Mem. Hosp.*, 250 Ark. 485, 465 S.W.2d 693 (1971)