

NO. A08-2190

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State of Minnesota  
In Supreme Court

HealthEast,

*Relator,*

and

University of Minnesota Physicians,

*Intervenor,*

vs.

County of Ramsey,

*Respondent.*

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**RESPONDENT'S BRIEF AND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

## TABLE OF CONTENTS

<b>TABLE OF AUTHORITIES</b> .....	ii
<b>STATEMENT OF THE CASE</b> .....	1
<b>STATEMENT OF FACTS</b> .....	2
<b>ARGUMENT</b> .....	4
I. The Standard of Review.....	4
II. Applicable Rules of Construction .....	5
III. The Tax Court Properly Concluded that HealthEast Has A Purpose or Existence Apart From the HealthEast Care System .....	6
A. HealthEast failed to prove that it has no purpose or existence apart from the Health East Care System. . . . .	6
B. The independent corporate status of HealthEast cannot be disregarded because services are provided for unrelated entities. . . . .	8
C. HealthEast provides more than <i>de minimis</i> services for third parties .....	11
D. The Court must look beyond the Articles of Incorporation for HealthEast in order to determine whether HealthEast Has A Purpose or Existence Apart From the HealthEast Care System .....	12
IV. Relator is Estopped from Arguing for a <i>de minimis</i> Exception to the Holding of HealthEast I Under the Doctrine of Law of the Case .....	13
V. Disregarding the Independent Corporate Status of HealthEast Does Not Result in an Exemption for the Subject Property. ....	15
<b>CONCLUSION</b> .....	16

## TABLE OF AUTHORITIES

### State Cases

<i>American Association of Cereal Chemists v. County of Dakota</i> , 454 N.W.2d 912, 914 (Minn. 1990).....	5
<i>Care Inst., Inc. – Roseville v. County of Ramsey</i> , 612 N.W. 2d 443, 447 (Minn. 2000) .....	5
<i>Care Inst., Inc.—Maplewood v. County of Ramsey</i> , 576 N.W.2d 734 (Minn. 1998) .....	5
<i>Christian Business Men’s Cmte. of Minneapolis v. State</i> , 228 Minn. 549, 554, 38 N.W.2d 803, 808 (1949) .....	6
<i>Croixdale, Inc. v. County of Washington</i> , 726 N.W.2d 483 (Minn. 2007) .....	5,8
<i>DePonti Aviation, Inc. v. State</i> , 280 Minn. 30, 157 N.W.2d 742 (1968) .....	5
<i>General Am. Life Ins. Co. v. Anderson</i> , 156 F.2d 615, 618 (6th Cir. 1946).....	15
<i>Healtheast v. County of Ramsey</i> , 749 N.W.2d 15, 17 -18 (Minn. 2008) ( <i>HealthEast I</i> ) .....	passim
<i>Ideal Life Church of Lake Elmo v. Washington County</i> , 304 N.W.2d 308 (Minn. 1981) .....	6
<i>Lange v. Nelson-Ryan Flight Service, Inc.</i> , 263 Minn. 152, 116 N.W.2d 266, 268-69 (1962), <i>cert. denied</i> , 371 U.S. 953, 83 S.Ct. 508, 9 L.Ed.2d 500 (1963) .....	14,15
<i>Lloyds of London</i> , 414 N.W.2d 717, 719-20 (Minn.1987) .....	14
<i>Loo v. Loo</i> , 520 N.W.2d 740, 744 n. 1 (Minn. 1994) .....	14
<i>Milwaukee Motor Transp. Co. v. Comm’r of Taxation</i> , 292 Minn. 66, 73, 193 N.W.2d 605, 609 (1971) .....	8, 13
<i>North Star Research Inst. v. County of Hennepin</i> , 306 Minn. 1, 236 N.W.2d 754 (1975).....	3, passim
<i>State v. Prickett</i> , 221 Minn. 179, 182, 21 N.W.2d 474, 475 (1946) .....	14

