

IN THE MATTER OF
NORTON SOUND HEALTH CORPORATION APPLICATIONS FOR 2025 REAL PROPERTY
TAX EXEMPTION FOR:

1. PARCEL # 190.1.059
2. PARCEL # 001.221.05A
3. PARCEL # 192.1.085
4. PARCEL # 001.118.07
5. PARCEL # 001.31.01A
6. PARCEL # 001.115.01
7. PARCEL # 001.211.03A
8. PARCEL # 001.211.03B
9. PARCEL # 001.201.05

INTRODUCTION

1. On January 28, 2025, Norton Sound Health Corporation ("NSHC") submitted nine applications for exemption from 2025 property tax. NSHC claims exemption based on use for nonprofit hospital and/or charitable purpose as well as implied federal preemption of the City's taxation.

2. Nome's form 2025 Application for Municipal Property Tax Exemption, which is substantially the same as the form for the several proceeding years, requires the applicant to provide information regarding use of the property for which exemption is sought. The applicant is required to provide or identify:

- a. The basis for the exemption requested;
- b. Each and every use and activity during the entire calendar year preceding the year for which exemption is requested;
- c. If any person or entity other than the applicant claims any legal or equitable interest in the property, the applicant must:
 - i. Identify by full legal name and address each such person or entity, and describe the affiliation or interest claimed by each such person or entity (i.e., lessor, lessee, landlord, tenant, mortgagor, mortgagee, secured creditor, partner, joint venturer, parent or subsidiary corporation, tenancy by the entirety [sic] or tenancy in common, franchisee, etc.); and
 - ii. Describe all uses and activities conducted on or with the property claimed for exemption, by the person identified above as affiliated or interested.

- d. If the property generated revenues or in-kind benefits of any nature (including donations, contributions, custodial services, or contributions to utility services) the applicant must
 - i. Describe all uses and activities conducted on or with the property claimed exempt, by each and every person or entity contributing cash revenues or in-kind benefits of any nature;
 - ii. Identify by full legal name and address each and every person or entity contributing cash revenues or in-kind benefits of any nature; and
 - iii. Describe in detail the amount of cash revenues and/or the precise nature and frequency of in-kind benefits received during the entire calendar year preceding the year for this requested exemption, from all persons and entities having use or conducting any activity on or with the property claimed for exemption;
- e. If at any time during the entire calendar year preceding the year for this requested exemption, the property has been used for purposes other than legally exempt activities or uses, the applicant must provide precise quantification of space and time for each identified purpose or use; and
- f. Finally, the applicant must describe, where applicable, the specific nature and extent of any claimed religious charitable or educational purposes, the specific portions of real property exclusively or solely used for such purposes, any and all uses of clergy residences, leasing and rental arrangements, and any other matters pertinent to location, quantification and uses of the property claimed for exemption.

3. For each complete application, “[u]nder penalty of perjury, the undersigned declares that he and/or she has examined this Application, including accompanying documents and statements, and to the best of his/her knowledge and belief, it is true, correct, and complete.”

4. NSHC’s 2025 applications for exemption follow upon its applications for 2022 tax exemptions based on hospital and/or charitable use. The 2022 applications did not seek exemption based on implied federal preemption or sovereign immunity. NSHC’s 2023 applications assert exemption based on nonprofit hospital and/or charitable use, implied federal preemption, and sovereign immunity. NSHC’s 2024 applications assert exemption based on nonprofit hospital and/or charitable use, implied federal preemption, and sovereign immunity. The 2022-2024 tax exemptions are, in different cases, pending before the Superior Court at Nome and the Alaska Supreme Court. NSHC’s 2025 applications rely upon the superior court’s decision in 2NO-23-00156 CI. However, after asserting in its applications for exemption that this decision has preclusive effect, NSHC successfully argued a contrary position, that this decision is not a final decision of the superior court. Accordingly, the preclusive effect of a final decision in that matter, if any, is not present.

5. In previous years, the assessor denied certain applications for exemption without providing meaningful findings in support of the assessor's decision. For 2024, NSHC alleged that the lack of findings sufficient to explain the reason for the assessor's decisions denied NSHC due process.

6. By letter dated February 5, 2025, the City requested that NSHC provide certain materials and information for proof of its eligibility for exemption. NSHC was informed that if it failed to provide any requested record or information reasonably available to NSHC, the assessor may infer that the withheld information would show that use of the property is not exempt. If NSHC was unable to provide any requested record or information, it was asked to provide an affidavit attesting to why the record or information cannot be provided.

7. NSHC was also informed that the assessor may make oral examination of an NSHC representative as provided for by AS 29.45.130(c) and that if such examination was deemed necessary, it would be conducted on March 18, 2025. Following review of supplemental information NSHC submitted, the City informed NSHC that examination upon oath would be conducted on March 18, 2025 at 9:30 am and was requested to provide representative, or representatives, of NSHC able to answer questions regarding NSHC's applications for exemption and the information provided in support.

8. On February 25, 2025, NSHC provided additional information in response to the City's February 5, 2025 requests for information.

9. On March 18, 2025 and at the City's request, NSHC submitted to oral examination regarding its applications for 2025 tax exemption. At that time, NSHC gave the City written notice of its objection to the oral examination. Dan Pardee testified on behalf of NSHC. He was joined by Stephen Osborne, legal counsel for NSHC. Charles Cacciola appeared for the City of Nome assessor.

10. NSHC written objection asserts that AS 29.45.130(c) "provides for oral examination under oath as related to the assessor's independent investigation of the 'valuation of the property'" and therefore does not apply to investigation into exemption, and that such examination is unduly burdensome. NSHC's objection is without merit.

11. Subsection (c) states: "An assessor may examine a person on oath. On request, the person shall submit to examination at a reasonable time and place selected by the assessor." Nothing in this language suggests that that the subsection is limited to "valuation of the property." NSHC further asserts that AS 29.45.130(c)'s purported limitation to valuation investigations "is evident from the titles of the preceding sections[.]" However, section titles "are not part of the statute" and "are not part of the law of Alaska."¹ Moreover, the Alaska Supreme Court has stated that the investigation statute "is an integral part of Alaska's statutes

¹ *DeNuptiis v. Unocal Corp.*, 63 P. 3d 272, 278 n. 15 (Alaska 2003).

establishing a uniform procedure in *taxing, levying, collecting, and foreclosing* taxes by political subdivisions of the state[.]”²

12. NSHC’s assertion that “[c]ase law further supports that AS 29.45.130 is limited to oral examinations under oath related to the valuation of the property” is not supported by the U.S. District Court decision nor the Alaska Supreme Court’s decision in an eminent domain case cited by NSHC, and NSHC fails to consider the several published decisions of the Alaska Supreme Court where an assessor investigated exemption pursuant to AS 29.45.130 and its predecessor statute.³

13. In previous years, NSHC complained that the assessor did not provide sufficient findings to explain the reason for the assessor’s decisions and thereby denied NSHC due process. However, the sparse information NSHC provides with its applications – omitting information that it is required to provide or asserting that such information is not applicable – is insufficient for the assessor to provide meaningful findings. Without obtaining information pursuant to the statute, the only option would be to summarily deny the applications for exemption based on NSHC’s failure to prove eligibility. This is the outcome that NSHC has (reasonably) complained of in the past.

14. If NSHC believes that oral examination under oath is unduly burdensome it does not need to apply for exemption. “[T]ax exemption is an economic benefit conferred by the State.”⁴ NSHC was not required to apply for this benefit. It was free to decline the request for supporting information and have exemption denied.⁵ By asking for the benefit of a tax exemption, NSHC invited the assessor to determine its eligibility.⁶ In 2025, NSHC seeks exemption for \$145,063,500 of real property. Given the value for which NSHC seeks exemption, it is eminently reasonable for NSHC to put significantly more attention and effort into proving eligibility for exemption than it has or that the City has asked of it.

15. Without authority to investigate, as NSHC argues, the only evidence that could be considered is whatever the applicant chooses to provide. An applicant could provide only evidence that supports exemption while declining to submit evidence that would plainly show that property is not exempt.⁷ An applicant could, for example, state under oath that that no person claims a legal or equitable interest in the property, such as a lessee or tenant, or that use

² *State v. 45,621 Square Feet of Land*, 475 P.2d 553 (Alaska 1970) (emphasis added).

³ *City of Nome v. Catholic Bishop of No. Alaska*, 707 P.2d 870 (Alaska 1985); *Henash v. Fairbanks North Star Borough*, 265 P.3d 302, 303-304 (Alaska 2011) (“*Henash II*”); *Fairbanks North Star Borough v. Victory Ministries*, 515 P.3d 111, 113 (Alaska 2022).

⁴ *Markham v. Kodiak Island Borough Bd. of Equalization*, 441 P.3d 943, 950 (Alaska 2019).

⁵ *Id.*, at 952 (regarding exemption under AS 29.45.030(e)).

⁶ *Id.*, at 953.

⁷ See *Alascom, Inc. v. North Slope Borough*, 659 P.2d 1175, 1180 (Alaska 1983) (“When a taxpayer underreports his holdings, the borough will have no reason to assess the omitted property until its independent investigation reveals the taxpayer’s omission.”).

of property did not generate any income despite knowing that the actual fact of the matter is that there are lease and tenant interest and that the use of the property generates income. Without authority to investigate, property owners would have a strong pecuniary motivation to provide incomplete, misleading, and even false information to obtain exemption. This moral hazard would be contrary to public policy.

16. Previously, NSHC a sworn application representation that there was no applicable third party, including lessee, interest should not affect its ability to later rely on a lease because the assessor is empowered to “request additional information pursuant to AS 29.45.130[.]”⁸ When it was too late for the assessor to “request additional information pursuant to AS 29.45.130,” NSHC took the position that the assessor should have used the investigatory authority provided by AS 29.45.130.

17. The following findings and conclusions are based on:

- a. NSHC’s 2025 Applications for Municipal Property Tax Exemption received on January 28, 2025;
- b. The City of Nome’s February 5, 2025 letter to NSHC;
- c. NSHC’s February 25, 2025 response to the City’s February 5, 2025 letter;
- d. Sworn testimony provided on March 18, 2025;
- e. 2025 Assessment Notices;
- f. City of Nome Ordinance No. O-24-06-01;
- g. Transcript of June 1, 2023 board of equalization hearing;

and where and as specifically identified:

- h. The City’s public GIS portal;⁹
- i. November 2022 contract between NSHC and CompHealth Medical Staffing, provided by NSHC to the BOE with its 2024 appeals of the assessor’s exemption determinations; and
- j. Certain information NSHC provided to the board of equalization for tax exemption in previous years, as identified.

⁸ *NSHC v. City of Nome*, 2NO-23-00156 CI, Appellant’s Reply Brief (June 5, 2024), at 9.

⁹ <https://geohub-nome.hub.arcgis.com/>.

18. Because of the constrained timeline for assessments, BOE appeals, certifying the tax roll, and setting the mill rate, the City issued 2025 assessment notices on March 26, 2025,¹⁰ with the written basis for the exemption determinations to follow. Those assessment notices state that the deadline to appeal is April 25, 2025. Because the assessment notices do not provide the basis for the 2025 exemption determinations, the time to appeal from the 2025 exemption determinations commences from the date this decision is mailed.

LEGAL PRINCIPLES

19. “All property is benefited by the security and protection furnished by the State, and it is only just and equitable that expenses incurred in the operation and maintenance of government should be fairly apportioned upon the property of all. An exemption from taxation releases property from this obligation to bear its share of the cost of government and serves to disturb to some extent, that equality in the distribution of this common burden upon all property which is the object and aim of every just system of taxation. While reasonable exemptions based upon various grounds of public policy are permissible, yet taxation is the general rule... . It is for this reason that statutes granting exemptions from taxation are strictly construed. A taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or the necessary implication of some statute conferring this privilege upon him.”¹¹

20. “[T]ax exemption is an economic benefit conferred by the State” and “is merely an economic interest” of the property owner.¹² “A taxpayer claiming a tax exemption must produce evidence sufficient to prove the property’s eligibility for the exemption”¹³ and “bears the burden of demonstrating that the property in question falls within the claimed exemption.”¹⁴

21. Alaska Statute 29.45.030(a)(3) establishes that property is exempt from general taxation if it is “used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes[.]” This exemption provision will be strictly construed against the applicant and in favor of the taxing authority.¹⁵ “This canon of strict construction, however, ‘is

¹⁰ The assessed land and improvement values set forth in the March 26, 2025 assessment notices are the correct full and true values as determined by the assessor. However, due to scrivener’s error in adjustments for exemption and therefore in the taxable value, the City issued corrected notices for those properties.

¹¹ *Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence*, 553 P.2d 467, 469 (Alaska 1976) (quoting *Animal Rescue League of Boston v. Assessors of Bourne*, 310 Mass. 330, 37 N.E.2d 1019, 1021 (1914)).

¹² *Markham*, 441 P.3d at 950; *State v. Schmidt*, 323 P.3d 647, 663 (Alaska 2014).

¹³ *Fairbanks v. Dená Nená Henash*, 88 P.3d 124, 144 (Alaska 2004) (“*Henash I*”).

¹⁴ *Catholic Bishop*, 707 P.2d at 878.

¹⁵ *E.g., Sisters of Providence in Washington, Inc. v. Municipality of Anchorage*, 672 P.2d 446, 447 (Alaska 1983).

an aid to, not a substitute for statutory interpretation; the interpretation must still be a reasonable one.”¹⁶

22. To be exempt under AS 29.45.030(a), the applicant must show that all use of the property is “clearly included on the face thereof.”¹⁷ Exemption hinges on how property is “actually used.”¹⁸ To be exempt, “[a]ll uses of the property must be for the ‘direct and primary’ exempt purpose.”¹⁹

23. “The ‘non-profit’ qualifier modifies ‘purposes,’ and the constitution does not expressly refer to the organization that owns or uses the property. In discussing eligibility, the primary exemption provisions do not refer to owner or user organizations. This suggests that the focus under the primary exemption provisions is on the purpose of the use, not on the organization.”²⁰ Accordingly, the use, not the organization, must be for a nonprofit purpose. “In order to qualify for an exemption ... the taxpayer must show, not benefits, but exclusive use.”²¹

24. Two decisions of the Alaska Supreme Court interpret and apply “property used exclusively for non-profit ... hospital ... purposes.”²²

25. In *Sisters of Charity*, the Court first determined that when property is rented, both the owner’s and renter’s uses of the property must be considered and both must be exclusively for non-profit hospital purposes.²³ It then determined that that the “actual use made of the first, second and third floors is for office space by doctors engaged in the private practice of medicine.”²⁴ The property owner, which operated a hospital, argued that its use of the property was for hospital purposes because the use was “reasonably necessary for the fulfillment of the generally recognized functions of a completely modern hospital and that it therefore can be characterized as used exclusively for hospital purposes.”²⁵ The Court found that “health care at Providence has been benefited” but “to qualify for an exemption, however, the taxpayer must show, not benefits, but exclusive use.”²⁶ In so doing, the Court rejected the

¹⁶ *Id.* (quoting *McKee v. Evans*, 490 P.2d 1226, 1230 (Alaska 1971)).

¹⁷ *Id.*, at 452.

¹⁸ *Henash I*, 88 P.3d at 133 (“Our property tax exemption cases have primarily turned on whether the property was actually *used* exclusively for an exempt purpose.”) (emphasis in original, further citations omitted).

¹⁹ *Catholic Bishop*, 707 P.2d at 879.

²⁰ *Henash I*, 88 P.3d at 130.

²¹ *Sisters of Charity*, 553 P.2d at 472.

²² *Sisters of Providence*, 672 P.2d at 448.

²³ *Sisters of Charity*, 553 P.2d at 470.

²⁴ *Id.*, at 468.

²⁵ *Id.*, at 470.

²⁶ *Id.*, at 472.

owner's use argument because it "would extend the tax exemption to everything owned and used in some way by an exempt institution. If only the uses of the office space by the Sisters are considered, by definition the Sisters' use is exclusive. Nothing in the exemption statute indicates that such a limited reading is justified."²⁷ Because the Court determined that the tenants' use was not for hospital purposes, and therefore the property was not used *exclusively* for hospital purposes even if the owner's use was for hospital purposes, the Court did not reach AS 29.45.030(c).

