

Circuit Court for Charles County  
Case No.: 08-C-16-001740

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1632

September Term, 2017

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FAMILY OF CARE REAL ESTATE  
HOLDING COMPANY, INC.

v.

SUPERVISOR OF ASSESSMENTS OF  
CHARLES COUNTY

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Meredith,  
Kehoe,  
Salmon, James P.  
(Senior Judge, Specially Assigned),  
JJ.

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Opinion by Salmon, J.

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Filed: July 9, 2019

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Family of Care Real Estate Holding Company, Inc. (“Family of Care”) applied to the State Department of Assessments & Taxation (“SDAT”) for a full charitable property tax exemption for two properties it owns in Charles County where a charity for which it holds the properties operates: 1) an adult daycare facility; 2) a nursing home; 3) an assisted living unit; and 4) a memory care unit. Family of Care also owns property, on which the charity for which Family of Care holds the property, rents a building to a third party that runs a dialysis center.

SDAT allowed the exemption in part and denied it in part. The Property Tax Assessment Appeals Board for Charles County affirmed SDAT’s decision, as did the Maryland Tax Court. Family of Care sought judicial review in the Circuit Court for Charles County. Following a hearing, the circuit court affirmed the Tax Court’s decision.

Family of Care presents the following question for our review, which we have rephrased slightly:

Did the Maryland Tax Court err, as a matter of law, in ruling that two parcels of land owned by [Family of Care] ... are not entitled to 100% property tax exemptions ... pursuant to Maryland Code, Tax-Property Article § 7-202(b)?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

## I.

### BACKGROUND

#### A. Portion of the Properties that are Indisputably Tax Exempt

Family of Care is a Maryland non-stock corporation formed for the sole purpose of holding real property for the benefit of the Charles County Nursing and Rehabilitation

Center (“CCNRC”). CCNRC is a Maryland non-stock corporation formed “exclusively to further and promote charitable, religious, scientific and educational purposes[.]” The main purpose and object promoted by CCNRC is “(1) to operate and maintain a nonprofit nursing home and rehabilitation center; [and] (2) to operate and maintain facilities and provide services in the communities in which the Corporation operates[.]” Both Family of Care and CCNRC are charitable nonprofit organizations exempt from federal and state income tax.

Family of Care owns a 16.83 acre parcel of property located on La Plata Road, in Charles County. The parcel contains two buildings. The first building is a single-story nursing home built in 1980, consisting of approximately 68,000 square feet, which contains the long-term nursing care unit, rehabilitative nursing service unit and a unit that provides adult daycare services. The long-term nursing care and rehabilitative services unit has a 165-bed capacity, with an average occupancy of approximately 157 on a daily basis, with over 200 residents admitted annually. For the fiscal year ending June 30, 2014, approximately 86.5% of the patients served in the long-term nursing care and rehabilitative service unit were indigent and their bills were mostly paid for by either Medicare or Medicaid. About 13.5% were private pay. CCNRC provides some services not covered by Medicare or Medicaid, such as dentistry and other medical services, free of charge to the patients.

The adult daycare unit is a 63-slot program which serves elderly, disabled and severely disabled adults, and provides medical supervision, daily activities and therapy.

The adult daycare center participates in the Maryland Medical Assistance Program, and offers additional services not covered through Medicaid, free of charge. Ability to pay is not a criterion for participation in the adult daycare unit; the unit serves approximately 50 participants on a daily basis. For the year ending June 30, 2014, approximately 94% of the adult daycare participants were indigent and qualified for Medicaid assistance. About 6% of the participants were private pay.

On January 21, 2015, the Supervisor of Assessments of Charles County (“the Supervisor”) ruled that the long-term nursing care and rehabilitative services unit and the adult daycare unit were exempt from property taxes because of the high percentage of Medicaid patients that were treated there. Based on the aforementioned ruling, the Supervisor granted Family of Care a 69% tax exemption on the 16.83 acres located on La Plata Road.<sup>1</sup> A 100% tax exemption was not granted for the La Plata Road Property because, as explained below, the Supervisor deemed other parts of the property non-exempt.