### State Statutes

Minn. Stat. § 271.10 (2004).....	5
Minn. Stat. § 272.02.....	7
Minn. Stat. § 273.19.....	1, 2, 7, 17
Minn. Stat. §273.19.....	2, 6, 7

## STATEMENT OF THE CASE

This case concerns whether a health clinic located at 580 Rice Street in St. Paul, Minnesota is entitled to a property tax exemption. Because the property is leased by HealthEast to UMPHysicians, the property cannot qualify for exemption unless the requirements of Minn. Stat. § 273.19, Subd. 1 are met. In the first trial, the matter was submitted to the tax court on the basis of a detailed stipulation of facts, supporting exhibits, trial briefs, and oral argument. Based on this record, the tax court concluded that HealthEast had not established that it was an institution of purely public charity under *North Star Research Institute v. County of Hennepin*, 306 Minn. 1, 236 N.W.2d 754 (1975). The Tax Court also determined that UMPHysicians was not an institution of purely public charity. As a result, the subject property could not qualify for tax exemption because neither of the two requirements of section 273.19 were met.

In the first appeal in this matter, this Court addressed HealthEast's argument that its separate corporate existence should be disregarded in favor of treating the entire "HealthEast Care System" as the fee owner of the subject property. Because the Tax Court had not specifically addressed this argument, the case was remanded the case back to the Tax Court on this narrow issue:

On remand, the tax court must determine whether HealthEast, either on the basis of the existing record or such further evidence as the tax court may in its discretion admit, has met its burden to prove that it does not have "a purpose or existence apart from" the HealthEast care system. If the tax court determines that HealthEast has met that

burden, then in determining whether Bethesda Clinic qualifies as tax-exempt property under Minn. Stat. § 273.19, the tax court should consider the HealthEast care system as the property's owner.

*HealthEast v. County of Ramsey*, 749 N.W.2d 15, 24 (Minn. 2008) (*HealthEast I*).

After the record was supplemented and the issue was fully briefed by all parties, the Tax Court issued its final order on November 18, 2008, concluding that HealthEast did not meet its burden of proof to show that Bethesda Clinic qualifies as tax-exempt property under Minn. Stat. §273.19. HealthEast's separate corporate existence could not be disregarded because HealthEast had not met its burden to prove that it does not have a purpose or existence apart from the HealthEast Care System.

## STATEMENT OF FACTS

Relator HealthEast, a Minnesota non-stock, non-profit corporation, was the fee owner of the subject real property for all three tax assessment years at issue. The subject property is located at 580 Rice Street in Saint Paul, Minnesota, and is the site of Bethesda Clinic. In assessment year 2002, the University of Minnesota leased and operated Bethesda Clinic. *HealthEast v. County of Ramsey*, 749 N.W.2d 15, 17 (Minn. 2008) (*HealthEast I*). In assessment years 2003 and 2004, intervenor-relator University of Minnesota Physicians (UMPhysicians) assumed the lease and the operations of Bethesda Clinic from the University of Minnesota. *Id.* UMPhysicians is the designated faculty clinical practice organization of the University of Minnesota Medical School. *Id.* HealthEast is essentially a management company. A fee is charged for management services based on a

percentage of the operating expenses of the client-entity. During the years at issue, HealthEast had revenues ranging from \$46 to \$74 million which resulted in profits for most years of between \$3.8 and \$5.8 million. (App. at 73, 83, and 92; Ramsey County at 3). Direct and indirect public support was minimal during this time. (App. at 73, 83, and 92; Ramsey County at 3).

UMPhysicians is the private practice component of the University of Minnesota Medical School. It was established in order to take advantage of cost efficiencies so that its clinics could compete more effectively in the Minneapolis medical market. (Ramsey County at 4). UMPHysicians had revenues ranging from \$102 to \$151 million during the years at issue. Profits ranged from \$1.9 million to \$4.5 million. UMPHysicians receives no direct charitable support. (Ramsey County at 4).

