PROFITS VS. NON-PROFITS …IT'S A SLIPPERY SLOPE

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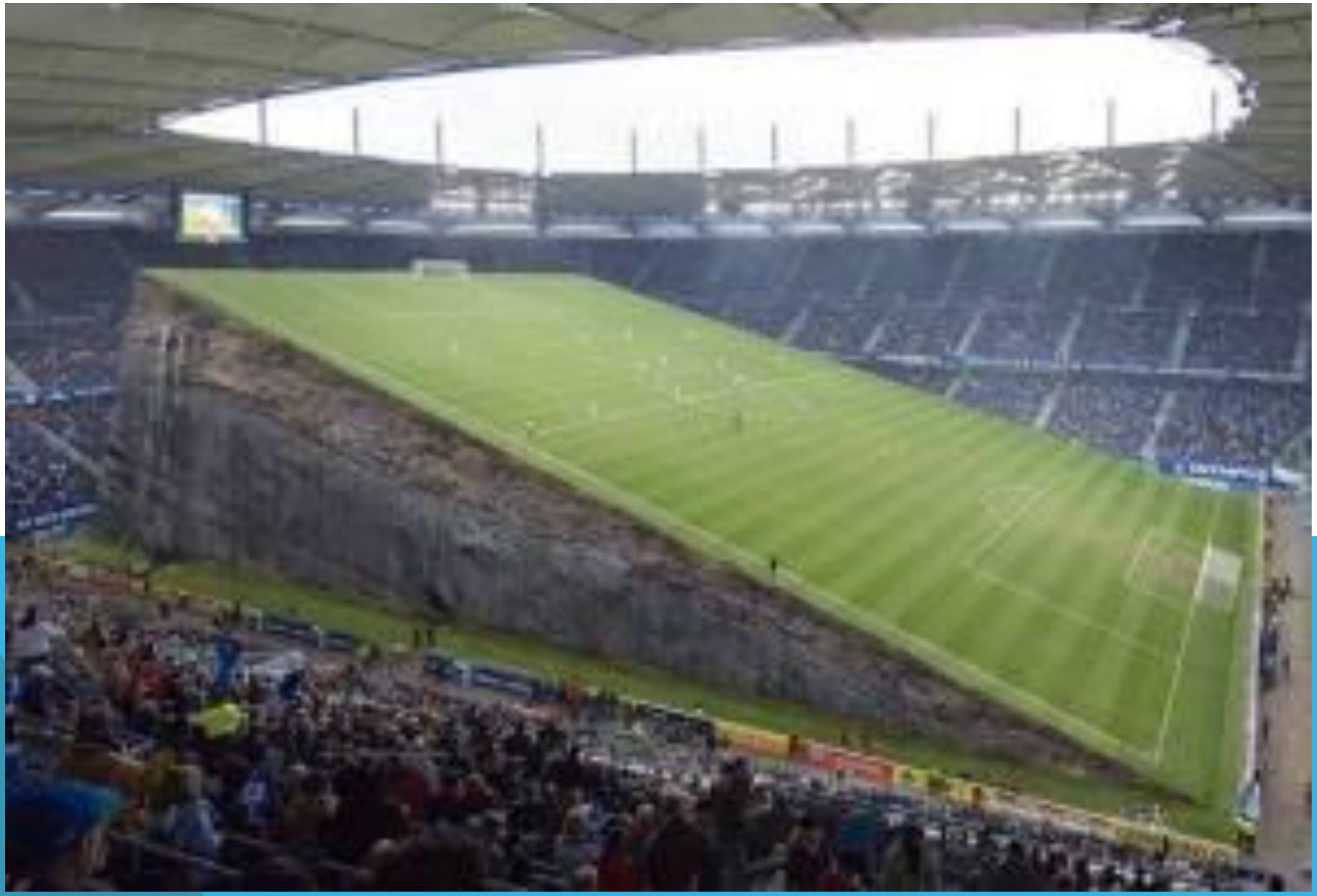
THE FUNDAMENTAL PROBLEM

As the width, breadth and sheer number of non-profit entities expand, our offices face the challenge of maintaining a level playing field.