### **B. Property Determined by the Supervisor to be Non-Exempt**

The second building owned by Family of Care and located on the La Plata Road property, is known as the Zimmerman building. The first floor of the Zimmerman building contains a dialysis center, which is operated by BIO-Medical Application of Maryland, Inc. d/b/a Fresenius Medical Care, a third-party lessee. The lessee pays CCNRC \$123,000

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<sup>1</sup> Later, the Supervisors recalculated the exemption to which the property owner was entitled and changed the exemption to 70.5%.

per year in rent. The dialysis center is a for-profit organization and is charged market rates. Having a dialysis center nearby is convenient for the nursing home patients who live in the adjacent building. Prior to the lease, nursing home patients had to travel a substantial distance to obtain dialysis services. According to the testimony received by the Tax Court, nursing home patients received 1,803 treatments at the dialysis center in 2015 and about 960 treatments at the dialysis center in 2014. The dialysis center facility also serves the general public and has the capacity to provide about 7,800 dialysis treatments per year.

On the second floor of the Zimmerman building, CCNRC operates a memory care unit. That unit provides housing and nursing care for patients with Alzheimer's disease and other forms of dementia. That unit provides specially designed activities and therapy to stimulate those with memory loss. The unit has 12 beds and is entirely private pay.

The second property owned by the appellant that is the subject of this appeal, is property located on Morris Drive in La Plata. The Morris Drive property is a 2.15-acre parcel improved by two one-story buildings. The buildings are both assisted living facilities for the elderly. CCNRC provides care and support to the patients who have medical diagnoses and require assistance with activities of daily living. The unit has a 32-bed capacity and on average, 31 of those beds are utilized daily. The assisted living unit is entirely private pay.

## II.

### THE GOVERNING STATUTE

This case is governed by Md. Code (1986, 2012 Repl. Vol.) Tax-Property (“Tax-Prop.”), § 7-202(b) which reads, in material part, as follows:

(b) Requirements for exemption.—(1) Except as provided in subsection (c) of this section, property is not subject to property tax if the property:

(i) is necessary for and actually used exclusively for a charitable or educational purpose to promote the general welfare of the people of the State, including an activity or an athletic program of an educational institution; and

(ii) is owned by: . . .

2. a nonprofit charitable, fraternal, educational, or literary organization[.] . . . [or]

3. a corporation, limited liability company, or trustee that holds the property for the sole benefit of an organization that qualifies for an exemption under this section[.]

In this case, there is no dispute that both properties at issue were owned by a non-profit charitable organization.<sup>2</sup>

The Maryland General Assembly addressed its concerns about too many properties being exempt from taxes in the Maryland Legislative Council Committee on Taxation and Fiscal Matters Report of 1970. This was discussed by the Court of Appeals in *Supervisor*

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<sup>2</sup> Neither CCNRC nor Family of Care have stockholders. The incorporating documents of both organizations prohibit the payment of dividends or distributions to their members, directors, officers, or other private persons, and no dividends or distributions have ever been declared. CCNRC was formed as a charitable institution with the sole object of serving elderly and disabled members of the Southern Maryland community.

*of Assessments of Baltimore County v. Trustees of Bosley Methodist Church Graveyard,*

293 Md. 208, 217-18 (1982), as follows:

The present exemptions from real property taxation embodied in Section 9 of Article 81 were enacted, substantially verbatim, from legislation proposed in 1970 by the Maryland Legislative Council Committee on Taxation and Fiscal Matters. See 1970 Report, Md. Leg. Council Committee on Taxation and Fiscal Matters, Exhibit F and compare 1972 Md. Laws, ch. 350. That committee received its mandate in part from House Joint Resolution 97 (printed as Joint Resolution 55 appended to 1970 Md. Laws) which recognized “that the State of Maryland is being deprived of much revenue as a result of the fact that non-profit organizations are not taxed,” and resolved “(t)hat the Legislative Council is requested to appoint a committee to study the activities of non-profit organizations and the possibility of taxing those organizations . . . .” After analysis of the tax exemption issue, the committee filed its report describing the problem presented as follows:

Tax exemptions constitute an erosion of the property tax base. For various reasons tax exemptions have been granted, and in recent years in increasing numbers, causing a loss of property tax revenues at the very time when local financial needs are great and the financial burden on taxpayers is heavy. The effect of exemptions is cumulative; one exemption by itself may appear to be justified, but taken together, the effect of all exemptions is serious.

The compelling factor which must be borne in mind in considering reform of tax exemptions was well expressed in the preface to the comprehensive review of personal property taxation reported by the Committee in 1957: “Our obligation to remove defects in the tax structure, although compelling, will always remain subordinate to the absolute need of maintaining an adequate supply of revenue to the State and local governments.” [Report, *supra*, at 93-94.]

