



Legal Lines

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Recent Threats to Local Tax Exemption in Colorado

The IRS has recently increased the accountability of organizations that benefit from a federal tax exemption under IRC §501(c)(3), most notably by proposing major increases in the required disclosure information on the Form 990 beginning in 2009. But the increased attention to tax exempt organizations is not just happening at the federal level – in recent months, not-for-profit, tax exempt entities have also faced challenges to their property or sales tax exemption at the state or local level. Colorado has not been immune to this tax collector’s agenda. We summarize here two recent cases that frame the issues particularly well for entities relying on a religious-based exemption.

YMCA of the Rockies

The YMCA is a 501(c)(3) non-profit entity exempt from federal income tax as a religious and charitable organization. It filed for exemption of its Estes Park and Snow Mountain Ranch facilities on the basis that the property at these facilities was “owned and used for religious purposes” under C.R.S. §39-3-106. In February, the Colorado Board of Assessment Appeals denied tax exemption for all but the chapels located at each YMCA facility. The Board found several factors of importance, including:

- Public school groups participate in program activities at the YMCA, and in such programs, discussion of Christian principles is not permitted;
- YMCA facilities are not marketed as “religious facilities,” nor are guests required to participate in any religious activities; and
- The Grand County Board of Commissioners issued \$5.7 million in bonds to YMCA with a covenant that the financed facilities would “not be used primarily for pervasively sectarian purposes” through the year 2023.

If the Board’s adverse ruling stands, the YMCA would be required to pay many thousands of dollars in property taxes each year. Therefore, the YMCA is 1) requesting an additional Board decision based upon its charitable purposes and 2) appealing the Board’s denial of the YMCA’s religious exemption to the Colorado courts.

Catholic Health

The second recent Colorado case is *Catholic Health Initiatives Colorado d/b/a Villa Pueblo Towers v. City of Pueblo, Colorado, Department of Finance (Colo. Ct. App. 9/6/2007)*. In *Catholic Health*, the Court of Appeals ruled that Catholic Health’s operation of a faith-based retirement



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community was not only a charitable but also a religious activity. In contrast to the YMCA case, the Court of Appeals decided that the retirement community was exempt from sales and use tax as a religious institution.

Catholic Health owns and operates Villa Pueblo Towers. Its application for a city sales and use tax exemption was denied by the City, the Colorado Department of Revenue, and a Pueblo trial court.

The facts were very important to the Court of Appeals' decision to reinstate the religious tax exemption. We have organized these facts by topic and summarize them as follows:

- Connection to the Underlying Religious Organization: Catholic Health is a tax exempt, not for profit religious organization affiliated with the Roman Catholic Church. Villa Pueblo holds itself out to the general public as part of this religious organization. Catholic Health's provision of housing and care for the elderly is motivated by the religious mission of the Catholic Church.
- Operating as a Charity: Catholic Health operated its senior care facilities, including Villa Pueblo, at a net loss for the period July 1, 1997 through May 31, 2004. From mid-1997 through mid-2000, approximately fifty percent of the residents of Villa Pueblo paid market rates for their accommodations, while the remaining fifty percent were on life care contracts; Villa Pueblo loses money on its life care contract program. Villa Pueblo admits residents who are unable to pay the normal and customary charges.
- Staff Training in Religious Mission: Catholic Health instructs new employees in orientation about its religious mission, and all employees of both Catholic Health and Villa Pueblo are required to support that mission and follow religious directives of the Catholic Church related to their jobs. Catholic Health also provides extensive leadership training for its managers regarding its religious mission and ministry.
- Availability of On-Site Religious Services: Villa Pueblo pays for an on-site chaplain who is available twenty-four hours a day, seven days a week, who interviews and completes a spiritual assessment for all residents admitted into the assisted living and skilled nursing units to create an individual spiritual care plan. Villa Pueblo's chapel is used by residents and staff for worship and meditation. Mass and vespers are conducted every Sunday, and a midweek Episcopal service and other special services are also held.

The city contended that Villa Pueblo's operations were no different than those of for-profit continuing care facilities, and that Catholic Health was only entitled to exemption on purchases and sales directly related to its religious operations. The Court of Appeals disagreed and ruled that Villa Pueblo operates as a religious activity. The Court specifically rejected the idea that the existence of secular nursing homes means that a Catholic nursing home is not operated as a religious organization.



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Further, the court held that property that is necessarily incidental to the operation of the exempted primary activity is also entitled to exemption.

For an organization that bases its tax status on a religious exemption, this case highlights the importance of maintaining strong connections to its underlying religious foundations. In fact, the list of stipulated facts in [Catholic Health](#) reads as a checklist of things an organization can do to enhance its standing for a religious exemption.

While there are no foolproof means to avoid a tax exemption challenge, key obligations for religious-exempt organizations include the following: document organizational connections through governing documents, have a robust charity care policy, provide training to staff in line with the organization's mission, and have spiritual resources widely available to residents.