

## **A PROGNOSIS OF NEW JERSEY NON-PROFIT HOSPITAL PROPERTY TAX EXEMPTION**

**By: Ryan Savercool<sup>1</sup>**

### **Introduction**

The evolution of the law on non-profit hospital property tax exemption has reached a pivotal juncture. Critical partnerships with physicians on the property, necessary to operate a modern hospital, may subject the property-owner to a revocation of its exemption because of the physicians' presumable profit-making nature. Healthcare continues to grow more complex and expensive, requiring hospitals to be innovative in their business decisions and approaches to care. Non-profit hospitals offer unprofitable, but essential services that may be abandoned without tax subsidies bolstering the bottom line. If the law continues to develop on its current path, municipalities should take careful consideration of important public policy concerns as to whether they should revoke non-profit hospitals' status and prompt litigation.

### **Statutory History & Interpretation: Tax Exemption Requires Satisfying Three Criteria**

The New Jersey Constitution vests power in the state to exempt from taxation property used for a broad range of charitable purposes.<sup>2</sup> The controlling statute, § 54:4-3.6, states the following as it pertains to hospitals:

The following property shall be exempt from taxation under this chapter. . . . all buildings actually used in the work of associations and corporations organized exclusively for hospital purposes, provided that if any portion of a building used for hospital purposes is leased to a for-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. . . .<sup>3</sup>

The public policy behind the statute is to permit an exception for special categories of property owners because ordinarily, all property owners bear their burden in the just and equal share of taxation.<sup>4</sup> Exemption from taxation is a departure from the status quo and claims are to

be strongly construed against the property owner.<sup>5</sup> The claimant bears the burden of establishing a case for exemption by satisfying a three-pronged test.<sup>6</sup> The property must: (1) be owned by an entity organized exclusively for the exempt purpose; (2) the property must be actually used for the tax-exempt purpose; and (3) its operation and use must not be conducted for profit.<sup>7</sup>

#### **A. Organization-Prong**

Subsequent decisions have applied this three-pronged test in the hospital context.<sup>8</sup> The organization-prong is to be assessed with regards to the entity's statement of purposes in its certificate of incorporation.<sup>9</sup> In *Hunterdon Medical Center v. Readington Township*, the tax court held that "HMC's certificate of incorporation . . . when read literally, could be construed to authorize activities other than the operation of a hospital. However, when read sensibly and reasonably, the certification satisfies the statutory requirement that HMC be organized exclusively for hospital purpose."<sup>10</sup> From this it can be inferred that so long as the hospital's certificate of incorporation makes clear that its mission is hospital purposes, no hospital will have its exemption status pulled under this prong.

#### **B. Use-Prong**

The use-prong has been the focal point of significant litigation and statutory changes. In *City of Long Branch v. Monmouth Medical Center*, the property lost complete exemption because of the arrangements within certain hospital buildings.<sup>11</sup> Physicians who rented hospital space for their professional practices to treat their own private patients in the offices presumably derived pecuniary profit.<sup>12</sup> The Appellate Division in *Long Branch* held that "the utilization of these buildings for the private practice of medicine and dentistry is purely and simply a private profit-making activity, and is in direct competition with the privately owned commercial rental buildings and goes far beyond the traditional functions and purposes of a hospital."<sup>13</sup> Based on these

findings, the property was not “actually and exclusively” used for hospital purposes as required in the statute.<sup>14</sup>

The Legislature subsequently amended the statute to remove the exclusivity requirement because of the overly strict effect it imposed.<sup>15</sup> The amendment’s purpose was to allow exempt associations to receive a partial real property tax exemption for buildings partially used for their own charitable purposes, distinct from facilities used for non-exempt purposes or leased to profit-making tenants.<sup>16</sup> Thus the use-test is an inquiry into how each portion of the building is used. The amendment does not advance impermissible commingling of non-profit and for-profit activities, but rather the change allows for some for-profit activity to take place so long as it can be segregated and measured for local taxing purpose.<sup>17</sup>

The New Jersey Supreme Court was faced with a use-prong issue in *Hunterdon Medical Center* to determine whether an off-site building that housed the hospital’s Health and Wellness Center was exempt.<sup>18</sup> Here, the Court forged an important development in the law by greatly expanding the previous statutory interpretation of “hospital purposes” for a hospital’s main campus.<sup>19</sup>

