

NO. A08-2190

State of Minnesota
 In Supreme Court

HealthEast,

Relator,

and

University of Minnesota Physicians,

Intervenor,

vs.

County of Ramsey,

Respondent.

RELATOR'S REPLY BRIEF

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ARGUMENT

I. Ramsey County Relies Upon A Flawed Analogy to Milwaukee Milwaukee Motor Trans. Co. v. Comm'r of Taxation.

Ramsey County relies almost exclusively upon *Milwaukee Motor Trans. Co. v. Comm'r of Taxation*, 292 Minn. 66, 193 N.W.2d 605 (1971) for its claim that HealthEast has an existence separate from the HealthEast Care System. Ramsey County's claim that the current case is factually analogous to the *Milwaukee Motor* case is simply wrong.

This Court's ruling in *Milwaukee Motor* was premised upon the undisputed fact that the trucking company at issue in that case was free to engage in trucking services completely unrelated to the railroad business. In direct contrast, HealthEast is absolutely prohibited by its Articles of Incorporation from having a function or purpose independent of the Hospitals and the HealthEast Care System. [App. At 17; Ex. 50].

HealthEast's Articles of Incorporation provide in relevant part as follows:

[HealthEast] is organized and shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of Bethesda, St. John's, St. Joseph's and Woodwinds as contemplated by Section 509(a)(3)(A) of the Code, by directly or indirectly advancing, supporting, promoting, conducting, administering or engaging in charitable activities, causes, projects and programs of every kind and nature related or contributing to the promotion of health, the advancement of education and science, the lessening of the burdens of government and the promotion of the social welfare through accomplishment of the foregoing.

[App. At 17; Ex. 50].

From HealthEast's own organizational documents it is apparent that HealthEast is prohibited from engaging in any activities unrelated to serving the charitable mission of

the Hospitals within the HealthEast Care System. Just like the subsidiary in *Community Hospital Linen*, HealthEast is prohibited from engaging in any activities that do not support or carry out the purposes of the member hospitals. *Community Hospital Linen Services, Inc. v. Commissioner of Taxation*, 309 Minn. 447, 245 N.W.2d 190 (1976). This Court must take note of the fact that neither the Tax Court nor Ramsey County has cited any example of HealthEast engaging in any activity inconsistent with the restrictions placed on it within its own Articles of Incorporation. All of the evidence supports HealthEast's claim that it has acted consistently with the restrictions of its Articles of Incorporation. In light of that fact, this Court must hold that HealthEast does not have a purpose or existence apart from the HealthEast Care System.

Ramsey County's claim that providing services to Portico HealthNet and the HealthEast Foundation is evidence of an existence separate and apart from the HealthEast Care System is similarly flawed. The HealthEast Foundation is a fully integrated part of the HealthEast Care System and has as its purpose charitable fund raising to help provide financial support for the services provided by the HealthEast Care System. The HealthEast Foundation is indisputable part of the HealthEast Care System for which HealthEast seeks to be considered part of for the purpose of analyzing real estate exemption. Ramsey County has taken the illogical position that because HealthEast provided services to the HealthEast Foundation, an entity that is part of the HealthEast Care System, HealthEast must have a purpose or existence apart from the HealthEast Care System. Likewise, Ramsey County's position that revenue received by HealthEast

from the HealthEast Foundation is simply indefensible. The relationship between HealthEast and the HealthEast Foundation is strong evidence that HealthEast should for purposes of real estate tax exemption be viewed in connection with the larger HealthEast Care System. To that same point, the Board of Directors of the 21 affiliates within the HealthEast Care System are all comprised of the President, Treasurer or other high ranking employee of the HealthEast Care System.

Ramsey County further claims that HealthEast's provision of services to Portico HealthNet shows that HealthEast has a purpose or existence apart from the HealthEast Care System. Again, Ramsey County ignores the practical reality that HealthEast's support of Portico HealthNet is further evidence that HealthEast must be viewed as part of the larger HealthEast Care System. The HealthEast Care System gave birth to Portico HealthNet. [App. At 109]. HealthEast provides employees to Portico HealthNet and Portico HealthNet reimburses HealthEast at cost. If HealthEast were not part of the HealthEast Care System, the employees provided to Portico HealthNet would have been the employees of member hospitals. Again, HealthEast's actions are a function of it having no purpose or existence apart from the HealthEast Care System.