26. In *Sisters of Providence*, the Court considered the opposite lessor-lessee relationship.²⁸ The personal property at issue was used by the lessee for "for non-profit ... hospital ... purposes" but, as the Court determined, the lessor's use was not. "The renting by the lessor and the physical use by the lessee constitute simultaneous uses of the property and when an owner leases his property to another, the lessee cannot be said to be the only one using the property. The owner is using it as he sees fit to reap a profit from his investment just as surely as if he physically operated the property."²⁹ Thus, the owner's use of the property to derive profit meant that that it was not "property used exclusively for non-profit ... hospital ... purposes."³⁰ The Court concluded: "The exemption statute involved in this case is clear and unambiguous: '[P]roperty used exclusively for nonprofit ... hospital ... purposes' is exempt from taxation. Property used by the lessee for nonprofit hospital purposes which is also used by the lessor to generate profit is not within the express language of the exemption statute. If there are policies to be implemented by granting an exemption under these circumstances, then it must be done by the legislature."³¹

27. The Alaska Supreme Court has twice rejected that property "reasonably necessary for the fulfillment of the generally recognized functions of a completely modern hospital ... therefore can be characterized as used exclusively for hospital purposes."³² "This formulation of the 'exclusive use' test derives from *Cedars of Lebanon Hospital v. Los Angeles County*, 221 P.2d 31, 40 (1950)."³³ That case was "distinguishable on its facts and on the statutory language."³⁴

28. "[P]roperty used exclusively for non-profit ... hospital ... purposes" does not, and cannot, mean all property used exclusively by an institution that operates a nonprofit hospital,

²⁷ *Id.*, at 470.

²⁸ 672 P.2d 446.

²⁹ *Id.*, at 451 (quoting *Appeal of Wirt*, 592 P.2d 875, 879-80 (Kan. 1979)).

³⁰ *Id.*, at 448.

³¹ *Id.*, at 452 (citation omitted).

³² *Sisters of Charity*, 553 P.2d at 470; *Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists*, 462 P.2d 432, 437-438 (Alaska 1969)

³³ *Sisters of Charity*, 553 P.2d at 470.

³⁴ *Harmon*, 462 P.2d at 438.

nor does a use benefitting a hospital constitute use for hospital purposes.³⁵ Subsection .030(a)(3) does not mention institution organization, or group. In contrast, subsection .030(c) states, “use of the property by nonprofit religious, charitable, hospital, or educational groups.”³⁶ In that subsection, religious, charitable, hospital, and educational modify “groups.”³⁷ In subsection (a)(3), religious, charitable, hospital, and educational modify “purposes.” In both subsections, religious, charitable, hospital, and educational are *adjectives* that modify a *noun*, “groups” or “purposes”. Thus, determining whether property is “property used exclusively for non-profit ... hospital ... purposes” depends on whether the property is used for adjective-hospital purposes, not whether it is used for the purposes *of* a hospital, much less the purposes of a hospital organization in furtherance of its hospital goals.

29. To read “hospital” as a noun is incorrect because a noun (hospital) does not modify a noun (purposes).³⁸ Adding the definite or indefinite article to hospital further demonstrates that reading hospital as a noun in the context of .030(a)(3) is incorrect.

30. A (noun) hospital is “an institution proving medical and surgical treatment and nursing care for sick or injured people.”³⁹ Thus, (adjective) hospital purposes are the provision of medical and surgical treatment and nursing care for sick or injured people. Property is therefore used for “hospital purposes” if it is actually used for providing of medical and surgical treatment and nursing care for sick or injured people. For exemption, “[a]ll uses of the property must be for the ‘direct and primary’ exempt purpose.” Accordingly, to be exempt based on use exclusively for hospital purposes, all of the ways the property is actually used must be for direct and primary purpose, providing medical and surgical treatment and nursing care for sick or injured people. In summary, property is exclusively used for hospital purposes if *all* uses of the property are actually for the direct and primary purpose of providing medical and surgical treatment and nursing care for sick or injured people.

31. To instead consider whether property is used for the purposes of an *institution* that provides “medical and surgical treatment and nursing care for sick or injured people” rather than for the purpose of providing “medical and surgical treatment and nursing care for sick or injured people” disregards the language of the statute and a return to the owner’s use theory that the Alaska Supreme Court rejected because that approach “would extend the tax exemption to everything owned and used in some way by an exempt institution.”

32. “[W]hat is done out of good will and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally comes within this meaning of the

³⁵ *Id.*, at 472.

³⁶ Emphasis added.

³⁷ See *Henash I*, 88 P.3d at 130.

³⁸ See *id.* at 130-131 (“Consequently, the question raised by the borough in this appeal is whether TCC was motivated by “charitable purposes,” not whether TCC itself was a “charity.”).

³⁹ Webster’s Seventh New Collegiate Dictionary, 694 (G. & C. Merriam Company, 1963).

word ‘charity.’”⁴⁰ “This concept of charity—as an activity that improves public welfare—reflects the public policy behind tax exemptions.”⁴¹ Property is used for charitable purposes if how the property is actually used “adds to the improvement of the moral, mental, and physical welfare of the public generally.” To be used exclusively for charitable purposes, all uses of the property must be for the direct and primary purpose of adding to the improvement of the moral, mental, and physical welfare of the public generally.

33. Because the statute states “nonprofit religious, charitable, cemetery, hospital, or educational purposes,” property is used exclusively for exempt purposes if *all* uses of the property are for any of the five nonprofit purposes. Use is not limited to one of the five.

34. The Alaska Supreme Court determined that activities of a tribally affiliated organization done to satisfy a Self-Determination contract had a charitable *motivation*.⁴² The Court did not hold that everything done by TCC that is connected to its Self-Determination contract is charitable and exempt. For example, TCC’s use of property to “economically benefit certain businesses (Credit and Finance), provide for economic development of certain areas (Planning), and technical assistance to tribal entities like drafting ordinances and constitutions (VGS)” was held non-exempt notwithstanding the ISDEAA activity.⁴³ The assessor determined that these uses “do not involve activities adding to the moral, mental, and physical welfare of the public generally” and were therefore not use for a charitable purpose.⁴⁴ The Court affirmed the assessor’s *denial* exemption of property so used.

35. This component of *Henash I* stands for the proposition that *an otherwise charitable use* remains exempt notwithstanding that the activity is fully funded by the federal government under an ISDEAA contract. The discussion was of whether the “[s]ource of funding” for these activities rendered them not charitable because TCC was, the borough argued “acting not to fulfill charitable purposes, but to satisfy its contractual undertakings to the government.”⁴⁵ That the activity is conducted to satisfy an ISDEAA contract means that the applicant’s financial incentive to do the work does not necessarily negate a charitable purpose. In summary, the Court held that TCC’s motivation for performing the activities was charitable rather than to satisfy its contractual undertakings. To be exempt, TCC still needed to prove that the activities were charitable, *i.e.*, added to the moral, mental, and physical welfare of the public

⁴⁰ *Matanuska-Susitna Borough v. King’s Lake Camp*, 439 P.2d 441, 445 (Alaska 1968) (quoting *Old Colony Trust v. Welch*, 25 F. Supp. 45, 48 (D.Mass. 1938)).

⁴¹ *Henash I*, 88 P.3d at 135.

⁴² *Id.*, at 132-136.

⁴³ *Henash I*, 140.

⁴⁴ Other uses affirmed as not exempt included TCC’s “administrative offices supported both exempt and nonexempt activities and that ‘[n]onexempt activities include[d] fund-raising, lobbying, and political activity, as well as economic development and commercial loan programs.’” *Id.*, at 140.

⁴⁵ *Id.*, at 133.

generally. Property used for activities that did *not* add to the moral, mental, and physical welfare of the public generally were held to be taxable.

36. “When use of a property involves fee-for-service, the activity generating the revenue must be the “direct and primary purpose of the beneficent institution.”⁴⁶ In adopting the majority rule and denying exemption notwithstanding that the profits from the operation were used for the church’s missionary work, the Court observed that for it “to hold otherwise would result in a taxed commercial business being forced to compete with the commercial activities of institutions claiming a tax exempt status under the law.”⁴⁷

37. “[O]therwise *exempt property* that generates revenue will not lose its exemption if (1) payment is not sought as a result of a dominant profit motive; (2) payment is both incidental to and reasonably necessary for the accomplishment of the exempt activity; and (3) payment does not exceed operating costs.”⁴⁸ This inquiry is distinct from determining in the first instance whether property is used exclusively for charitable purposes.

38. Alaska Statute 29.45.030(c) provides that “[p]roperty described in (a)(3) or (4) of this section 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. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.” “[S]ubsection .030(c) looks to the nature of the user” not to the purpose of the use.⁴⁹

39. The Court has summarized the interplay between subsections .030(a)(3): “As a general matter, property must meet the exclusive use requirement of AS 29.45.030(a) to qualify for tax exemption — that is, it must be ‘used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes.’ In the special case of income-deriving properties, these remain exempt if (1) the entities using a specific property are all nonprofit religious, charitable, hospital, or educational groups (with educational groups using the property exclusively for classroom space); and (2) the property meets the exclusive use requirement of AS 29.45.030(a), being used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes.”⁵⁰

40. Justice Borghesan has observed a “wrinkle” in the Court’s precedent regarding rental income.⁵¹ In *Henash II*, the Court stated that court observed that AS 29.45.030(c) “places no restrictions on the amount of income the charitable organization derives from renting the

⁴⁶ *Evangelical Covenant Church v. City of Nome*, 394 P.2d 882, 883 (Alaska 1964) (quoting Annot., 154 A.L.R. 895, 898 (1945)).

⁴⁷ *Id.*, at 885.

⁴⁸ *Henash I*, 88 P.3d at 137 (emphasis added).

⁴⁹ *Id.*, at 131.

⁵⁰ *Henash II*, 265 P.3d at 305 (emphasis added).

⁵¹ *Kodiak Island Borough v. Kodiak Area Native Association*, S-18884, Oral Argument (Dec. 4, 2024).

property.”⁵² However, earlier decisions state that exemption remains only if the payment does not exceed operating costs. The wrinkle can ironed out. While there is no express limitation on rental income under AS 29.45.030(c), excessive income results in the property no longer being “[p]roperty described in (a)(3).” Where the owner is using the property “to reap a profit from his investment just as surely as if he physically operated the property” this is a use of the property and use “to derive profit renders AS [29.45.030(a)(3)] inapplicable.”⁵³

41. The Alaska Constitution permits of no other result. “Nonprofit” imposes a substantial limit on the scope of the exemption.⁵⁴ Article IX, section 4 of the Alaska Constitution was based on an existing territorial exemption statute that dates to 1923.⁵⁵ The territorial exemption statute, however, did not include the “nonprofit” limitation. The convention minutes show that the delegates’ predominant interest and concern regarding the constitutional provision was the changes from the territorial exemption statute, predominantly the addition of “nonprofit” and the effect of this new term as well as the inclusion of “cemetery.” The language of article IX, section 4 was prepared by the Committee on Finance and Taxation. The Committee gave its report and recommendation that included this language. As would be expected, the non-Committee delegates peppered the reporting Committee delegate with questions regarding the proposed language.

42. With “[a]ll, or any portion of, property used exclusively for non-profit ... purposes”⁵⁶ the intent “is to allow for tax exemptions on property used for religious, charitable, cemetery, or educational purposes, to be exempt from taxation, but to provide for taxation of income-producing property, and furthermore, to allow for proration of such income-producing property.”⁵⁷

43. “Our constitutional framers recognized that self-sustaining nonprofit groups would not necessarily come within the ambit of the word ‘charitable.’ In debating the need to include nonprofit cemeteries within the list of uses that are exempt from taxation, one delegate stated: ‘If you strike this [inclusion of cemeteries] I presume that you will make them subject to taxation, if and when the local government unit or the state ever imposed a tax, unless they were covered under the word ‘charitable,’ and I’m pretty sure most of them are not charitable, they are just self-sustaining, nonprofit groups.’”⁵⁸ However, that discussion was premised on the fact that urban nonprofit cemeteries “would certainly have a high tax rate” and do not make a lot of

⁵² *Henash II*, 265 P.3d at 306.

⁵³ *Sisters of Providence*, 672 P.2d at 450-452 (quoting *Appeal of Wirt*, 592 P.2d 875, 879-80 (Kan. 1979)).

⁵⁴ See *Henash I*, 88 P.3d at 130.

⁵⁵ Ch. 97, § 12, SLA 1923. See *Henash I*, 88 P.3d at 129 n. 15.

⁵⁶ Alaska Const. art. IX, § 4.

⁵⁷ Constitutional Minutes, page 1112, statement of White.

⁵⁸ *Henash I*, 88 P.3d at 144 n.5.

money.⁵⁹ Therefore, “if they are not exempt from taxes, they cannot maintain themselves with the prices they charge”⁶⁰ and this would eventually result in a macabre foreclosure of interred remains.⁶¹

44. The debate regarding cemetery use further shows the delegates’ intent for the limitation “nonprofit” imposes on the scope of exemption: a use is not nonprofit, and therefore not exempt, if it is profitable.⁶² In the exact context of the delegates acknowledging the benefit of nonprofit groups that are self-sustaining, it was pointed out that such groups may go beyond self-sustaining revenue.⁶³ The Committee representative responded that in circumstances “where they make a lot of money, and certainly I agree with him, they should be taxed.”⁶⁴

45. At the conclusion of the debate regarding self-sustaining nonprofit groups and money-making nonprofit groups, Committee member White desired “to state for the record to amplify a little bit in an answer we gave to Mr. Johnson’s question earlier, and that is as to the exemptions extended to property used by the nonprofit, religious, charitable, cemetery, and educational purposes, and that is that this is carefully drawn to provide that even any part of property owned by such organization or used for such purposes which is used for profit could be taxed.”⁶⁵

⁵⁹ Minutes, at 2329-2320, statement of Barr (“Our cemeteries here are a little different than those outside, because we can go out here and stake out a piece of ground in the tundra anywhere and dig a hole, and it’s a cemetery; but down in the states most churches have a cemetery in connection with them; they own the ground, and if it happened to be inside of a city, that ground would certainly have a high tax rate, and they do not make any money off of that.”).

⁶⁰ *Id.*, at 2320 statement of McLaughlin (“We are not faced with the problem today but with the growth of population, it’s going to come. We are in substance, all of us, nothing more or less than rural communities, and the rural communities can beat it in their small religious cemeteries but the time will come when we will have to set aside large plats and those places can’t support themselves if they are not exempt, even though they be nonprofit, if they are not exempt from taxes, they cannot maintain themselves with the prices they charge.”).

⁶¹ *Id.*, statement of Metcalf (“Mr. Hellenthal, if you subject any kind of a cemetery to taxation, isn’t it possible that 50 years from now that the taxes may become delinquent on that cemetery and the sheriff comes around and sells it at a tax sale. What are we going to do with the remains there?”).

⁶² *Id.*, at 2327, statement of Barr, speaking for the Committee: “I will point out, it says nonprofit cemeteries. Of course, there are some cemeteries out in the large cities that do make a profit.”

⁶³ *See id.*, at 2328, statement of Marston.

⁶⁴ *Id.*, at 2330, statement of Barr (“Mr. Marston mentioned these promotional deals where they make a lot of money, and certainly I agree with him, they should be taxed. But what we provide for that in here -- this is only for nonprofit cemeteries, meaning usually religious cemeteries.”)

⁶⁵ *Id.*, at 2332, statement of White.

46. Under AS 29.45.050(b)(1)(A), a municipality may by ordinance exempt from taxation “the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter[.]” This statutory subsection demonstrates that the property described therein is not property described by AS 29.030(a)(3). Accordingly, “nonprofit charitable ... purposes” does not include all uses that may constitute community purposes.

