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OFF-CAMPUS HOSPITAL OUTPATIENT FACILITIES QUALIFY FOR PROPERTY TAX EXEMPTION

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This week, the Wisconsin Supreme Court affirmed that off-campus hospital outpatient facilities qualify for Wisconsin property tax exemption. By a 6-1 vote, the Supreme Court held that a hospital outpatient facility operated by Wheaton Franciscan Healthcare in Wauwatosa is exempt from the property tax under the same statute that exempts hospitals. Reinhart attorneys Don Millis and Kristina Somers represented Wheaton Franciscan Healthcare before the Supreme Court. The Supreme Court focused on four issues:

1. **Exclusive Use For Hospital Purposes:** The Supreme Court found the Outpatient Clinic is used exclusively for hospital purposes, pointing to the following factors, among others:
 - The Outpatient Clinic delivers services more conveniently and efficiently, provides a single location to address the special health needs of women throughout their lives, and provides the most modern facilities and equipment (such as hyperbaric chambers) for patients, visitors, and staff;
 - The Outpatient Clinic reduced diversion at the St. Joseph Hospital (when the emergency room was at capacity and could no longer accept ambulances); and
 - The Outpatient Clinic's records (medical and pharmaceutical), billing system, and administration (e.g., same hospital license and department heads) are integrated.
2. **Doctor's Office:** The Supreme Court found that the Outpatient Clinic is not a taxable "doctor's office," and pointed to several factors, including that:
 - Physician compensation is not affected by the services provided or oversight of non-physician staff;
 - Patients receive a facility bill from the Outpatient Clinic (as well as a professional bill from the physician);
 - Physicians at the Outpatient Clinic do not have their own offices (instead, they share access to unassigned cubicles); and
 - Physicians practicing at the Outpatient Clinic do not own or lease the building or equipment.

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The Supreme Court also clarified that the facility can be located off the hospital's main campus (i.e., proximity to the hospital is not a factor) and providing services by appointment during regularly scheduled office hours does not mean the property is a taxable doctor's office.

3. **Commercial Purposes:** The Supreme Court held that because the Outpatient Clinic is primarily devoted to the diagnosis, treatment and care of the sick, injured, and disabled, it is not operated for commercial purposes (i.e., profit is not its primary aim). The Supreme Court also reaffirmed that not-for-profit entities may generate revenues in excess of expenses.
4. **Inurement To A Member:** If any portion of the net earnings of the Outpatient Clinic inures to the benefit of its "member," the property will not qualify for exemption. The Court held it would be unreasonable to classify not-for-profit corporations as a "member" for this purpose.

How This Decision Affects Wisconsin Health Care Providers

This decision will benefit all types of health care providers in Wisconsin, not just hospitals. Obviously, this decision will allow Wisconsin hospitals to maintain property tax exemption for off-campus facilities that provide hospital-based outpatient services. Health care providers other than hospitals (e.g., primary and special physician clinics) may benefit by partnering with hospitals in developing off-campus outpatient facilities that that will be partially exempt (like the facility at issue in this case) to provide a full spectrum of care in one facility. Feel free to contact Don Millis or Kristina Somers to discuss how we can help you obtain the maximum property tax exemption available for current or future off-campus hospital outpatient facilities.



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