

IN THE MATTER OF

APPEALS FROM THE DECISIONS OF THE CITY OF NOME ASSESSOR DENYING  
APPLICATIONS FOR AN EXEMPTION FROM REAL PROPERTY TAX ON: A) BLOCK  
91, LOTS 3 AND 4; B) MS 1298; C) BLOCK 110, LOTS 1 & 2; AND  
D) BLOCK 110, LOT 3A

Appellant: Norton Sound Health Corporation  
Appellant's Representative: Steve Osborne, Hobbs Straus Dean & Walker, LLP

Appellee: City of Nome Tax Assessor  
Appellee's Representative: Charles Cacciola

Having sat to hear an appeal pursuant to Sections 17.20.050 and 17.20.060 of the Nome Code of Ordinances and held a properly noticed public hearing on the above-referenced appeals on May 1, 2024, considered all the evidence in the record and all of the arguments made at the appeal hearing and having voted to affirm the decision of the City Assessor the Board of Equalization of the City of Nome adopts the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**FINDINGS OF FACT**

1. The properties involved in this appeal are:
  - A. Tax Parcel 001.221.05A: Block 91, Lots 3 & 4 ("Seven Plex Property")
  - B. Tax Parcel 192.1.085: MS 1298 ("20-Plex Property")
  - C. Tax Parcel 001.211.03A: Block 110, Lots 1 & 2 ("BHS Property")
  - D. Tax Parcel 001.211.03B: Block 110, Lot 3A ("State Lease Property" or "HAT Property")

all of which are located within the boundaries of the City of Nome (collectively "the Properties").

2. The Properties are owned by the Norton Sound Health Corporation ("NSHC").
3. On or about January 24, 2024, NSHC submitted applications for exemption from City of Nome 2024 real property tax assessed against each of the Properties.
4. On or about March 18, 2024, the City Assessor issued assessment notices against each of the Properties. The Notices acted as a denial of NSHC's applications for exemption.
5. NSHC timely appealed the assessments, which provide that the entire assessed value of the Properties is subject to tax. NSHC does not appeal the valuations of the Properties. Rather, it appeals the determination that this value is taxable.

6. The board of equalization has heard similar appeals filed by NSHC in 2022 and 2023. NSHC appealed the board's 2022 decision to the superior court ("2022 Judicial Appeal"). The 7-Plex Property is the only property that was at issue in the 2022 Judicial Appeal. The superior court decision in the 2022 Judicial Appeal was issued after the board of equalization heard NSHC's 2023 appeals.

7. In the 2022 Judicial Appeal, the superior court determined that *NSHC's uses* of the 7-Plex Property were exclusively for exempt purposes. The superior court did not consider whether the tenants' use of 7-Plex Property is also for exempt purposes. The issue of whether AS 29.45.030(c) precludes exemption of the 7-Plex Property (or of any of property from which NSHC derives income) was not presented to the board in 2022, nor was it decided in the 2022 Judicial Appeal. The superior court determined that Nome's tax was preempted as to 7-Plex Property under the doctrine of implied federal preemption. However, in 2022 NSHC did not apply for exemption of 7-Plex Property on the basis of implied federal preemption and the assessor did not specifically present information to the board relevant to the City's interest in the tax, one of the two prongs required for implied federal preemption. Finally, in the 2022 Judicial Appeal, the superior court ruled that tribal sovereign immunity does not preclude the City from assessing property tax on property owned by an entity that enjoys sovereign immunity. The City of Nome appealed to the Alaska Supreme Court the superior court's decision that 7-Plex Property is exempt from 2022 real property taxes. That appeal is pending.

8. In 2023, NSHC appealed the assessor's denial of 2023 exemption for each of the Properties now at issue in these 2024 appeals. At the time of the 2023 hearing, the board's 2022 decision as to 7-Plex Property had not been reversed by the superior court. At the 2023 hearing, NSHC urged the board to hear NSHC's appeals despite similar issues having been resolved in the City's favor in 2022. NSHC represented that the 2023 appeals involved different properties, different uses, and different facts from the 2022 appeals. The board heard NSHC's appeals on the merits notwithstanding the board's 2022 decision that was contrary to certain positions NSHC advanced in the 2023 appeals.

