

OVERVIEW OF MISSOURI CHARITABLE EXEMPTION LAW – THE FRANCISCAN TEST

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MISSOURI PROPERTY TAX SYSTEM

- Real Property and Tangible Personal Property
- Fair Market Value
- Assessment Percentage
- Tax Rate
- Tax Bill



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MISSOURI TWO YEAR ASSESSMENT CYCLE FOR REAL PROPERTY

- January 1st of Every Odd-Numbered Year (ex. 2015)
- County Assessor Makes Assessment
- Appeal Process for Exemptions
 - County Board of Equalization (or Circuit Court)
 - Missouri State Tax Commission or Circuit Court
 - Note: Appeals to St. Louis County Council are no longer permitted
 - Appeals to Courts (civil appeals process)



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EXEMPTIONS FROM PROPERTY TAX

- Government Owned Property
- Nonprofit Cemeteries
- Veterans' Organizations
- Religious Worship (Nonprofit)
- Schools and Colleges (Nonprofit)
- Property Used for “Purposes Purely Charitable”



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MISSOURI CHARITABLE EXEMPTION STATUTE

RSMo 137.100(5)

137.100. The following subjects are exempt from taxation for state, county or local purposes:

...

(5) All property, real and personal, actually and regularly used exclusively for...**purposes purely charitable** and not held for private or corporate profit...



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1978 - THE FRANCISCAN CASE

- Missouri Supreme Court announced a new set of requirements for all organizations seeking a charitable exemption under the statute.
- Still good law today.
- Applies to hospitals, senior living facilities, day care centers and other nonprofit organizations seeking a charitable exemption.



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THE FRANCISCAN CASE FACTS

- Missouri nonprofit corporation
- Apartment building for low-income elderly (no nursing care or health care)
- HUD low-interest loan and HUD rent restrictions
- HUD rent subsidy program (Gov't assistance)
- Policy – no eviction if unable to pay rent



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FRANCISCAN DECISION

- Law does not require the facility to operate at a loss as long as charity is the dominant objective.
- “Charity is not limited to relief of the destitute... we cannot believe that it is the intent of the people under § 137.100 to withhold the financial assistance of a tax exemption until such time as our elderly are totally incapable of providing for themselves.”



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THE FRANCISCAN TEST

- 1) The property must be owned and operated on a not-for-profit basis;
 - 2) The property must be unconditionally dedicated to the charitable use and no private profit may result; and
 - 3) The dominant use of the property must benefit society generally or an indefinite number of people.
- Note: Must satisfy all 3



THE PROPERTY MUST BE OWNED AND OPERATED ON A NOT-FOR-PROFIT BASIS

- Ownership – nonprofit entity, usually 501(c)(3)
- Operation – must demonstrate a dominant charitable objective (ex. Nonprofit low-cost housing for the elderly).
- The primary goal cannot be to generate a profit.
- It is acceptable to generate excess of income over expenses as long as achieved incidental to accomplishment of a charitable mission.



THE PROPERTY MUST BE UNCONDITIONALLY DEDICATED TO THE CHARITABLE USE AND NO PRIVATE PROFIT MAY RESULT

- The primary use of the property must be for charitable purposes (“used exclusively for charitable purposes”).
- There can be no profit, presently or prospectively, to individuals or corporations.
- Any gain achieved must be devoted to attainment of the charitable objectives.
- The focus is on the use of the property. Property held for investment does not satisfy this requirement.



**THE DOMINANT USE OF THE PROPERTY MUST
BENEFIT SOCIETY GENERALLY OR AN
INDEFINITE NUMBER OF PEOPLE**

- There must be a direct or indirect benefit to society in addition to and as a result of the benefit conferred on the persons directly served.
- For example, the provision of low-cost housing for elderly persons benefits not only the residents themselves, but also society generally.



APPLICATION OF THE FRANCISCAN TEST TO SENIOR LIVING COMMUNITIES OVER THE PAST 35 YEARS

- Distinction between HUD facilities and those not receiving HUD assistance
- Missouri Court cases – St. Louis County Facilities
 - Evangelical Retirement Homes (Friendship Village St. Louis County – 1984)
 - Village North (St. Louis County - 1990)
 - Bethesda Barclay House (St. Louis County - 2002)



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SIMILAR FACTS PRESENT IN THESE POST-FRANCISCAN CASES

- Admission was restricted to the elderly;
- Residents were required to provide financial information prior to admission;
- Residents were required to pay an entrance/endowment fee and monthly fees; and
- The owner/operator of the facility maintained a policy of not evicting a resident solely because of the inability of the resident to pay the monthly fee.
- Exemptions denied to all except Village North SNF



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EVANGELICAL CASE

- Missouri Supreme Court decision 6 years after Franciscan case (Majority 5-2 decision)
- In applying the Franciscan Test to Friendship Village, the Court denied an exemption because it concluded that the facility excluded low-income elderly
- “The public nature of a charity is diminished when it is systematically denied to those who need and can least afford the service.”
- May not systematically deny services to low-income persons
- Services must be provided to a “usual and ordinary” number of low-income individuals
- Services must be available to rich and poor



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EVANGELICAL DISSENTS

- Missouri Supreme Court Judges Welliver and Donnelly dissented from the majority opinion and would have allowed exemption to all retirement homes operated on a not-for-profit basis, irrespective of the financial means of the residents.
- Judge Welliver: “The principal opinion represents a substantial retreat from the holding of Franciscan, that indigency is no longer the principal test for exemption from taxation.”
- Judge Donnelly: “In my view, the majority errs when it adds a fourth requirement to the Franciscan test: that the property accommodate the ability to pay of the less financially fortunate elderly.”



VILLAGE NORTH – PARTIAL EXEMPTION FOR SKILLED NURSING PORTION OF FACILITY (1990)

- Missouri allows for partial exemptions (Barnes case 1979)
- No exemption sought for Independent Living portion
- 60 bed skilled nursing facility held exempt



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VILLAGE NORTH – PARTIAL EXEMPTION FOR SKILLED NURSING PART OF FACILITY

- While the screening process for the selection of residents included analysis of financial ability to pay, no such requirement existed with respect to non-residents who sought admission to the skilled nursing facility.
- Approximately 50% of the beds in the facility were, at any one time, occupied by non-residents. There was some evidence that if the facility were full and a resident needed a bed a non-resident would be transferred to make room. This had happened twice over a five (5) year period.
- Lack of ability to pay had never caused a transfer.
- At the time of the hearing, the facility had at least one patient who had remained for two years in spite of his inability to pay the full cost of services rendered.



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KEY FACTORS UNDER CURRENT MISSOURI LAW

- Community must not systematically exclude low-income elderly
 - Financial screening
 - Entrance fee requirement
 - Monthly fee structure
 - History of admission and provision of services to low-income elderly



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KEY FACTORS UNDER CURRENT MISSOURI LAW

- The community must provide a direct or indirect benefit to society
 - Housing and other services at cost or less to the “usual and ordinary number” of low-income persons
 - Affiliated Med. Transport: 5% of operating expenses – exemption approved
 - Bethesda Barclay House: less than 1% - exemption denied



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KEY FACTORS UNDER CURRENT MISSOURI LAW

- A commitment by the community to continue to provide services to a resident that becomes insolvent or unable to pay for services is not enough, by itself, to establish that the home is providing a benefit to society as a whole.
- The community must demonstrate that its services are available to the rich and the poor, that it takes into account the ability to pay of the entire spectrum of the aged.
- A partial exemption is available if only a part of the facility qualifies for exemption.



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QUESTIONS?



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