47. In *White Mountain Apache Tribe v. Bracker*,⁶⁶ the U.S. Supreme Court “recognized federal pre-emption as a principal barrier to the assertion of state regulatory authority over tribal reservations and members and specifically invalidated the challenged assertion of taxing authority on that basis” and also that in some instances a state law may be invalid because it infringes the right of reservation Indians to make their own laws and be ruled by them.”⁶⁷ With an on-reservation activity, the “exercise of state authority which imposes additional burdens on a tribal enterprise must ordinarily be justified by functions or services performed by the State[.]”⁶⁸ The Court has also determined that state taxation of *on-reservation* activities was not preempted where “a purpose of the [Congressional] Act is to provide Indian tribes with badly needed revenue, but [it found] no evidence for the further supposition that Congress intended to remove all barriers to profit maximization.”⁶⁹

48. “But tribal activities conducted outside the reservation present different considerations. ‘State authority over Indians is yet more extensive over activities . . . not on any reservation.’ Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.”⁷⁰

49. Thus, while “liberal rules govern preemption analysis with respect to laws that pertain to Indian country or Indians in Indian country, standard preemption analysis applies with respect to nondiscriminatory laws of general applicability that may affect Indians outside of Indian country, as is the case here.”⁷¹

50. The Fifth Circuit affirmed imposition of state sales tax on the off-reservation purchase of vehicles used by a tribe for ISDEAA activities because “the fact that Indian health

⁶⁶ 448 U.S. 136.

⁶⁷ *Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 848 (1982) (citations and quotation marks omitted).

⁶⁸ *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 336 (1983)

⁶⁹ *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 180 (1989).

⁷⁰ *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-149 (1973) (quoting *Organized Village of Kake v. Egan*, 369 U. S. 60, 75 (1962)).

⁷¹ *Malabed v. North Slope Borough*, 335 F.3d 864, 872 (9th Cir. 2003); see also *Blunk v. Arizona Department of Transportation*, 177 F.3d 879, 882-884 (9th Cir. 1999) (recognizing that federal preemption balancing test analysis only applies where the property is Indian country).

care is subject to pervasive federal regulation does not defeat the general principle of *Mescalero* which requires ‘express federal law’ in order for Indian tribes going off-reservation to be exempt from state taxation.”⁷²

51. The Alaska Supreme Court has never held that federal law in Alaska is different than federal law in the rest of the country. When it considered the balancing of interest for potential preemption, the court did *not* hold that the balancing test applied outside of Indian country, but addressed the test in a hypothetical context:

assuming that the *Williams v. Lee* test applies even though KIC is obviously not a reservation Indian tribe, the Borough’s non-discriminatory ad valorem property taxes are valid, because even if the burden falls upon KIC, when Ketchikan’s and KIC’s interests are balanced it is apparent that Ketchikan’s assertion of taxing authority is reasonable.⁷³

52. When applying the balancing test under the above hypothetical assumption to property tax, the Court looked to “the governmental functions [the municipality] provides to the property[.]”⁷⁴ And in *Ketchikan Gateway Borough v. Ketchikan Indian Corp.*, “the substantial services that the borough afforded to the building and the tribe are as applicable” were again considered to reflect the correct inquiry if the preemption doctrine were applicable outside of Indian country.⁷⁵

53. Notably, government-owned property is not inherently exempt from municipal property tax. Alaska Statute 29.45.030(a)(1)(C) provide that “an ownership interest of a municipality in real property located outside the municipality acquired after December 31, 1990, is taxable by another municipality[.]” “A municipality may bring an action in the superior court to compel payment of property taxes due from the state, municipal, or federal entity if the entity does not pay the amount due within six months after the date that the taxes are due.”⁷⁶

FINDINGS

NSHC & Its Activities in Nome

54. NSHC is a tribally owned and operated independent not-for-profit healthcare organization founded in 1970 to meet the healthcare needs of the Inupiat, Siberian Yup’ik and Yup’ik people of the Bering Strait region.⁷⁷

⁷² *Tunica-Biloxi Tribe v. Louisiana*, 964 F.2d 1536, 1542 (5th Cir. 1992).

⁷³ *Board of Equalization for the Borough of Ketchikan v. Alaska Native Brotherhood & Sisterhood, Camp No. 14*, 666 P.2d 1015, 1022 (Alaska 1983)

⁷⁴ *Id.*, at n. 5.

⁷⁵ 75 P.3d 1042, 1048 (Alaska 2003).

⁷⁶ AS 29.45.295.

⁷⁷ *E.g.*, *NSHC v. City of Nome*, 2NO-23-00156 CI, *Appellant’s Excerpt of Record*, at Exc. 28.

55. NSHC has extensive Nome real estate holdings. NSHC-owned Nome real property constitutes approximately one-quarter of the full and true value of all privately owned real property in Nome.

56. NSHC's Funding Agreement "obligates NSHC to be responsible for and to provide health PSFAs identified in Section 3 [Tribal Programs and Budget], utilizing the resource transferred under [the] FA and other funds as they may become available to NSHC." The categories identified under Section 3 (most with additional subcategories) are Executive Leadership, Hospital and Clinic Services, Behavioral Health Services, Other Health Services, Support Services, Capital Projects, Village Built Clinic (VBC) Lease Program, Public Health and Epidemiology, and Other Programs/Services Funded.

57. With Resolution 2010-16, NSHC's board of directors resolved to extend services to persons other than IHS beneficiaries ("Non-Beneficiaries") on a fee-for-service basis "in an amount not less than the actual cost of providing such services" and that it may suspend services to Non-Beneficiaries if it is determined that serving Non-Beneficiaries has resulted in denial or diminution of services to IHS beneficiaries ("Beneficiaries").⁷⁸ When providing services to Non-Beneficiaries, NSHC intends to make a profit.

58. All of NSHC's Nome real property is regulated by the Nome Code of Ordinances as relates to building, construction and nuisances,⁷⁹ smoking,⁸⁰ platting,⁸¹ potable water service,⁸² sewer service,⁸³ refuse service,⁸⁴ 911 surcharges,⁸⁵ building numbering,⁸⁶ snow removal,⁸⁷ and zoning and land use.⁸⁸

⁷⁸ See also 25 U.S.C § 1680(c)(3) (requiring that non-beneficiaries "shall be liable for payment of such health services under a schedule of charges prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services.").

⁷⁹ NCO Title 5.

⁸⁰ NCO Chapter 10.50.

⁸¹ NCO Chapter 11.30.

⁸² NCO Chapter 15.50.

⁸³ NCO Chapter 15.60.

⁸⁴ NCO Chapter 15.70.

⁸⁵ NCO 15.90.010.

⁸⁶ NCO Chapter 16.10.

⁸⁷ NCO Chapter 16.15.010.

⁸⁸ NCO Title 18.

59. All of NSHC's Nome real property benefits from services provided by the City, which are funded, in part, by property taxes. These benefits include police and fire protection, zoning and land use regulation, animal control, roads and transportation and sanitation.

60. NSHC and its services benefit from additional services provided by the City, which are funded, in part, by property taxes. Nome's tax-funded public education assists NSHC in having an educated workforce and makes it easier for NSHC to recruit and retain Nome-based employees. So, too, do Nome's roads and transportation, sanitation, public library, museum, recreational facilities (which NSHC staff use extensively), and permitting and plan review for building life safety, fire, and electrical codes.

61. NSHC's interest in exemption is economic.⁸⁹ It desires to retain funds to use to provide services. The City's interest in taxation is similarly economic and it similarly desires to tax NSHC's property for the services the City provides to the property, to NSHC, and to the City of Nome and its visitors (including NSHC's out-of-town hospital patients) as a whole. Nome's interest in the tax to provide services is not relatively inconsequential compared to NSHC's interest in retaining the funds to provide services.

62. If NSHC's interest is instead stated as the principles implicated — sovereignty, independence, and economic development — then the principles implicated by preempting Nome's tax must be considered. Alaska's Constitution states, "The power of taxation shall never be surrendered."⁹⁰ An express purpose of Article X of the state's constitution is to provide for maximum local self-government.⁹¹ Local self-government cannot be maximized without the ability to effectively tax. Under this view, the interests to be balanced are interests of self-governance. These are compelling interests. Neither a people's interest in self-governance by municipal government nor a people's interest in self-governance by tribal government are relatively inconsequential compared to the other.

63. In 2024, NSHC's board approved a monthly stipend for housing in Nome which will provide full time employees with \$1,500, employees working 80 percent of the time will receive \$1,200 and part time employees \$937.50.⁹²

64. NSHC does not require any of its staff – employees or contractors – to stay at any NSHC owned-property. All NSHC's Nome employees and contractors may obtain housing from a landlord other than NSHC or purchase their own home. NSHC does not have concerns regarding response times for doctors or nurses living anywhere in Nome.

⁸⁹ *Markham*, 441 P.3d at 950; *Schmidt*, 323 P.3d at 663.

⁹⁰ Alaska Const. art. IX, § 1.

⁹¹ Alaska Const. art. X, § 1.

⁹² Anna Lionas, *NSHC board votes to approve housing stipend for employees*, the Nome Nugget (September 27, 2024), <https://nomenugget.com/news/nshc-board-votes-approve-housing-stipend-employees>.

65. Not all NSHC employees are offered employer-owned housing. Which employees are offered employer-owned housing is determined at NSHC's discretion. NSHC employees who live in employer-owned housing choose that option because it is convenient.

66. For employees housed in NSHC-owned properties, NSHC either charges rent or the employee pays income tax on the value of the rent-free housing. The rent, or the value thereof, is not less than market rent. NSHC's tenants may keep pets in rented units.

67. In addition to providing housing for some of its Nome employees, NSHC also provides housing to contractors (a/k/a *locum tenens*). For locum services, NSHC contracts with medical staffing companies such as CompHealth. NSHC's contract with CompHealth specifies that the locums remain employees of CompHealth and are not NSHC employees. CompHealth is a for-profit business.

68. Several of the properties at issue are leased to the IHS. Under these leases, NSHC, the lessor, is paid fair market rent for the property.

69. NSHC testified that these leases are a funding mechanism. This funding mechanism is separate from the Funding Agreement. The Funding Agreement funds the PSFAs identified in Section 3, Tribal Programs and Budget, of the Funding Agreement. The Funding Agreement does *not* fund the operational costs of the facilities where the PFSA's are performed, only the PFSA's themselves. NSHC testified that the lease income is for facility expenses, which is not provided for by the Funding Agreement.

70. The fair market rent paid to NSHC under the leases is determined by appraisal. These appraisals were not disclosed. Whether or not NSHC is considered a real estate investor, the fair market rent is not based on NSHC's expectations for return on investment but the market expectation in which property interests (fee or leasehold) are sold. This is confirmed by the fair market rent reflected in each of the leases – the appraised fair market rent exceeds (often significantly) the costs of operating and managing the income-producing property, including allowance for depreciation. In any event, the fair market rents NSHC receives are found to be profitable, as expected for market rents in a tight market, which NSHC has persuasively argued is the case for Nome. Additionally, market rents in Nome, through market efficiency, reflect the owner's property tax expense.

71. No NSHC Nome property is in Indian country. "[T]he fact that Indian health care is subject to pervasive federal regulation does not defeat the general principle of *Mescalero* which requires 'express federal law' in order for Indian tribes going off-reservation to be exempt from state taxation." Additionally, NSHC has provided no evidence for the supposition that Congress, with the ISDEAA, intended to remove all barriers to profit maximization.⁹³

⁹³ See *Cotton Petroleum Corp.*, 490 U.S. at 180.

**Parcel # 190.1.059; Tract A
(Hospital)**

72. Parcel #190.1.059 is a 38.8-acre tract with a 149,156 square-foot hospital building.

73. NSHC's January 28, 2025 application for exemption for this property states that this property is "used exclusively for the delivery of health care services, including medical and surgical treatment, nursing care, and related services." It attested that there were no applicable revenues or in-kind benefits of any nature generated by this property, and that no person or entity had any legal or equitable interest in the property, including as a lessee.

74. The building contains a kitchen, public cafeteria (346 square feet), and dining room for the cafeteria (882 square feet). The cafeteria and the dining room combined are hereinafter referred to as the "public cafeteria."

75. However, in response to the City's request that NSHC identify "all revenue generated from cafeteria sales" and spatial apportionment information for any non-exempt use, NSHC identified, on February 25, 2025, that the gross cafeteria sales for FY 2024 were \$597,523.12 and \$213,648.73 for FY 2025 year-to-date. These sales amounts are for "register" sales at the public cafeteria and do not include meals prepared for patients.

76. Additionally, NSHC receives \$19,906,449 in annual lease revenue for this property. As 0.823% of the property is the public cafeteria, this space generates \$163,830 in lease revenue.

77. This property is predominantly used for hospital purposes. For present purposes, the City assumes that this use is for *nonprofit* hospital purposes.

78. The public cafeteria sells food and beverages to the public. In this regard, it is no different than any other NOME restaurant or eatery. The actual use of the public cafeteria is operation of a food and beverage business. The cafeteria, dining room, and kitchen are not used exclusively for nonprofit hospital purposes.

79. NSHC has not provided meaningful, if any, evidence that the public cafeteria operation has a charitable purpose.

80. Sale of food and beverage to the public is a fee-for-service or sales activity and is not the primary purpose of NSHC as a beneficent institution. For this reason, the use of the public cafeteria and kitchen is not exclusively charitable.

81. Accordingly, the public cafeteria and kitchen are not used exclusively for nonprofit hospital or charitable purposes.

82. The kitchen is not used *exclusively* for hospital purposes because it is used to prepare meals for hospital patients and food sold in the food and beverage business conducted on the premises. However, the kitchen's role in preparing meals for hospital patients is directly incidental and vitally necessary to the exempt hospital use of the property. Accordingly, this

portion of the property is exempt notwithstanding the fact that the use is not *exclusively* for exempt purposes.

83. NSHC has not shown that this property, much less the public cafeteria, is comprehensively and pervasively regulated by the federal government. Thus, even if the *Bracker* balancing test, rather than principle of *Mescalero*, were applicable outside of Indian country, the first of two necessary prongs for federal preemption is not satisfied. Nor is the second, because Nome has a substantial interest in taxing the property, which benefits from the services those taxes fund. NSHC has not shown that federal law impliedly preempts Nome's non-discriminatory ad valorem property taxes.

84. In addition to the building, the property also includes 38.8 acres of land. Assuming that the land used for parking is used exclusively for hospital purposes or is vitally necessary for the hospital, much of the land, specifically the portion north of the former boundary line for MS 1800 that was vacated with Plat No. 2008-9, is vacant. There is no exempt use of these 20 acres of vacant land.⁹⁴ Accordingly, 52% of the land is not used exclusively for an exempt purpose and 48% is.

85. However, the City's 2025 assessment notice has already been issued for this property, with that notice granting exemption by apportioning exemption to the land value (\$457,300, with \$453,642 determined exempt) in the same proportion as it was granted for the building (0.823%). Unlike 2025 assessment notices where the City issued a corrected notice to correct scrivener's error in the original notice, exemption for the land value based the proportion of the building that is exempt, as reflected in the assessment notice, resulted from failure to separately consider that 20 of the 38.8 acres of land is vacant, and therefore not exempt, prior to issuing the notice. Because this error was not scrivener's error and for other reasons, the 2025 Assessment Notice for Parcel # 190.1.059 is not corrected by the assessor and the taxable value adjustment for exempt use stands absent an appeal for this parcel to the board of equalization, which may adjust the taxable value stated in the assessment notice accordingly.

Parcel # 001.221.05 A; Block 91 Lots 3 & 4
(7-Plex)

86. Parcel # 001.221.05 A is a 14,000 square-foot lot and a seven-unit apartment building. Exemption was denied for 2024.

87. NSHC applied for exemption from 2025 property taxes for the 7-Plex. NSHC did not identify any non-exempt use, request spatial apportionment, or provide information that would allow spatial apportionment.

88. The January 28, 2025 application for exemption for the 7-Plex attests that no person or entity other than NSHC claims any legal or equitable interest in the property. NSHC also attested that there was no applicable persons or entity with a lessee or tenant affiliation for the property.

⁹⁴ See <https://geohub-nome.hub.arcgis.com/>.

89. The property is actually used for the private residences of employees and contractors who work for NSHC. This includes doctors and nurses as well as other staff and medical students.

