SENATE, No. 487

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:
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SYNOPSIS
Preserves property tax exempt status of certain nonprofit acute care hospitals; requires these hospitals to enter into payment in lieu of taxation agreement in certain circumstances.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning the property taxation of nonprofit acute care hospitals, supplementing chapter 48 of Title 40 and chapter 4 of Title 54 of the Revised Statutes, and amending R.S.54:4-3.6.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) a. If the average of the community benefit expense percentages of total expense reported by a qualified nonprofit acute care hospital exempt from taxation pursuant to R.S.54:4-3.6 and section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) on its Internal Revenue Service Form 990, Schedule H, filed with the Internal Revenue Service for the three tax years prior to the pretax year is five percent or greater, but not greater than eight percent, and the average of the combined community benefit expense and community building activities percentages of total expense reported on those filings is less than 10 percent, the owner of the hospital shall enter into a payment in lieu of taxation agreement with the municipality in which the hospital is located for the current tax year.

b. If the average of the community benefit expense percentages of total expense reported by a qualified nonprofit acute care hospital exempt from taxation pursuant to R.S.54:4-3.6 and section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) on its Internal Revenue Service Form 990, Schedule H, filed with the Internal Revenue Service for the three tax years prior to the pretax year is greater than eight percent or the average of the combined community benefit expense and community building activities percentages of total expense reported on those filings is 10 percent or greater, the owner of the hospital may enter into a voluntary payment in lieu of taxation agreement with the municipality in which the hospital is located for the current tax year.

c. If a nonprofit acute care hospital does not meet the requirements of a qualified nonprofit acute care hospital and is not exempt from taxation pursuant to R.S.54:4-3.6 and section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), the municipality in which the hospital is located may enter into a payment in lieu of taxation agreement with the owner of the hospital, and forego the collection of property taxes with respect to that hospital.

d. A nonprofit acute care hospital shall annually file with the tax assessor of the municipality in which the hospital is located copies of its Internal Revenue Service Form 990, including Schedule H, filed with the Internal Revenue Service for the three

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
tax years prior to the pretax year by September 1 of each pretax year.

e. The tax assessor of a municipality in which a nonprofit acute care hospital is located shall annually determine whether the hospital is a qualified nonprofit acute care hospital exempt from taxation and whether the hospital is required to enter into a payment in lieu of taxation agreement with the municipality pursuant to R.S.54:4-3.6 and P.L. , c. (C. ) (pending before the Legislature as this bill) by October 1 of each pretax year.

f. The owner of an acute care hospital may appeal the determination of a tax assessor pursuant to subsection e. of P.L. , c. (C. ) (pending before the Legislature as this bill) in the manner set forth in R.S.54:3-21.

g. The Commissioner of Health, in consultation with the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Local Government Services in the Department of Community Affairs, shall adopt regulations necessary to effectuate the provisions of this section pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

h. As used in this section:

"Acute care hospital" means a hospital which maintains and operates organized facilities and services as approved by the Department of Health for the diagnosis, treatment, or care of persons suffering from acute illness, injury, or deformity and in which all diagnosis, treatment, and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey.

"Nonprofit acute care hospital" means an acute care hospital that is owned by an association or corporation organized as a nonprofit pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes exclusively for hospital purposes.

"Qualified nonprofit acute care hospital" means a nonprofit acute care hospital for which either an average of the community benefit expense percentages of total expense reported on its Internal Revenue Service Form 990, Schedule H, filed with the Internal Revenue Service for the three tax years prior to the pretax year is five percent or greater, or the average of the combined community benefit expense and community building activities percentages of total expense reported on those filings is 10 percent or greater.

2. (New section) a. Property, including land and buildings, used as a qualified nonprofit acute care hospital shall be exempt from taxation, provided that, except in the case of a lease to or use by a profit-making medical provider for medical purposes, if any portion of the property is leased to a profit-making organization or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining
portion only shall be exempt. If any portion of a qualified nonprofit acute care hospital is leased to or otherwise used by a profit-making medical provider for medical purposes, that portion shall be exempt from taxation.

b. The owner of property used as a qualified nonprofit acute care hospital exempt from taxation pursuant to subsection a. of this section may be subject to a payment in lieu of taxation agreement as provided in section 1 of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. As used in this section:

"Acute care hospital" means a hospital which maintains and operates organized facilities and services as approved by the Department of Health for the diagnosis, treatment, or care of persons suffering from acute illness, injury, or deformity and in which all diagnosis, treatment, and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey.