The committee, after scrutinizing the then existing statutory scheme of property tax exemptions, had requested its staff to prepare two alternative “rearrangements” of property tax exemptions, one identified as a “housecleaning rearrangement” of exemptions, and the other as a “complete rearrangement.” Report, *supra*, at 114. Following a review of the two proposals, the committee recommended adoption of the “complete

rearrangement.” The General Assembly concurred by repealing the prior property taxation provisions and enacting in their stead the current version[.]

Maryland Laws 1972, ch. 350 rearranged and substantively changed the exemptions in Article 81 of the Annotated Code, which formally controlled the right to exemption for real property. Section 9(e), which addressed charitable exemptions, was later re-codified, without substantive change, and is now found in Tax-Prop. Article § 7-202(b).

After the present version of the tax exemption statute was enacted in 1972, it became more difficult to qualify for a property tax exemption.<sup>3</sup> *Supervisor of Assessments of Montgomery County v. Asbury Methodist Home, Inc.*, 313 Md. 614, 632 (1988) (hereinafter “*Asbury*”).

Under the statute as presently written, there are two ways that a property owned by a charity may qualify for an exemption. First, the property may qualify if it “is actually and exclusively used for and necessary for the *charitable purposes of the whole organization.*” *Asbury*, 313 Md. at 629 (citation omitted). In other words, if it is “instrumental in the manner required by [the statute] to the charitable purposes of the encompassing organization[.]” *Id.* (citation omitted). Second, the property may qualify for an exemption if “its own purposes, viewed separately, are charitable.” *Id.* (footnote

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<sup>3</sup> A prior version of the charitable exemption was applied in *Maryland State Fair v. Supervisor of Assessments of Baltimore County*, 225 Md. 574, 578-79 (1961). Property owned by a charity prior to the 1972 revision, was exempt if the following criteria was met: “(1) the property must be that of an educational or charitable institution; (2) no part of the net income (with an exception not here pertinent) of the institution can inure to the benefit of any private shareholder or individual; (3) the property must be actually used by the educational or charitable institution; (4) and the use of the property must be reasonably necessary for the charitable or educational work of the institution.”

omitted). Thus, a property may seek an exemption under the charitable exemption provision set forth in Tax-Prop. § 7-202(b), on either of two grounds.

### **III.**

#### **EVIDENCE PRESENTED TO THE TAX COURT**

##### **A. Testimony of William Holman, Jr.**

William Holman, Jr. is the President and CEO of Sage Point Senior Living Services (“Sage Point”). Sage Point is the parent company that oversees the operation of CCNRC and Family of Care. According to Mr. Holman, the funds received from the lease on the dialysis center, as well as the funds from both the assisted living facility and the memory unit, “are used to help reduce expenditures of the entire [CCNRC] system.”

Mr. Holman further testified that prior to having the dialysis center on the property owned by Family of Care, patients from the nursing facilities were “spending upwards of eight hours per day on public transportation to go miles away to get dialysis.” In his view, having the dialysis center “on our campus” not only brought in rent monies but also brought along with it “a better quality of life for” the patients that were in the nursing home that needed dialysis treatment.

On direct examination, Mr. Holman was asked what was done with the money received as rent for the dialysis center. He said that the money went into the “general fund,” or “into one pot.” He said that the same was true in regard to money received from the memory unit and the assisted living facility. The general fund “runs everything” and is used to support and run the nursing home. He added that if the nursing home had to exist

on Medicaid funding alone, “the nursing home would not be able to continue to operate and provide the quality and level of care that our residents in Charles County deserve.”

Records introduced into evidence showed that for 2015: 73.3% of nursing home revenue came from Medicaid; Medicare provided approximately 13.1%; and 13.2% was private pay.

### **B. Testimony of Dennis O’Neal**

Dennis O’Neal testified that he is the Vice President of Finance and Chief Financial Officer of Sage Point. His responsibilities are to manage the assets and finances of the organization. In that capacity, he has the responsibility of supervising the outside accountants who prepare tax documents for CCNRC and Family of Care. During his testimony, Mr. O’Neal was shown several tax documents concerning the long-term nursing care and rehabilitative services unit, the adult daycare unit, and the memory care unit. The first building on the La Plata Road property, which houses the nursing unit, had, in 2014, total revenue of approximately 16 million dollars. The memory care unit, in 2014, had a gross revenue of approximately \$198,000, and the assisted living facility on the Morris Drive property had gross revenue of a little over 1.6 million dollars. He testified that if the nursing home were required to subsist only on revenue from Medicaid, the quality of services at the nursing home would be very substantially decreased. After Mr. O’Neal’s direct testimony, counsel for the Supervisor asked no questions. Later, however, Mr. O’Neal was recalled as a witness. That testimony will be summarized, *infra*.

