THE SUPREME COURT OF THE STATE OF ALASKA

CITY OF NOME EQUALIZATION BOARD, Appellant, v. NORTON SOUND HEALTH CORPORATION, Appellee.	Supreme Court No. S-18833 Superior Court No. 2NO-22-00095 CI <u>O P I N I O N</u> No. 7823 – August 7, 2026

Appeal from the Superior Court of the State of Alaska, Second Judicial District, Nome, Paul A. Roetman, Judge.

Appearances: Charles Cacciola, Munson, Cacciola & Severin, LLP, Anchorage, for Appellant. Geoffrey D. Strommer, Hobbs, Straus, Dean & Walker, LLP, Portland, Oregon, for Appellee. Sean B. Kelley, Soldotna, for Amicus Curiae Kenai Peninsula Borough. Glenn J. Brown, Ketchikan, for Amicus Curiae Ketchikan Gateway Borough. Scott A. Brandt-Erichsen, Keene & Currall, PPC, Ketchikan, for Kodiak Island Borough. Laura Wolff, Assistant Attorney General, Anchorage, and Treg Taylor, Attorney General, Juneau, for Amicus Curiae State of Alaska. M. Scott Broadwell, Davis Wright Tremaine, LLP, Anchorage, for Amicus Curiae Bristol Bay Area Health Corporation. Richard D. Monkman, Sonosky, Chambers, Sachse, Miller & Monkman, LLP, Juneau, and K. Amanda Saunders and Steven C. Wilfong, Sonosky, Chambers, Sachse, Miller & Monkman, LLP, Anchorage, for Amicus Curiae Alaska Tribal Health Organizations. Charles W. Scarborough and Martin Totaro, Attorneys, Appellate Staff Civil Division, Washington, D.C., Bryan M. Boynton, Principal Deputy Assistant Attorney General, Washington, D.C., and Josh Traini, Assistant United States Attorney, U.S. Attorney's Office, Anchorage, for Amicus Curiae United States.

Before: Carney, Borghesan, Henderson, and Pate, Justices, and Eastaugh, Senior Justice.* [Maassen, Chief Justice, not participating.]

BORGHESAN, Justice.

I. INTRODUCTION

Alaska law authorizes local governments to levy a tax on property but exempts from taxation property used exclusively for hospital purposes. Norton Sound Health Corporation (NSHC), a tribally owned nonprofit corporation that provides health care in the Bering Strait region, sought a tax exemption for an apartment building it owns in Nome. NSHC uses the apartment building, which is close to the hospital NSHC operates, to house doctors, nurses, and other hospital staff. The City of Nome denied the requested exemption on the ground that the apartment was not used exclusively for hospital purposes. On appeal the superior court reversed the decision of the City's Board of Equalization and ruled that the apartment building was exempt from taxation. The City appealed the decision to us.

We affirm the superior court's ruling that the apartment building is exempt from taxation. The apartment is used by NSHC to facilitate its hospital operations by keeping medical staff close by in case of emergency. But the apartment is not used exclusively for hospital purposes because it is used for private residential purposes as well. Nevertheless, we have long recognized that property is exempt from taxation if it is directly incidental to and vitally necessary to the exempt use of other property. The

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* Sitting by assignment made under article IV, section 11 of the Alaska Constitution and Alaska Administrative Rule 23(a).

apartment building is directly incidental to and vitally necessary to NSHC's hospital because it is used to house medical staff recruited from outside the Bering Strait region who must quickly respond to medical emergencies on short notice, and there is a dearth of short-term rental housing in Nome that can meet this need. Therefore, the property satisfies the requirement for exempt use.

The City argues for the first time on appeal that rents NSHC charges to some of the property's tenants, in an amount NSHC describes as "nominal," make the property ineligible for a tax exemption. But because the City did not raise this argument below, the record does not contain findings that conclusively establish whether these rents are disqualifying. Therefore, we affirm the superior court's decision exempting the property from tax.

II. FACTS AND PROCEEDINGS

A. Background

NSHC is a tribally owned and operated nonprofit healthcare organization founded to meet the health care needs of the Bering Strait region. NSHC operates health care facilities pursuant to the Alaska Tribal Health Compact. The Compact is a multi-tribe self-governance compact with the federal Indian Health Service (IHS) under Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA).[1] NSHC has a funding agreement with IHS, negotiated every year to fund the programs, services, functions, and activities that NSHC performs on behalf of IHS. Among the required services and programs are the operation of hospital facilities in Nome and the provision of "[s]upport services" for NSHC's health services. Support services include "the provision of staff housing."

In January 2022 NSHC submitted applications for municipal tax exemptions for several of the properties it owns in Nome. Only "Property 1" is the subject of this appeal.

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1 25 U.S.C. §§ 5381-99.

