

TO: Members of the Revenue and Transportation Interim Committee

FROM: Megan Moore, Legislative Services

RE: Requested Additional Information Regarding Property Tax Exemptions in Other States for SJR 23 Study

DATE: November 29, 2011

This memorandum includes additional information that was requested at the September 26-27, 2011, Revenue and Transportation Interim Committee related to property tax exemptions in other states. The information falls into two categories: statutes that create multifactor tests for determining whether nonprofits should be exempt from taxation and statutes that address exemptions for hospitals.

Multifactor Test Statutes

Minnesota and Pennsylvania both have statutes that outline a list of factors that an exempt entity must meet to qualify for property tax exemption. These tests have their basis in court decisions but were later adopted statutorily with some changes.

Minnesota

Article X, Section 1 of the Minnesota Constitution exempts from taxation “public burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose.” This section also provides that the Legislature may define or limit exemptions other than those for churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities, and seminaries of learning. This gives the Legislature some discretion to place restrictions on some exemptions, including those for public hospitals and institutions of purely public charity.

For a number of years, Minnesota determined whether an institution of purely public charity should be exempt using a six-factor test established by the Minnesota Supreme Court in the 1975 case, *North Star Research Institute v. County of Hennepin*. The six factors from the *North Star* holding were:

1. whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;
2. whether the entity involved is supported by donations and gifts in whole or in part;

3. whether the recipients of the "charity" are required to pay for the assistance received in whole or in part;
4. whether the income received from gifts, donations, and charges to users produces a profit to the charitable institution;
5. whether the beneficiaries of the "charity" are restricted or unrestricted, and if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; and
6. whether dividends, in form or substance, or assets upon dissolution are available to private interests.

Court holdings after the *North Star* case referenced the six-factor test and gave equal weight to each factor without requiring that an exempt entity meet all six factors.¹

The Minnesota Supreme Court held otherwise, however, in the 2007 case *Under the Rainbow Child Care Center v. County of Goodhue*. The Court determined that the third factor, which addresses whether the recipients of the charity pay for the assistance, was "fundamental to the concept of charity."² The Court concluded that, to qualify as an exempt entity, a daycare center must offer its services for free or at a reduced rate.³ In response to the *Under the Rainbow* decision, the 2008 Minnesota Legislature placed a moratorium on granting exemptions to charitable organizations and directed the Department of Revenue to survey county assessors on their assessment practices. In addition to collecting the survey data, the Department met with the nonprofit community, assessing officers, and legislative staff.⁴ The survey and meetings led to a consensus description of "institutions of purely public charity," which the Legislature adopted in 2009.⁵

Subdivision 7 of Chapter 272.02 of the Minnesota Revised Statutes codifies the consensus definition of "institutions of purely public charities." The section outlines six factors, nearly identical to those from the *North Star* case, that are to be considered when granting an exemption. This definition reconciles the *North Star* and *Under the Rainbow* decisions by requiring that an institution of purely public charity meet all six factors "unless there is a reasonable justification for failing to meet the factors in clause (2), (3), or (5), and the organization provides to the assessor the factual basis for that justification." The factors addressed in (2), (3), and (5) are whether the institution is supported by donations and gifts, whether the recipient of the charity is required to pay for assistance, and whether the beneficiaries are restricted or unrestricted, respectively. The complete text of Subdivision 7 appears below in italics.

Subd. 7. Institutions of public charity.

(a) Institutions of purely public charity that are exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code are exempt if they meet the

¹ Minnesota Department of Revenue, "Assessment and Classification Practices Report: Institutions of Purely Public Charity," Feb 2009, p. 5-6.

² *Under the Rainbow Child Care Ctr. v. County of Goodhue*, 741 N.W.2d 880, 886 (Minn. 2007).

³ Minnesota Department of Revenue, "Assessment and Classification Practices Report: Institutions of Purely Public Charity," Feb 2009, p. 6.