### **C. Testimony of Nicole Ramstedt**

Nicole Ramstedt, the Supervisor of Assessments of Charles County, explained why she concluded that the Zimmerman building, which contained the dialysis center and the memory unit, was non-exempt. She also explained why the Morris Drive property, which was used for the assisted living facility for the elderly, was also deemed to be non-exempt.

In regard to the portion of the Zimmerman building that is rented to the owner of the dialysis center, she testified that the property was not exempt because it was rented to a third-party lessee at market rates and, in regard to the second floor of the Zimmerman building, which housed the memory care unit, she opined that this was not exempt because patients that use the memory care unit, were not indigent and the patients paid for 100% of their own care, with “no assistance” being given by Medicaid. In deciding whether a property was exempt, she focused on whether Medicaid payments were needed to provide for medical care. She did not take into consideration whether any of the properties were subsidizing the long-term nursing care and rehabilitative service unit or the adult daycare unit.

The witness was asked if she could tell, based on the records, whether the exempt property was being subsidized by the non-exempt property. She said that this was difficult to tell. For example, in fiscal year 2013, the tax return showed that the nursing home had revenues of \$14,952,814 and expenses of \$12,309,991, which came to a difference of over 2.6 million dollars. But, based on the tax records that were provided to her and admitted

into evidence, one could not tell what, if any, percentage of the 2.6 million dollar difference represented profit, because no document showed what the overhead expenses were.

#### **D. Dennis O’Neal’s Testimony When Recalled**

Mr. O’Neal, in his testimony when recalled, stressed that the tax returns that were in evidence showed only gross revenues and direct expenses. But, importantly, the returns did not include “overhead for the operation of the building” nor did the returns show payments to anyone who was not directly involved in the provision of care. Overhead expenses are reported on a separate schedule on federal tax returns, but he did not have a copy of that schedule concerning either the exempt or non-exempt properties.

At the conclusion of Mr. O’Neal’s testimony, the following brief colloquy took place:

THE COURT: Do you have any way to prove or disprove the analysis that says that the assisted living facility is actually generating money that goes to help pay for the nursing home?

[COUNSEL FOR FAMILY OF CARE]: Just the testimony that we’ve offered and the fact that the expenses, the overall expenses, on line –

THE COURT: Well, I know there’s other expenses because otherwise - - without the other expenses, everything is going really, really well.

[MR. O’NEAL]: Right.

THE COURT: Okay. Thank you.

MR. O’NEAL: Okay. Thank you.

THE COURT: I assume it’s fairly clear that the dialysis center is contributing funds to the overall operation of the resident facility because there’s not a whole lot of expenses associated with collecting rent.

[COUNSEL FOR THE SUPERVISOR]: True. I agree, Your Honor.

### **E. Analysis of Asbury**

As will be seen, the Tax Court based its opinion on what the Court of Appeals said in *Asbury*. Therefore, the facts and the Court of Appeals’ analysis of those facts, are important.

In *Asbury*, a charity owned an apartment building for persons 65 years old and older; that apartment building was a component of a larger property, containing a nursing care facility and homes for the elderly. 313 Md. at 616. The nursing home facility and the home for the elderly were operated at a loss. *Id.* at 620. The nursing care facility and the elderly housing unit admitted residents regardless of their ability to pay and both units had qualified for charitable tax exemption. The residents of the apartments, however, paid market rates. *Id.* at 616-17. The Supervisor of Assessments of Montgomery County took the position that the corporation that owned the Asbury apartments as well as a healthcare facility and a home for the elderly, needed to justify the exemption for the apartments separately and not by reference to the home and healthcare facilities. *Id.* at 617. Ultimately, the Supervisor concluded that the Asbury apartments did not meet the statutory requirements for exemption and should therefore be taxable.

The Tax Court framed the issue that was before it as “whether the apartments were actually used exclusively for and necessary for charitable purposes[.]” *Id.* at 621. In this regard, the evidence presented was that in order to reside in the apartments, the tenant had to pay an entrance fee and a monthly maintenance charge. The entrance fee varied

according to the size of the apartment. Monthly charges were calculated from year-to-year to equal the total operating cost of the apartments.