Now, “hospital purposes” in the context of determining tax exemption is inclusive of any medical service that a patient may require pre-admission, during a hospital stay, or post-admission.<sup>20</sup> Whether a medical or diagnostic service is conducted on the main campus or in an immediately adjacent building is immaterial so long as the service is necessary to meet the needs of the patient.<sup>21</sup> The Supreme Court rejected the previous construction of “hospital” as strictly a place where a patient could receive twenty-four-hour continuous care.<sup>22</sup> This was held to be too restrictive in analyzing tax exemption status due to the evolving nature of modern hospitals.<sup>23</sup>

The greatly expanded definition in conjunction with the amendment in response to *Long Branch* significantly broadens the scope of what qualifies as appropriate use under the use-prong. The Supreme Court's aim in *Hunterdon* was to "infuse meaning into the concept of 'hospital purposes' so that the statutory exemption can be consistently applied."<sup>24</sup> So long as the property is used to administer some medical service on the property, the "use" is presumptively for core "hospital purposes" and should be deemed tax-exempt eligible under the use test.<sup>25</sup>

### C. Profit-Prong

The profit-prong is a "pragmatic inquiry into profitability. . . . [A] realistic common sense analysis of the actual operation of the taxpayer; mechanical centering on income and expense figures is to be avoided."<sup>26</sup> A holistic inquiry should be undertaken when considering where the profit goes<sup>27</sup>: "If [the court] can trace it into someone's personal pocket . . . the entity is not entitled to tax exemption."<sup>28</sup> The essential focus is on whether the exempt entity engages in forbidden profit-making activity *for itself*, meaning that the dominant motive behind the organization's conduct cannot be to generate a profit.<sup>29</sup>

#### *AHS Hosp. Corp. v. Town of Morristown*

In 2010, the tax court ruled on cross-motions for partial summary judgment from Morristown and AHS Hospital Corp. (d/b/a Morristown Hospital).<sup>30</sup> Morristown sought to revoke the exemption status of the rented office space in the cancer center, children's hospital, and café space of Morristown Memorial Hospital, while the hospital sought to reaffirm the exemption of the remainder of the subject property.<sup>31</sup> On Morristown's motion, the parties heavily disagreed over the Hospital's claim that it had satisfied both the use and profit-prongs designated by the court.<sup>32</sup> However, citing *Hunterdon Medical Center*, the court found that resolution of the profit-prong was dispositive for both parties' motions.<sup>33</sup> In holding that "the use-for-an-exempt purpose

[prong] is superfluous when property is otherwise ineligible because a for-profit activity is conducted on it[.]”<sup>34</sup> the tax court’s interpretation raises a fundamental question on the interplay between the two prongs.

Portions of the cancer center and children’s hospital were leased to private physicians to conduct their practice. They were required to be a member of the hospital’s medical staff and were awarded certain privileges, but they were not paid by the hospital as employees.<sup>35</sup> The tax court granted Morristown’s motion, heavily relying on the facts of *City of Long Branch*.<sup>36</sup> The arrangements at Morristown Memorial Hospital similarly gave rise to the presumption that the private physicians derived pecuniary profit from their use of their office space, which in the tax court’s view was a violation of the profit-test, despite the issue being framed in *City of Long Branch* as what would be a standard use-prong concern.<sup>37</sup>

In rejecting the hospital’s argument about the different legal issue, the tax court reasoned that “regardless if such a use is reasonably necessary under the expanded definition of ‘hospital purposes,’ it does not negate the commercial nature of the use of the office space by the private physicians and the other private parties.”<sup>38</sup> Thus effectively, the tax court created a novel method in between the partial revocations under the use-prong, and complete revocation under the profit-prong, by revoking exemption for the portion of the property that it held violated the profit-prong. This ruling on Morristown’s partial summary judgment raises significant concerns for other New Jersey hospitals if—and when—the tax court’s analysis proceeds to its logical conclusion in subsequent cases. Consequently, any relationship with a profit-making entity on the property could be both a use-prong and profit-prong issue making modern hospitals subject to both partial revocation under both prongs, or complete revocation as a *per se* violation under the profit-prong.