⁴ *Ibid.*

⁵ Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," 44 *New England Law Review* 621, 2010, p. 630.

requirements of this subdivision. In determining whether real property is exempt under this subdivision, the following factors must be considered:

(1) whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;

(2) whether the institution of public charity is supported by material donations, gifts, or government grants for services to the public in whole or in part;

(3) whether a material number of the recipients of the charity receive benefits or services at reduced or no cost, or whether the organization provides services to the public that alleviate burdens or responsibilities that would otherwise be borne by the government;

(4) whether the income received, including material gifts and donations, produces a profit to the charitable institution that is not distributed to private interests;

(5) whether the beneficiaries of the charity are restricted or unrestricted, and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; and

(6) whether dividends, in form or substance, or assets upon dissolution, are not available to private interests.

A charitable organization must satisfy the factors in clauses (1) to (6) for its property to be exempt under this subdivision, unless there is a reasonable justification for failing to meet the factors in clause (2), (3), or (5), and the organization provides to the assessor the factual basis for that justification. If there is reasonable justification for failing to meet the factors in clause (2), (3), or (5), an organization is a purely public charity under this subdivision without meeting those factors. After an exemption is properly granted under this subdivision, it will remain in effect unless there is a material change in facts.

(b) For purposes of this subdivision, a grant is a written instrument or electronic document defining a legal relationship between a granting agency and a grantee when the principal purpose of the relationship is to transfer cash or something of value to the grantee to support a public purpose authorized by law in a general manner instead of acquiring by professional or technical contract, purchase, lease, or barter property or services for the direct benefit or use of the granting agency.

(c) In determining whether rental housing property qualifies for exemption under this subdivision, the following are not gifts or donations to the owner of the rental housing:

(1) rent assistance provided by the government to or on behalf of tenants; and

(2) financing assistance or tax credits provided by the government to the owner on condition that specific units or a specific quantity of units be set aside for persons or families with certain income characteristics.

Pennsylvania

Article VIII, section 2(a)(v) of the Pennsylvania Constitution allows the General Assembly to exempt from taxation “institutions of purely public charity.” Other parts of Section (2)(a) allow

for exemptions for places of regular religious worship, places of burial, public property used for public purposes, and property owned and occupied by veterans' organizations used for benevolent, charitable, or patriotic purposes. Property tax exemptions enacted by the General Assembly are in 72 P.S. Section 5020-204 and include (among others) exemptions for hospitals, universities, colleges, and institutions of learning, benevolence, or charity. The relevant portions of the statute follow in italics.

72 P.S. Section 5020-204 Exemptions from taxation

(a) The following property shall be exempt from all county, city, borough, town, township, road, poor and school tax, to wit:

...

(3) All hospitals, universities, colleges, seminaries, academies, associations and institutions of learning, benevolence, or charity, including fire and rescue stations, with the grounds thereto annexed and necessary for the occupancy and enjoyment of the same, founded, endowed, and maintained by public or private charity: Provided, That the entire revenue derived by the same be applied to the support and to increase the efficiency and facilities thereof, the repair and the necessary increase of grounds and buildings thereof, and for no other purpose: And provided further, That any charitable organization providing residential housing services in which the charitable nonprofit organization receives subsidies for at least ninety-five per centum of the residential housing units from a low-income Federal housing program shall remain a "purely public charity" and tax exempt provided that any surplus from such assistance or subsidy is monitored by the appropriate governmental agency and used solely to advance common charitable purposes within the charitable organization;

...