90. Because the property generated revenues and/or in-kind benefits, NSHC was required to identify by full legal name and address each and every person or entity contributing cash revenues or in-kind benefits of any nature. NSHC did not do so.

91. For FY 2024, the property generated \$217,122.42 in rent and lease income.

92. The NSHC 7-Plex Financial Analysis provided with the application shows \$255,929.34 in total expense for the property. The expense items include \$11,757.60 for property tax, \$27,467.80 for depreciation and \$166,423 for “105(l) Lease Restricted Reserve.”

93. By letter dated February 5, 2025, NSHC was requested to provide the following:

- a. A copy of each lease, rental, or similar agreement for each tenancy, residential use, or other third-party use of the 7-Plex during 2024 and for 2025 through the date of your response.
- b. If not fully identifiable from the records provided in response to the above request, identify the name of each person that has rented, leased, or occupied as a tenant any of the units at the 7-Plex during 2024 and for 2025 through the date of your response, and identify whether such person was, during the period of occupancy, an NSHC (1) employee, or (2) contractor/contract laborer.
- c. A copy of each agreement relating to the FY 2024 \$166,423 in “105(l) Lease Revenue” as identified in the attachment to NSHC’s application for exemption.
- d. An estimate or projection of FY 2025 revenue from use of the 7-Plex, including the sources of such revenue.
- e. An explanation of how NSHC determined \$27,567.80 in depreciation expense for FY 2024.
- f. Each record evidencing payment of the claimed \$166,423 “105(l) Lease Restricted Reserve” expense identified in the attachment to NSHC’s application for exemption.
- g. If you would like the assessor to consider spatial apportionment between any exempt and non-exempt use, please provide a complete description of the non-exempt use, the portion of the property with such use, and how you would have the assessor spatially apportion the exemption.
- h. All other information you would have considered for the purpose determining exemption.

94. The City's request letter also stated that if NSHC failed to provide any requested record or information that is reasonably available to NSHC, the assessor may infer that the withheld information would show that use of the property is not exempt.

95. In response, NSHC provided:

- a. an affidavit,
- b. a letter,
- c. Two "Lease Modification" documents and Two "IHS Compensation Summary" documents related to the 105(l) Lease Revenue identified in the NSHC 7-Plex Financial Analysis provided with the applications;
- d. Projected FY 2025 financial analysis; and
- e. Part of its 2022 Form 990.

96. In regards to the claimed \$166,423 "105(l) Lease Restricted Reserve" expense, NSHC stated that it "places these funds in a reserve account for future facility needs[.]"

97. NSHC was asked about the inconsistency between the application's representation that there are no persons contributing cash or in-kind benefits and the fact that there are rent-paying tenants. NSHC's response was, "stand by the application." Given the opportunity to explain the sworn representation as the product of scrivener's error or other inadvertent mistake, NSHC chose to stand by the incorrect representation. That NSHC has little concern for the accuracy of information it provides to obtain tax exemption appears to be an unavoidable conclusion.

98. NSHC refused to provide copies of lease or rental agreement and to identify each person that has rented, leased, or occupied as a tenant any of the units at the 7-Plex during 2024 and for 2025 through the date of its response. It asserted that this information is irrelevant and unnecessarily requests sensitive and personal data. NSHC also asserted that there "is no private business use of the 7-Plex."

99. NSHC's contention that the lease, rental agreement, and tenant information is irrelevant is wrong. First, the information directly relates to use of the property and whether the use is exempt. Second, if NSHC's interest in the 7-Plex were exempt, the City may still tax others' possessory interests in the property.⁹⁵

100. By asking for the benefit of a tax exemption, NSHC invited the assessor to determine eligibility to receive it. NSHC is entitled to withhold relevant information the City

⁹⁵ E.g., *Fairbanks North Star Borough Assessor's Office v. Golden Heart Utilities, Inc.* 13 P.3d 263, 268-269 (Alaska 2000).

requested based on privacy interests. It simply means NSHC cannot receive the benefit for which it applied.⁹⁶

101. As NSHC was warned before it refused to provide this information (which is for the assessment and collection of property taxes), it is inferred that the withheld information would show that use of the property is not exempt. Specifically, it is inferred that this information would have shown that:

- a. There is third-party use of the property that is not exclusively for nonprofit hospital or charitable purposes;
- b. Income is derived that is not solely from use of the property by nonprofit religious, charitable, hospital, or educational groups;
- c. The residential use is not directly incidental and vitally necessary to NSHC's exempt use of other property;
- d. There is no comprehensive and pervasive regulation of NSHC's rental of the property; and
- e. There are possessory interests that would be taxable were NSHC's fee interest exempt.

102. Based on the above inferences, the 7-Plex is not used exclusively for nonprofit hospital or charitable purposes.

103. The 7-Plex is located in Nome's residential zoning district. This district does not allow hospitals.⁹⁷ If the 7-Plex property were used for hospital purposes, the use would be unlawful and subject NSHC to civil penalties. Exemption for non-profit hospital use is separately denied for this reason.

104. NSHC appears to rely on the fact that the Funding Agreement provides NSHC funding for "the provision of staff housing" to support its claim that this property is used for hospital and charitable purposes. Notably, the provision of staff housing is provided for under Section 3.5. Support Services. This is entirely distinct from Section 3.2, Hospital and Clinic Services. Even the Funding Agreement does not consider the provision of staff housing to be a "hospital" service. It is expressly a "Support Service" which accords with the Nome BOE's previous analysis of this property as a *support* property, not hospital property. Nor does the Funding Agreement render this use charitable. As explained above, *Henash I* does not hold that all activities related to an ISDEAA contract are charitable. Rather, it holds that full funding under an ISDEAA contract does not result in loss of charitable use exemption for an otherwise exempt activity. Whether NSHC's rental of housing is done to satisfy an ISDEAA contract is

⁹⁶ See *Markham*, 441 P.3d at 952.

⁹⁷ See NCO 18.50.020. Hospital is an allowed use in the commercial district. NCO 18.60.020(e).

relevant only if NSHC first proves that the use is otherwise charitable. If it so proves, then the ISDEAA funding does not eliminate exemption.

105. The actual use of the 7-Plex is residential. This residential use is not charitable as it does not contribute the betterment of the moral or physical welfare of the public, nor are these residences used exclusively for nonprofit hospital purposes (which would be unlawful). Healthcare at the hospital has benefited from this use, but “to qualify for an exemption, however, the taxpayer must show, not benefits, but exclusive use.”⁹⁸

106. The basis for charitable use exemption, if any, arises out of NSHC’s Funding Agreement, a Self-Determination contract. The result of a finding that NSHC uses this property to satisfy its obligations under the contract would only mean that NSHC’s motivation may remain charitable notwithstanding compensation under the Funding Agreement. NSHC has not identified any funding under the Funding Agreement for this Property, so whether activities on the property are done to satisfy Funding Agreement obligations is irrelevant.

107. The application for exemption asserts that “without housing the hospital could not sufficiently staff and support its operations to provide essential healthcare services.” While true, it does not mean that the property is used exclusively for nonprofit hospital or charitable purposes. NSHC has an exemplary model of delivering healthcare, but there is nothing exemplary or unique about its need for a housed workforce nor its renting of housing to its employees. All organizations need employees. And all of those employees need a place to live. Were employee housing considered use exclusively by the employer, every nonprofit charitable, educational, religious, or hospital organization would be entitled to exemption for employee housing. That the Alaska Supreme Court has repeatedly held that such housing is not exempt demonstrates that employee housing use is not use exclusively by for the employer’s exempt purposes. Moreover, this is simply a reformulation of the owner’s use argument that the Court has rejected.

108. Nor can it be that that the residence of an employee of a nonprofit charitable, educational, religious, or hospital organization is exempt under the directly incidental and vitally necessary exception to the exclusive use rule. In fact, this would have more drastic consequences than the example above because it would not matter whether title to the property was held by the employer or employee. Because the directly incidental and vitally necessary standard is an *exception* to the exclusive use requirement, the employee-owner’s use (to the extent not already exempt under NSHC’s theory that the residence of an employee is use exclusively by the employer) would not defeat exemption. Whether the employer or the employee owns the residence in no way changes the employer’s vital necessity for a housed work force. Thus, every residence of every employee of a nonprofit charitable, educational, religious, or hospital organization would be exempt from Alaska municipal property taxes

⁹⁸ *Sisters of Charity*, 553 P.2d at 472.

unless the property generated income and where not exempt pursuant AS 29.45.030(c). This is obviously not the case.⁹⁹

109. NSHC was asked how its use of the staff housing properties (the 7-Plex, the 20-Plex, and the Duplex) is different than if NSHC bought the house of its CFO and then leased that house back to the CFO. NSHC refused to answer the question. No adverse inferences need to be drawn from NSHC's refusal to answer. NSHC's argument for exemption for the staff housing properties is simply that the properties are residences of NSHC staff and therefore exempt.

110. For the reasons above, the 7-Plex is not used exclusively for nonprofit hospital or charitable purposes, nor, for the purpose of exemption, is the use directly incidental and vitally necessary to NSHC use of other exempt property.

111. Neither the public generally nor any discreet group thereof (save, arguably, NSHC's employees and NSHC's for-profit contractor partners) receive any substantial benefit from NSHC's employer-provided housing. The employer-owned housing does not add to the moral, mental, and physical welfare of the public, nor is that NSHC's purpose in providing it. The benefits of this use are for NSHC and its employees and for-profit contractor partners, which is what NSHC is intending to accomplish with this use. For these additional reasons, exemption based on use exclusively for charitable (or concurrent with hospital) purposes is denied. While this use may indirectly benefit NSHC's charitable activities, exemption requires use exclusively for exempt purposes, not benefits.

112. If the 7-Plex were property described in AS 29.45.030(a)(3) it still would not be exempt because income derived from the property is not solely from use by nonprofit religious, charitable, hospital, or educational groups. The \$50,699.42 in rental income is from use by the rent-paying tenants. These rent-paying tenants are not nonprofit religious, charitable, hospital, or educational groups. Even if this rental income were for some reason viewed as *also* from NSHC's concurrent "owner's use" of the property, it would not matter because the income must be *solely* from use by nonprofit religious, charitable, hospital, or educational groups. It is not.

113. *Henash II* explains that in "the special case of income-deriving properties, these remain exempt if (1) the entities using a specific property are all nonprofit religious, charitable, hospital, or educational groups (with educational groups using the property exclusively for classroom space); and (2) the property meets the exclusive use requirement of AS 29.45.030(a), being used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes."¹⁰⁰ Thus, where the entities using a specific property are NOT all nonprofit religious, charitable, hospital, or educational groups, it is irrelevant whether the income exceeds expense or if it is derived from a profit motive. To contend otherwise is to ignore the plain statutory language as well as the Alaska Supreme Court's application of it. But again, the preceding

⁹⁹ Notably, Alaska Statute authorizes partial exemption for the personal residences of certain volunteers based on the legislative determination that their volunteer employment provides particular public benefit. AS 29.45.050(r).

¹⁰⁰ *Henash II*, 265 P.3d at 305 (emphasis added).

quotation reiterates that the matter of income under AS 29.45.030(c) is relevant only if all uses of the property are exempt, which is not the case for the 7-Plex. If this property were property described by AS 29.45.030(a)(3), exemption would be denied based on subsection .030(c).

114. While the tenant use of the 7-Plex, and the rent paid for such use, is not exclusively for an exempt purpose, the rental payments are not reasonably necessary for the accomplishment of the non-exempt activity and exceed the operating costs of the activity for which payment is received. First, the claimed \$166,423 “105(l) Lease Restricted Reserve” expense is not an operating expense (or any kind of expense). This is money that NSHC retains for future capital investment. Setting aside funds for future capital investment is not an expense; its accumulation of capital. That this saving of funds is not an expense is further demonstrated by the \$27,467.80 NSHC claims for depreciation expense. Depreciation is the loss in service value of a capital asset over time.¹⁰¹ The \$27,467.80 in depreciation expense shows that \$166,423 “105(l) Lease Restricted Reserve” that is set aside for future capital investment is not an expense.

115. The 7-Plex FY 2024 income exceeded operating costs (including depreciation and property tax expense), by \$127,616.08. For FY 2025, income is projected to exceed expenses by \$135,870. Accordingly, the rent paid by the tenants is not reasonably necessary for the accomplishment of the (non-exempt) activity, and it exceeds the operating costs of the activity for which it is received. Exemption under AS 29.45.030(a)(3) would additionally be denied for this reason.

116. Contrary to NSHC’s representation, the 7-Plex has private business use, at least to the extent that the residence of an employee is considered use by the employer. Contract staff residents are employees of for-profit staffing agencies. Thus, if the residence of an employee is considered property use by the employer, the 7-Plex is used for the private, for-profit business purposes. However, a person’s residential use of the property is use by the resident, not by the resident’s employee.¹⁰² But were it otherwise – that the 7-Plex is not used by the tenants but rather by their employer as NSHC contends – then the 7-Plex would be used for private, for-profit business and exemption would be denied for this reason.

117. NSHC has not shown that the property or its residential use is subject to comprehensive and pervasive federal oversight. NSHC operates the property at NSHC’s discretion, subject to the City’s regulatory authority. Thus, even if the *Bracker* balancing test, rather than principle of *Mescalero*, were applicable outside of Indian country, the first of two necessary prongs for federal preemption is not satisfied. Nor is the second, because Nome has a substantial interest in taxing the property, which benefits from the services those taxes fund. NSHC has not shown that federal law impliedly preempts Nome’s non-discriminatory *ad valorem* property taxes.

¹⁰¹ *E.g., Louisiana Pub. Serv. Comm’n v. F.C.C.*, 476 U.S. 355, 364 (1986).

¹⁰² There are specific circumstances, not present here, where it could be viewed otherwise. See Publication 15-B (2025), *Employer’s Tax Guide to Fringe Benefits*.

118. NSHC has not shown that federal law impliedly preempts Nome's non-discriminatory ad valorem property taxes.

**Parcel # 192.1.085; Mineral Survey ("MS") 1298
(20-Plex)**

119. Parcel # 192.1.085 is a 769,313 square-foot (approximately 17.7 acres) lot with a 20-unit apartment building. The property was not exempt in 2024.

120. NSHC applied for exemption from 2025 property taxes for the 20-Plex. NSHC did not identify any non-exempt use, request spatial apportionment, or provide information that would allow spatial apportionment.

121. The January 28, 2025 application for exemption for the 20-Plex attests that no person or entity other than NSHC claims any legal or equitable interest in the property.

122. NSHC also attested that there was no applicable persons or entity with a lessee or tenant affiliation for the property. However, this response is plainly incorrect because, *inter alia*, "[t]wo of the units are subject to long-term (1-year) leases." While NSHC may not have deliberately provided an incorrect attestation, the inaccuracy shows that NSHC provides information to obtain exemption without concern for accuracy.

123. The January 28, 2025 application also states that "NSHC uses the 20-Plex to provide housing to employees of the hospital." While the statement is true, NSHC's February 25, 2025 disclosures in response to the City's requests show that it is also incomplete. Not all 20-Plex residents work at the hospital.

124. Because the property generated revenues and/or in-kind benefits, NSHC was required to identify by full legal name and address each and every person or entity contributing cash revenues or in-kind benefits of any nature. NSHC refused to do so. NSHC did not provide copies of any lease or rental agreements.

125. For FY 2024, the property generated \$1,448,812.90 in rental and lease income.

126. The NSHC 20-Plex Financial Analysis provided with the application shows \$1,822,310.79 in total expense for the property. The expense items include \$54,138.55 for property tax, \$283,706.25 for depreciation, \$18,900.78 for equipment, repairs, and maintenance, and \$1,239,339 for "105(l) Lease Restricted Reserve."

127. By letter dated February 5, 2025, NSHC was requested to provide the following:

- a. A copy of each lease, rental, or similar agreement for each tenancy, residential use, or other third-party use of the 20-Plex during 2024 and for 2025 through the date of your response.
- b. If not fully identifiable from the records provided in response to the above request, identify the name of each person that has rented, leased, or occupied as a tenant any of the units at the 20-Plex during 2024 and for 2025 through the

date of your response, and identify whether such person was, during the period of occupancy, an NSHC (1) employee, or (2) contractor/contract laborer.