### ***Analysis of AHS Hosp. Corp. v. Town of Morristown***

The tax court rejected the argument that *Hunterdon Medical Center*'s expanded definition of hospital purposes distinguishes the analysis the tax court should engage from that done in the *City of Long Branch*.<sup>39</sup> Instead, the tax court used *Hunterdon Medical Center* to stand for the proposition that the use-prong is superfluous when property is otherwise ineligible because of a violation of the other prongs.<sup>40</sup> The tax court's reliance on *Hunterdon Medical Center* in conjunction with *City of Long Branch* in *AHS Hosp. Corp.* may cause inconsistent results in its application because as a matter of statutory interpretation, "construction that will render any part of a statute inoperative, superfluous, or meaningless, is to be avoided."<sup>41</sup>

The tax court's holding results in the same disproved constructive effect rejected in *Paper Mill Playhouse*. There, the New Jersey Supreme Court rejected Millburn's contention that regardless of the theater's intentions, because it at times rendered a surplus, it was a "commercial enterprise."<sup>42</sup> If the Supreme Court were to have adopted Millburn's proposed reasoning it would have nullified the profit-prong. The test is simply stated by the Supreme Court as ". . . whether or not [the entity] is 'conducted for the purpose of making a profit.'"<sup>43</sup> Millburn's contention that the non-profit should lose its exemption by maintaining a surplus was inconsistent with the adopted interpretation. The profit-prong asks why a surplus is maintained and whether the money inures to the benefit of an individual, not simply whether a surplus exists.

The Supreme Court in *Hunterdon Medical Center* greatly expanded hospital purposes for the use-prong, but did not disturb the prevailing interpretation of the profit-prong.<sup>44</sup> The use-test asks whether the property is "actually used" for the exempt purpose, while the profit-test asks whether the purpose is conducted for a profit.<sup>45</sup> The tax court in *AHS Hosp. Corp.* would be correct if it found that the hospital's purpose is to conduct itself for profit and it completely revoked the exemption. Beyond this finding, it would be unnecessary to ascertain whether the specific use of

the property by entities on the property were for hospital purposes since the profit-prong is dispositive in this hypothetical. However, the reasoning upon which Morristown's motion was granted created a subtle but critical change in the articulation of the profit-prong.

By holding that the profit-prong is dispositive and finding *City of Long Branch* persuasive, the tax court is reinterpreting the profit-prong to ask whether the use is by a profit-making entity, as opposed to whether the hospital's purpose is for-profit.<sup>46</sup> Consequently, a hospital may be in compliance with the use-prong for conducting a "hospital purpose" under *Hunterdon*, but if that physician generates a profit for herself, the expanded definition of "hospital purposes" is voided and that portion of the property loses its exemption under the profit-prong. This nullifies the use-prong in the hospital context because it logically follows that any physician relationship found on the property is subsequently taxable. Leases to a for-profit making organization, which would be taxable under the use-prong, are "superfluous" to the profit-prong because inevitably the physician will get paid for her services.<sup>47</sup>

The reality of a modern hospital is that every physician whose practice is conducted in the hospital derives private profit, regardless of whether they are positioned there because of a contract or lease. The State Supreme Court has warned that to permit a nonprofit entity to remain tax exempt when it has become inseparably commingled with for-profit entities would be against the principles of the profit-prong.<sup>48</sup> The commingling with for-profit entities must be separately accountable for taxation purposes under the use-prong, but if the commingling is so pervasive, it can still give rise to an entity's dominant motive being to support the for-profit entities and violate the profit-prong.<sup>49</sup> This recognized interplay between the use-prong and profit-prong still adheres to the holistic-inquiry of determining the property-owner's purpose. If the *AHS Hosp. Corp.* interpretation of *City of Long Branch* is taken to its logical conclusion that there is no necessary

use-prong inquiry when there are profit-making entities on the property, the dominant motive behind a hospital cannot be seen as anything more than being a space for for-profit physicians to carry out their practice and is therefore completely taxable.