(9) All real property owned by one or more institutions of purely public charity, used and occupied partly by such owner or owners and partly by other institutions of purely public charity, and necessary for the occupancy and enjoyment of such institutions so using it;

The section of Pennsylvania law allowing for the exemption for institutions of purely public charity does not define the term. The Pennsylvania Supreme Court established a five part test determining eligibility as a purely public charity in the 1985 case *Hospital Utilization Project v. Commonwealth*. The five considerations outlined in the ruling, known as the HUP test, were whether the organization “(a) advances a charitable purpose; (b) donates or renders gratuitously a substantial portion of its services; (c) benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (d) relieves the government of some of its burden; and (e) operates entirely free from private profit motive.”⁶

In 1997, the Pennsylvania General Assembly passed “The Institutions of Purely Public Charity Act,” known by its bill number as Act 55. According to a legislative intent statement in 10 P.S. Section 372, the reason for the legislation was to “eliminate inconsistent application of eligibility standards for charitable tax exemptions, reduce confusion and confrontation among traditionally tax-exempt institutions and political subdivisions and ensure that charitable and public funds are

⁶ *Hospital Utilization Project v. Commonwealth of Pennsylvania*, 487 A.2d 1306, 1317 (Pa. 1985).

not unnecessarily diverted from the public good to litigate eligibility for tax-exempt status by providing standards to be applied uniformly...”

Subsections (b) through (f) of Act 55 are based on the HUP test but expand the criteria for exemption.⁷ Some consider Act 55 to overrule the HUP test but the Pennsylvania Supreme Court has so far sidestepped a constitutional challenge.⁸ The five criteria for exemption remain the same (though in a different order than in the HUP test): advancement of a charitable purpose, operation free from a private profit motive, donation of a substantial portion of services, benefits provided to a substantial and indefinite class of persons who are legitimate subjects of charity, and relief of government burden.

Unlike the HUP test, Act 55 provides specific guidance for each of the five parts. Subsection (b) describes organizations that advance a charitable purpose as fulfilling one or more of the following purposes: relief of poverty, advancement or provision of education, advancement of religion, prevention or treatment of disease, government purposes, and advancement of social, moral or physical objectives. A detailed explanation of operation free from private profit motive is contained in subsection (c) and requires that no net earnings or donations inure to the benefit of a private shareholder or other individual. Subsection (d) contains a discussion of what it means for an organization to “donate or render gratuitously a substantial portion of its services.” The class of persons who must benefit from the charity is outlined in subsection (e). Finally, subsection (f) lists the ways in which the institution must relieve a government burden. The section of law is reproduced below in italics.

10 P.S. Section 375. Criteria for institutions of purely public charity

(a) General rule.--*An institution of purely public charity is an institution which meets the criteria set forth in subsections (b), (c), (d), (e) and (f). An institution which meets the criteria specified in this section shall be considered to be founded, endowed and maintained by public or private charity.*

(b) Charitable purpose.--*The institution must advance a charitable purpose. This criterion is satisfied if the institution is organized and operated primarily to fulfill any one or combination of the following purposes:*

- (1) Relief of poverty.*
- (2) Advancement and provision of education. This paragraph includes postsecondary education.*
- (3) Advancement of religion.*
- (4) Prevention and treatment of disease or injury, including mental retardation and mental disorders.*
- (5) Government or municipal purposes.*
- (6) Accomplishment of a purpose which is recognized as important and beneficial to the public and which advances social, moral or physical objectives.*

⁷ David B. Glancey, “PILOTS: Philadelphia and Pennsylvania,” Property-Tax Exemption for Charities, Ed. Evelyn Brody, Urban Institute Press, 2002, p. 226.

⁸ Ibid.

(c) Private profit motive.--The institution must operate entirely free from private profit motive. Notwithstanding whether the institution's revenues exceed its expenses, this criterion is satisfied if the institution meets all of the following:

(1) Neither the institution's net earnings nor donations which it receives inures to the benefit of private shareholders or other individuals, as the private inurement standard is interpreted under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

(2) The institution applies or reserves all revenue, including contributions, in excess of expenses in furtherance of its charitable purpose or to funding of other institutions which meet the provisions of this subsection and subsection (b).

(3) Compensation, including benefits, of any director, officer or employee is not based primarily upon the financial performance of the institution.

(4) The governing body of the institution of purely public charity has adopted as part of its articles of incorporation or, if unincorporated, other governing legal documents a provision that expressly prohibits the use of any surplus funds for private inurement to any person in the event of a sale or dissolution of the institution of purely public charity.