"Medical provider" means an individual or entity which, acting within the scope of a licensure or certification, provides health care services, and includes, but is not limited to, a physician, physician assistant, psychologist, pharmacist, dentist, nurse, paramedic, respiratory care practitioner, medical or laboratory technician, ambulance or emergency medical worker, orthotist or prosthetist, radiological or other diagnostic service facility, bioanalytical laboratory, health care facility, and further includes administrative support staff of the individual or entity.

"Nonprofit acute care hospital" means an acute care hospital that is owned by an association or corporation organized as a nonprofit pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes exclusively for hospital purposes.

"Qualified nonprofit acute care hospital" means a nonprofit acute care hospital for which either an average of the community benefit expense percentages of total expense reported on its Internal Revenue Service Form 990, Schedule H, filed with the Internal Revenue Service for the three tax years prior to the pretax year is five percent or greater, or the average of the combined community benefit expense and community building activities percentages of total expense reported on those filings is 10 percent or greater.

3. R.S.54:4-3.6 is amended to read as follows:

54:4-3.6. The following property shall be exempt from taxation under this chapter: all buildings actually used for colleges, schools, academies or seminars, provided that if any portion of such buildings are leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt; all buildings actually used for historical societies, associations or exhibitions, when owned by the State,
county or any political subdivision thereof or when located on land
owned by an educational institution which derives its primary
support from State revenue; all buildings actually and exclusively
used for public libraries, asylum or schools for adults and children
with intellectual disabilities; all buildings used exclusively by any
association or corporation formed for the purpose and actually
engaged in the work of preventing cruelty to animals; all buildings
actually and exclusively used and owned by volunteer first-aid
squads, which squads are or shall be incorporated as associations
not for pecuniary profit; all buildings actually used in the work of
associations and corporations organized exclusively for the moral
and mental improvement of men, women and children, provided
that if any portion of a building used for that purpose is leased to
profit-making organizations or is otherwise used for purposes which
are not themselves exempt from taxation, that portion shall be
subject to taxation and the remaining portion only shall be exempt;
all buildings actually used in the work of associations and
corporations organized exclusively for religious purposes, including
religious worship, or charitable purposes, provided that if any
portion of a building used for that purpose is leased to a profit-
making organization or is otherwise used for purposes which are not
themselves exempt from taxation, that portion shall be subject to
taxation and the remaining portion shall be exempt from taxation,
and provided further that if any portion of a building is used for a
different exempt use by an exempt entity, that portion shall also be
exempt from taxation; all buildings actually used in the work of
associations and corporations organized exclusively for hospital
purposes, provided that, except in the case of a qualified nonprofit
acute care hospital as provided in section 2 of P.L. [ ]
c. (C. ) (pending before the Legislature as this bill), if any
portion of a building used for hospital purposes is leased to profit-
making organizations or otherwise used for purposes which are not
themselves exempt from taxation, that portion shall be subject to
taxation and the remaining portion only shall be exempt; all
buildings owned or held by an association or corporation created for
the purpose of holding the title to such buildings as are actually and
exclusively used in the work of two or more associations or
corporations organized exclusively for the moral and mental
improvement of men, women and children; all buildings owned by a
corporation created under or otherwise subject to the provisions of
Title 15 of the Revised Statutes or Title 15A of the New Jersey
Statutes and actually and exclusively used in the work of one or
more associations or corporations organized exclusively for
charitable or religious purposes, which associations or corporations
may or may not pay rent for the use of the premises or the portions
of the premises used by them; the buildings, not exceeding two,
actually occupied as a parsonage by the officiating clergymen of
any religious corporation of this State, together with the accessory
buildings located on the same premises; the land whereon any of the buildings hereinbefore mentioned are erected, and which may be necessary for the fair enjoyment thereof, and which is devoted to the purposes above mentioned and to no other purpose and does not exceed five acres in extent; the furniture and personal property in said buildings if used in and devoted to the purposes above mentioned; all property owned and used by any nonprofit corporation in connection with its curriculum, work, care, treatment and study of men, women, or children with intellectual disabilities shall also be exempt from taxation, provided that such corporation conducts and maintains research or professional training facilities for the care and training of men, women, or children with intellectual disabilities; provided, in case of all the foregoing except for a qualified nonprofit acute care hospital, the buildings, or the lands on which they stand, or the associations, corporations or institutions using and occupying them as aforesaid, are not conducted for profit, except that the exemption of the buildings and lands used for charitable, benevolent or religious purposes shall extend to cases where the charitable, benevolent or religious work therein carried on is supported partly by fees and charges received from or on behalf of beneficiaries using or occupying the buildings; provided the building is wholly controlled by and the entire income therefrom is used for said charitable, benevolent or religious purposes; and any tract of land purchased pursuant to subsection (n) of section 21 of P.L.1971, c.199 (C.40A:12-21), and located within a municipality, actually used for the cultivation and sale of fresh fruits and vegetables and owned by a duly incorporated nonprofit organization or association which includes among its principal purposes the cultivation and sale of fresh fruits and vegetables, other than a political, partisan, sectarian, denominational or religious organization or association. The foregoing exemption shall apply only where the association, corporation or institution claiming the exemption owns the property in question and is incorporated or organized under the laws of this State and authorized to carry out the purposes on account of which the exemption is claimed or where an educational institution, as provided herein, has leased said property to a historical society or association or to a corporation organized for such purposes and created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes.