9. In 2023, the board determined that the 7-Plex Property, the 20-Plex Property, the BHS Property, and the State Lease Property were not exempt from the City's 2023 property tax. NSHC appealed the board's 2023 decision to the superior court. That appeal is pending. At present, the board's 2023 decision is the final judgment as to exemption from 2023 taxes, at least as to the 20-Plex Property, the BHS Property, and the State Lease Property. These issues were resolved in favor the City. NSHC asks the board to nevertheless hear why these properties should be determined to be exempt in 2024.

10. NSHC is an Alaskan non-profit corporation.

11. NSHC is not included on the list of recognized tribal entities published in the Federal Register and does not have a constitution approved by the Bureau of Indian Affairs pursuant to the Indian Reorganization Act.

12. NSHC has been deemed a "tribal organization" for purposes of federal laws related to eligibility to contract with the United States for the provision of health care to Alaskan Natives.

13. Under the Alaska Supreme Court’s April 26, 2024 decision in *Ito v. Copper River Native Association*, NSHC very likely enjoys sovereign immunity.

14. The Properties have not been acquired by the United States in trust for NSHC.

15. NSHC operates various facilities throughout the Bering Straits region including a hospital located within the City and medical clinics located outside the City.

16. The expense of operating the hospital, the medical clinics, and the broad array of public health programs run by NSHC is funded, in part, by the United States under a funding agreement (“the Funding Agreement”).

17. The Funding Agreement identifies Programs, Functions, Services and Activities (“PFSAs”) for which NSHC may receive IHS funding. NSHC’s PSFSA’s include provision of staff housing, training of community health aides, emergency medical services training and provision of lodging for patients and their escorts or family members are within the scope of NSHC services eligible for funding under the Funding Agreement. The Funding Agreement PFSAs also include a broad array of services to support public health, including services relating to sanitation infrastructure, drinking water, nutrition, programs for childhood nutrition, child education and development programs, housing safety, substance abuse, promoting exercise and development of indoor recreation facilities, and many other services. The Funding Agreement and NSHC take a holistic, broad approach to health that is not limited to medical care provided at a hospital or to services furnished by licensed providers.

18. The assessed value of the 7-Plex Property is \$1,022,400. The assessed value is not affected by exemption.

19. The 7-Plex Property contains seven dwelling units. The building on the 7-Plex Property is used by NSHC to provide housing to NSHC staff, both contract and employee. At least some of this staff are doctors, nurses, or other licensed healthcare providers. NSHC did not show that residential use of the 7-Plex Property is limited to licensed healthcare providers. Some employees who reside at the 7-Plex Property pay rent. The rent charged and paid is approximately a market rate. For employees who do not pay rent, the value of the housing provided to the employee constitutes personal income of the employee for the employee’s federal income tax.

20. In FY 2022, NSHC derived \$67,706 in rental income from use of the 7-Plex Property. In FY 2023, NSHC derived \$72,639 from use of the 7-Plex Property. It also derived \$58,395 in “105(l) Lease Revenue” in 2023. NSHC’s financial analysis for the 7-Plex Property for 2023 shows that expenses exceed income by \$27,139.48. NSHC’s expenses include \$10,735.20 for property tax and \$27,467.80 for depreciation. For 2023, NSHC’s 7-Plex Property earnings before interest, tax, and depreciation were \$11,063.52.

21. Based on the record before the board, the \$72,639 in 2023 7-Plex Property rental income was from use of the 7-Plex Property by the tenants.

22. The assessed value of the 20-Plex Property is \$4,707,700. This valuation is not affected by whether or not exemption applies.