### **The Nature of Modern Hospitals**

New Jersey has promulgated an extensive list of rules required for licensure to assure the high quality of care throughout hospitals in the state.<sup>50</sup> To accomplish complete medical care hospitals are required to have special physician groups accomplish majority of their practice on-site including radiology, anesthesia, pathology, and emergency medicine.<sup>51</sup> The New Jersey Supreme Court, while acknowledging that the licensure regulations are not conclusive on the question of the use, recognizes that the regulations are aligned with its expanded definition of “hospital purposes” to “adequately address the needs of all of the types of patients that a hospital is expected to serve.”<sup>52</sup> Consultation prior to surgery by anesthesiologists, tissue testing by pathologists and emergency medicine are performed by contracted, for-profit physician groups without whom hospitals would operate less efficiently resulting in lower quality patient care.<sup>53</sup>

The tax court’s granting of Morristown’s partial summary judgment on the presumption of pecuniary benefit raises concerns for all hospital facilities based on some integral services provided by for-profit medical staffs on the property.<sup>54</sup> Hospitals improve the quality of patient care by bringing together in one facility professionals in varied but related practices.<sup>55</sup> The tax court found that the commercial nature of these physicians’ private practice to be dispositive without regard to the desirability of the necessity of improving patient care by co-locating physician practices in single facility. Extending this reasoning would be a serious threat to any hospital that contracts with private physician groups.

An expansive scholarly debate exists on the legitimacy of non-profit hospital exemptions in respect to their market behavior. Some commentators assert that non-profits act like for-profits and should be taxed accordingly.<sup>56</sup> In a competitive marketplace, hospitals necessarily have to act as business entities in order to provide efficient services.<sup>57</sup> With the changes in how healthcare is approached through expansive research, technology, and holistic care, more strategic business decisions about how to obtain the necessary capital must be made.<sup>58</sup> The traditional profit-test implicitly recognizes this reality. In *Paper Mill*, the Supreme Court reasoned that “ordinary prudent judgment requires that nonprofit organizes, like other organizations, try to generate a surplus for emergencies, and, in this case, capital expansion. . . . In cases where we have held that the taxpayer was operating for a profit, the profit arose from the nonexempt operation of the organization.”<sup>59</sup>

Hospitals across the state are no longer the fifty-bed facilities constructed decades ago, as evidenced by AHS reporting its incoming-producing activity to be over one billion dollars in its Form 990.<sup>60</sup> Consequently, towns have a much greater stake today in asserting a challenge to collect property taxes from these now massive entities. Municipalities are still required to provide non-profits with public services such as police, fire protection, and street maintenance which together come at a much greater cost when considering the breadth of a hospital’s daily activities and size. From the town’s perspective, it seems unjust that a dominant entity that acts, looks, and feels like a for-profit business is exempt from paying its fair share of the public burden of taxation. One scholar asserts that local governments must balance the benefits provided to the community by the non-profit hospital with restrictions on the hospital’s ability to acquire new technologies if it is no longer fully subsidized.<sup>61</sup>

### **Consequences of Losing Exemption Status**

The burden is on the party asserting exemption to demonstrate that it does not violate the profit-prong.<sup>62</sup> As a result of *AHS Hospital Corp.*, the threshold for successfully defending an exemption has been raised if the profit-test is violated by a use of the property by a profit-making entity, irrespective of the purpose behind the use. Further exacerbating the issue, traditionally the binary nature of the statute does not allow for partial exemption under the profit-test.<sup>63</sup> In 2012, New Jersey hospitals operated at roughly a three percent margin, nearly half that of the national average.<sup>64</sup> Therefore, incurring large tax bills with significant interest because of complete revocation may cause hospitals to consider reducing the services it provides.<sup>65</sup>

From a market standpoint, hospitals will likely be forced to cut the most unprofitable services in order to stay afloat. With the cuts, it is the public that receives the brunt of the harm without a place to receive charitable care. The traditional notions of a hospital's charitable mission have included vital research centers, teaching hospitals, and other preventive health measures. These expensive and unprofitable services may no longer be offered if non-profit hospitals can no longer establish a case for exemption.<sup>66</sup>

### **Closing Remarks**

In order to be a successful hospital in the modern world, it is necessary for non-profit hospitals to retain relationships with outside for-profit physicians. Within having to satisfy all three prongs of *Paper Mill Playhouse*, justifying the physician-hospital relationship has become increasingly more important element. If the utilization of for-profit entities on the property, which historically would cause those portions of the property to be taxable under the use-prong, runs the risk for a complete exemption under the profit-prong, then non-profit hospitals in the state face a significant threat to their exemption status. A complete revocation of exemption has a vast impact on the community that the hospital services. Municipalities should consider whether the utility of

having a non-profit hospital providing quality services is outweighed by its seemingly for-profit nature.