According to NSHC, Property 1 is a seven-unit apartment building located within walking distance of the inpatient hospital facility. The building houses doctors, nurses, and newly hired employees who work at the hospital. NSHC represents that 98% of the "occupancy" of the building is by medical staff. Given the shortage of qualified medical personnel in the region, NSHC describes the provision of this housing as "a necessary incentive to attract qualified [staff] to work in [a] remote area," especially because there are "no efficient or feasible short-term rentals in the Nome area." Doctors work on a one-month-on, one-month-off rotation, and nurses are hired on a contract basis. The remaining two percent of the building's occupancy serves as temporary housing for new permanently hired employees of the hospital system. For these staff, rent is free for the first 30 days, after which NSHC charges "nominal rent."

NSHC claimed that Property 1 was exempt from taxation because it was used exclusively for hospital purposes under AS 29.45.030(a)(3).[2] The assessor denied the requested exemptions.

B. Board Of Equalization Appeal

NSHC appealed the assessor's denial to the City of Nome Board of Equalization (the Board).[3] The written appeal included arguments regarding federal preemption and hospital use exemptions.

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[2] AS 29.45.030(a)(3) exempts property "used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes" from general taxation.

[3] The Nome Code of Ordinances provides a right to appeal to the Board any alleged error in valuation. Nome Code Ordinance 17.20.050(a) (1994). It separately provides a right to appeal the assessor's denial of an application for exemption:

> A denial by the assessor of an application for exemption from taxation may be appealed to the board of equalization. The appellant shall, within thirty days from the date of mailing of the notice of denial, submit to the assessor a written appeal specifying all grounds for relief from the

The Board heard NSHC's appeal in May 2022. The assessor explained that he had denied the exemption for Property 1 because it was "convenient" but "not necessary for the operation of the hospital." He acknowledged that while there is a housing shortage in Nome, and while NSHC was arguing that these leases were meant "to provide housing for necessary people to come and work here," other industries faced the same issues. He contended that it was therefore not necessary for NSHC to provide housing.

NSHC argued that local taxation of the contested properties was preempted by the ISDEAA, invoking the implied federal preemption doctrine for federal laws addressing Indian affairs.[4] NSHC also reiterated its position that Property 1 was exempt under state law because it was used exclusively for hospital purposes.

The Board voted to deny the appeal a few days later. It issued the following factual findings related to Property 1:

> Property 1 contains seven dwelling units. As of January 1, 2022, the building on Property 1 was used to provide housing for both permanent and contract doctors and nurses who work at the hospital. Housing is provided at no charge to these persons. During 2% of the time Property 1 is used as temporary housing for newly hired "non-medical" support employees for a period of thirty (30) days after which support employees are charged nominal rent.

In its conclusions of law, the Board indicated that the "hospital purposes" tax exemption is to be "narrowly construed," and that the ordinary meaning of

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> alleged error, and providing a summary of facts and an identification of documents to be presented as proof of qualification for the exemption.

Nome Code Ordinance 17.20.050(b).

[4] *See White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-44 (1980) (explaining that "[a]mbiguities in federal law have been construed generously in order to comport with . . . traditional [tribal] notions of sovereignty and with federal policy of encouraging tribal independence," such that express statement by Congress is not required to preempt state law).

"hospital" is "an institution providing medical and surgical treatment and nursing care for sick or injured people." Using this definition, the Board concluded that Property 1 was not "used exclusively to provide medical treatment to sick or injured people." While acknowledging there is an exception to the exclusive use requirement for property directly incidental to and vitally necessary for the use of other exempt property,[5] the Board concluded that Property 1 did not meet this exception. It explained:

> The use of Property 1 for residential housing is not "vitally necessary" to provision of medical services. Only a small number of NSHC employees reside there. NSHC provided medical services for years without the use of Property 1. If the Alaska legislature had intended to exempt staff housing for hospital staff from property tax specific provisions doing so would have been included in AS 29.45.030(a) for hospitals as they were for religious uses in AS 29.45.030(b).[6]

The Board also rejected NSHC's argument that local taxation was preempted by federal law.

C. Superior Court Appeal

NSHC appealed the Board's decision to the superior court. The superior court granted NSHC an exemption for Property 1. It first explained that the Board defined "hospital purposes" too narrowly by focusing only on the word "hospital." The court reasoned that the word "hospital" had to be combined with the term "purpose," which the court defined as "something set up as an object or end to be

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5 *See City of Nome v. Cath. Bishop of N. Alaska*, 707 P.2d 870, 874 (Alaska 1985) (recognizing that "property may be exempt if its use is both directly incidental to and vitally necessary for the use of exempt property").

6 Alaska Statute 29.45.030(b)(1) provides that "property used exclusively for religious purposes" includes any "residence of an educator in a private religious or parochial school or a bishop, pastor, priest, rabbi, minister, or religious order of a recognized religious organization" owned by a religious organization.

attained: intention." It then concluded that "hospital purposes" covered NSHC's use of Property 1.

The court also addressed federal preemption of local tax. It rejected the City's argument that NSHC had not preserved its implied federal preemption argument for appeal. It then concluded that federal law preempted the application of property tax to Property 1.

The City appeals the superior court's decision to grant a tax exemption for Property 1.