23. The 20-Plex Property consists of 17.43 acres of land and a 20-unit apartment building. Most of the land is vacant and unused, though NSHC intends to use it to construct additional housing in the future. NSHC bought the 20-Plex Property in 2022 because it was a shrewd business decision, not a federal mandate. The building on the 20-Plex Property is used by NSHC primarily to provide housing to NSHC staff, both contract and employee. At least some of this staff are doctors, nurses, or other licensed healthcare providers. NSHC did not show that residential use of the 20-Plex Property is limited to licensed healthcare providers. Additionally, before the board in 2023, NSHC acknowledged that two of the twenty units were occupied by lease-paying tenants who are not NSHC staff and do not work at NSHC facilities. NSHC represents that the facts have not changed since 2023 and did not show that the 20-Plex Property units are leased exclusively to NSHC staff. Some NSHC employees who reside at the 20-Plex Property pay rent. The rent charged and paid is approximately a market rate. For employees who do not pay rent, the value of the housing provided to the employee constitutes personal income of the employee for the employee's federal income tax.

24. In FY 2023, NSHC derived \$166,548.73 in rental income from the 20-Plex Property. It also derived \$431,299.00 in "105(l) Lease Revenue" from the 20-Plex Property. NSHC's financial analysis for the 7-Plex Property for 2023 shows that expenses exceed income by \$309,352.24. NSHC's expenses include \$49,430.85 in property tax and \$283,706.25 in depreciation. For 2023, NSHC's 20-Plex Property earnings before interest, tax, and depreciation were \$23,632.59.

25. Based on the record before the board, the \$166,548.73 in 2023 20-Plex Property rental income was from use of the 20-Plex Property by the tenants.

26. Uses of the 7-Plex Property and the 20-Plex Property (together, "Housing Properties") are similar.

27. No NSHC employee is required to live at either of the Housing Properties. NSHC also rents units in Nome from third-party landlords. NSHC uses these rented units for additional staff housing. No NSHC employee is required to live in any NSHC-provided housing. For employees who need to report to the hospital for their job duties, NSHC expects a response time of approximately 20 minutes. Nome is relatively compact and virtually all, if not all, housing options in Nome can readily satisfy NSHC's response time. At the 2023 hearing, NSHC's CEO represented that NSHC does not have significant concerns regarding staff response times. NSHC staff, including licensed providers, can live anywhere in Nome. As NSHC previously explained to the board, all employees may obtain their own housing but they have little incentive to do so when NSHC provides it for them.

28. NSHC enters into rental agreements and leases with some, if not all, of the staff who live at the Housing Properties. NSHC has elected to regulate tenants' pets, alcohol consumption, and smoking, among other tenant conduct, at the Housing Properties. Staff family members may also reside in the staff member's unit at the Housing Properties.

29. NSHC uses its discretion and business judgment to set policies for which staff are offered housing, the location of the housing (whether at one of the Housing Properties or otherwise), the terms upon which the housing is used, and to encourage staff to seek out non-

NSHC provided housing.

30. Attracting qualified professionals to off-road system communities, including Nome, can be challenging. The City has experience in this arena. Employers in off-road system communities, including in Nome, often provide or arrange housing for employees to improve recruiting and retention.

31. NSHC offers housing to staff as an incentive to attract qualified professionals to Nome to work at NSHC's facilities. NSHC has not shown that this incentive is limited to licensed providers who work at the hospital.

32. The assessed value of the BHS Property is \$1,904,100. This valuation is not affected by whether or not exemption applies.

33. The improvements on the BHS Property are undergoing construction. The intended future use of the BHS Property is to provide housing for maternity patients. However, no PFSA's are conducted at the BHS Property. Before the board of equalization in 2023, NSHC stated that it anticipated that the BHS Property would be put into service for the intended use in the fall of 2023. NSHC's 2024 application for exemption and appeal show that this did not occur. Other than intent for future use, NSHC did not identify plausible use of the BHS Property for hospital or charitable purposes.

34. The assessed value of the State Lease Property is \$759,800. This valuation is not affected by whether or not exemption applies.