The Tax Court found that HealthEast performs, “a number of services for entities outside the HealthEast Care System, which it does not control.” (App. at 117). Specifically, the Tax Court identified the leasing of the subject property to UMPHysicians, which generated revenues of \$474,647 in 2001, 2002, and 2003; management services for HealthEast Foundation, which HealthEast does not control; management services for Portico HealthNet, to include the lease of employees and management of its operations. (*Id.*) It further found that Portico is a free standing corporation and not a HealthEast subsidiary. (*Id.*) For combined services rendered to both Portico and HealthEast Foundation, the Tax Court found

that HealthEast received revenues in 2001, 2002, and 2003 of \$1,735,489, \$2,108,414, and \$8,005,040, respectively. (*Id.*)

Additionally, the Tax Court found that HealthEast performed services for other third parties, including a pension fund, outside medical providers, and a credit union. (App. at 117-18). HealthEast received revenue for services rendered to the pension fund in 2001, 2002, and 2003 in the amount of \$45,770, \$3,491, and \$30,227, respectively. (App. at 118). HealthEast provided outside counseling services in 2002, 2003, and 2004, which yielded gross revenues of \$9,412, \$8,639, and \$6,802, respectively. (*Id.*) It made signs for outside medical providers and provided postage for a credit union, which yielded revenues of \$2,034 in 2002 and \$1,964 in 2003, and it received \$10,485 in 2004 for credit union postage and equipment set-up and repair for providers outside the HealthEast Care System. (*Id.*)

## ARGUMENT

### I. The Standard of Review

The standard of review is that stated by this court in *Croixdale, Inc. v. County of Washington*, 726 N.W.2d 483, 487 (Minn. 2007):

This court reviews a tax court's decision to determine whether the tax court had jurisdiction, whether or not the order is justified by evidence or in conformity with law, or whether the tax court committed an error of law. Minn. Stat. § 271.10 (2004). Absent a question of law, we will uphold the tax court's decision where sufficient evidence exists for the tax court to reasonably reach the conclusion that it did. *Care Inst., Inc.—Maplewood v. County of Ramsey*, 576 N.W.2d 734, 738 (Minn. 1998); *Am. Ass'n. of Cereal Chemists v. County of Dakota*, 454 N.W.2d 912, 914 (Minn. 1990).

## II. Applicable Rules of Construction

A claim of exemption from real estate taxes must always begin with the general rule that all property is presumed taxable. *Croixdale, Inc. v. County of Washington*, 726 N.W.2d 483, 487 (Minn. 2007). A statute creating exemption from taxation must be strictly construed. *Care Inst. Inc. – Roseville v. County of Ramsey*, 612 N.W. 2d 443, 447 (Minn. 2000). “The presumption against tax exemption can only be rebutted by ‘clear and express language.’” *DePonti Aviation, Inc. v. State*, 280 Minn. 30, 34, 157 N.W.2d 742, 746 (1968). Another general rule for property to be exempt is that it must be owned by an exempt entity and be put to an exempt use for which that entity was organized. In other words, there must be a concurrence of ownership and use. *Ideal Life Church of Lake Elmo v. Washington County*, 304 N.W.2d 308, 313 (Minn. 1981); *Christian Business Men’s Cmte. of Minneapolis v. State*, 228 Minn. 549, 554, 38 N.W.2d 803, 808 (1949).

An exception to the rule requiring concurrence of ownership and use is found in Minn. Stat. §273.19. That section sets out several requirements. First, the property in question must be “tax-exempt property” under the special definition of section 273.19. Second, the property must be “held under a lease for a term of at least one year, and not taxable under section 272.01, subdivision 2, or under a contract for the purchase thereof.” If these requirements are met, then section

273.19 provides that the property “shall be considered, for all purposes of taxation, as the property of the person holding it.” *HealthEast I* at 19.