(d) Community service.—

(1) The institution must donate or render gratuitously a substantial portion of its services. This criterion is satisfied if the institution benefits the community by actually providing any one of the following:

(i) Goods or services to all who seek them without regard to their ability to pay for what they receive if all of the following apply:

(A) The institution has a written policy to this effect.

(B) The institution has published this policy in a reasonable manner.

(C) The institution provides uncompensated goods or services at least equal to 75% of the institution's net operating income but not less than 3% of the institution's total operating expenses

(ii) Goods or services for fees that are based upon the recipient's ability to pay for them if all of the following apply:

(A) The institution can demonstrate that it has implemented a written policy and a written schedule of fees based on individual or family income. An institution will meet the requirement of this clause if the institution consistently applies a formula to all individuals requesting consideration of reduced fees which is in part based on individual or family income.

(B) At least 20% of the individuals receiving goods or services from the institution pay no fee or a fee which is lower than the cost of the goods or services provided by the institution.

(C) At least 10% of the individuals receiving goods or services from the institution receive a reduction in fees of at least 10% of the cost of the goods or services provided to them.

(D) No individuals [FN1] receiving goods or services from the institution pay [FN2] a fee which is equal to or greater than the cost of the goods or services provided to them, or the goods or services provided to the individuals described in clause (B) are comparable in quality and quantity to the goods or services provided to those individuals who pay a fee which is equal to or greater than the cost of the goods or services provided to them.

(iii) Wholly gratuitous goods or services to at least 5% of those receiving similar goods or services from the institution.

(iv) *Financial assistance or uncompensated goods or services to at least 20% of those receiving similar goods or services from the institution if at least 10% of the individuals receiving goods or services from the institution either paid no fees or fees which were 90% or less of the cost of the goods or services provided to them, after consideration of any financial assistance provided to them by the institution.*

(v) *Uncompensated goods or services which in the aggregate are equal to at least 5% of the institution's costs of providing goods or services.*

(vi) *Goods or services at no fee or reduced fees to government agencies or goods or services to individuals eligible for government programs if any one of the following applies:*

(A) *The institution receives 75% or more of its gross operating revenue from grants or fee-for-service payments by government agencies and if the aggregate amount of fee-for-service payments from government agencies does not exceed 95% of the institution's costs of providing goods or services to the individuals for whom the fee-for-services payments are made.*

(B) *The institution provides goods or services to individuals with mental retardation, to individuals who need mental health services, to members of an individual's family or guardian in support of such goods or services or to individuals who are dependent, neglected or delinquent children, as long as the institution performs duties that would otherwise be the responsibility of government and the institution is restricted in its ability to retain revenue over expenses or voluntary contributions by any one of the following statutes or regulations or by contractual limitations with county children and youth offices in this Commonwealth:*

(I) *Sections 1905(d) and 1915(c) of the Social Security Act (49 Stat. 620, 42 U.S.C. §§ 1396d(d) and 1396n(c)).*

(II) *42 CFR 440.150 (relating to intermediate care facility (ICF/MR) services).*

(III) *42 CFR Pt. 483 Subpt. I (relating to conditions of participation for intermediate care facilities for the mentally retarded).*

(IV) *The act of October 20, 1966 (3rd Sp.Sess., P.L. 96, No. 6), [FN3] known as the Mental Health and Mental Retardation Act of 1966.*

(V) *Articles II, VII, IX and X of the act of June 13, 1967 (P.L. 31, No. 21), [FN4] known as the Public Welfare Code.*