35. The State Lease Property is leased by NSHC to the State of Alaska, Department of Transportation and Public Facilities. Under the lease, the state pays at least \$5,000 per month for the use of the State Lease Property. The lease does not require that the tenant use the premises for any particular use. NSHC asserts that the state uses the property for office space for public health nurses. Operational costs are 35% of the Base Monthly Lease Rate of \$5,000. The lease is subject to all laws of the State of Alaska and the City of Nome. Under the lease, the lessee is "responsible for interior janitorial services as they may require, parking lot, sidewalk snow and ice removal services."

36. NSHC's lease revenue analysis of the State Lease Property shows that NSHC received \$60,000 in rental income from the State Lease Property in 2023. This analysis indicates that NSHC received net lease revenue of -\$16,479.98. This analysis includes \$21,050.60 for snow removal. It also includes \$30,020.29 in depreciation. NSHC's 2023 earnings before interest, tax, and depreciation was \$13,540.31. On the other hand, the lease agreement provides that the operating cost of are only 35% of the rent. This results in net income of \$39,000 from the State Lease Property.

37. The \$60,000 in 2023 income NSHC derived from the State Lease Property is from use by the state, as is evident from the lease agreement.

38. The City regulates zoning, platting, building standards, electrical, water, sewer and refuse service, snow removal, animal control, and much more for all real property in Nome.

39. In 2023, approximately \$15,000,000 in City revenue was used to provide municipal services. Property taxes provided about \$4,200,000 of this total. FY 2024 is anticipated to be substantially similar.

40. By value, NSHC owns approximately 1/4 of privately owned property real property in Nome. NSHC cannot successfully provide its ISDEAA programs without extensive operational and logistic support from these Nome-based facilities.

41. All of NSHC's Nome facilities are on roads maintained by the City. Effective use of NSHC's Nome property is possible because of the road, utilities, public safety, planning, and other municipal services the City provides. NSHC uses the City's building inspector for permitting and plan review for life safety compliance with building, fire, and electrical codes. NSHC makes extensive use of the City's emergency dispatch for public safety services at NSHC's facilities. NSHC argued that it cannot operate its hospital or satisfy its funding agreement without vehicle storage and maintenance. These vehicles would be of little use to NSHC without roads on which to drive them.

42. NSHC extensively uses the City's indoor recreation facilities. In FY 2023, NSHC purchased passes for approximately 6,000 visits to the recreational center. While there is a charge for these passes, pass revenue does not cover the operating costs (much less capital cost) of the rec center, which is covered by the City's general fund.

43. NSHC emphasizes the importance and challenges of attracting qualified personnel to work in Nome. A public library, parks and recreation, Iditarod festivities, building and safety codes, planning and zoning, law enforcement, public education, transportation – all make Nome a more desirable place to work and live. Without the benefits funded by the City's property tax, NSHC recruiting would be significantly more difficult.

44. The City uses property tax to fund K-12 education provided by the Nome Public Schools. Nome Public Schools have programs for child health, and developmental and school screenings, supplemental food and nutrition education to young children, that promote growth and development of young children, adolescent mental health and suicide prevention; developmental disability programs, programs to help at-risk youth succeed at school, including recreational and activity programs.

45. The City uses property tax revenue to fund services that further the public health objectives that are identified in the Funding Agreement as PFSA's that NSHC is authorized to provide.

## **CONCLUSIONS OF LAW**

1. NSHC asserts that the assessor is collaterally estopped from "relitigating" issues that were decided by the superior court in the 2022 Judicial Appeal. When the elements that support collateral estoppel are satisfied, it remains a discretionary determination based on fairness under the circumstances. The only issues before the board that are substantially the same as those decided in the 2022 Judicial Appeal are whether (1) *NSHC's use* of the 7-Plex is

exclusively for exempt purposes, (2) whether the City's taxation of that property is preempted by federal law, and (3) whether sovereign immunity precludes the City's assessment of the 7-Plex Property. Notably, NSHC asks the board to conclude, *contrary to the superior court's decision in the 2022 Judicial Appeal*, that sovereign immunity precludes assessment of taxes on the 7-Plex. Additionally, NSHC asks the board not to follow the 2023 determinations the board made regarding the 20-Plex Property, the BHS Property, and the State Lease Property.