Construction of the apartment units was financed by a loan from the Asbury Methodist Home, Inc. (“the Corporation”), a non-profit organization. In *Asbury* the Court of Appeals focused on how the entry fees paid by residents of the nursing home were used:

Construction of the apartments was financed by a loan, with an interest rate of approximately 6%, from the Corporation’s capital fund. This fund had been accumulated over the years from various sources, including donations. The money received by the Corporation as entrance fees to the apartments was first, as an accounting matter, segregated into the apartments’ capital fund; from there it was paid to the Corporation’s capital fund as debt retirement, becoming available as part of the Corporation’s total capital. This total capital was then available for such things as major repairs for all the Corporation’s facilities, construction, and for subsidizing deficits from the home and health center, both of which operated at a loss.

*Id.* at 620.

In *Asbury*, the Tax Court denied the exemption, stating that “it is not charitable to provide low-cost housing to those who do not need financial assistance, whether they are young or old.” *Id.* at 621 (citation and quotation marks omitted).

The Corporation appealed the Tax Court’s decision to the Circuit Court for Montgomery County, which reversed the decision of the Tax Court and ordered the Supervisor to grant the tax exemption. *Id.* at 621. This Court affirmed the circuit court, stating that “the proper test for determining the tax exempt status of a portion of the property owned by a charitable institution is whether the subject property is actually and exclusively used for and necessary for the *charitable purposes of the whole organization.*”

*Id.* at 622 (quoting *Supervisor v. Asbury Methodist Home*, 72 Md. App. 352, 356-57 (1987)) (emphasis in original).

In *Asbury*, the Court of Appeals opined that this Court was wrong when it enunciated the test for determining the tax exempt status of a portion of property owned by a charitable institution. *Id.* at 629. Rather than looking at the whole organization, the Tax Court should look at the part of the organization that is seeking the exemption. The Court explained:

Certainly in most cases controlled by [Tax-Prop. § 7-202(b)] the only charitable purpose on which to predicate the subject property’s exemption will be that of the encompassing organization. There is, however, no necessity that this always be the case. Charitable activities and facilities come in diverse forms. It may happen that large scale charitable organizations encompass facilities or activities that themselves are arguably charitable on a rationale different from that of the encompassing organization. In such instances the component facility or activity may seek exemption under [Tax-Prop. § 7-202(b)] on either of two grounds: first, that it is instrumental in the manner required by [Tax-Prop. § 7-202(b)] to the charitable purposes of the encompassing organization; second; that its own purpose, viewed separately, are charitable. The case before us is such an instance. The Corporation had two rationales for the apartments’ exemption: first, that the apartments were actually and exclusively used for and were necessary for the charitable purposes of the Asbury Village complex as a whole; second, that the apartments, viewed separately, achieved the assertedly charitable purpose of providing moderately priced housing for the aged.

*Id.* at 629-30 (footnote omitted).

In regard to the first rationale, the *Asbury* Court stated that the primary issue for the Tax Court to resolve was “whether the apartment entrance fees were used to subsidize the other facilities in the complex,” which the Court deemed to be a “fact-based” issue “requiring of agency expertise[.]” *Id.* at 631. The Court went on to hold that there was

substantial evidence supporting the Tax Court’s decision that the entrance fees were not used to subsidize the other facilities in the complex. *Id.* at 631-32. The Court stated:

From the data and testimony before it, the court had grounds to conclude that the transfer of the apartments’ entrance fees to the Corporations’ capital fund did no more than replenish the fund for the amount depleted by the apartments’ construction loans. Moreover, the corporate capital fund received money from many sources, and no evidence showed that the amounts attributable to the entrance fees were actually used for or were necessary for subsidizing the other facilities. In light of this evidence, and given that the facilities in other respects operated independently of the apartments, the apartments could reasonably be deemed not to meet [Tax-Prop. § 7-202(b)]’s “necessary for” and “actually used for” elements. It was well within the Tax Court’s province to take this view of the facts, and we therefore find that substantial evidence supports its decision.

*Id.* at 633-34 (footnotes omitted).

The *Asbury* Court also held that the Tax Court did not err in holding that the tax payer failed to meet the second possible rationale for an exemption, i.e., that the apartments, viewed separately, achieved the charitable purpose of providing moderately priced housing for the elderly. Quoting from the case of *Appeal of Marple Newtown School Dist.*, 455 A.2d 98, 100 (Pa. 1982), the Court of Appeals held that “‘a private housing facility which for all practical purposes offers its residents no services beyond those which the residents demonstrate an ability to afford’ does not achieve a charitable purpose.” *Id.* at 635.