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<sup>2</sup> N.J. Const. art. VIII, § 1, ¶ 2.

<sup>3</sup> N.J. Stat. Ann. § 54:4-3.6 (West).

<sup>4</sup> *Princeton Univ. v. Borough of Princeton*, 35 N.J. 209, 214 (1961).

<sup>5</sup> *Id.*

<sup>6</sup> *Paper Mill Playhouse v. Millburn Twp.*, 95 N.J. 503, 506 (1984).

<sup>7</sup> *Id. See L. 1983, c. 224* (removing the requirement that the property be exclusively used for exempt purpose).

<sup>8</sup> *See, e.g., AHS Hosp. Corp. v. Town of Morristown*, 25 N.J. Tax 374, 381 (Tax Ct. 2010); *Hunterdon Medical Center v. Township of Readington*, 195 N.J. 549, 561 (2008); *Jersey Shore Med. Ctr. v. Neptune Twp.*, 14 N.J. Tax 49, 54 (Tax Ct. 1994).

<sup>9</sup> *See Planned Parenthood of Bergen County, Inc. v. Hackensack City*, 12 N.J. Tax 598, 610 n. 6 (Tax 1992) (holding that the word “‘organized’ in the statute refers to the entity’s organizational documents, its corporate charter”); *see also Intercare Health Sys., Inc., v. Cedar Grove Twp.*, 12 N.J. Tax 273, 275 (App. Div. 1991) (relying on corporate charter to determine whether claimant met organizational test).

<sup>10</sup> *Hunterdon Medical Center v. Readington Tp.*, 22 N.J. Tax 302, 316-317 (Tax Ct. 2005).

<sup>11</sup> *City of Long Branch v. Monmouth Medical Center*, 138 N.J. Super. 524, 538 (App. Div. 1976). The “complex” included the following: apartments used exclusively as residences for resident physicians and nurses; an attached building that housed security and finance offices, medical education, and various medical practices in one-half, while the other half housed private professional practices; a nurses’ training facility with rented space to physicians; and a clinic that rented part of its space to a pharmacy. *Id.* at 526-29.

<sup>12</sup> *Id.* at 535.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 555.

<sup>15</sup> *L. 1983, c. 224.*

<sup>16</sup> *International School Services, Inc. v. West Windsor Tp.*, 207 N.J. 3, 17 (2011) (citing the Governor’s reconsideration and recommendation statement to Assembly No. 2246 on L. 1985, c. 395). This amendment removed the exclusivity requirement for non-profits in the work of an association or corporation organized exclusively for the moral and mental improvement of men, women, and children, and noted that this change was made for non-profit hospitals two years prior.

<sup>17</sup> *Id.* at 23.

<sup>18</sup> *Hunterdon Medical Center*, 195 N.J. at 553 (affirming in part, reversing in part, remanded for reconsideration consistent with the new interpretation and analysis promulgated).

<sup>19</sup> *Id.* at 572. *See also Kuchera v. Jersey Shore Family Health Center*, No. 073483, 2015 WL 1421421 (N.J. Mar. 31, 2015) (holding that an outpatient health care facility which was owned and operated by a nonprofit hospital was organized exclusively for hospital purposes under *Hunterdon Medical Center* and could not take advantage of New Jersey’s charitable immunity statute).

<sup>20</sup> *Id.* at 554.

<sup>21</sup> *Id.*

<sup>22</sup> *See City of New Brunswick v. Rutgers Cmty. Health Plan, Inc.*, 7 N.J. Tax 491, 494 (Tax Ct. 1985).