**III. The Tax Court Properly Concluded that HealthEast Has A Purpose or Existence Apart From the HealthEast Care System**

**A. HealthEast failed to prove that it has no purpose or existence apart from the Health East Care System.**

In *HealthEast I*, this Court reviewed only the first element of the Tax Court’s application of Minn. Stat. §273.19 in this matter and remanded the case back to the Tax Court to determine whether HealthEast had met its burden to prove that it does not have “a purpose or existence apart from” the HealthEast Care System. *HealthEast I*, 749 N.W.2d at 24. If HealthEast met that burden, then the Tax Court would need to analyze whether the HealthEast Care System met the requirements of Minn. Stat. § 273.19. Specifically, the court would need to determine whether the HealthEast Care system is a “benevolent society or institution” or “a corporation whose property is not taxed in the same manner as other property.” If either of those definitions was met, then the tenant, UMPHysicians, would be treated as the fee owner of the subject property for purposes of determining whether the property would be exempt under Minn. Stat. § 272.02.

On remand, the Tax Court concluded that HealthEast did not meet its burden on the first issue, finding numerous instances where HealthEast performed

services for independent third party entities. (App. at 117-118). Because the Court found that it could not ignore the separate corporate status of HealthEast, it did not address whether the HealthEast Care System met the first element of Minn. Stat. §273.19. Furthermore, the court made no additional findings regarding whether UMPPhysicians would qualify for an exemption.

The Tax court correctly ruled that HealthEast failed to meet its burden of proof with respect to the threshold inquiry in this matter. In order to determine whether HealthEast has a “purpose or existence apart from” its member hospitals, it needed to describe the relationship with all of its subsidiaries. In this regard, HealthEast never even specifically identified the entities with which it seeks to be aggregated. Indeed, the record leaves many unanswered questions about HealthEast’s relationship with its affiliated entities. Although HealthEast has asserted that the members of the Board of Directors are the same for HealthEast and its four hospitals, it acknowledges that the members of the Board of Directors for HealthEast Foundation are different from the members of the HealthEast board. No information is given regarding the Board of Directors for any of the other 21 affiliates, 15 of which do not qualify for tax-exempt status for federal income tax purposes, let alone property taxes.

The failure of HealthEast to address these fundamental questions regarding its corporate organization is sufficient to support the Tax Court’s ruling that HealthEast failed in its burden of proof. That finding can be overturned only if

contrary to law or if there is insufficient evidence to support its conclusion.

*Croixdale, Inc. v. County of Washington*, 726 N.W.2d 483, 487 (Minn. 2007).

Throughout its Brief, HealthEast argues only that its subsidiaries activities are consistent with its corporate mission. Although that argument may be important for income tax purposes, it does not address the issue in this case. The inquiry in this matter is whether the *subject property* is exempt from taxation. HealthEast's exempt status for income tax purposes is only the beginning of the analysis regarding the subject property, not the end. Furthermore, it has nothing to do with whether the separate corporate status of HealthEast can be disregarded.

**B. The independent corporate status of HealthEast cannot be disregarded because services are provided for unrelated entities.**

This Court has cautioned that the corporate structure of an entity should be disregarded for tax purposes only in limited circumstances. *HealthEast I*, 749 N.W. 2d at 22. The general rule is that “[i]f a corporation elects to treat itself as an independent business for some purposes, it should not be permitted to disavow that identity merely to avoid the resultant tax consequences.” *Milwaukee Motor Transp. Co. v. Comm’r of Taxation*, 292 Minn. 66, 73, 193 N.W.2d 605, 609 (1971). Furthermore, the separate corporate status of the real property’s fee owner may be disregarded only if the owner “could have no purpose or existence apart from the operations of” the entities with which it is sought to be aggregated. *Id.* at 77, 611; *HealthEast I*, 749 N.W. 2d at 22. In this case, HealthEast must show that

it is “organized *solely* for and devoted *exclusively* to serving the needs of the member hospitals.” *HealthEast I*, 749 N.W. 2d at 22 (emphasis added).