#### IV.

#### THE DECISION OF THE TAX COURT

The Tax Court ruled as follows:

Asbury Methodist Homes appears to be the Court of Appeals case that is as close to be on point as there is. And on page 630 [of 313 Md.], it appears that they are defining how one should . . . analyze these. And it says there's two rationales for the exemption. First - - well, they're talking about apartments. First, the apartments were actually and exclusively used for and are necessary for the charitable purposes of Asbury Village Complex as a whole; and/or, secondly, that the apartments viewed separately. It used the asserted charitable (inaudible) by providing moderately priced housing for the [aged]. So basically it's describing two separate ways either of which will allow the exemption to hold if it fits the facts.

So using that as a guideline, I, first of all, considered the facility that was leased out for dialysis center. And in this instance, it's clearly that there's some net rent money that would flow from the lease to the organization. And is that enough to by itself allow this to be an exempt property? And I'm going to suggest that clearly the answer has to be no because if just the flowing through of the funds were sufficient, then they could rent out space to McDonald's, bank branches, or whatever else would pay the highest rent. And if they use that for their charitable functioning, it would make the lease nonprofit, and that can't work.

So then we need to go back to is this facility actually and exclusively used and necessary for the charitable purposes of the entire organization. And the testimony is that having a dialysis center on - - well, it's very near to the nursing home, makes it very convenient for the residents at the nursing home who needs dialysis. There was also testimony that in the past, the residents used another dialysis center that was further away. And indirectly, there's testimony that the majority of the available times at the dialysis center are for nonresidents. So putting that all together was not exclusively used for [sic] necessary for the charitable purposes of the whole organization. And, of course, the organization that is leasing it appears to be paying market rent and is a for profit organization. So I'll put together there cannot be an exemption that I can see for the property.

The other two to look at are an assisted living facility and a memory facility, both of which are owned by petitioner or a related organization. And to analyze them, the problem that I see for them getting exempt are testimony is that they're not providing care or treatment at below market rates. They're not taking on charity patients and paying for them. They're operating those two facilities to make money, as much as possible to help the nursing home. And this is more like Asbury Methodist in that the quote was from that case was providing housing to elderly at market rate is not a charity. It's not the

operation of a charity. And to look to see what happens to the net revenues probably doesn't cure the problem. And for those reasons I'm going to suggest that they should not be exempt either.

And lastly, the testimony was from both of our witnesses that these two facilities make money for the nursing home, but they don't have any exhibit that shows that. The exhibits both show that there's revenues exceed the direct cost, but they didn't allocate the non-direct cost, so I can't tell if they are actually making money or not. And so I assume they might be, but in order to grant the exemption, and if that was a necessary feature that they were providing funds to the nursing home, I can't say it was proved to me. All that taken together, I'm not finding any of these properties to be entitled to a property tax exemption.

## V.

### STANDARD OF REVIEW

The parties dispute the appropriate standard of review to be applied to the Tax Court's decision. Family of Care contends that because the facts of the case are not in dispute, the Tax Court's legal conclusions are entitled to no deference and should be reviewed de novo. The Supervisor argues that the Tax Court's application of the charitable tax exemption statute as set forth in § 7-202(b), to the facts creates a mixed question of law and fact, which required the Tax Court to use its expertise as an administrative agency to draw inferences from facts in evidence. The Supervisor also argues that this Court should review the Tax Court's decision under the deferential substantial evidence test. We agree with the Supervisor. As will be shown, some of the facts are in dispute, namely, whether either the assisted living facility or the memory unit earned a profit that was necessary to help support the exempt property, i.e., the nursing and rehabilitative unit and the adult

daycare unit. Appellant claims they did but the Tax Court held that it was not persuaded that this had been proven.

As an administrative agency, decisions of the Tax Court “are subject to the same standards of judicial review as adjudicatory decisions of other administrative agencies.” *NIHC, Inc. v. Comptroller of the Treasury*, 439 Md. 668, 682 (2014) (citation omitted). We review a decision of the Tax Court by “looking through” the decision of the circuit court and “evaluating directly” the decision of the Tax Court. *Brutus 630, LLC v. Town of Bel Air*, 448 Md. 355, 367 (2016) (citation omitted); *Townsend Baltimore Garage, LLC v. Supervisor of Assessments of Baltimore City*, 215 Md. App. 133, 140 (2013) (citing *Supervisor of Assessments of Baltimore County v. Greater Baltimore Medical Center*, 202 Md. App. 282, 291-92 (2011)).