- c. A copy of each agreement relating to the FY 2024 \$1,239,339 in “105(l) Lease Revenue” as identified in the attachment to NSHC’s application for exemption.
- d. An estimate or projection of FY 2025 revenue from use of the 20-Plex, including the sources of such revenue.
- e. Records evidencing payment of \$81,268 in expense for “Consulting & Purchased Svcs” in FY 2024 as identified in the attachment to NSHC’s application for exemption.
- f. An explanation of how NSHC determined \$283,607.25 in depreciation expense for FY 2024.
- g. Each record evidencing payment of the claimed \$1,239,339 “105(l) Lease Restricted Reserve” expense identified in the attachment to NSHC’s application for exemption.
- h. If you would like the assessor to consider spatial apportionment between any exempt and non-exempt use, please provide a complete description of the non-exempt use, the portion of the property with such use, and how you would have the assessor spatially apportion the exemption.
- i. All other information you would have considered for the purpose determining exemption.

128. The City’s request letter also stated that if NSHC failed to provide any requested record or information that is reasonably available to NSHC, the assessor may infer that the withheld information would show that use of the property is not exempt.

129. In response, NSHC provided:

- a. an affidavit,;
- b. a letter;
- c. Two “Lease Modification” documents and Two “IHS Compensation Summary” documents related to the 105(l) Lease Revenue identified in the NSHC 20-Plex Financial Analysis provided with the applications;
- d. Projected FY 2025 financial analysis;
- e. Part of its 2022 Form 990;
- f. A record of vendor payables;
- g. A copy of its 2022-2024 Funding Agreement; and

h. Documents relating to its ongoing development of the land.

130. In regards to of the \$1,239,339 “105(l) Lease Restricted Reserve” expense, NSHC stated that it “places these funds in a reserve account for future facility needs[.]”

131. NSHC refused to provide copies of lease or rental agreement or to identify each person that has rented, leased, or occupied as a tenant any of the units at the 20-Plex during 2024 and for 2025 through the date of its response. It asserted that this information is irrelevant and unnecessarily requests sensitive and personal data.

132. NSHC’s contention that the lease, rental agreement, and tenant information is irrelevant is wrong. First, the information directly relates to use of the property and whether the actual use is exempt. Second, if NSHC’s interest in the 20-Plex were exempt, the City may still tax others’ possessory interests in the property.¹⁰³

133. By asking for the benefit of a tax exemption, NSHC invited the assessor to determine eligibility to receive it. NSHC is entitled to withhold relevant information the City requested. It simply means NSHC cannot receive the benefit for which it applied.¹⁰⁴

134. As NSHC was warned before it refused to provide this information, it is inferred that the withheld information would show that use of the property is not exempt. Specifically, it is inferred that this information would have shown that

- a. There is third-party use of the property that is not exclusively for nonprofit hospital or charitable purposes;
- b. Income is derived that is not solely from use of the property by nonprofit religious, charitable, hospital, or educational groups;
- c. The residential use is not directly incidental and vitally necessary to NSHC’s exempt use of other property;
- d. There is no comprehensive and pervasive regulation of NSHC’s rental of the property; and
- e. There are possessory interests that would taxable were NSHC’s fee interest exempt.

135. Based on the above inferences, the 20-Plex is not used exclusively for nonprofit hospital or charitable purposes.

136. Separately, the actual use of the 20-Plex is private residential use by employees and contractors who work for NSHC. Some, but not all, of these persons work at the hospital.

¹⁰³ *Golden Heart Utilities, Inc.* 13 P.3d at 268-269.

¹⁰⁴ *Markham*, 441 P.3d at 952.

137. Neither the public generally nor any discreet group thereof (save, arguably, NSHC's employees and NSHC's for-profit contractor partners) receive any substantial benefit from NSHC's employer-owned housing at the 20-Plex. It does not add to the moral, mental, and physical welfare of the public, nor is that's NSHC's purpose in providing it. The benefits of this use are for NSHC and its employees and for-profit contractor partners, which is what NSHC is intending to accomplish with this use. For these additional reasons, exemption based on use exclusively for charitable (or concurrent with hospital) purposes is denied. Healthcare at the hospital may benefit from this use, but "to qualify for an exemption, however, the taxpayer must show, not benefits, but exclusive use."¹⁰⁵

138. For the reasons stated for the 7-Plex, the 20-Plex building is not used exclusively for nonprofit hospital or charitable purposes, nor, for the purpose of exemption, is the use directly incidental and vitally necessary to NSHC use of other exempt property.

139. Were the 20-Plex building property described in AS 29.45.030(a)(3), it would not be exempt because income derived from the property is not solely from use by nonprofit religious, charitable, hospital, or educational groups. The \$209,473 in rental income is from use by the rent-paying tenants. These rent-paying tenants are not by nonprofit religious, charitable, hospital, or educational groups. Even if this rental income were for some reason viewed as also from NSHC's concurrent use of the property, it would not matter because the income must be *solely* from use by nonprofit religious, charitable, hospital, or educational groups. It is not.

140. While the tenant use of the 20-Plex building, and the rent paid for such use, is not exclusively for an exempt purpose, the rental payments are also not reasonably necessary for the accomplishment of the non-exempt activity and exceed the operating costs of the activity for which payment is received. First, the claimed \$1,239,339 "105(l) Lease Restricted Reserve" expense is not an operating expense (or any kind of expense). This is money that NSHC retains for future capital investment. Setting aside funds for future capital investment is not an expense; it's accumulation of capital. That this saving of funds is not an expense is further demonstrated by the \$283,706.25 NSHC claims for depreciation expense and the \$18,900.78 for equipment, repairs, and maintenance. Depreciation is the loss in service value of a capital asset over time.¹⁰⁶ The depreciation expense and equipment and repair expense further show that the \$1,239,339 "105(l) Lease Restricted Reserve" that is set aside for future capital investment is not an expense.

141. The 20-Plex FY 2024 income exceeded operating costs by \$865,841.11. For FY 2025, income is projected to exceed operating expense by \$939,126.83. Accordingly, the rent paid by the tenants is not reasonably necessary for the accomplishment of the non-exempt activity, and it exceeds the operating costs of the activity for which it is received. Exemption under AS 29.45.030(a)(3) would additionally be denied for this reason.

142. Moreover, there is private business use of the 20-Plex, at least if the residence of an employee is considered use by the employer. The locums are employed not by NSHC but by

¹⁰⁵ *Sisters of Charity*, 553 P.2d at 472.

¹⁰⁶ E.g., *Louisiana Pub. Serv. Comm'n*, 476 U.S. at 364.

for-profit medical staffing agencies. Thus, if the residence of an employee is considered use of property by the employer, the 20-Plex is used for private, for-profit business purposes. A person's residence is use of property by that resident, not by the resident's employer. But were it otherwise – that the 20-Plex is not used by the tenants but rather by their employers as NSHC contends – then the 20-Plex would be used for private, for-profit business and exemption would be denied for this reason.

143. So far, only the 20-Plex use of this property has been considered. The property also consists of approximately 17.7 acres of land. Of this acreage, 2.6 acres are appurtenant to the 20-Plex building; 15.1 acres are not. Approximately 1.8 acres are subject a deed restriction that limits some uses and prohibits others. The remaining 13.3 or so acres are used for drainage of the property and development of a new housing project. As of January 1, 2025, the development project had not progressed beyond site preparation.¹⁰⁷

144. The Alaska Supreme Court has not directly answered whether property intended to be used exclusively for exempt purposes in the future is presently use exclusively for exempt purposes. A footnote in *Catholic Bishop* suggests that construction of a building intended for exempt use and later put to such use is not exempt during the period of construction.¹⁰⁸ *Sisters of Charity* also suggests that intent for future exempt use, whether the property is currently under construction or otherwise, is not exempt because “to qualify for an exemption ... the taxpayer must show, not benefits, but exclusive use.”¹⁰⁹ The Court also rejected an “owner’s use” analysis that that “would extend the tax exemption to everything owned and used in some way by an exempt institution.”¹¹⁰ This reasoning applies to property intended for future exempt use. Intent for future exempt use, whether construction has begun or not, is best viewed as benefitting (a future) exempt use, not use exclusively for exempt purposes.

145. Where a statutory exemption is based, in whole or in part, on ownership rather than use exclusively for exempt purposes, courts have often found that property owned by such organizations that is under construction for future exempt activities is exempt. However, exemption under Alaska’s statute hinges upon “whether the property was actually used exclusively for an exempt purpose.”¹¹¹ “Even when the uses of a piece of property are highly related to the primarily exempted activity, the exemption will not apply when the statute requires ‘exclusive’ use.”¹¹²

¹⁰⁷ For the purposes of exemption analysis, it would make no difference if vertical construction had commenced.

¹⁰⁸ *Catholic Bishop*, 707 P.2d at 895 n. 51.

¹⁰⁹ *Sisters of Charity*, 553 P.2d at 472.

¹¹⁰ *Id.*, at 470.

¹¹¹ *Henash I*, 88 P.3d at 133.

¹¹² *Harmon v. North Pacific Union Conference Association of Seventh Day Adventists*, 462 P.2d 432, 437 (Alaska 1969).

146. The California Supreme Court has observed that “matters of bona fide intention as well as acts on the part of the qualifying institution have been recognized in decisions by courts which are committed to the doctrine of liberal construction of tax exemption statutes. But the reasoning of such decisions is without force under the rule of strict construction[.]”¹¹³ In Alaska, extending an exemption statute’s “coverage beyond what is clearly included on the face thereof” is not permitted.¹¹⁴ Neither construction nor intent for future use are clearly included on the face of the exemption statute.

147. Some courts have determined that a property that was previously exempt does not lose exemption during a period of construction. Here, however, even that standard would not be satisfied because this land was not previously exempt. Exemption was sought, but it was denied because the land was vacant, among other reasons.

148. An intention to make future use of property for exempt purposes may never be realized and the property may be sold or put to a nonexempt use and, even if realized, may be long deferred, the public deriving no benefit during this time from the property and such benefit being the reason for the grant of tax exemption. Intent for future exempt use is not an actual use of the property exclusively for exempt purposes. Nothing in the plain language of AS 29.45.030(a)(3) provides exemption based on intent for future use. If there are policies to be implemented by granting an exemption for property under development for prospective future exempt use, then it must be done by the legislature.

149. To find that site preparation for residential development is use exclusively for nonprofit hospital purposes would require “extending an exemption statute’s ‘coverage beyond what is clearly included on the face thereof.’”¹¹⁵ Nor does dirt work add to the moral, mental, or physical welfare of the public generally. There is a benefit, certainly, but it accrues to NSHC in the form of future housing and the significant income NSHC receives for its housing properties. For the 15.1 acres, exemption under AS 29.45.030(a)(3) is denied because development for a prospective future exempt use is not use exclusively for exempt purposes. It would also be denied because the prospective future use is unlikely to be exempt. This, in turn, further demonstrates why intent for future use cannot constitute proof of use for exempt purposes: intent for future use often lacks the details necessary to determine if that future use is an exempt one.

150. That the land development may be funded, in whole or in part, by the Funding Agreement has been considered. As explained above, this would not make the use charitable. That the development is or may be funded by the federal government pursuant to the Funding Agreement does not create a charitable use, it would only mean that NSHC’s *motivation* is charitable rather than being motivated by payment under the contract. Use exclusively for exempt purposes is not determined exclusively by the motivation for the use, as is shown by the

¹¹³ *Cedars of Lebanon Hospital v. Los Angeles County*, 221 P.2d 31, 40 (1950) (emphasis added).

¹¹⁴ *Sisters of Providence*, 672 P.2d 452.

¹¹⁵ *Sisters of Providence*, 672 P.2d at 452 (quoting *McKee*, 490 P.2d at 1230 n. 19.).

Henash I decision affirming denial of exemption for TCC's properties used for "self-governance, planning, [and] village government credit and finance" ISDEAA activities.

151. Finally, the deed-restricted portions of the land do not call for a different result. Those restrictions are for NSHC's development of the land. While there may be some public benefit from undeveloped land, the primary purpose for the use restrictions is to benefit NSHC's residential development. Alaska Statute 29.45.050(e) confirms that the deed-restricted lands are not exempt based on use exclusively for exempt purposes. That statute specifies that a municipality *may*, by ordinance, "exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body." If such use were exempt under .030, there would be no purpose in municipality having the option of establishing exemption for such use.¹¹⁶

152. NSHC operates the property at NSHC's discretion, subject to the City's regulatory authority. NSHC has not shown that its activities at this property, much the property, is comprehensively and pervasively regulated by the federal government. Thus, even if the *Bracker* balancing test, rather than principle of *Mescalero*, were applicable outside of Indian country, the first of two necessary prongs for federal preemption is not satisfied. Nor is the second, because Nome has a substantial interest in taxing the property, which benefits from the services those taxes fund. NSHC has not shown that federal law impliedly preempts Nome's non-discriminatory ad valorem property taxes.

Parcel # 001.118.07; Block 118, Lot 7
(Duplex)

153. Parcel # 001.118.07 is a 7,000 square-foot lot with a duplex. The property was not exempt in 2024.

154. NSHC acquired this property on July 5, 2024.

155. NSHC's January 28, 2025 application for exemption for the Duplex attests that no person or entity other than NSHC claims any legal or equitable interest in the property. NSHC also attested that there was no applicable persons or entity with a lessee or tenant affiliation for the property and that the property did not generate any revenue or in-kind benefits. NSHC included with the January 28, 2025 application an FY 2024 financial analysis if the Duplex. That analysis shows \$0 for rental income, \$0 for 105(l) Lease Revenue, and a total of \$36,257.79 in expense.

156. By letter dated February 5, 2025, NSHC was requested to provide the following:

- a. A copy of each lease, rental, or similar agreement for any tenancy, residential or other third-party use of the Duplex in 2024 and for 2025 through the date of your response.

¹¹⁶ Nor would the deed-restriction at issue qualify for such optional exemption because the grant is not to "a governmental body."

- b. If not fully identifiable from the records provided in response to the above request, identify the name of each person that has rented, leased, or occupied as a tenant any of the units at the Duplex during 2024 and for 2025 through the date of your response, and identify whether such person was, during the period of occupancy, an NSHC (1) employee, or (2) contractor/contract laborer.
- c. Identify all revenue derived from use of the Duplex between September 1, 2024 and December 31, 2024 and, separately, from January 1, 2025 through the date of your response.
- d. Provide an estimate or projection of FY 2025 revenue from use of the Duplex, including the sources of such revenue.
- e. An explanation of how NSHC incurred and determined \$26,271.18 in depreciation expense for FY 2024.
- f. If you would like the assessor to consider spatial apportionment between any exempt and non-exempt use, please provide a complete description of the non-exempt use, the portion of the property with such use, and how you would have the assessor spatially apportion the exemption.

157. In response, NSHC provided:

- a. an affidavit;
- b. a letter;
- c. an addendum to the Funding Agreement;
- d. Projected FY 2025 financial analysis as well as FY 2025 analysis as of February, 24, 2025;
- e. Part of its 2022 Form 990;
- f. a Lease Agreement for Iterant Housing Provider, with attachment;
- g. A copy of its 2022-2024 Funding Agreement; and
- h. Documents relating to its ongoing development of the land.

158. The financial analyses disclosed on February 25, 2025 contradict the representations in the application for exemption. The property is projected to have \$90,588 in 105(l) lease revenue in FY 2025 (which began October 1, 2024) and there is a lease agreement for the property. NSHC provided no explanation or justification for the inaccurate representations in its application for exemption. The application for exemption also states that the residents of the property are contract staff and members of NSHC's ambulance service and that "NSHC collects no rent from these persons." However, as of February 24, 2025, it had collected \$495.12 in rental income other than the 105(l) lease income. While this relatively

modest amount appears to have been collected after NSHC submitted its application for exemption, it is unclear what changed from not collecting rent from the tenants to collecting some rent from tenant(s). NSHC has good cause for this \$495.12 in rental income not appearing in its January 28, 2025 application for exemption. There is no excuse for the omission of the 105(l) lease income. This alone is sufficient to deny exemption.