<sup>23</sup> *Hunterdon Medical Center*, 195 N.J. at 554.

<sup>24</sup> *Id.* at 568.

<sup>25</sup> *Id.* at 572. *See also* *Hunterdon Medical Center v. Readington Tp.*, 416 N.J. Super. 127, 138 (App. Div. 2010) (holding that physical therapy fulfills a core hospital purpose as a medical service even though it is not necessarily administered pre-admission or post-admission).

<sup>26</sup> *Paper Mill Playhouse*, 95 N.J. at 521.

<sup>27</sup> *Kimberley School v. Town of Montclair*, 2 N.J. 28, 37 (1949).

<sup>28</sup> *Trenton v. N.J. Div. of Tax Appeals*, 65 N.J. Super. 1, 12 (App. Div. 1960).

<sup>29</sup> *International Schools Services*, 207 N.J. at 22 (Highlighting cases that demonstrate the proper application of the statutory test). *See, e.g.*, *Paper Mill Playhouse v. Millburn Twp.*, 95 N.J. 503 (1984); *Princeton Univ. Press v. Borough of Princeton*, 35 N.J. 209 (1961); *Kimberley Schools v. Town of Montclair*, 2 N.J. 28 (1949).

<sup>30</sup> *AHS Hospital Corp.*, 25 N.J. Tax at 376.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 382.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* (citing *Hunterdon Med. Ct.*, 195 N.J. at 566 n.13).

<sup>35</sup> *Id.* at 378-79.

<sup>36</sup> *Id.* at 382.

<sup>37</sup> *Id.* at 384. The legislature amended the statute because of the draconian restrictions it placed on the requirement of exclusive use. *L. 1983, c. 224*. This case predated *Paper Mill Playhouse* and cannot be explicitly classified as a use-prong case. However, the legislative intent behind the amendment indicates that the use of the property was the issue.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 385.

<sup>40</sup> *Id.* at 382.

<sup>41</sup> *Paper Mill Playhouse*, 95 N.J. at 521 (quoting *Abbotts Dairies v. Armstrong*, 14 N.J. 319, 328 (1954)).

<sup>42</sup> *Id.* (citing *The Kimberly School* at 37-38).

<sup>43</sup> *Id.* The tax court acknowledges this test by stating that “[t]here is nothing in the statute requiring, as a condition of tax exemption, that a hospital must actually operate at a loss....” *See Atlantic Hosp. Corp.*, 25 N.J. Tax at 382.

<sup>44</sup> *Hunterdon Medical Center*, 195 N.J. at 566 (citing approval of the profit-prong analysis in dicta in *Jersey Shore*, 14 N.J. Tax at 65-66). *Jersey Shore's* coffee shop was not “reasonably necessary” for hospital purposes and therefore was in violation of the use-prong. The court held that this was not contrary to *Paper Mill Playhouse* where the Supreme Court noted that “[i]n cases where we have held that the taxpayer was operating for a profit, the profit arose from the nonexempt operation of the organization.” 95 N.J. at 523. Due to profit-sharing agreement, any profits realized by *Jersey Shore* from the coffee shop would be the result of “the nonexempt operation of the organization,” which stated more plainly, concerns the use of the property. Although it was unnecessary to proceed to the third prong, the court noted that if the coffee shop were deemed reasonably necessary for hospital purposes, it would still fail the profit test. The operating agreement between *Jersey Shore* and *PCS* established that the coffee shop was conducted for profit since the agreement contemplated a 60–40 percent sharing of profits. “Any other conclusion would create an artificial distinction between leases of hospital property to ‘profit-making organizations,’ which are clearly taxable under the 1983 statutory amendment and operating agreements permitting the use of hospital property by profit-making organizations.” *Jersey Shore*, 14 N.J. Tax at 66. Whether use of the real estate is by way of a lease or an operating agreement should not affect the taxability of a use by a profit-making entity.

<sup>45</sup> *Paper Mill Playhouse*, 95 N.J. at 521.

<sup>46</sup> *See AHS Hosp. Corp.*, 25 N.J. Tax at 384 (“When a private physician used one of the Hospital’s procedure rooms, the patient was charged by the Hospital for the use of the room and Hospital supplies, and by the private physician for his or her services. Accordingly, the facts here, like the facts in the *City of Long Branch*, give rise to the presumption that the private physicians derived pecuniary profit from their use of their respective office space.”).