The standard of review that we apply to Tax Court decisions ““depends on whether [we are] reviewing a question of law, question of fact, or a mixed question of law and fact.”” *Townsend Balt. Garage*, 215 Md. App. at 139 (quoting *Prince George’s Cnty. v. Brown*, 334 Md. 650, 658 (1994)). As we observed in *Comptroller of Treasury v. Jalali*, 235 Md. App. 369, 378 (2018):

We review the Tax Court’s findings of fact to determine whether there is substantial evidence in the record as a whole to support its findings. If “a reasoning mind reasonably could have reached the factual conclusion that the [Tax Court] reached,” the factual finding must be upheld. And, when the interpretation of tax law involves mixed questions of law and fact, we review the Tax Court’s determination for substantial evidence. As we said in *Comptroller v. Johns Hopkins Univ.*, 186 Md. App. 169, 188-89, 973 A.2d 256 (2009), “the Tax Court is the agency charged with interpreting and applying the Maryland tax code,” and therefore its decision on a “mixed question of law and fact” is given deference.

And even though we review the Tax Court’s decision of pure law de novo, its interpretation and application of the statute it administers is often accorded a degree of deference and given considerable weight. We do not, however, extend deference to the Tax Court’s application and analysis of case law.

(Internal citations and some quotation marks omitted) (brackets in original).

In *Supervisor of Assessments of Montgomery County v. Group Health Association, Inc.*, 308 Md. 151, 157 (1986), the Court of Appeals explained that, even though the facts were not disputed, the Tax Court’s determination as to whether Group Health qualified as a “charitable” organization under the tax exemption statute, was a question of fact, not of law. *Id.* at 157. The Court observed that because there were conflicting inferences as to whether Group Health was a charitable organization, it was “the province of the Tax Court, not the reviewing court, to draw the inference.” *Id.* at 159. The Court applied the substantial evidence test to review the Tax Court’s finding that Group Health did not provide a sufficient benefit to the community to qualify for charitable tax exemption. *Id.* at 159-60. *See also Ramsay, Scarlett & Co., Inc. v. Comptroller of the Treasury*, 302 Md. 825, 838 (1985) (holding that whether several in-state and out-of-state businesses comprised a “unitary business” for purposes of corporate income tax assessment was not “solely a question of law,” but one which involved an application of the law to the facts, which required the expertise of the agency); *See also, Asbury*, 313 Md. at. 631, and *Charles County Dept. of Social Svcs. v. Vann*, 382 Md. 286, 298 (2004) (stating that “[d]eferential review over mixed questions of law and fact is appropriate in order for the agency to fulfill its mandate and exercise its expertise.”).

In the present case, the Tax Court’s determination as to whether three of the units located on the Family of Care properties qualified for a charitable exemption was a mixed question of law and fact requiring the agency’s expertise. We therefore review the Tax Court’s decision under the substantial evidence test and afford deference to the Tax Court’s application and analysis of the law.

## VI. ANALYSIS

The issue to be decided in this case is whether, viewed separately, one or more of the three properties that the Supervisor deemed to be non-exempt, were “necessary for and actually used exclusively for a charitable . . . purpose to promote the general welfare of the people of the State[.]” Tax-Prop. § 7-202(b)(1)(i). If any of the three properties met that test, the appellant was entitled to an exemption for such property. Put another way, the property will be exempt if “it is instrumental in the manner required by § 9(e) [now codified in Tax-Prop. § 7-202(b)] to the charitable purposes of the encompassing organization; [or] second, that its own purposes, viewed separately, are charitable.” *Asbury*, 313 Md. at 629 (footnote omitted).

### A. The Dialysis Center

The Tax Court acknowledged that rent money received from the dialysis center flowed to CCNRC’s general fund but opined that this fact, standing alone, would not justify an exemption. Appellant contends that the Tax Court was wrong in this regard. It cites *Maryland State Fair*, 225 Md. at 588, for the proposition that “property which is used directly for the [charitable] purposes and in the operation of the charity is exempt, though

it may also be used in a manner to yield some return, and thereby reduce expenses.” (citation and quotation marks omitted). Appellant’s reliance on the *Maryland State Fair* case is misplaced because that case dealt with a prior statute that was, as the Court of Appeals explained in *Asbury*, a “less exacting version of [Article 81] § 9(e).” 313 Md. at 632. Like the criteria under Article 81 § 9(e), under the present version of the tax statute, the tax payer must prove that the revenue produced by the property was necessary for and actually used for a charitable purpose. In this case, no witness testified and no document demonstrated that money from the dialysis center lease was necessary for CCNRC’s charitable purpose, which was to operate the nursing home and rehabilitation center. The closest appellant came to such proof was Mr. Holman’s testimony that the existence of the nursing home would be threatened if CCNRC only had Medicaid reimbursement. But, according to the evidence introduced in the Tax Court, approximately 13.2% of the patients in the nursing home and rehabilitation center were private pay and 13.1% of the revenue earned by that facility was from Medicare.