Physician Medical Practices and Medical Service Businesses

Historically, established as individual or group practices. Subject to local BPOL and Personal Property taxation.

Then came “Physician Enterprises”, a for-profit division under the larger “Health System” non-profit corporation. Physicians became W-2 employees of the business, but overall little change in BPOL and PP taxes.

2012 Article in Washington Post

A TRAINED EYE

Hospitals buy private practices, and a medical tradition fades

A medical version of mom-and-pop against Wal-Mart

Now those medical practices and medical service businesses are reorganizing into non-profit 501(c)(3) entities.

IRS Justification?

- Affiliation with parent entity
- Practice of accepting Medicare / Medicaid as well as self-pay and insured

But…

- Policy is not exclusive to the non-profit sector
- Same services, similar pricing
- Essentially same customer/patient population
- More aggressive collection practices

2019 September 9 Article in Washington Post

Health

‘UVA has ruined us’: Health system sues thousands of patients, seizing paychecks and putting liens on homes

2019 September 13 Article in Washington Post

Health

UVA Health System revamps aggressive debt collection practices after report

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

C. No county, city, or town shall impose a license fee or levy any license tax:

....

18. a. On or measured by receipts of a nonprofit organization described in Internal Revenue Code § 501(c)(3) or 501(c)(19) except to the extent the organization has receipts from an unrelated trade or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of this subdivision, "nonprofit organization" means an organization that is described in Internal Revenue Code § 501(c)(3) or 501(c)(19), and to which contributions are deductible by the contributor under Internal Revenue Code § 170, except that educational institutions exempt from federal income tax under Internal Revenue Code § 501(c)(3) shall be limited to schools, colleges, and other similar institutions of learning.

In defense, the organization relies on Tax Commissioner ruling 05-143, re good-will thrift store:

- Report no UBI
- Operate in accordance with charitable mission

…Let’s keep reading §58.1-3703:

b. On or measured by gifts, contributions, and membership dues of a nonprofit organization. Activities conducted for consideration that are similar to activities conducted for consideration by for-profit businesses shall be presumed to be activities that are part of a business subject to licensure. For the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal income tax under Internal Revenue Code § 501 other than the nonprofit organizations described in subdivision a;

Prior Attorney General opinions have addressed the topic. In Opinion 04191996, regarding BPOL exemptions applicable to a hospital’s off-site facilities and facilities operated by the hospital’s parent corporation, the request cited §58.1-3703(B)(15) of the *Code of Virginia*, which has since expired.

15. (Expires July 1, 1997) On any hospital, college, university or other institution of learning not organized or conducted for pecuniary profit which by reason of its purposes or activities is exempt from income tax under the laws of the United States unless such tax was enacted by the local governing body prior to January 15, 1991. The provisions of this subdivision shall expire on July 1, 1997.

The Attorney General’s response considered the provisions of §58.1-3703(B) as a whole, concluding that it contained no exemption for nonprofit, tax-exempt organizations such as a doctor’s office or convalescent or retirement center. The response also noted that the commissioner may have to distinguish between the types of services commonly offered by hospitals on-site versus those commonly provided in a doctor’s office.

In Opinion 10061998, the question was whether a medical center owned by a hospital corporation is exempt from personal and real property taxation. The medical center was an off-site facility in which a physician diagnosed patients but sent them to a hospital for treatment. The Attorney General distinguished between a hospital and a physician's office, advising the facility is not tax exempt unless used principally for performing surgery.

WHAT'S THE CURE?

- August 2019 Request to Attorney General for Informal Opinion
- Awaiting response
- Will probably request a formal opinion to follow
- Potential for appeals to Tax Commissioner
- Potential for lawsuits

ULTIMATELY…

Our concern is to ensure we administer fair and equitable distribution of the tax burden.

What's Your Diagnosis?