2. Based on the totality of the circumstances, the board declines to apply collateral estoppel as to issues that were decided in either NSHC's favor or in the assessor's favor in either the 2022 Judicial Appeal or by the board's 2023 decision. The board will consider the arguments of both. For its findings and conclusions, the board considers the decision in the 2022 Judicial Appeal and is of the opinion that nothing in these conclusions conflicts with the superior court's decision in the 2022 Judicial Appeal.

3. In *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467 (Alaska 1976), the Alaska Supreme Court determined that exemption analysis requires examination of *both* the owner-lessor's and the lessee's use of the property. The Court confirmed this requirement in the *Catholic Bishop* case. Where *the lessee's use* of property is not for exempt *purposes*, the property is not used *exclusively* for exempt purposes. If only the uses of the Properties by NSHC are considered, by definition NSHC's use is exclusive. "Nothing in the exemption statute indicates that such a limited reading is justified." *Sisters of Charity*, 553 P.2d at 470.

4. The 7-Plex Property is not used exclusively for exempt charitable or hospital *purposes*. While *NSHC's use* of the 7-Plex Property may be for charitable or hospital purposes, the board must also consider the tenants' use. Tenants' use of the 7-Plex Property is for their own personal purposes, which are not exempt. This conclusion is evidenced by the fact, among others, that tenants pay rent to use the 7-Plex Property or have the value of their use treated as personal income for tax purposes.

5. Alaska Statute 29.45.030(c) imposes an additional burden on an applicant seeking exemption under AS 29.45.030(a)(3) if the applicant derives income from the property. Property "from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups."

6. NSHC derives significant rental income from the 7-Plex Property. NSHC failed to prove that the income it derives from the 7-Plex Property "is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups." For this independent reason, NSHC has failed to show that the 7-Plex Property is exempt under AS 29.45.030(a)(3).

7. The 20-Plex Property is not used exclusively for exempt purposes. While *NSHC's use* of the 20-Plex Property to house staff may be for charitable or hospital purposes, the board must also consider the tenants' use. Tenants' use of the 20-Plex Property is for their own personal purposes, which are not exempt. This conclusion is evidenced by the fact, among others, that tenants pay rent to use the property or have the value of their use treated as personal income for tax purposes. Additionally, NSHC failed to prove that NSHC's rental of the 20-Plex Property's units is to NSHC (employee or contract) staff only. NSHC also failed to show that the

vacant land portion of the 20-Plex Property is used exclusively for exempt purposes.

8. NSHC derives significant rental income from the 20-Plex Property. NSHC failed to prove that the income it derives from the 20-Plex Property “is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups.” For this independent reason, NSHC has failed to show that the 20-Plex Property is exempt under AS 29.45.030(a)(3).

9. NSHC has also failed to prove that its use of the Housing Properties is vitally necessary to its nonprofit charitable or hospital purposes. NSHC offers housing to some staff to attract them to Nome. Recruiting to off-road system Alaska is challenging and housing is one of the reasons. The record shows that NSHC’s reason for offering housing to some staff is no different than any other employer who provides this incentive in to recruit staff. If this means that offering housing to employees is vitally necessary to the employer’s exempt purposes, virtually all nonprofit religious, charitable, cemetery, hospital, or educational groups in rural Alaska would be entitled to exemption for all employee housing. This cannot be what the legislature intended, and it would be in conflict with the numerous times the Alaska Supreme Court determined that housing provided by nonprofit religious, charitable, cemetery, hospital, or educational groups was not exempt.

10. The BHS Property is not used exclusively for exempt purposes. The use of this property is construction that is intended to facilitate exempt use in the future. When the property is actually used for those intended purposes, it may be entitled to exemption. Now, however, the BHS Property is not used exclusively for exempt purposes.