159. For 2025, NSHC projects that it will earn \$90,588 in 105(l) lease revenue. It has already received \$495 in tenant income, though it is unclear what additional tenant income it may receive because its projected FY 2025 analysis shows no tenant income, which the passage of time has shown to be an incorrect projection.¹¹⁷ Excluding the claimed \$90,588 in "105(l) Lease Restricted Reserve" expense, which is not an expense, the property is projected to have \$45,824.34 in FY 2025 expense. It will have at least \$90,588 in lease and tenant income and thus an operating profit of \$44,763, just shy of a 100% operating profit margin.

160. The tenants of this property appear to be predominantly contract staff, not NSHC employees (which also tends to explain the modest tenant income). As explained above, the contract staff are employed by for-profit staffing agencies. If employee housing is considered use of the property by the employer rather than by the employee, as NSHC contends, then this property is used for for-profit businesses purposes.

161. This property is not used exclusively for nonprofit charitable or hospital purposes for the same reasons that the residential use of the 7-Plex and 20-Plex are not. Exemption under AS 29.45.030(a)(3) and under the doctrine of implied federal preemption is denied for the same reasons it was denied for the 7-Plex and 20-Plex buildings.

Parcel # 001.131.01A; Block 33, Lot 19
(Kusqii House)

162. Parcel # 001.131.01A is a 4,950 square-foot lot with an apartment building. This property was exempt in 2024.

163. The January 28, 2025 application for exemption states that NSHC uses this property to provide transitional housing for persons receiving behavioral health treatment until such time as the persons are able to live independently or are no longer in the program. NSHC attested that the property does not generate revenue or in-kind benefits of any nature (including donations, contributions, custodial services, or contributions to utility services). It also attested that no person or entity other than NSHC claims any legal or equitable interest in the property (i.e., lessor, lessee, landlord, etc.).

164. The application included a financial analysis for the property. For FY 2023, the analysis includes \$35,667 in 105(l) Lease Revenue, \$5,418 in property tax expense, and

¹¹⁷ NSHC explained that the FY 2025 financial analysis was likely prepared before this tenant income was received. That's a reasonable explanation for the seeming inconsistency but is not helpful for determining what the actual 2025 tenant income will be.

\$35,667 in “105(l) Lease Restricted Reserve” expense. For FY 2024, the analysis includes \$101,318 in 105(l) Lease Revenue and \$101,318 in “105(l) Lease Restricted Reserve” expense.

165. By letter dated February 5, 2025, NSHC was requested to provide, by February 28, 2025, the following:

- a. A copy of each rental, use or similar agreement (including an agreement to abide by any housing policies) for any tenancy, residential, or third-party use of the Kusqii House during 2024 and for 2025 through the date of your response. Names of NSHCs patient may be redacted.
- b. If the Kusqii House had any use in 2024 or anticipated use in 2025 other than transitional housing as part of NSHC’s Behavioral Health Services, provide a complete description of each additional use.
- c. A copy of each agreement relating to the FY 2024 \$101,318 in “105(l) Lease Revenue” as identified in the attachment to NSHC’s application for exemption.
- d. Each record evidencing payment of the claimed \$101,318 in “105(l) Lease Restricted Reserve” expense identified in the attachment to NSHC’s application for exemption.
- e. If you would like the assessor to consider spatial apportionment between any exempt and non-exempt use, please provide a complete description of the non-exempt use, the portion of the property with such use, and how you would have the assessor spatially apportion the exemption.
- f. All other information you would have considered for the purpose determining exemption

166. In response, NSHC submitted:

- a. an affidavit;
- b. a letter;
- c. Two “Lease Modification” documents and two “IHS Compensation Summary” documents related to the 105(l) Lease provided with the application;
- d. Projected FY 2025 financial analysis;
- e. City of Nome Resolution R-24-03-01; and
- f. The 2024 Tax Bill.

167. The financial analysis projection for FY 2025 includes \$104,641 in 105(l) Lease Revenue, \$33,263.88 for equipment purchase expense, and \$104,641 for “105(l) Lease Restricted Reserve” expense.

168. NSHC asserts \$5,418 in FY 2023 property tax expense. While NSHC initially paid the tax, it was refunded with interest. Assuming that it is appropriate accounting for NSHC to nevertheless claim this is an FY 2023 expense because the tax was refunded in FY 2024, the FY 2024 analysis should show the refunded amount, including interest, as income of the property. It does not. NSHC has identified expense while omitting corresponding revenue.

169. NSHC’s reliance upon exemption having been granted in 2023 and 2024 is misguided. NSHC did not disclose any lease revenue when it applied for exemption for those tax years. For 2023, this may have been reasonable as it appears that the lease revenue commenced in October 2023 whereas the application was submitted in January 2023. However, NSHC’s application for exemption from 2024 taxes was filed at the end of January 2024, four months into the lease term. Yet the application says *nothing* about lease revenue. This omission was particularly misleading because the 2024 application included a financial analysis for FY 2022 and FY 2023, but *no income or revenue of any type was identified for FY 2023*, only expense. The 2024 application’s FY 2023 financial analysis for the Kusqii house is identical to the 2025 application’s FY 2023 financial analysis except that it *omitted* the \$35,667 in 105(l) Lease Revenue and the \$35,667 in “105(l) Lease Restricted Reserve” expense. NSHC was granted exemption from 2024 property tax based upon an application that omitted material fact. NSHC cannot rely upon an improperly procured 2024 exemption as a basis for 2025 exemption.

170. The FY 2024 and FY 2025 “105(l) Lease Restricted Reserve” expense of \$101,318 and \$104,641, respectively, are not operating expenses or expenses of any kind for the reasons explained above regarding supposed “105(l) Lease Restricted Reserve” expense. Accordingly, the property revenue exceeded expense by \$80,516.03 in FY 2024 and is projected to exceed it by \$17,584.88 in FY 2025.

171. The Kusqii House is in Nome’s residential zoning district. This district does not allow hospitals.¹¹⁸ If the property were used for hospital purposes, the use would be unlawful and subject NSHC to civil penalties. Exemption hospital purposes is denied for this reason.

172. The transitional housing use of the property is not for hospital purposes (which would be unlawful). On its own, this use is plausibly charitable. However, the revenue NSHC receives must be considered.

173. According to NSHC, the \$101,318 and \$104,641 in lease income for FY 2024 and FY 2025 respectively is to compensate NSHC for the cost of owning and managing improved real property (not compensation for the activities conducted at the property) and is not the product of a true lease. Accepting this interpretation, the payment is not for use of the property for hospital or charitable purposes, much less as modified by “nonprofit.” Owning and managing real property is not done for charity. No benefit accrues to the public welfare, to the

¹¹⁸ See NCO 18.50.020. Hospital is an allowed use in the commercial district. NCO 18.60.020(e).

Beneficiaries, or to the Non-Beneficiaries through NSHC's owning and managing real property. From the activities conducted at the property perhaps, but NSHC has expressly disclaimed that the six-figures of lease income is derived from or for those activities. Because this lease income is for use of the property but not for or from any charitable activities that may be conducted on the property, this lease use of the property is not *exclusively* for nonprofit hospital or charitable purposes. "[P]roperty used by a charitable organization to raise money for that group's charitable activities is not exempt since the property's direct and primary use is fund-raising and not charity itself."¹¹⁹ Exemption based on charitable use is therefore denied.

174. Were the City to hold NSHC to the form of its lease agreement and determine that it is a true lease,¹²⁰ it would conclude that NSHC is leasing the property to the federal government for substantial profit. This is a non-possessory use, but it is a use.¹²¹ Here, we have an unusual circumstance where lessor, rather than the lessee, is using the property for arguably charitable purposes, but that does not change the fact that property "which is also used by the lessor to generate profit is not within the express language of the exemption statute."¹²² The convention delegates were clear as to the intent of the newly added "nonprofit" modifier: "to allow for tax exemptions on property used for religious, charitable, cemetery, or educational purposes, to be exempt from taxation, but to provide for taxation of income-producing property[.]"¹²³

175. There is no evident purpose for this lease other than to provide NSHC income. For this income, NSHC does nothing that it is not already contractually obligated to do and separately compensated for. NSHC's sole purpose with this lease is to generate income, a conclusion that accords with NSHC's position that the lease is a funding mechanism. This use is profitable, highly profitable. NSHC's lessor's use is to generate profit. Under this view, exemption under AS 29.45.030 would be denied.

176. On a final note, leasing real property at fair market value is not the direct and primary purpose of NSHC as a beneficent institution. In a market where property tax is levied, property tax expense is priced into market rents. To find that this property is exempt based on use for charitable purposes would result in taxed commercial landlords being forced to compete with the commercial activities of institutions claiming a tax exempt status under the law, which the Alaska Supreme Court has determined to reflect policy not intended by the exemption statute.¹²⁴ Exclusive use exemption would also be denied for this reason.

¹¹⁹ *Catholic Bishop*, 707 P.2d at 879.

¹²⁰ See *Sisters of Providence*, 672 P.2d at 448 ("a taxing authority may penetrate the form of a transaction to determine its substance, but a taxpayer may not").

¹²¹ *Id.* at 450-452.

¹²² *Id.*, at 452.

¹²³ Minutes, at 1112, statement of White.

¹²⁴ See *Evangelical Covenant Church*, 394 P.2d at 885.

177. NSHC has not shown that federal law impliedly preempts Nome's non-discriminatory ad valorem property taxes.

Parcel # 001.115.01, Block 116 Lot 1A
(Main Hostel, Wellness Center, Operations)

178. Parcel # 001.115.01 is a 287,123 square-foot (approximately 6.6 acre) lot with several buildings. The property was exempt in 2024.

179. The application for exemption from 2025 property taxes for this property states that NSHC uses the hostel to provide housing to patients undergoing medical treatment, including pre-admission and maternity patients. NSHC attested that the property does not generate revenue or in-kind benefits of any nature (including donations, contributions, custodial services, or contributions to utility services). It also attested that no person or entity other than NSHC claims any legal or equitable interest in the property (i.e., lessor, lessee, landlord, etc.). No form of income or revenue was identified for this property.

180. By letter dated February 5, 2025, NSHC was requested to identify or provide:

- a. All uses and activities conducted on or within the property that generate revenue and the amount of revenue from each such use or activity.
- b. If you would like the assessor to consider spatial apportionment between any exempt and non-exempt use, please provide a complete description of the non-exempt use, the portion of the property with such use, and how you would have the assessor spatially apportion the exemption.
- c. All other information you would have considered for the purpose determining exemption.

181. In response, NSHC submitted:

- a. an affidavit;
- b. a letter;
- c. Part of its 2022 Form 990;
- d. Patient Hostel Financial Analysis for FY 2024 and projected for FY 2025;
- e. Wellness & Training Center Financial Analysis for FY 2024 and projected for FY 2025;
- f. Lease Agreement for Patient Hostel Building with attachments;
- g. Lease Agreement for Wellness & Training Center with attachments;
- h. Lease Agreement for Operations Building with attachments;

- i. City of Nome Resolution R-24-03-01;
- j. 2024 Assessment Notice; and
- k. 2024 Tax Bill.

182. The information disclosed in response to the City's February 5, 2025 requests shows that NHSC received \$5,091,381 in lease income for this property in FY 2024. The FY 2024 total income from this property is at least \$11,788,292.19.

183. NSHC provided no explanation or justification why its January 28, 2025 application for exemption attests that no party claims any legal or equitable interest in this property, including as a lessee, nor why it attested that the property does not generate revenue or in-kind benefits of any nature (including donations, contributions, custodial services, or contributions to utility services). The property plainly generates substantial revenue — \$5,091,381 in lease income and \$6,969,911.19 in other revenue. While NSHC is a large organization with approximately a quarter billion dollars in annual revenue and \$453,138,246 in net assets according to its 2022 Form 990, it is implausible that it forgot about the leases for this property or the \$11,788,292.19 in revenue from use of the property.

184. Neither the City's application for exemption form nor Alaska law permits an applicant to misrepresent material facts. That the assessor has to investigate and demand proof of eligibility in a form that the assessor considers necessary is not an invitation to misrepresent that a property had no applicable revenue or in-kind benefits of any nature because the applicant can later disclose the true revenue information if the assessor requests revenue information. By submitting the application for exemption, NSHC sought exemption based on the information provided and invited the assessor to rely, and grant exemption, based on that information. The only reason that NSHC did not obtain exemption based on material misrepresentation is that the assessor did not accept NSHC's representations at face value. NSHC (repeatedly) made factual representations to obtain exemption with disregard for the truth and accuracy of those representations. Other considerations aside, the evidentiary value of NSHC's representations are severely diminished.

185. No weight is given to the fact that NSHC obtained exemption for this property for 2023 and 2024. NSHC's 2023 and 2024 applications for exemption for this property similarly attested that the property does not generate revenue or in-kind benefits of any nature (including donations, contributions, custodial services, or contributions to utility services) and that no person or entity other than NSHC claims any legal or equitable interest in the property (i.e., lessor, lessee, landlord, etc.) and no income or revenue was identified for this property. Assuming without determining that those representations were accurate, the \$11,788,292.19 in FY 2024 revenue is a material change of fact rendering the exemption granted in those years irrelevant.

186. Though it is a single tax parcel, the Main Hostel, Wellness Center, and Operations are separate buildings with separate uses. Notwithstanding the troubling lack of candor with the application for exemption for this parcel, exemption is granted for the Wellness

Center and Operations building. Accordingly, only the Main Hostel and its use are considered in detail.

187. The Main Hostel's FY 2024 income and projected FY 2025 income that was omitted from the January 28, 2025 application for exemption but provided on February 25, 2025 in response to the City's requests shows \$733,321 in lease income and \$4,475,168 in "Patient Service Revenue" for FY 2024 and somewhat higher amounts projected for FY 2025. According to NSHC's own determination, revenue exceeded expense by \$2,624,202 in FY 2024 and is projected to do so by \$4,530,057 for FY 2025.¹²⁵ However, the actual FY 2024 profit and projected FY 2025 profit are greater. As with several of the other properties with Section 105(l) lease income, NSHC claims "105(l) Lease Restricted Reserve" as an expense. This amount is \$733,321 for FY 2024 and \$757,374 for FY 2025. Notably, depreciation expense of \$163,566.12 is also claimed for both years. For the reasons discussed above, the 105(l) Lease Restricted Reserve is not an expense. Thus, the actual profit for the Main Hostel is \$3,357,523 for FY 2024 and projected to be \$5,287,431 for FY 2025.

188. The Main Hostel guest revenue figures combine the amounts received from guests staying at the Main Hostel with the guest revenue the West Campus Hostel because NSHC does not separately account for guest revenue from each of the two hostels. Because the guest revenue is for both the Main Hostel and the West Campus Hostel and specific amounts cannot be allocated to either property, for the purpose of determining exemption the combined revenue and expense from both hostels must be considered together.

189. The West Campus Hostel has an additional \$128,920 in lease revenue for FY 2024 and is projected to earn \$1,249,550 in lease revenue for FY 2025. Excluding the claimed "105(l) Lease Restricted Reserve" expense, the total expense for the West Campus Hostel is \$490,599 for FY 2024 and \$547,202 is projected for FY 2025.

190. Accordingly, exemption for the Main Hostel and the West Campus Hostel are considered jointly based on the following income analysis:

Revenue & Expense (Main Hostel & West Campus Hostel)	FY 2024	FY 2025
105(l) Lease Revenue	\$ 862,241.00	\$ 2,006,924.00
Guest Revenue	\$ 4,475,168.23	\$ 5,018,183.03
Expense Total ¹²⁶	\$ 2,341,565.60	\$ 1,141,273.01
Profit	\$ 2,995,843.63	\$ 5,833,834.07

¹²⁵ Each of the individual expense items for 2025 do not add up to NSHC's "Total Expense" for FY2025 of \$1,245,500.09. Rather, the total of the FY 2025 expense items for the Main Hostel is \$1,351,444.61, a difference of \$105,944.52. The City assumes that the individual items are accurate and the total in error, the interpretation more favorable to NSHC.

¹²⁶ For the reasons stated above, the "105(l) Lease Restricted Reserve" expense is omitted.