Rather than exclusively serving the needs of its member hospitals, HealthEast provides services for outside entities and affiliated entities that it does not control. HealthEast acknowledges performing services for third parties. (App. at 50-52). Those services have included an employee assistance program, making signs for outside medical providers, repairing medical equipment for outside medical providers, and providing postage for a credit union. (*Id.*) Although the revenue received for those services is small, it is enough to establish that HealthEast has in the past and could in the future provide services for third parties. As a result, HealthEast cannot argue that it is “organized *solely* for and devoted *exclusively* to serving the needs of the member hospitals,” as required by this Court. See *HealthEast I*, 749 N.W.2d at 22.

Because HealthEast acknowledges performing service for third parties, this case is factually analogous to *Milwaukee Motor Transp. Co. v. Comm’r of Taxation*, 292 Minn. 66, 193 N.W.2d 605 (1971). In *Milwaukee Motor Transp. Co.* this Court declined to disregard, for corporate income tax purposes, the separate corporate status of a trucking company that was wholly owned by a railroad. The *Milwaukee Motor* Court noted that nearly all of the trucking company’s revenues were earned from performing services for the railroad. Nevertheless, the Court concluded that the fact that the trucking company was authorized to, and in fact did engage in, trucking services unrelated to railroad

business meant that the trucking company was a “distinct and separate corporate entity with an independent corporate vitality.” *Id.* at 77, 611. As a result, the Court concluded that the separate corporate status of the trucking company could not be disregarded. *Id.* at 77, 612. In accordance with *Milwaukee Motor*, this Court should not disregard the separate corporate status of HealthEast.

HealthEast urges this Court to adopt a *de minimis* exception to the exclusivity rule articulated by the Court in *Milwaukee Motor* and *Community Hospital Linen Services, Inc. v. Commissioner of Taxation*, 309 Minn. 447, 245 N.W.2d 190, (1976). In support of its argument, HealthEast cites cases that allow a continued exemption even though the operations of the entity at issue has some non-exempt commercial interests. (Relator’s Brief at 13). However, whether an entity can retain its exempt status while engaged in non-exempt activities has nothing to do with whether the Court should ignore the corporate structure of an entity. In those cases, the court deals with the issue by apportioning the property between the exempt and non-exempt purposes. Adopting a *de minimis* exception when looking at corporate status does not allow for such an apportionment. The issue is all or nothing. Either the corporate status is recognized or the entity is aggregated with other entities for property tax purposes.

Adopting a *de minimis* test is also contradictory to the principle that a corporate structure can be disregarded only under very limited circumstances. *HealthEast I*, 749 N.W. 2d at 22. The Tax Court correctly found that such a test would also create difficult enforcement issues for County Assessors. Financial

statements would need to be reviewed annually in order to apply an unspecified and inexact *de minimis* test.

**C. HealthEast provides more than *de minimis* services for third parties.**

Even if this Court were to adopt a *de minimis* exception to the exclusivity rule articulated in *Milwaukee Motor* and *Community Linen* and affirmed by this Court in *HealthEast I*, the services provided by HealthEast for entities outside of its control are far from *de minimis*. The Tax Court found that services performed for such outside entities generated almost \$10 million in revenue. (App. at 117-118). Of particular interest is the fact that HealthEast is the landlord for at least one totally unrelated entity. The property at issue in this case is leased to UMPHysicians, generating revenues of \$474,647 in 2001, 2002, and 2003. (App. at 117). By leasing a clinic to UMPHysicians, HealthEast is acting in a capacity no different than any other property owner that leases to another entity. Clearly, this activity is not exclusively for the benefit of the member hospitals.

HealthEast argues that this unrelated business activity should not be considered for purposes of deciding whether its separate corporate status can be ignored because it would be a “bizarre twist of logic” to use the leasing of the property at issue to deny the exemption. (Relator’s Brief at 15). This argument misses the point. At issue is whether to ignore the corporate status. The fact that HealthEast engages in such activity means that its corporate status cannot be ignored. The loss of exemption for the subject property is the result of

recognizing the separate corporate existence not the result of merely leasing the property.