As used in this section, "hospital" means the same as that term is defined in section 2 of P.L. 1991, c. 199 (pending before the Legislature as this bill).

"Hospital purposes" includes qualified nonprofit acute care hospitals, health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L.1979,
c.496 (C.55:13B-1 et al.), the "Rooming and Boarding House Act of 1979"; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly, but does not include acute care hospitals that do not meet the requirements of a qualified nonprofit acute care hospital, as that term is defined in section 2 of P.L. , c. (pending before the Legislature as this bill), which acute care hospitals shall be subject to taxation except as may be otherwise provided pursuant to subsection c. of section 1 of P.L. , c. (pending before the Legislature as this bill).

“Qualified nonprofit acute care hospital” means the same as that term is defined in section 2 of P.L. , c. (pending before the Legislature as this bill).

(cf: P.L.2011, c.171, s.4)

4. This act shall take effect on the first day of the tax year next following the date of enactment, except that subsection d. of section 1 of this act shall take effect immediately and except the Commissioner of Health may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

STATEMENT

This bill would tie the property taxation of a non-profit acute care hospital to the percentages of community benefit expenses and community building activities out of total hospital expenses that the hospital reports to the Internal Revenue Service. The bill would clarify that complex modern nonprofit hospitals, which provide nonprofit medical services while also hosting for-profit medical activities, may remain exempt from property taxation if certain minimum percentages of community benefit expenses or community building activities are reported, but may be responsible for either providing some financial support to their host municipalities or may be subject to full property taxation if such hospitals’ community benefit expenses or community building activities percentages are lower.

The Tax Court recently held that a nonprofit hospital was not entitled to a property tax exemption because profit-making medical services were provided throughout the hospital, and there was no separate accounting of nonprofit and for-profit medical activities to delineate exempt property from non-exempt property. Since for-profit medical services are commonly provided at nonprofit hospitals, this ruling could potentially be applied to many other nonprofit hospitals throughout the State. This bill would eliminate
any uncertainty over the property tax exempt status of nonprofit hospitals that lease space to or share space with for-profit medical providers, but still qualify as nonprofit institutions, by establishing clear and specific guidelines for when such hospital properties are exempt from property taxation, subject to a payment in lieu of taxation requirement, or subject to full property taxation.

Specifically, a nonprofit hospital would be exempt from property taxation if the average of its reported community benefit expense percentages of total expense on its Internal Revenue Service Form 990, Schedule H, filed with the Internal Revenue Service for a three year period is five percent or greater or the average of its combined community benefit expense and community building activities percentages of total expense reported on those filings is 10 percent or greater. Such hospital would be subject to a mandatory payment in lieu of taxation agreement with its host municipality if the average of its community benefit expense percentages of total expense is five percent or greater, but not greater than eight percent, and the average of its combined community benefit expense and community building activities percentages of total expense is less than 10 percent. If the average of such hospital’s community benefit expense percentages of total expense is greater than eight percent or the average of its combined community benefit expense and community building activities percentages of total expense is 10 percent or greater, the hospital may, but is not required to, enter into a payment in lieu of taxation agreement with its host municipality.

A nonprofit hospital would be subject to full property taxation if the average of its community benefit expense percentages of total expense is less than five percent and the average of its combined community benefit expense and community building activities percentages of total expense is less than 10 percent. The municipality in which such hospital is located may forego property tax collection against such hospital and implement a payment in lieu of taxation agreement instead.