The Tax Court was correct when it held that it is insufficient to merely prove that rent receipts from the dialysis center helped support the nursing home; appellant also had to prove that such contributions were “necessary” for the fulfillment of CCNRC’s charitable purposes. Contrary to appellant’s contention, the Tax Court judge did not make an error of law when he said, concerning the “necessary” element, that it is not enough to prove that net rent from the dialysis lease went to the charitable corporation.

As the Tax Court recognized, in regard to the dialysis center property, there was a second method that a taxpayer may use in order to show that the property is exempt. In order to meet the requirements of the second method, appellant was required to prove, as to the property rented to the dialysis center, that the use of the property as a dialysis center, viewed separately, was charitable. The Tax Court found that although residents of the nursing home regularly used the dialysis center, and that such use was very convenient for them, that did not make the use of the property charitable because: (1) the majority of users of the dialysis facility were persons unaffiliated with CCNRC; and (2) the land was used by a for profit company that was “paying market rent.”

Appellant’s only challenge to the last mentioned finding of the Tax Court is expressed as follows:

[T]he Tax Court erred by concluding that the dialysis center is “not exclusively used for and necessary for the charitable purposes of the whole organization,” when the evidence at trial established that a substantial portion of CCNRC’s residents used the dialysis center and the revenue from the lease is exclusively used, and necessary for, reducing costs associated with operating the nursing and adult day care [facilities].

(References to record extract omitted.)

The Tax Court did not err in its conclusion. As the Tax Court pointed out, the dialysis center was not used exclusively by patients treated at the CCNRC facilities. Instead, the evidence supported the judge’s view that the majority of the patients that use the dialysis center were not affiliated with the charity. And, as already stated, appellant never proved that the revenue from the dialysis center was “necessary for” operating the

nursing home or the adult daycare units. We shall affirm the Tax Court’s decision regarding the portion of the property used by the dialysis center property.

We turn our focus next to the memory care unit and the portion of the property that was used, on Morris Drive, for an assisted living facility for the elderly. The patients at those facilities pay for their own care. In regard to those two facilities, the Tax Court first found that the facilities are “not taking on charity patients and paying for them.” The Court went on to say that appellant failed to prove to him that the two facilities were providing funds to the nursing home. The reason he was not persuaded, was because no document showed what, if any, monies went from the assisted living facility or the memory facility to the charitable organization as a whole. The judge, in effect, rejected the testimony of appellant’s witnesses because the testimony was not corroborated. Nor did appellants prove that the requirement of the second method was met, because there was no proof that the use of either the assisted living facility or the memory unit, viewed separately, were charitable.

In regard to the assisted living facility and the memory unit, appellant’s argument is, as it was in regard to the dialysis center, basically the same. Citing *Asbury*, 313 Md. at 631, it claims it proved that the revenue from the assisted living facility and the memory care unit were “actually and exclusively used for, and necessary for the charitable purposes” of CCNRC. That argument fails inasmuch as the Tax Court judge did not credit appellant’s witness in this regard because, based on the documents produced, he could not tell whether the assisted living facility or the memory care unit even made a profit that

could be used to contribute to the expenses for the charity work provided in the adult daycare unit and/or nursing and rehabilitative unit. In summary, appellant was not entitled to an exemption for the property used for the memory care unit or the assisted living unit, because it failed to meet its burden showing entitlement to the exemption.

### CONCLUSION

“[J]udicial review of [the Tax Court’s decision] is narrow,” and the reviewing Court “shall not ‘substitute [its] judgment for the expertise of those persons who constitute the administrative agency.’” *Frey v. Comptroller of the Treasury*, 422 Md. 111, 137 (2011) (citations omitted). The decisions of administrative agencies are *prima facie* correct and “carry with them the presumption of validity.” *Supervisor of Assessments of Baltimore County v. Keeler*, 362 Md. 198, 209 (2001) (citations and quotation marks omitted). Additionally, in deciding this case, we recognize that “taxation is the rule with exemption the exception, and that statutes providing for tax exemption are to be strictly construed in favor of the State.” *Trustees of Bosley Methodist Church Graveyard*, 293 Md. at 212. For all of the above reasons, we affirm the judgment of the Circuit Court for Charles County, which affirmed the decision of the Tax Court.

**JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.**