11. The State Lease Property (HAT Property) is not used exclusively for exempt purposes. Even if *NSHC’s use* of the State Lease Property is for charitable or hospital purposes, the board must also consider the lessee’s use. The use of this property is remarkably similar to use of the property that was at issues in *Sisters of Charity*. The Sisters rented office space on a hospital campus to doctors for the doctors’ medical practices. The Sisters argued that this use benefited the hospital and medical care and facilities “reasonably necessary for the fulfillment of the generally recognized functions of a completely modern hospital” should be considered property used for hospital *purposes*. The Court concluded that “the Sisters have performed a service to doctors and patients alike in constructing the Professional Building, and that health care at Providence has been benefited. In order to qualify for an exemption, however, the taxpayer must show, not benefits, but exclusive use. The use of the Professional Building for nonprofit hospital purposes is not exclusive.” *Sisters of Charity*, 553 P.2d at 472. The same conclusion is necessarily reached here. In order to qualify for an exemption, NSHC must show, not benefits, but exclusive use. It fails to show that the State Lease Property is used exclusively for hospital or charitable purposes. Specifically, it fails to show that the lessee’s use is for hospital or charitable purposes.

12. Annually, NSHC derives at least \$60,000 in income rental income from leasing the State Lease Property to the state. The State of Alaska is not a nonprofit religious, charitable, hospital, or educational group. For this independent reason, NSHC has failed to show that the State Lease Property is exempt under AS 29.45.030(a)(3).

13. The Alaska Supreme Court’s recent decision in *Ito v. Copper River Native*



*Association* strongly suggests that NSHC enjoys sovereign immunity. However, in *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), the U.S. Supreme Court conclusively determined that tribal sovereign immunity does not affect assessment of municipal property taxes.

14. NSHC urges the board to find that the City's tax of the Properties is preempted by federal law, relying upon the U.S. Supreme Court's decisions in *White Mountain Apache Tribe v. Bracker* and *Ramah Navajo School Board, Inc., v. New Mexico*, and Alaska precedent interpreting those decisions. These U.S. Supreme Court cases establish a balancing test, referred to as the *Bracker* test, that is used to determine when state action on in Indian country is preempted by federal law.

15. Decisions of the Ninth Circuit Court of Appeals recognize that the implied preemption doctrine does not apply outside of Indian country. *Malabed v. North Slope Borough*, 335 F.3d 864, 872 (9th Cir. 2003); *Blunk v. Arizona Department of Transportation*, 177 F.3d 879, 882-884 (9th Cir. 1999).

16. The Alaska Supreme Court has never found municipal property taxes to be preempted under this doctrine. Nor has the Court ever gone against federal law and held that the doctrine applies outside of Indian country. Rather, the Alaska Supreme Court has applied the doctrine in a hypothetical context and concluded that *if it applies outside of Indian country*, the municipal property taxes at issue would not be preempted. *Board of Equalization for the Borough of Ketchikan v. Alaska Native Brotherhood & Sisterhood*, 666 P.2d 1015 (Alaska 1983).

17. In *Board of Equalization*, the Alaska Supreme Court determined that, "The revenues generated from the taxes will be used to provide police and fire protection to the premises, as well as to provide water, electrical and sewer services to the building. Like the state interest identified in Washington, Ketchikan has a strong interest in raising these revenues by taxing the property because they are for services that must be provided to the property." (emphasis added). The Court therefore determined that *if the doctrine of implied federal preemption applied outside of Indian country*, it still would not preempt the tax given Ketchikan's strong interest in the tax.

18. The Alaska Supreme Court again reached the same basic conclusion in *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, 75 P.3d 1042 (Alaska 2003). Without specifically holding that the *Bracker* test applied outside of Indian country, the Court determined that Ketchikan's property tax was not preempted because its "observations in *Board of Equalization* concerning the substantial services that the borough afforded to the building and the tribe are as applicable now as they were in that case." Those observations, set forth above, are that the traditional municipal services like roads and public safety mean that the municipality has a strong interest in raising the tax revenue.