(VI) *23 Pa.C.S. Ch. 63 (relating to child protective services).*

(VII) *42 Pa.C.S. Ch. 63 (relating to juvenile matters).*

(VIII) *55 Pa. Code Chs. 3170 (relating to allowable costs and procedures for county children and youth), 3680 (relating to administration and operation of a children and youth social service agency), 4300 (relating to county mental health and mental retardation fiscal manual), 6400 (relating to community homes for individuals with mental retardation), 6500 (relating to family living homes), 6210 (relating to participation requirements for the intermediate care facilities for the mentally retarded program), 6211 (relating to allowable cost reimbursement for non-State operated intermediate care facilities for the mentally retarded) and 6600 (relating to intermediate care facilities for the mentally retarded).*

(vii) *Fundraising on behalf of or grants to an institution of purely public charity, an entity similarly recognized by another state or foreign jurisdiction, a qualifying religious organization or a government agency and actual contribution of a substantial portion of the funds raised or contributions received to an institution of purely public charity, an entity similarly recognized by another state or foreign jurisdiction, a qualifying religious organization or a government agency.*

(2) *The institution may elect to average the applicable data for its five most recently completed fiscal years for the purposes of calculating any formula or meeting any quantitative standard in paragraph (1).*

(3) *For the purposes of calculating the number of individuals for use in the percentage calculations in this subsection, educational institutions may use full-time equivalent students as defined by the Department of Education.*

(4) *For purposes of this subsection, the term "uncompensated goods or services" shall be limited to any of the following:*

(i) *The full cost of all goods or services provided by the institution for which the institution has not received monetary compensation or the difference between the full cost and any lesser fee received for the goods or services, including the cost of the goods or services provided to individuals unable to pay.*

(ii) *The difference between the full cost of education and research programs provided by or participated in by the institution and the payment made to the institution to support the education and research programs.*

(iii) *The difference between the full cost of providing the goods or services and the payment made to the institution under any government program, including individuals covered by Medicare or Medicaid.*

(iv) *The difference between the full cost of the community services which the institution provides or participates in and the payment made to the institution to support such community services.*

(v) *The reasonable value of any moneys, property, goods or services donated by a primary donor to an institution of purely public charity or to a government agency or the reasonable value of the net donation made by a secondary donor to a primary donor. As used in this subparagraph, the following words and phrases shall have the following meanings:*

"Net donation." In the case of a donation of money, property or identical goods and services made by a secondary donor, the difference between the value of the donation made by the secondary donor and the value of the donation made by the primary donor, provided such value is positive.

"Primary donor." An institution which makes a donation of any money, property, goods or services to an institution of purely public charity.

"Secondary donor." An institution which receives a donation of any money, property, goods or services from a primary donor and then makes a donation back to that primary donor within three years of having received such donation.

(vi) *The reasonable value of volunteer assistance donated by individuals who are involved or assist in the provision of goods or services by the institution. The reasonable value of volunteer assistance, computed on an hourly basis, shall not exceed the Statewide average weekly wage as defined in section 105.1 of the act of June 2, 1915 (P.L. 736, No. 338), [FN5] known as the Workers' Compensation Act, divided by 40.*

(vii) *The cost of goods or services provided by an institution licensed by the Department of Health or the Department of Public Welfare to individuals who are unable to pay provided that reasonable and customary collection efforts have been made by the institution.*

(viii) *The value of any voluntary agreement as set forth in section 7(c).*

(e) **Charity to persons.—**

(1) *The institution must benefit a substantial and indefinite class of persons who are legitimate subjects of charity.*

(2) As used in this subsection, the following words and phrases shall have the meanings given to them in this paragraph:

"Legitimate subjects of charity." Those individuals who are unable to provide themselves with what the institution provides for them.

"Substantial and indefinite class of persons." Persons not predetermined in number, provided that, where the goods or services are received primarily by members of the institution, membership cannot be predetermined in number and cannot be arbitrarily denied by a vote of the existing members. This subsection specifically recognizes that the use of admissions criteria and enrollment limitations by educational institutions does [FN6] not constitute predetermined membership or arbitrary restrictions on membership so as to violate this section and recognizes that an institution may reasonably deny membership based on the types of services it provides, as long as denial is not in violation of Federal or State antidiscrimination laws, such as the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241) and the act of October 27, 1955 (P.L. 744, No. 222), [FN7] known as the Pennsylvania Human Relations Act.

