

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

UNIVERSITY HEALTHCARE FOUNDATION, INC.
f/k/a CITY HOSPITAL FOUNDATION, INC.,

Petitioner,

v.

Civil Action No. 15-AA-_____

LARRY A. HESS, ASSESSOR
OF BERKELEY COUNTY, WEST VIRGINIA, and
MARK W. MATKOVICH,
STATE TAX COMMISSIONER,

Respondents.

PETITION APPEALING DENIAL OF
2015 AD VALOREM PROPERTY TAX EXEMPTION

COMES NOW the Petitioner, by counsel, pursuant to West Virginia Code Sections 11-3-24a and 11-3-25, and it does represent unto this Honorable Court as follows:

1. That the Petitioner and the Respondents (collectively, the "Parties") are litigating a certain civil action pending before the Circuit Court of Berkeley County, West Virginia, Business Court Division, Case No. 14-AA-4, styled *University Healthcare Foundation, Inc. f/k/a City Hospital Foundation, Inc. v. Larry A. Hess, Assessor of Berkeley County, West Virginia and Mark W. Matkovich, State Tax Commissioner* (the "2014 Case").

2. That the 2014 Case involves the Petitioner's contention that a certain parcel of its real property in Berkeley County, West Virginia, known as the Dorothy A. McCormack Cancer Treatment and Rehabilitation Center (the "DMC") is exempt from *ad valorem* property tax for tax year 2014, which contention the Respondents oppose.

3. That the Petitioner asserts the same contention with respect to the tax exemption issue for tax year 2015, to-wit: that the DMC is exempt from *ad valorem* property taxes, a contention which the Respondents oppose.

4. That, by instrument dated February 9, 2015, and fully executed and agreed to by the Parties on February 26, 2015, the Parties entered into a certain Agreement and Stipulations (the "Agreement") whereby, in order to preserve their respective positions as to the tax exemption issue for the DMC for tax year 2015, and in the interests of efficient and economical use of administrative and judicial resources, the Parties agreed to, and stipulated, as follows:

a. As provided in section twenty-four-a, article three, chapter eleven of the West Virginia Code (herein referred to as "WV Code §11-3-24a"), for tax year 2015 purposes, and within the times set forth therefore, but without the necessity of taking any further actions: (a) the Petitioner shall be deemed to have timely applied to the Respondent Assessor for information regarding the taxability of the DMC; (b) the Respondent Assessor shall be deemed to have timely ruled that the DMC is taxable for such purposes; (c) the Petitioner shall be deemed to be dissatisfied with the Respondent Assessor's ruling and shall be deemed to have timely requested the Assessor to certify the tax exemption issue to the Respondent Tax Commissioner, using the forms and procedures established by the Tax Commissioner for the same; (d) the Respondent Assessor shall be deemed to have timely acted fully on such request and to have timely certified the tax exemption issue and (e) the Respondent Tax Commissioner shall be deemed to have timely made a ruling against the Petitioner with respect to the tax exemption issue, to-wit: that the DMC is taxable for tax year 2015.

b. All of the deemed actions of the Parties, described in paragraph 4.a, above, shall have been done on the basis of the positions they have taken, the authorities they have cited and the evidence they have presented, all as contained in the record of the 2014 Case, all of which, including the documents filed, exhibits admitted and testimony given, the Parties stipulate, are hereby incorporated by reference herein.

c. The facts, material to the administrative disposition of the tax exemption issue for 2015 tax year purposes, are the same as the facts in the record of the 2014 case except: (a) the Petitioner's use of the DMC and of its other real property in Berkeley County as of July 1, 2014, is as shown on Exhibit A to the Agreement, and (b) the Petitioner's Form 990 for calendar year 2013 is attached as Exhibit B to the Agreement.

d. Upon the express condition that, within the time allowed for the same in WV Code §§11-3-24a and 11-3-25, the Petitioner acts to perfect an appeal to the Circuit Court of Berkeley County, West Virginia, of the Respondent Tax Commissioner's deemed ruling, described in subsection (e) of paragraph 4.a, above, the Parties shall jointly take such actions necessary to seek an Order of the West Virginia Supreme Court of Appeals transferring said appeal to the Business Court Division and consolidating it with the 2014 Case for final disposition according to such proceedings as the Court may direct.

e. Except as otherwise provided in the Agreement, nothing shall prohibit the right of any of the Parties from making any arguments, asserting any legal points, citing any legal authorities, or presenting any further evidence with respect to the tax exemption issue for the DMC for tax year 2015.