191. The hostels, both the Main Hostel and the West Campus Hospital, are used for lodging. Persons with medical appointments as well as their escorts stay at the hostels.

192. NSHC charges per person, per night for lodging and a separate meal charge. In 2017, NSHC charged \$175 per person per night and \$42 per person per day for meals. The current lodging rates are higher, though NSHC was uncertain of the exact amounts.

193. Lodging at the hostels is provided to IHS beneficiaries as well as to other persons. For non-IHS beneficiaries, the charges may be billed to the guest's insurer. Based on the tremendously profitable operation, NSHC charges a fee for this service that is significantly greater than the costs of providing the service.

194. Even if the 105(l) lease revenue is excluded, the hostels operate at a significant profit and the fee for the service still exceeds the cost of providing the service.

195. Lodging for persons with medical appointments and their escorts, and the selling of meals, is not use exclusively for nonprofit hospital purposes. The property is not actually used for hospital purposes, and the use is highly profitable. The way NSHC has structured the hostels is beneficial to patients and by extension beneficial to the hospital. "In order to qualify for an exemption, however, the taxpayer must show, not benefits, but exclusive use." The actual use of the property for lodging and providing meals for a fee, which is undoubtedly helpful and convenient to NSHC's patients,¹²⁷ is not significantly different from other Nome lodging establishments such as the Nome Nugget Inn.

196. In fact, NSHC used third-party lodging in an identical manner when the Main Hostel did not have vacancies. In FY 2024, NSHC incurred expense of \$60,953 to place guests in third-party lodging when the hostel was full. If NSHC's argument that the benefit to the patients that accrues as a result of the way NSHC coordinates and provide lodging meant that the hostel is used exclusively for hospital purposes (or that its vitally necessary to exempt use of the hospital property), the third-party lodging that NSHC pays for in the event of overflow was used for the same purpose and would also be entitled to exemption.

197. To the extent NSHC would seek to distinguish between the use of the hostel properties and third-party lodging that NSHC used for the same purpose based on the third-party lodging providers generating profit, there is no distinction: NSHC derives significant profit from its use of the hostels. "The exemption statute involved in this case is clear and unambiguous: Property used for nonprofit hospital purposes "which is also used by the lessor to generate profit is not within the express language of the exemption statute. If there are policies

¹²⁷ NSHC has organized the hostels in a way that enables the lodging to be paid by the guests' insurers (at least in part) rather than out of pocket. This structure enables persons who may not have the resources stay at Nome hotels such as the Nome Nugget Inn, to have safe and comfortable lodging, together with their escorts, while in Nome for medical appointments. This is a commendable undertaking, but does not mean the property is exempt from taxation.

to be implemented by granting an exemption under these circumstances, then it must be done by the legislature.”¹²⁸

198. In *Evangelical Covenant Church*, the Alaska Supreme Court held that fee-for-service or sales use does not eliminate exemption for otherwise exempt property if the line of goods or services sold “is the direct and primary purpose of the beneficent institution.”¹²⁹ “[T]o hold otherwise would result in a taxed commercial business being forced to compete with the commercial activities of institutions claiming a tax exempt status under the law.”¹³⁰ However, the sale of food and lodging is not the direct and primary purpose of NSHC as a beneficent institution, at least not for sales to non-Beneficiaries. To the extent NSHC would have this service considered the provision of healthcare services (and it is found not to be), NSHC would be required to charge Non-Beneficiaries at least the costs of providing the service. That is not beneficent. Exemption under AS 29.45.030(a)(3) would be denied under this analysis.

199. Under *Henash I*, payment from the government for ISDEAA-contracted services does not defeat exemption for property that is used exclusively for an exempt activity. NSHC has not provided evidence that any of the guest revenue is from the Funding Agreement. But even if it is assumed that *some* of the revenue is, not *all* of it is. Not all the hostel guests are Beneficiaries. Some of the guest income is paid by Medicare and some is paid by private insurers, and some may be paid by guests out-of-pocket. Thus, even if some of the guest income is from the Funding Agreement, NSHC would have a charitable motivation, rather than a pecuniary one, only as to that unknown amount of funding.

200. In *Henash I*, the Court also reiterated that exemption “require[s] that payment not exceed operating costs, [but] that requirement should not disqualify property owned by successful fundraisers. We hold that an operating surplus will not preclude an otherwise valid tax exemption so long as revenue is not generated out of a dominant profit motive and revenue is allocated only to support exempt purposes.”¹³¹ First, NSHC has not shown that the multi-million-dollar profit from guest income is allocated only to support exempt purposes. Second, *Henash I* did not involve application of AS 29.45.030(c), much less in the context of the Court’s surplus analysis.¹³² Third, the “surplus” holding was based the Court’s view that it “makes little sense to endorse a rule that would encourage charities to operate at a deficit just to ensure tax exemption eligibility.”¹³³ Charities would only be incentivized to operate *at a deficit* if payment of the property tax exceeds the operating surplus. The “effective fund-raising and careful management” that that generates the surplus that Court evidently wanted to encourage remains

¹²⁸ *Id.*, at 452.

¹²⁹ *Evangelical Covenant Church*, 394 P.2d at 883.

¹³⁰ *Id.*, at 885.

¹³¹ *Henash I*, 88 P.3d at 138.

¹³² The decision looks at AS 29.45.030(c) to interpret .030(a)(3) by distinguishing between the latter’s focus on the use’s purpose and the former on the user.

¹³³ *Id.*, at 139.

encouraged by profitable operations so long as the profitable use still generates a profit at *after* paying the property tax.¹³⁴

201. The “surplus” conclusion of *Henash I* must be construed within the constraints imposed by Alaska’s constitution. As discussed above, the framer’s clear intent for adding the “nonprofit” limitation was to ensure that property that generated a profit would be taxed. At the same time, the framers saw value in the self-sustenance of nonprofit groups.¹³⁵ The discussion regarding the self-sustenance of nonprofit groups was a concern that their meager self-sustaining funds would be unable to shoulder the burden of property taxes for tracts of land in future, developed urban areas.¹³⁶ The express discussion and purpose for exemption of nonprofit *but self-sustaining* uses was for circumstances where taxation of property would destroy the capacity to be a self-sustaining group. This was expressly stated at the convention: “[T]hose places can’t support themselves if they are not exempt, even though they be nonprofit, if they are not exempt from taxes, they cannot maintain themselves with the prices they charge.”¹³⁷

202. *Henash I*’s conclusion that an operating surplus will not preclude an otherwise valid tax exemption must be interpreted and applied within the boundaries imposed by Alaska’s constitution. Notably, the constitutional basis for the “surplus” conclusion from *Henash I* was the framer’s desire for self-sustaining nonprofit’s ability to self-sustain not be eviscerated by property tax, which the scrappy nonprofit groups that were considered could not possibly afford to pay. *Henash I*’s surplus holding cannot be interpreted as allowing limitless profit. As the framers expressly stated for self-sustaining groups, “where they make a lot of money ... they should be taxed.”¹³⁸ Thus, to comport with the restrictions of our state constitution as well as the constitutional basis for *Henash I*’s surplus holding, it must be interpreted to mean that an operating surplus will not destroy property tax exemption where payment of the tax would destroy, or at least present a substantial risk of destroying, the group’s ability to self-sustain.

203. Given the vagaries of the marketplace and revenue from participating in it, this constitutionally mandated limitation does not necessarily mean that if a year’s operating surplus exceeds the amount of the tax by a dollar the property is taxable. The precise contours of when a surplus becomes profit and thereby rendering property eligible for exemption need not be determined here because Nome’s tax would be a relatively small portion of the profit NSHC derives from the hostel properties. There is zero risk that payment of Nome’s tax will impair the

¹³⁴ A contrary interpretation *Henash I* “would result in a taxed commercial business being forced to compete with the commercial activities of institutions claiming a tax exempt status under the law.”

¹³⁵ See Minutes, at 2328-2321; see also *Henash I*, 88 P.3d at 144 n. 5.

¹³⁶ *Id.*, at 2329-2320, statement of Barr (“Our cemeteries here are a little different than those outside, because we can go out here and stake out a piece of ground in the tundra anywhere and dig a hole, and it’s a cemetery; but down in the states most churches have a cemetery in connection with them; they own the ground, and if it happened to be inside of a city, that ground would certainly have a high tax rate, and they do not make any money off of that.”).

¹³⁷ *Id.*, at 2330, statement of McLaughlin.

¹³⁸ *Id.*, statement of Barr.

self-sustaining capacity of the hostel operations. NSHC makes significant money from the hostel properties. “[W]here they make a lot of money, and certainly I agree with [delegates Marston and Barr], they should be taxed.”¹³⁹

204. The assessed value of the West Campus Hostel property is \$2,290,400. The assessed value of the Main Hostel part of that property is \$14,672,196, for a combined potentially taxable value of \$16,962,596. Nome’s mill rate has ranged from 10.5-13 mills over the past four years. At 13 mills, the tax on this assessed value would be \$220,514. If Nome’s 2025 mill were *double* the highest rate that it has been in the preceding four years, the 2025 tax would be \$441,028. Even after payment of 2025 property tax at an inconceivably high mill rate, NSHC’s projected FY 2025 profit is \$3,435,982. NSHC would have no incentive to operate the hostels and thereby forgo \$3,435,982 in profit to avoid paying \$441,028 in property tax.¹⁴⁰ A \$3.5ish million FY 2025 profit provides NSHC ample encouragement to continue to carefully and profitably manage this highly lucrative operation.

205. Alaska Supreme Court “decisions have recognized that the existence of a gap between what the beneficiary pays and the value of the services the beneficiary receives could be evidence of a charitable purpose.”¹⁴¹ If this gap can be evidence of charitable purpose, it can also be evidence of a profitable purpose. That is the case here. Lodging at a 300-500% profit margin is excellent business if you can get it, but it is neither charitable nor nonprofit.¹⁴²

206. As explained below, the overall operation of this property would be profitable if NSHC charged \$0 for guests to stay at the hostel. Thus, the only motivation to charge for guests to stay at the hotel is to profit.

207. In *Catholic Bishop*, the Court held that “property will not lose an exemption under AS [29.45.030(a)(3)] even if payment is received for the use of the property if: (1) the property is used exclusively for exempt purposes; (2) the payment is not sought as a result of a dominant profit motive; and (3) the payment is both incidental to and reasonably necessary for the accomplishment of the exempt activity and does not exceed the operating costs of the exempt activity for which payment is received. If all of the above are met, the property does not lose its exemption on account of the income.”¹⁴³ Here, however, all of the above are not met. First, the hostels have been found *not* to be used exclusively for exempt purposes. Second, the fee-for-service payment is found to have a dominant profit motive. Third, the guest fee-for-service vastly exceeds the operating cost of the activity. Payment for the lodging service could

¹³⁹ *Id.*, statement of Barr (“Mr. Marston mentioned these promotional deals where they make a lot of money, and certainly I agree with him, they should be taxed. But what we provide for that in here -- this is only for nonprofit cemeteries, meaning usually religious cemeteries.”)

¹⁴⁰ The mill rate is unlikely to exceed 13 mills and therefore the actual 2025 tax will be around \$220,000 and therefore NSHC’s FY 2025 profit from the hostel guest income around \$3,650,000.

¹⁴¹ *Id.*, at 136.

¹⁴² Nome’s expressly for-profit lodging business would envy this profit margin.

¹⁴³ *Catholic Bishop*, 707 P.2d at 889 (emphasis added).

be \$0 and the property's activities would remain profitable. At \$0 payment for the lodging service and after paying the 2025 property tax, NSHC would still have over a half-million-dollar profit from its operation of this property. Because the property's activities would remain profitable without charging a penny for the guests' lodging, the payment is not reasonably necessary for the activity. Under this *Catholic Bishop* analysis, exemption under AS 29.45.030(a)(3) is denied.

208. The hostel guests use the hostels for lodging. From the guests' lodging use of the hostels, NSHC derived \$4,475,168 in income in FY 2024 and projects of \$5 million in FY 2025. This income is from the guests' use of the property. The guests are not "nonprofit religious, charitable, hospital, or educational groups." Accordingly, were the property otherwise property described in AS 29.45.030(a)(3), the income would eliminate exemption pursuant to AS 29.45.030(c). Exemption under AS 29.45.030(a)(3) is denied for this independent reason.

209. If the lease income is considered separate from the guest income, the payment is not received as compensation for activities with a charitable purpose or exclusively hospital purpose. Alternatively, as the lessor under the lease agreements for the hostel properties, the owner's use is to generate income. This use is not exempt under AS 29.45.030(a)(3).¹⁴⁴ Under this alternative view of the arrangement, exemption would be denied for this reason.

210. In the past, NSHC has argued that exemption should be determined based on NSHC's use of property and third-party use disregarded. This owner's use approach conflicts with Alaska law. Nevertheless, the property would not be exempt under AS 29.45.030(a)(3) based on the incorrect owner's use approach. NSHC's use of the hostels benefits care at the hospital and NSHC's ISDEAA activities. However, based on the extraordinary profit margin, NSHC uses the hostel properties to generate profit. The owner's use of property to derive profit means that that it is not property used exclusively for nonprofit hospital or charitable purposes."¹⁴⁵ The amount and profit margin are not an incidental operating surplus. NSHC uses the hostels for profit. Thus, even if NSHC's owner's includes use is for hospital and/or charitable purposes, the owner's use also includes generating profit. Accordingly, the owner's use, disregarding use by others as NSHC argues should be done, is not *exclusively* for exempt purposes. Exemption under .030(a)(3) would be denied for this separate reason.

211. Even if the *Bracker* balancing test, rather than principle of *Mescalero*, were applicable outside of Indian country, Nome has a substantial interest in taxing the property, which benefits from the services those taxes fund and therefore the second of two necessary prongs for federal preemption is not satisfied because Nome has a substantial interest in taxing the property, which benefits from the services those taxes fund. Further, the hostel guests benefit from Nome's taxes as well. NSHC emphasizes that the main hostel is across the street from the hospital and the West Campus Hostel is about a 15-minute walk down Sixth Avenue. Those streets are funded, in part, by property tax. NSHC has not shown that federal law impliedly preempts Nome's non-discriminatory ad valorem property taxes.

¹⁴⁴ See generally, *Sisters of Providence*, 672 P.2d 446.

¹⁴⁵ *Id.*, at 448.

Parcel # 001.211.03A; Block 110, Lots 1 & 2
(Hostel West)

212. Parcel # 001.221.03A is a 14,000 square-foot lot with a building. The property was not exempt in 2024 as it was under construction at that time after being vacant.

213. The application for exemption from 2025 property taxes for this property states that NSHC uses this property hostel to provide housing to patients undergoing medical treatment, including pre-admission and maternity patients. NSHC attested that the property does not generate revenue or in-kind benefits of any nature (including donations, contributions, custodial services, or contributions to utility services). It also attested that no person or entity other than NSHC claims any legal or equitable interest in the property (i.e., lessor, lessee, landlord, etc.). No form of income or revenue was identified for this property.

214. The information disclosed in response to the City's February 5, 2025 requests shows that NHSC received \$128,920 in lease income for this property in FY 2024 and projects that it will receive \$1,249,550 in lease income for this property in FY 2025. Claimed FY 2024 expense total \$619,519.45, with \$452,212.68 in depreciation expense, \$21,897.15 for property tax, and \$128,920 for "105(l) Lease Restricted Reserve." For 2025, the total claimed expense is \$1,796,753, with \$452,212.68 in depreciation expense and \$1,249,550 for "105(l) Lease Restricted Reserve." As explained above, the claimed 105(l) Lease Restricted Reserve is not an operating expense, but funds that NSHC keeps for future capital investment.

215. At the oral examination, NSHC clarified that the guest revenue it disclosed on February 25, 2025 for the Main Hostel is from guest use of both the Main Hostel and the West Campus Hostel that is described as Parcel # 001.221.03A. Thus exemption for this property is discussed together with exemption for the Main Hostel above. For the reasons stated, exemption under AS 29.45.030(a)(3) and based on implied federal preemption is denied.

Parcel # 001.211.03B; Block 110, Lot 3A
(HAT Building)

216. Parcel # 001.211.03B is a 13,993 square-foot lot with an office/commercial building. Exemption was denied for 2024 because the property was leased to the State of Alaska.