(3) An institution shall be considered to benefit a substantial and indefinite class of persons who are legitimate subjects of charity if the institution is primarily engaged in fundraising on behalf of or making grants to an institution of purely public charity, an entity similarly recognized by another state or foreign jurisdiction, a qualifying religious organization or a government agency and there is actual contribution of a substantial portion of the funds raised or contributions received to an institution of purely public charity, an entity similarly recognized by another state or foreign jurisdiction, a qualifying religious organization or a government agency.

(4) An institution which operates exclusively on a voluntary basis to provide emergency health and safety services to the community or an institution which provides funds and support exclusively to volunteer institutions which provide emergency health and safety services to the community shall be considered to benefit a substantial and indefinite class of persons who are legitimate subjects of charity.

(5) An institution shall not be considered to benefit a substantial and indefinite class of persons who are legitimate subjects of charity if:

(i) the institution is not qualified under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)); and

(ii) the institution is qualified under section 501(c)(4), (5), (6), (7), (8) or (9) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(4), (5), (6), (7), (8) or (9)) as any of the following:

(A) An association of employees, the membership of which is limited to the employees of a designated person or persons.

(B) A labor organization.

(C) An agricultural or horticultural organization.

(D) A business league, chamber of commerce, real estate board, board of trade or professional sports league.

(E) A club organized for pleasure or recreation.

(F) A fraternal beneficiary society, order or association.

(f) Government service.--*The institution must relieve the government of some of its burden. This criterion is satisfied if the institution meets any one of the following:*

(1) Provides a service to the public that the government would otherwise be obliged to fund or to provide directly or indirectly or to assure that a similar institution exists to provide the service.

(2) Provides services in furtherance of its charitable purpose which are either the responsibility of the government by law or which historically have been assumed or offered or funded by the government.

(3) Receives on a regular basis payments for services rendered under a government program if the payments are less than the full costs incurred by the institution, as determined by generally accepted accounting principles.

(4) Provides a service to the public which directly or indirectly reduces dependence on government programs or relieves or lessens the burden borne by government for the advancement of social, moral, educational or physical objectives.

(5) Advances or promotes religion and is owned and operated by a corporation or other entity as a religious ministry and otherwise satisfies the criteria set forth in section 5.

(6) Has a voluntary agreement under section 7.

(g) Other nonprofit entities.--*A nonprofit parent corporation, together with all of its subsidiary nonprofit corporations, may elect to be considered as a single institution in meeting the criteria set forth in this section as long as all of the following are met:*

(1) Each subsidiary:

(i) is a nonstock corporation of which the nonprofit parent corporation is the only member; and

(ii) meets the requirements of this section.

(2) The parent:

(i) is a nonstock corporation;

(ii) is qualified by the Internal Revenue Service as meeting the requirements of section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3));

(iii) meets the requirements of subsection (b) and (c); and

(iv) except for services that meet the requirements of this section, does not render services for a fee to an individual or entity that does not meet the requirements of paragraph (1).

(h) Parcel review.--

(1) Nothing in this act shall affect, impair or hinder the responsibilities or prerogatives of the political subdivision responsible for maintaining real property assessment rolls to make a determination whether a parcel of property or a portion of a parcel of property is being used to advance the charitable purpose of an institution of purely public charity or to assess the parcel or part of the parcel of property as taxable based on the use of the parcel or part of the parcel for purposes other than the charitable purpose of that institution.

(2) Nothing in this act shall prohibit a political subdivision from filing challenges or making determinations as to whether a particular parcel of property is being used to advance the charitable purpose of an institution of purely public charity.

(i) Standards.--*An institution of purely public charity may conduct activities intended to*

influence legislation provided that no substantial part of the activities of an institution of purely public charity shall consist of carrying on propaganda, except as otherwise provided in section 501(h) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(h)), or participating in or intervening in, including the publishing or distributing of statements, any political campaign on behalf of or in opposition to any candidate for public office as such limitations are interpreted under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. § 501).