5. A true and correct copy of the Agreement and Stipulations dated February 9, 2015 and executed by the Parties on February 26, 2015, including the Exhibits attached to and incorporated therein, is attached hereto as **Petition Exhibit 1**.

6. Pursuant to the above-described Agreement, the Petitioner further alleges as follows:

a. That the Petitioner is aggrieved by the actions of the Respondent Assessor in denying the Petitioner's timely application for exemption from 2015 *ad valorem* property taxes of certain improved real property owned by the Petitioner, situate in Martinsburg District, Berkeley County, West Virginia, consisting of 5.71 acres, assessed in the name of Gateway Foundation, Inc.¹ and being described in the land records of Berkeley County as Map 4D, Parcel 1.1, including ten (10) subparcels separately identified by the Assessor as 1.1.3001 (Suite 1100), 1.1.3002 (Suite 2100), 1.1.3003 (Suite 2400), 1.1.3004 (Suite 3200), 1.1.3005 (Suite 3300), 1.1.3006 (Suite 3500), 1.1.3007 (Suite 2200), 1.1.3008 (Suite 3100), 1.1.3010 (Suite 3650), and 1.1.3013 (Suite 1200) (collectively, the "DMC").²

b. That the Petitioner is also aggrieved by the actions of the Respondent Tax Commissioner, which ruled, upon timely application of the Petitioner, that the DMC is not exempt from 2015 *ad valorem* property taxes under West Virginia Code Section 11-3-9.

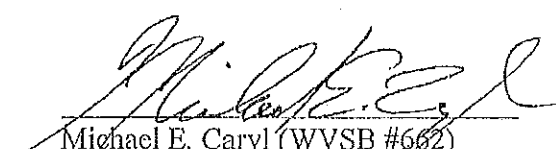
¹ The Petitioner was incorporated under the name of Gateway Foundation, Inc. By Certificate of Amendment to the Petitioner's Articles of Incorporation dated October 12, 2004, the Petitioner's name was changed to City Hospital Foundation, Inc. Subsequently, by Certificate of Amendment to the Petitioner's Articles of Incorporation dated December 23, 2013, the Petitioner's name was changed to University Healthcare Foundation, Inc.

² The Petitioner has not received prior tax year tickets for, and is unaware of whether the Respondent Assessor has assigned sub-parcel numbers 1.1.3009, 1.1.3011, and/or 1.1.3012 to any property. The Petitioner seeks tax exemption for the entire DMC, which is generally described by the Assessor as one parcel referred to as "06-4D-1.1," including not only the residue of Map 4D, Parcel 1.1., but also the above-listed sub-parcels and any other portion of the DMC that is or may be separately identified by the Assessor in the land records.

c. That the factual and legal basis for the Petitioner's application, the Respondent Assessor's denial thereof, and the Respondent Tax Commissioner's ruling are as set forth in the record of the 2014 Case, as supplemented by the facts and stipulations of the Parties set forth in the Agreement.

WHEREFORE, Petitioner prays that this Honorable Court: (a) recommend that this matter be referred to the Business Court Division and consolidated with that certain case pending before the Circuit Court of Berkeley County, West Virginia, Business Court Division, Case No. 14-AA-4, styled *University Healthcare Foundation, Inc. f/k/a City Hospital Foundation, Inc. v. Larry A. Hess, Assessor of Berkeley County, West Virginia and Mark W. Matkovich, State Tax Commissioner*; (b) overrule and reverse the Respondent Assessor's denial of the Petitioner's application for exemption of the DMC from 2015 *ad valorem* property taxes; (c) overrule and reverse the Respondent Tax Commissioner's ruling against the Petitioner with respect to the tax exemption issue, to-wit: that the DMC is taxable for tax year 2015; and (d) determine that the DMC is exempt for 2015 *ad valorem* property tax purposes as provided in West Virginia Code Section 11-3-9.

UNIVERSITY HEALTHCARE
FOUNDATION, INC., f/k/a CITY
HOSPITAL FOUNDATION, INC.
PETITIONER
By Counsel



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