217. The application for 2025 property tax exemption for this property states that the building was vacant as of December 1, 2024 and that NSHC intends to renovate it in the spring and summer of 2025. The prospective future use is similar to the Main Hostel and West Campus Hostel.

218. NSHC has not obtained any building or renovation permits. As of March 18, 2025, NSHC was still in the "design phase" and was uncertain if it had any designs for the renovation. NSHC could not identify any PFSA's that are conducted at this property.

219. This property was vacant on January 1, 2025.

220. Prospective future use is not present, current use. While property under construction arguable benefits a future exempt use, “to qualify for an exemption, however, the taxpayer must show, not benefits, but exclusive use.” Here, however, the property was not under construction as of January 1, 2025; it was simply vacant.

221. NSHC appears to predicate its claim for exemption on the fact that the Funding Agreement provides funding for Capital Projects. That part, Section 3.6, provides:

Provides technical assistance, planning, design, engineering, management and general contracting for construction, maintenance and operation of all facilities used by NSHC, including both federal facilities and those lease or owned by NSHC. This program also provides technical assistance and construction related services to other tribes and tribal organizations inside and outside NSHC’s service area.

222. First, this provision amply demonstrates that NSHC’s activities, including its activities under the Funding Agreement, are far broader than the provision of healthcare, a matter discussed in connection with NSHC’s implied federal preemption claim. Second, NSHC has not provided any evidence that the above PFSA is conducted at this vacant property. The only above-described Capital Projects activity that has arguably been conducted *in relation to this property* is “design.” This property is the subject of that design work, not *where* the design work was carried out. There is no evidence that this property is used to conduct the Capital Project activities.

223. Additionally, Section 3.6, Capital Projects, is distinct from Section 3.2, Hospital and Clinic Services. Even the Funding Agreement does not consider Capital Project activities to be a “hospital” service. Even if this vacant property were in fact used for capital projects activities, that is not use exclusively for hospital purposes under the plain language of the statute or under NSHC’s Fund Agreement.

224. As explained above, *Henash I* does not hold that all activities related to an ISDEAA contract are charitable. Rather, it holds that full funding under an ISDEAA contract does not result in loss of charitable use exemption for an otherwise exempt activity. That is not a relevant concern for this property because NSHC has not disclosed any funding associated with the “use.”

225. A vacant property does not constitute a gift to the public nor does it improve the moral, mental, and physical welfare. Where improved real estate is in high demand as is the case in Nome, vacant improved real estate is contrary to the public good.

226. Because there is no plausible exclusive use for nonprofit hospital or charitable purposes, exemption under AS 29.45.030(a)(3) is denied.

227. NSHC has not shown that this vacant property is comprehensively and pervasively regulated by the federal government. Thus, even if the *Bracker* balancing test, rather than principle of *Mescalero*, were applicable outside of Indian country, the first of two necessary prongs for federal preemption is not satisfied. Nor is the second, because Nome has a substantial interest in taxing the property, which benefits from the services those taxes fund.

NSHC has not shown that federal law impliedly preempts Nome's non-discriminatory ad valorem property taxes.

Parcel # 001.201.05; Block 127, Lot 7A
(Storage)

228. Parcel # 001.201.05 is a 52,436 square-foot lot and warehouse-type buildings. The property was granted exemption in 2024.

229. The January 28, 2025 application for exemption states that the property is used "to store essential equipment and supplies for the operation of the hospital. ... There is no other use of the property." NSHC attested that the property does not generate revenue or in-kind benefits of any nature (including donations, contributions, custodial services, or contributions to utility services). It also attested that no person or entity other than NSHC claims any legal or equitable interest in the property (i.e., lessor, lessee, landlord, etc.).

230. By letter dated February 5, 2025, NSHC was requested to:

- a. Confirm that Lease No. IHS-NSHC-2024-1039 was not renewed into any portion of 2025 and that no such similar lease for the property for any portion of 2025 exists.
- b. Identify all uses and activities conducted on or within the property that generate revenue and the amount of revenue from each such use or activity.
- c. If you would like the assessor to consider spatial apportionment between any exempt and non-exempt use, please provide a complete description of the non-exempt use, the portion of the property with such use, and how you would have the assessor spatially apportion the exemption.
- d. All other information you would have considered for the purpose determining exemption.

231. In response, NSHC submitted:

- a. an affidavit;
- b. a letter;
- c. Lease Agreement for West Campus Storage Buildings-4 with associated attachments;
- d. An amendment to its Funding Agreement;
- e. City of Nome Resolution R-24-03-01; and
- f. The 2024 Tax Bill.

232. The Lease Agreement for West Campus Storage Buildings-4, wherein NSHC is the Lessor, states: “The Lessor hereby leases to the IHS the following described premises: Four Buildings (Storage, Material Management, Maintenance Shop and Medical Records Storage) with a combined size of 12,448 square feet located at NSA West 6th Avenue, Nome AK 99762.” NSHC received \$137,942 in rental income in FY 2024 and has or will receive \$266,034.92 in rental income in FY 2025.

233. Once again, NSHC provided no justification for why its application for exemption attests that that no person or entity other than NSHC claims any legal or equitable interest in the property (i.e., lessor, lessee, landlord, etc.) and that that the property does not generate revenue or in-kind benefits of any nature (including donations, contributions, custodial services, or contributions to utility services). These representations were not correct. For this property, there is a lease that provides NSHC \$266,034.92 in rental income in FY 2025. Yet NSHC made no mention of *any* lease or *any* rental income and represented that there were none. While NSHC has previously argued that its applications for exemption that misrepresent that the property has no third-party interests and does not generate revenue are of no consequence because the assessor could “request additional information pursuant to AS 29.45.130” to obtain the true information,¹⁴⁶ this does not justify its attestations that this property has no third-party interests and does not generate revenue when, in fact, there is a third-party lease interest and the property generates revenue. The representations and omissions are particularly troubling given that NSHC disclosed the existence of similar leases, and lease revenue, for other properties for which it sought exemption.

234. Nor was it accurate that the property is used solely to store essential equipment and supplies for the operation of the hospital. At the oral examination, NSHC disclosed that the property is used for general storage and includes vehicles, paints, plumbing fixtures, electrical odds and ends, materials and supplies for village facilities, including generators and backflow devices. The lease agreement suggests that only part one of the four buildings is used for storage of medical record – “Storage, Material Management, Maintenance Shop and Medical Records Storage.”

235. Questioned as to whether the sundry items stored at the property were for use at the hospital, NSHC’s representative testified: “Given the scale of the operations with the documents and other things that are stored, overwhelmingly benefit the hospital as opposed to much, much, much smaller operations.” Asked if the witness had been to the building to determine for himself that document storage is the majority use, NSHC’s attorney sought to answer the question for NSHC, “using a little logic in terms of the allocation of space.” Asked if the attorney had a basis of knowledge for his proposed allocation, he responded that the City did not have a basis for questioning his opinion. The City’s basis for questioning the use of the property is NSHC invitation to the assessor to determine eligibility for exemption, as NSHC’s attorney was promptly informed. The City does not need to know whether NSHC provided misleading information to ascertain the veracity of the information it provided. NSHC then contended that “it’s made clear in the application [that] the facility overwhelmingly stores things that are used at the hospital[.]” However, the purpose of the oral examination is for the City to

¹⁴⁶ *NSHC v. City of Nome*, 2NO-23-00156 CI, Appellant’s Reply Brief (June 5, 2024), at 9.

obtain more information and to verify the information that was provided in the application. Simply saying that the application states that property is used in some way defeats the purpose, particularly when this application for exemption, as with other submitted for 2025, contains plainly incorrect representations.

236. On the matter of whether the sundry items stored at the property are for use at the hospital, NSHC explained: “I look at it as everything that we own is integral to what we do at the hospital, so regardless of what property it may or may not be used at is kind of irrelevant.” The way views the matter explains the basic error in its approach to seeking exemption: NSHC’s opinion is that everything it owns is used exclusively for hospital purposes and facts that would indicate otherwise are not relevant and therefore do not need to be disclosed to the City. NSHC’s view is that if NSHC says property is a hospital, it is so, the City has no ability to question it, and exemption must be granted. On the contrary, NSHC has the burden of producing evidence sufficient to prove the property’s eligibility for the exemption,”¹⁴⁷ and it “bears the burden of demonstrating that the property in question falls within the claimed exemption.”¹⁴⁸ NSHC cannot, and does not, satisfy those burdens simply by stating that everything that it owns is integral to what it does at the hospital, particularly when the facts are otherwise. NSHC’s conclusory statements as to the use of its property in service of hospital purposes are not persuasive evidence.

237. Some of the storage is for hospital-related personal property but much of it is not. There is no reliable information in the record to determine the scope of the hospital materials storage. NSHC could have provided such information but declined to do so.

238. This property is used for general storage of odds and ends. This storage benefits other NSHC property (in Nome and in the villages). Some of the NSHC property that benefits from this storage use is exempt, other property benefitted is not. Apportionment is ultimately not necessary because use for the benefit or support of exempt (and non-exempt) activities occurring at other property is not exempt use.

239. Not all property used in some way by a charitable organization is used exclusively for nonprofit charitable purposes. Storing one’s own stuff is not charitable even if one is a charitable organization. The storage use of this property benefits NSHC use of other property, some of which is exempt, some of which is not. However, NSHC must show use exclusively for exempt purposes, not benefits. Moreover, the benefits from the use of this property accrue to NSHC, not to the public. Any indirect benefit to the public or to the the Beneficiaries and Non-Beneficiaries, or improvement of the moral or physical welfare of same, is tertiary. This only significant contribution this property makes to the public welfare is accomplished by keeping it on tax rolls.

240. The basis for charitable use exemption, if any, arises out of NSHC’s Funding Agreement, a Self-Determination contract. The result of a finding that NSHC uses this property to satisfy its obligations under the contract would only mean that NSHC’s motivation for the use

¹⁴⁷ *Henash I*, 88 P.3d at 144.

¹⁴⁸ *Catholic Bishop*, 707 P.2d at 878.

may remain charitable notwithstanding compensation under the Funding Agreement. NSHC has not identified any funding under the Funding Agreement for this Property, so whether activities on the property are done to satisfy Funding Agreement obligations is irrelevant. Moreover, were use of this property funded under the Funding Agreement (again, NSHC has not disclosed any such revenue), it would be under Section 3.5, Support Services, not Section 3.2 Hospital and Clinic Services. Thus, the property would be best described as support property not property used for hospital purposes as the BOE determined in 2022 and 2023.

241. The West Campus Storage property is not used for nonprofit hospital or charitable purposes, nor is the storage use vitally necessary to exempt use of other exempt property.

242. *Sisters of Providence* states that the “renting by the lessor and the physical use by the lessee constitute simultaneous uses of the property and when an owner leases his property to another, the lessee cannot be said to be the only one using the property. The owner is using it as he sees fit to reap a profit from his investment just as surely as if he physically operated the property.”¹⁴⁹ Thus, the owner’s use of the property to derive profit meant that that it was not “property used exclusively for non-profit ... hospital ... purposes.”¹⁵⁰ The Court concluded: “The exemption statute involved in this case is clear and unambiguous: “[P]roperty used exclusively for nonprofit ... hospital ... purposes” is exempt from taxation. Property used by the lessee for nonprofit hospital purposes which is also used by the lessor to generate profit is not within the express language of the exemption statute. If there are policies to be implemented by granting an exemption under these circumstances, then it must be done by the legislature.”¹⁵¹

243. NSHC receives income for the use of this property, \$137,942 in FY 2024 and projects \$266,034.92 for FY 2025. NSHC has not provided an iota of evidence of any expense associated with this property or its use. Under *Evangelical Covenant Church*, if the property were otherwise used exclusively for exempt purposes (which has been found to not be the case), the payments NSHC collects for the storage use of the property would not destroy exemption if storage is the direct and primary purpose of NSHC as a benevolent institution. It is not. Storage could arguably be viewed as an indirect and tertiary purpose of NSHC as a benevolent institution, but that is not the applicable standard. Were the use otherwise exempt, exemption would be denied for these reasons. Property used exclusively for nonprofit exempt purposes was “carefully drawn to provide that even any part of property owned by such organization or used for such purposes which is used for profit could be taxed.”¹⁵² That is the case here.

244. Under *Catholic Bishop*, “property will not lose an exemption under AS [29.45.30(a)(3)] even if payment is received for the use of the property if: ... the payment is both incidental to and reasonably necessary for the accomplishment of the exempt activity and

¹⁴⁹ 672 P.2d at 451 (quoting *Appeal of Wirt*, 592 P.2d 875, 879-80 (Kan. 1979)).

¹⁵⁰ *Id.*, at 448.

¹⁵¹ *Id.*, at 452.

¹⁵² Minutes, at 2332, statement of White.

does not exceed the operating costs of the exempt activity for which payment is received.”¹⁵³ Here, the payment exceeds the operating cost by \$137,942 in FY 2024 and \$266,034.92 in FY 2025. Additionally, the payment is not reasonably necessary for the activity. This property had the same fundamental storage use in 2022, 2023, and 2024, years where exemption was granted. NSHC successfully enjoyed this use without receiving payment for it. NSHC has not provided any evidence of a change in circumstances that results in \$266,034.92 being reasonably necessary for the storage activity in 2025 when it accomplished the same basic activity in 2022, 2023, 2024 without any payment for the use. Where the use otherwise exempt, exemption would be denied for these reasons.

245. As the Lessor under the Lease Agreement for West Campus Storage Buildings-4, the owner’s use is for rental income. This use is not exempt under AS 29.45.030(a)(3).¹⁵⁴ Under this alternative view of the lease arrangement, exemption would be denied for this reason. Similarly, “property used by a charitable organization to raise money for that group’s charitable activities is not exempt since the property’s direct and primary use is fund-raising and not charity itself.”¹⁵⁵

246. Finally, leasing real property at fair market value is not the direct and primary purpose of NSHC as a beneficent institution. In a market where property tax is levied, property tax expense is priced into market rents. To find that this property is exempt based on charitable use would result in taxed commercial landlords being forced to compete with the commercial activities of institutions claiming a tax exempt status under the law, which the Alaska Supreme Court has determined to reflect policy not intended by the exemption statute.¹⁵⁶ Exemption would also be denied for this reason.

CONCLUSIONS

1. NSHC’s 2025 Application for Municipal Property Tax Exemption for Parcel # 190.1.059 is granted as to 99.177% of its total assessed value and denied as to 0.823% of its total assessed value.
2. NSHC’s 2025 Application for Municipal Property Tax Exemption for Parcel # 001.221.05A is denied.
3. NSHC’s 2025 Application for Municipal Property Tax Exemption for Parcel # 192.1.085 is denied.

¹⁵³ *Catholic Bishop*, 707 P.2d at 889 (citation to AS 29.53.020(a)(3), which was subsequently renumbered to AS 29.45.030(a)(3), omitted).

¹⁵⁴ See *Sisters of Providence*, 672 P.2d at 449-542.

¹⁵⁵ *Catholic Bishop*, 707 P.2d at 879.

¹⁵⁶ See *Evangelical Covenant Church*, 394 P.2d at 885.

4. NSHC's 2025 Application for Municipal Property Tax Exemption for Parcel # 001.118.07 is denied.

5. NSHC's 2025 Application for Municipal Property Tax Exemption for Parcel # 001.31.01A is denied.

6. NSHC's 2025 Application for Municipal Property Tax Exemption for Parcel # 001.115.01 is granted as to 66.6% of the assessed value and denied as to 33.3% of assessed value.


7. NSHC's 2025 Application for Municipal Property Tax Exemption for Parcel # 001.211.03A is denied.

8. NSHC's 2025 Application for Municipal Property Tax Exemption for Parcel # 001.211.03B is denied.

9. NSHC's 2025 Application for Municipal Property Tax Exemption for Parcel # 001.201.05 is denied.

This decision may be appealed within 30 days to the board of equalization pursuant to NCO 17.20.050 or directly to the superior court pursuant to AS 29.45.200(c).

Dated this 10th day of April 2025.



For the City of Nome Assessor