HealthEast claims that the services provided for HealthEast Foundation, the employee pension fund and Portico HealthNet should also be ignored even though it acknowledges that it does not control those entities. (Relator's Brief at 14-15). Once again, HealthEast argues that those entities are charitable organizations whose activities are consistent with its mission. Although the consistent mission may relate to HealthEast's ability to maintain its charitable status for income tax purposes, it does mean that it has no purpose or existence separate from its member hospitals. The fact that it provides these services for entities it does not control is what requires the Court to recognize its separate corporate status.

**D. The Court must look beyond the Articles of Incorporation for HealthEast in order to determine whether HealthEast Has A Purpose or Existence Apart From the HealthEast Care System**

Although, its Articles of Incorporation state that HealthEast "shall be operated exclusively for the benefit of..." the hospitals, it also states that this mission is carried out by "directly or *indirectly*" engaging in a number of activities. (App. at 55) (emphasis added). The Articles further provide that it can "engage in all manner of activities incidental or related to the accomplishment of the foregoing." (App. at 56).

The broad language of its Articles have allowed HealthEast to perform services for third party entities. This is distinctly different from the situation in

*Community Hospital Linen* where the Articles of the subsidiary entities “specifically *forbid* them from engaging in any activity unrelated to their purpose of serving the member hospitals.” *Community Hospital Linen Services, Inc. v. Commissioner of Taxation*, 309 Minn. 447, 456, 245 N.W.2d 190, 195 (1976) (emphasis added). No such prohibition exists in the HealthEast Articles of Incorporation. If such a prohibition existed, HealthEast would be acting outside the scope of its authority when it provides services to third parties.

**IV. Relator is Estopped from Arguing for a *de minimis* Exception to the Holding of HealthEast I Under the Doctrine of Law of the Case**

As already noted, this Court held in *HealthEast I*,

we disregard an entity's separate corporate status for tax purposes only in limited circumstances...the general rule is that if a corporation elects to treat itself as an independent business for some purposes, it should not be permitted to disavow that identity merely to avoid the resultant tax consequences...we will disregard the separate corporate status of the real property's fee owner *only* if the owner *could have no purpose or existence apart from the operations of the entities with which it is sought to be aggregated.*

*HealthEast I*, 749 N.W.2d at 22 (internal citation and quotation marks omitted) (emphasis added). This language allows for no *de minimis* exceptions.

The doctrine of law of the case is a rule of practice followed between the Minnesota appellate courts and the lower courts. It is a discretionary doctrine developed by the appellate courts to effectuate the finality of appellate decisions. *Loo v. Loo*, 520 N.W.2d 740, 744 n. 1 (Minn. 1994). Ordinarily, the doctrine applies

where an appellate court has ruled on a legal issue and has remanded the case to the lower court for further proceedings. *Id.* (citing *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 719-20 (Minn.1987); *Lange v. Nelson-Ryan Flight Service, Inc.*, 263 Minn. 152, 116 N.W.2d 266, 268-69 (1962), *cert. denied*, 371 U.S. 953, 83 S. Ct. 508, 9 L.Ed.2d 500 (1963)).

Where a question of law is decided on appeal, it becomes the law of the case, which the trial court is bound to follow on a new trial and the appellate court will not reexamine on a subsequent appeal. *State v. Prickett*, 221 Minn. 179, 182, 21 N.W.2d 474, 475 (1946). The rule is not limited to any particular kind of legal questions. *Id.* While this Court's membership has changed since *HealthEast I*, it should be noted that a change in membership of the appellate court is irrelevant to the application of the law of the case doctrine:

Since our prior decision the membership of the court has changed. If we were to assume that the arguments of the defendant presently advanced on the issues previously determined might now be persuasive to a majority of the court, we nevertheless are not at liberty under this rule to engage in a reexamination, much less to so declare. This attitude is consistent with the rule of the law of the case and is founded upon a policy which requires that issues once fully litigated be set at rest.

