

## Publications

### **Health Care Alert: Real Property Tax Exemptions for Your Residential Care Facilities and Nursing Homes May Be at Risk**

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On January 7, 2020, the Ohio Board of Tax Appeals (BTA) issued a decision that arguably cuts against prior BTA and Ohio Supreme Court decisions regarding the “life care” requirements for real property tax exemptions for homes for the aged contained in Ohio Revised Code (R.C.) 5709.12. See *Antonine Maronite Sisters of Youngstown, Inc. v. McClain*, Ohio BTA, Dkt. Nos. 2018-25, 2018-63, 01/07/2020.

This BTA decision involved a residential care facility in northeastern Ohio owned and operated by Antonine Maronite Sisters of Youngstown, Inc. (Sisters), a Roman Catholic religious order that require vows of poverty. The Sisters constructed a residential care facility and filed an application for real property tax exemption requesting exemption for the facility pursuant to R.C. 5709.12 as a “home for the aged.” A “home for the aged” is defined in R.C. 5701.13. One of several definitional requirements for a “home for the aged” is that a facility “provides services for the life of each resident without regard to the resident's ability to continue payment for the full cost of the services.”

A volunteer board member provided a generic resident agreement for the Sisters' facility that contained a clause permitting the Sisters to terminate the agreement for nonpayment. The tax commissioner, citing to the Court's decision in *Ohio Presbyterian Homes v. Kinney*, 9 Ohio St.3d 90 (1983), denied the Sisters' application for exemption based upon this right to terminate as being contrary to the “life care” requirement under R.C. 5701.13. The Sisters appealed the tax commissioner's decision to the BTA.

Testimony before the BTA provided that the Sisters were unaware that their resident agreement was arguably contrary to the law. According to the Sisters, removing a resident who was unable to pay was never considered and would violate the Sisters' religious vows to care for the poor. Furthermore, the Sisters, upon learning that their resident agreement was potentially flawed, immediately revised the agreement so that there was no ongoing dispute about exemption for tax year 2017 and forward.

The BTA reversed the tax commissioner on the basis that the Court requires exemptions under R.C. 5709.12 to be determined on “the totality of the circumstances.” The BTA cited to two sales tax cases, *Bay Mechanical & Electrical Corp. v. Testa*, 133 Ohio St.3d 423, 2012-Ohio-4312 and *Accel, Inc. v. Testa*, 152 Ohio St.3d 262, 2017-Ohio-8798, as support that it should consider “context and course of performance, not only specific terms of a contract in a vacuum.” Accordingly, the BTA found that the Sisters’ “disputed clause was both unintended and benign,” which distinguished it from the facts in *Presbyterian Homes, supra*. The BTA found that “there was no possibility that a client would be terminated under the former agreement” and, as such, the Sisters’ facility satisfied the life care requirement under R.C. 5701.13 and was a “home for the aged” for purposes of real property tax exemption under R.C. 5709.12.

The tax commissioner may appeal the BTA’s decision to the Ohio Supreme Court. Even if the case is not appealed to the Court, Vorys believes that the tax commissioner will likely severely limit application of this decision based upon the case’s facts. Thus, owners and operators of residential care and nursing facilities seeking real property tax exemption as “homes for the aged” should be cautious when relying upon this case as a basis for real property tax exemption.

Over the last several years, the tax commissioner has taken what Vorys believes to be a very aggressive approach in its interpretation of resident agreements for purposes of satisfying the “life care” requirement under R.C. 5701.13. All facilities seeking real property tax exemption as a “home for the aged” should consider reviewing their resident agreements to ensure compliance. Furthermore, facilities with real property tax exemptions in place should also consider reviewing and, if necessary, revising resident agreements that arguably may not satisfy the “life care” requirement under R.C. 5701.13.

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