19. Each time the Alaska Supreme Court has been asked to hold that municipal property tax was preempted under the implied federal preemption doctrine, the Court determined that the doctrine, even if applicable, would not preempt municipal property taxes because "revenues generated from the taxes will be used to provide police and fire protection to the

premises, as well as to provide water, electrical and sewer services to the building” and therefore the municipal interest in the tax was *not* relatively inconsequential. The same conclusion applies to the City’s taxation of the Properties.

20. Nevertheless, the board acknowledges that the *Bracker* test requires “particularized examination of the relevant state, federal, and tribal interests” in the tax and the object to be taxed. To weigh the municipal interest against the federal and tribal interests, Courts consider whether the thing to be taxed is part of a “comprehensive and pervasively regulated” federal program. Here, the City of Nome seeks to tax real property.

21. NSHC’s argument that the Properties are comprehensively and pervasively regulated by a federal program relies on PFSA’s occurring at the Properties and the Section 105(l) leases of the Housing Properties.

22. Though it does not significantly influence the board’s analysis, only one-third of NSHC’s funding is from the Funding Agreement. If NSHC is using the Properties that are *not* funded through the Funding Agreement or only partially funded through the Funding Agreement, then the degree of the federal government and tribal interest would appear to be proportionately diminished. NSHC has not provided information showing the degree to which its use of the Properties is based on IHS funding under the Funding Agreement.

23. NSHC admits that no PFSA are provided at the BHS Property. NSHC provides no PFSA’s at the State Lease Property. Insofar as NSHC alleges that the state is providing PSFA’s on NSHC’s behalf, the record does not support any degree of federal oversight of the state’s use of the State Lease Property. Notably, the lease for the State Lease Property is subject to all state and local laws. Federal regulation of the BHS Property and the State Lease Property, if any, is minor. The City’s interest in the tax is not relatively inconsequential compared to the federal and tribal interests in the BHS Property and the State Lease Property.

24. NSHC provides staff housing at the Housing Properties. The provision of housing is pursuant to the Funding Agreement, thus NSHC conducts PFSA’s at the Housing Properties. NSHC asserts that it holds Section 105(l) leases for the Housing Properties. Of note, NSHC attested under oath that no third party has a legal or equitable interest in either of the Housing Properties. To the extent NSHC relies upon these leases, it has not shown that they represent comprehensive and pervasive regulation of the real property.

25. The record shows a reasonable degree of federal oversight, perhaps even comprehensive and pervasive federal regulation, *of the PSFA’s*. However, the City is not seeking to tax PSFA activities. The City is seeking to tax the real property. While some federal regulation of the real property arguably exists, the record shows that federal regulation of the real property is far from comprehensive and pervasive. No reasonable interpretation of the record suggests that this is a “context in which the Federal Government has undertaken to regulate the most minute details” *of the real property*. The City’s interest in the tax to be assessed against the Housing Properties is not relatively inconsequential compared to the federal and tribal interests in the real property.

26. The board recognizes a strong tribal interest, and an important interest of the

region generally, in the individual healthcare and public health services NSHC provides. However, the City's tax does not unduly burden these activities, if it burdens them at all. Approximately one-third of NSHC's revenue is from the Funding Agreement. NSHC has not shown that payment of the taxes would require the use of funds that Congress intended for tribal health.

1. The denial of the application for an exemption from 2024 real property tax for the 7-Plex Property is AFFIRMED.

2. The denial of the application for an exemption from real property tax for the 20-Plex Property is AFFIRMED.

3. The denial of the application for an exemption from 2024 real property tax for the BHS Property is AFFIRMED.

4. The denial of the application for an exemption from 2024 real property tax for State Lease Property is AFFIRMED.

This is the final administrative action of the City of Nome on these appeals. This action may be appealed to superior court. Any such appeal must be filed within 30 days from the date these Findings of Fact and Conclusions of Law are adopted.

Duly adopted this \_\_\_<sup>th</sup> day of May, 2024.

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Hon. John Handeland  
Chair  
City of Nome Board of Equalization