<sup>47</sup> *AHS Hosp. Corp.*, 25 N.J. Tax at 382.

<sup>48</sup> *International School Services, Inc. v. West Windsor Tp.*, 207 N.J. at 23-24 (“[T]o permit a nonprofit entity to claim a property tax exemption when it has become inseparably entangled with for-profit entities would allow indirect taxpayer subsidization of those entities . . . and would result in the type of disquieting outcome cautioned against in *Paper Mill Playhouse*, in which we warned that an exemption should not be granted when profit can be traced “into someone’s personal pocket.”) (holding that the inability to discern between

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the nonprofit activities on ISS's property and its activities in that same location that furthered of the interests of various for-profit entities warranted revocation). Hospitals would inherently be subject to this same risk because some physician practice in hospitals without requiring a lease therefore making the exacerbating the commingling effect that the Supreme Court rejects.

<sup>49</sup> *Id.*

<sup>50</sup> See N.J.A.C. 8:43G-1.1.

<sup>51</sup> N.J.A.C. 8:43G-2.12.

<sup>52</sup> *Hunterdon Medical Center*, 195 N.J. at 572.

<sup>53</sup> See *Belmar v. Cipolla*, 96 N.J. 199, 203-04 (1984) (Affirming the right of a non-profit hospital to enter into an exclusive contract to provide all of the anesthesiological services at the hospital reducing the burden of the hospital administration). Although petitioners challenged the exclusive contracts as a violation of anti-trust law, the court notes that the decision to enter exclusive contracts was motivated by the hospital's desire to insure a high standard of medical care and that the contracts were not contrary to public policy. *Id.* at 211. Implicit in this reasoning, is the Supreme Court's approval of third-party contracts for non-profit hospitals.

<sup>54</sup> *AHS. Hosp. Corp.*, 25 N.J. at 384.

<sup>55</sup> See *Kuchera*, 2015 WL 1421421 at \*7 (noting various courts' recognition of the evolving nature and character of hospitals and healthcare).

<sup>56</sup> See generally Jack E. Karns, *Justifying the Nonprofit Hospital Tax Exemption in a Competitive Market Environment* 13 WIDENER L.J. 383, 494 (2004) (analyzing various prominent commentators' exemption rationales predominately on the federal tax level).

<sup>57</sup> *Id.* at 499.

<sup>58</sup> *Id.* at 532.

<sup>59</sup> *Paper Mill Playhouse*, 95 N.J. at 523.

<sup>60</sup> See *AHS Hosp. Corp.*, 25 N.J. Tax at 387-88. In opposition to the Hospital's motion for partial summary judgment, the Town submitted into evidence the Hospital's Form 990 for 2007, which declared roughly \$1.1 billion in income-producing activity.

<sup>61</sup> Karns, 13 WIDENER L.J. at 556-57.

<sup>62</sup> See *Princeton University Press*, 35 N.J. at 214.

<sup>63</sup> See N.J.S.A. 54:4-3.6. The statute allows for partial exemption under the use-prong but does not provide for intermediate sanctions under the profit-prong.

<sup>64</sup> Anthony Birritteri, *Hospitals in Transition: How executives from some of the state's leading healthcare institutions are implementing new cures to keep their industry and communities healthy*, N.J. BUSINESS MAGAZINE (Aug. 11, 2014), [http://njbmagazine.com/monthly\\_articles/hospitals-transition/](http://njbmagazine.com/monthly_articles/hospitals-transition/).

<sup>65</sup> Rachel Weisblatt, 55 B.C. L. REV 687, 699 (2014). See Pricewaterhousecoopers' Health Res. Inst., *Acts of Charity: Charity Care Strategies for Hospitals in a Changing Landscape* 1, 31 (2005), available at <http://www.pwc.com/us/en/healthcare/publications/act-of-charity.jhtml> (hypothetical nonprofit hospital's revocation could turn its 2.6% profit margin to a loss).

<sup>66</sup> Karns, 13 WIDENER L.J. at 550.