Hospital-Related Statutes

For hospital exemptions, there was a request for additional information about statutes in Maine and Wisconsin that are footnoted on pages 47-48 of “Background Report on Income and Property Tax Exemptions,” provided at the September 26-27, 2011, Revenue and Transportation Interim Committee meeting.

Maine

Title 36, Chapter 105, Section 652 of the Maine Revised Statutes outlines property tax exemptions. The exemptions for hospital property are included in two separate subsections. Subsection (1)(a) provides for an exemption for “property owned and occupied or used solely for their own purposes by benevolent and charitable institutions.” The second paragraph of the subsection contains a description of certain exempt properties. The list does not include nonprofit hospital property but the list is not all-inclusive and provides that “‘benevolent and charitable institutions’ includes, but is not limited to” the properties enumerated.

Subsection (1)(k) provides an additional exemption for “real and personal property leased by and occupied or used solely for its own purposes by an incorporated benevolent and charitable organization that is exempt from taxation under section 501 of the Code and the primary purpose of which is the operation of a hospital...” The difference between this exemption and the one in subsection (1)(a) is that the subsection (1)(k) exemption is for leased property rather than owned property. A 2009 amendment to this section added the last sentence providing that leased real property is not exempt for tax years beginning on or after April 1, 2012. After that time, the only leased property eligible for exemption is personal property, such as hospital equipment.

The Maine property exemption statute is not discussed with Minnesota and Pennsylvania as having a multifactor test that originates in holdings from state courts. However, subsection (1)(c) contains additional restrictions for exempt property that are reminiscent of the multifactor tests discussed above. Those limitations include a requirement that the exempt entity be organized and conducted exclusively for benevolent and charitable purposes, that employees not receive any profit from the operation of the organization except reasonable compensation for services, and that all profits be devoted to the purpose for which the entity is organized.

In addition, subsection (1)(j) contains a provision that allows an exemption for property owned by one organization eligible for exemption and used or occupied by another such organization.

The relevant portions of the statute are reproduced below in italics.

1. Property of institutions and organizations. The property of institutions and organizations is exempt from taxation as provided in this subsection.

A. *The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State are exempt from taxation. Such an institution may not be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit the funds are applied.*

For the purposes of this paragraph, "benevolent and charitable institutions" includes, but is not limited to, nonprofit nursing homes licensed by the Department of Health and Human Services pursuant to Title 22, chapter 405, nonprofit residential care facilities licensed by the Department of Health and Human Services pursuant to Title 22, chapter 1663, nonprofit community mental health service facilities licensed by the Commissioner of Health and Human Services pursuant to Title 34-B, chapter 3 and nonprofit child care centers incorporated by this State as benevolent and charitable institutions. For the purposes of this paragraph, "nonprofit" refers to an institution that has been determined by the United States Internal Revenue Service to be exempt from taxation under Section 501(c)(3) of the Code.

...

C. *Further conditions to the right of exemption under paragraphs A and B are that:*

(1) Any corporation claiming exemption under paragraph A must be organized and conducted exclusively for benevolent and charitable purposes;

(2) A director, trustee, officer or employee of an organization claiming exemption may not receive directly or indirectly any pecuniary profit from the operation of that organization, except as reasonable compensation for services in effecting its purposes or as a proper beneficiary of its strictly benevolent or charitable purposes;

(3) All profits derived from the operation of an organization claiming exemption and the proceeds from the sale of its property must be devoted exclusively to the purposes for which it is organized;

(4) The institution, organization or corporation claiming exemption under this section must file with the assessors upon their request a report for its preceding fiscal year in such detail as the assessors may reasonably require;

...