*Lange*, 263 Minn. at 156, 116 N.W.2d at 269. This rule of “the law of the case,” is a salutary rule, necessary as a matter of policy in order to end litigation. *Id.* (quoting *General Am. Life Ins. Co. v. Anderson*, 156 F.2d 615, 618 (6<sup>th</sup> Cir. 1946)) (internal quotation omitted). “It is based upon the ground that there would be no end to a suit if every obstinate litigant could, by repeated appeals compel a

court to listen to criticisms of their opinions, or speculate on chances from changes in its members.” *Id.*

Therefore, even if a majority of the Court wished to create a *de minimis* rule that allowed HealthEast to disregard its corporate status to avoid tax consequences, the law of the case mandates that only the holding of *HealthEast I* can control the outcome of the instant appeal. Since HealthEast admits that it performs services for entities that it does not seek to be aggregated with for tax purposes, our inquiry is at an end under the holding of *HealthEast I*. HealthEast’s argument for a *de minimis* rule cannot be reconciled with the law of the case.

**V. Disregarding the Independent Corporate Status of HealthEast Does Not Result in an Exemption for the Subject Property.**

The inquiry as to whether to disregard the corporate status of HealthEast is only the first step in the process of determining whether the subject property is exempt from property taxation. As outlined above, if the separate corporate status is disregarded, the court would then need to determine if the aggregated entity met the separate definition of section 273.19. In particular, the Court would need to decide if the HealthEast Care System was a “benevolent society or institution” or “a corporation whose property is not taxed in the same manner as other property.” If it met either of those tests, then the tenant’s status would need to be examined.

In a previous Brief filed with this Court, Ramsey County argued that the HealthEast Care system, taken as a whole, would not meet the definition of a

“benevolent society or institution” (Ramsey County at 38-41). Nothing has been introduced on remand that would change this argument. As a result, Ramsey County submits that even the aggregated health care system would fail to meet the first criteria of section 273.19. Furthermore, in its first order in this matter, the Tax Court determined that UMPPhysicians was not an institution of purely public charity. (Ramsey County at 21-26). Nothing in the record that is before the Court contradicts this determination. As a result, the second criteria of section 273.19 is not met and the subject property is not entitled to an exemption.

#### CONCLUSION

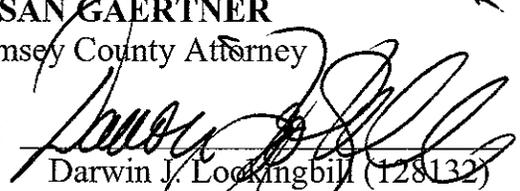
HealthEast failed to carry its burden of proof below. It did not establish that it could have *no* purpose or existence apart from the operations of the entities with which it is sought to be aggregated. Indeed, the record does not even yield which entities HealthEast seeks to be aggregated with. Moreover, even if HealthEast is completely successful in this appeal, it still could not succeed on remand since the Tax Court has already determined that UMPPhysicians does not meet the second prong of analysis under Minn. Stat. § 273.19.

Furthermore, HealthEast does not dispute that it does not fall within the purview of the rule of *HealthEast I*. The law of the case precludes HealthEast from arguing for a *de minimis* exception to the rule of *HealthEast I*. Even if it did not, HealthEast’s revenues from third-party services are well in excess of ten

million dollars, hardly a *de minimis* sum. Respondent Ramsey County respectfully requests the Court to affirm the judgment below.

Dated: 2/17/09

**SUSAN GAERTNER**  
Ramsey County Attorney

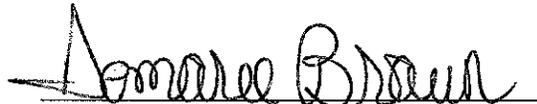
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## CERTIFICATE OF COMPLIANCE

I, Demaree Braun, certify that Respondent's Brief complies with the word count limitation of Minn. R. Civ. App. P. 132.01, subd. 3(a). I further certify that, in preparation of this Brief, I used Microsoft Word 2007, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count. All text is 13 point Times New Roman. I further certify that the Brief contains 4,240 words.

  
Demaree Braun