II. HealthEast Cannot be Denied Exempt Status based upon *de minimis* services provided to outside entities.

Ramsey County claims that the doctrine of law of the case prohibits HealthEast from arguing that *de minimis* revenue received from outside sources should not result in a determination that HealthEast has a purpose or existence apart from the entities with which it is sought to be aggregated. Ramsey County has misread this Court's decision in

HealthEast I. HealthEast v. County of Ramsey, 749 N.W.2d 15 (Minn. 2008). Nowhere within *HealthEast I* did this Court rule that *de minimis* revenue from outside sources would automatically result in a determination that HealthEast has an existence or purpose apart from the HealthEast Care System. Rather, this Court directed the Tax Court to determine whether HealthEast “has a purpose or existence apart from” the HealthEast Care System. *Id.* Ramsey County’s contention that in *HealthEast I* this Court held that a few hundred dollars in income from producing signs and fixing medical equipment results in the loss of tax exempt status for an entity related or exempt function income of approximately \$58,000,000 in each of the years at issue would undermine this Court’s jurisprudence on the issue of tax exemption and improperly raise form over function to the detriment of those served by Minnesota’s non-profit community, thereby undermining the Constitutional and statutory purpose behind the tax exemption.

Allowing for *de minimis* revenue from unrelated outside sources is consistent with both this Court’s jurisprudence and a common sense analysis of whether the entity at issue has “a purpose or existence apart from” the HealthEast Care System. If Ramsey County and the Tax Court contention that receiving a single dollar of revenue from outside sources conclusively determines that an entity has a separate purpose or existence is upheld, this Court’s rulings in *Community Hospital Linen* and *HealthEast I and St. Paul Union Depot* will be completely undermined. A *de minimis* exception will not create difficult enforcement issues for County Assessors. The facts of this case are quite distinct from the typical tax assessment case. There are few non-profit organizations as large and

complex as the HealthEast Care System and an even smaller subset that would encounter this quite narrow issue of the relationship between the separate entities within the larger system.

Moreover, it is no more difficult for a tax assessor or the Tax Court to determine what outside income should be considered *de minimis* than it is to determine whether a charity's use of real property for commercial purposes was merely incidental to the use of the property for charitable purposes. In *Afton Historical Press v. County of Washington*, 742 N.W.2d 434 (Minn. 2007), this Court held that "Afton's use of its real property for commercial purposes was incidental to its use for charitable purposes," and therefore the property qualified for exemption. This Court has repeatedly recognized that incidental or *de minimis* use should not result in the loss of tax exemption. *Christian Bus. Men's Comm. of Minneapolis, Inc. v. State*, 228 Minn. 549, 38 N.W.2d 803, 812 (1949) (holding that subordinate an incidental commercial activities do not result in the loss of tax exemption); *See also Mayo Foundation v. Comm'r of Revenue*, 306 Minn. 25, 236 N.W.2d 767 (1975). The Tax Court cannot ignore this Court's long held precedent in an unsupportable attempt to make the tax assessor's job easier.

CONCLUSION

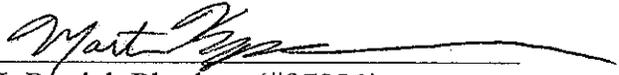
Ramsey County has failed to provide any material example of HealthEast acting in contravention of its Articles of Incorporation's requirement that it operate exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the hospitals of the HealthEast Care System. Instead, Ramsey County attempts to mischaracterize

HealthEast as separate from the HealthEast Care System and punish it for providing services to the HealthEast Care System's fund-raising arm, giving its own employees counseling in times of distress and supplying employees to a formerly affiliated charity at cost; employees that would otherwise been provided at cost by the individual member hospitals. The record unequivocally establishes that HealthEast exists solely and has its only purpose as an integral part of the HealthEast Care System.

Respectfully submitted,

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