J. *The real and personal property owned by one or more of the organizations in paragraphs A and B and E to H and occupied or used solely for their own purposes by one or more other such organizations are exempt from taxation.*

K. *Except as otherwise provided in this subsection, the real and personal property leased by and occupied or used solely for its own purposes by an incorporated benevolent and charitable organization that is exempt from taxation under section 501 of the Code and the primary purpose of which is the operation of a hospital licensed by the Department of Health and Human Services, a health maintenance organization or a blood bank are exempt from taxation. For property tax years beginning on or after April 1, 2012, the exemption provided by this paragraph does not include real property.*

...

An organization or institution that desires exemption under this section must file a written application accompanied by written proof of entitlement for each parcel on or before the first day of April in the year in which the exemption is first requested with the assessors of the municipality in which the property would otherwise be taxable. If granted, the exemption continues in effect until the assessors determine that the organization or institution is no longer qualified. Proof of entitlement must indicate the specific basis upon which exemption is claimed.

Wisconsin

Section 70.11(4m) exempts nonprofit hospitals from property taxation. Subsection (a) provides the exemption for real property owned and used and personal property used exclusively for the purposes of a nonprofit hospital with 10 beds or more. Subsection (b) also provides an exemption for real property used exclusively for the purposes of a nonprofit hospital with 10 beds or more and leased from a nonprofit organization or nonprofit hospital that is exempt from taxation if the income derived from the lease is used for maintenance of the leased property or retirement of construction debt.

Subsections (a) and (b) both provide that the exemption does not apply to property used for commercial purposes, as a health and fitness center, or as a doctor's office. "Health and fitness center" is defined in subsection (c) and does not include a facility primarily used for rehabilitation and therapy prescribed by a physician or physical therapist and located within the hospital.

Section 70.11(4m) in its entirety reads:

(4m) NONPROFIT HOSPITALS.

(a) Real property owned and used and personal property used exclusively for the purposes of any hospital of 10 beds or more devoted primarily to the diagnosis, treatment or care of the sick, injured, or disabled, which hospital is owned and operated by a corporation, voluntary association, foundation or trust, except an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority under ch. 618 and that offers a health maintenance organization or a limited service health organization, no part of the net earnings of which inures to the benefit of any shareholder, member, director or officer, and which hospital is not operated principally for the benefit of or principally as an adjunct of the private practice of a doctor or group of doctors. This exemption does not apply to property used for commercial purposes, as a health and fitness center or as a doctor's office. The exemption for residential property shall be limited to dormitories of 12 or more units which house student nurses enrolled in a state accredited school of nursing affiliated with the hospital.

(b) Real property leased by and used exclusively for the purposes of any hospital that has 10 beds or more, is devoted primarily to the diagnosis, treatment or care of the sick, injured or disabled and is owned and operated by a corporation, voluntary association, foundation or trust, except an organization that is organized under s. 185.981 or ch. 611, 613 or 614 and that offers a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3) or an organization that is issued a certificate of authority

under ch. 618 and that offers a health maintenance organization or a limited service health organization, no part of the net earnings of which inures to the benefit of any shareholder, member, director or officer and is not operated principally for the benefit of or principally as an adjunct to the private practice of a doctor or group of doctors. This exemption applies only to real property leased from a nonprofit organization or nonprofit hospital that is exempt from taxation under this chapter and that uses the income derived from the lease only for maintenance of the leased property or construction debt retirement of the leased property or both. This exemption does not apply to property used for commercial purposes, as a health and fitness center or as a doctor's office.

(c) In this subsection, "health and fitness center" means an establishment the primary purpose of which is to provide recreational services or facilities that are purported to assist patrons in physical exercise, in weight control or in figure development, including but not limited to a health and fitness center, studio, salon or club. In this subsection, "health and fitness center" does not include a facility the primary purpose of which is to provide services or facilities that are primarily a part of a course of rehabilitation or therapy prescribed by a physician or physical therapist to treat a physical injury or dysfunction and that are aimed primarily at patients of the hospital or an affiliated entity and not at the general public and that is located within the physical confines of a hospital.

CI0425 1332MEQA