III. STANDARD OF REVIEW

"When an appeal is taken from a decision of the superior court sitting as an intermediate appellate court reviewing an administrative ruling, we independently review the merits of the administrative decision and give no deference to the superior court's decision."[7]

A few principal standards of review apply in evaluating a board of equalization's decision. First, "[w]e review factual findings made by an administrative agency using the 'substantial evidence' standard."[8] Under this standard, "findings will be upheld so long as there is enough relevant evidence to allow a reasonable mind to adequately support such a conclusion."[9] "[W]e will not reweigh conflicting evidence, determine witness credibility, or evaluate competing inferences from testimony," as these are agency functions.[10]

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[7] *AU Int'l, Inc. v. State, Dep't of Nat. Res.*, 971 P.2d 1034, 1036-37 (Alaska 1999).

[8] *Haar v. State, Dep't of Admin., Div. of Motor Vehicles*, 349 P.3d 173, 177 (Alaska 2015) (quoting *McKitrick v. State, Pub. Emps. Ret. Sys.*, 284 P.3d 832, 837 (Alaska 2012)).

[9] *Id.* (quoting *McKitrick*, 284 P.3d at 837).

[10] *Id.* (alteration in original) (quoting *McKitrick*, 284 P.3d at 837) (internal quotation marks omitted).

Second, "[w]e review questions of law involving agency expertise under the reasonable basis test."[11] "When applying the reasonable basis test, we 'seek to determine whether the agency's decision is supported by the facts and has a reasonable basis in law, even if we may not agree with the agency's ultimate determination.' "[12]

Where no expertise is involved, we apply the "substitution of judgment test."[13] When applying the substitution of judgment standard, "we may 'substitute [our] own judgment for that of the agency even if the agency's decision had a reasonable basis in law.' "[14] No deference is given to the assessor's administrative expertise.[15] In reviewing questions of law de novo, we adopt the rule of law "most persuasive in light of precedent, reason, and policy."[16]

We reject the City's argument that the reasonable basis standard applies to the legal rulings in this case. The City argues that the Board's decisions "involve[] questions of fact and law that involve agency expertise."[17] But "[w]hether certain property merits a tax exemption under AS 29.45.030 is a question requiring statutory interpretation," which is generally the province of courts rather than agencies.[18] And

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[11] *Id.* (quoting *Titus v. State, Dep't of Admin., Div. of Motor Vehicles*, 305 P.3d 1271, 1276 (Alaska 2013)).

[12] *Id.* (quoting *Davis Wright Tremaine LLP v. State, Dep't of Admin.*, 324 P.3d 293, 299 (Alaska 2014)).

[13] *Id.* (quoting *Titus*, 305 P.3d at 1276).

[14] *Id.* (alteration in original) (quoting *Davis Wright Tremaine LLP*, 324 P.3d at 299).

[15] *Dená Nená Henash v. Fairbanks N. Star Borough* (*Henash II*), 265 P.3d 302, 304 (Alaska 2011).

[16] *Id.* (quoting *Fairbanks N. Star Borough v. Dená Nená Henash* (*Henash I*), 88 P.3d 124, 128-29 (Alaska 2004)).

[17] *Black v. Mun. of Anchorage, Bd. of Equalization*, 187 P.3d 1096, 1099 (Alaska 2008) (quoting *CH Kelly Trust v. Mun. of Anchorage, Bd. of Equalization*, 909 P.2d 1381, 1382 (Alaska 1996)).

[18] *See Henash II*, 265 P.3d at 304.

the cases the City cites, which relate to agency expertise, applied the reasonable basis standard to determinations of the value of real property.[19] The value of Property 1 is not disputed in this appeal. We therefore apply the substitution of judgment standard.

IV. DISCUSSION

This appeal concerns whether Property 1 is exempt from general taxation under AS 29.45.030. This statute exempts property from taxation if it is "used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes."[20] Each use described in the statute modifies the term "purposes." Therefore, the correct inquiry when interpreting this statute is not to determine whether the property is used as a "hospital," but whether it is used for "hospital . . . purposes."

The City argues that Property 1 is not used exclusively for hospital purposes because it is actually used for private residential purposes. NSHC responds that Property 1 is "an integral part" of NSHC's hospital operation and that the hospital would be unable to function "without the proximity of Property 1 to facilitate the 24-hour on-call status of the medical personnel living there."

To determine whether a property is exempt from taxation under AS 29.45.030(a)(3), we first ask whether it is used for a nonprofit hospital purpose.[21] We then ask whether the property is being used exclusively for that purpose.[22] If not, we must determine whether the property satisfies one of two exceptions to the exclusive

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[19] *See, e.g.*, *Black*, 187 P.3d at 1098-99 (disputing valuation of land and condominium); *CH Kelly Trust*, 909 P.2d at 1381-82 (disputing appraised value); *Twentieth Century Inv. Co. v. City of Juneau*, 359 P.2d 783, 784-85 (Alaska 1961) (disputing valuation of building).

[20] AS 29.45.030(a)(3).

[21] *See Henash I*, 88 P.3d at 130.

[22] *See id.*

use requirement: (1) any non-exempt use is de minimis, or (2) the property's use is "directly incidental to and vitally necessary for" its hospital operations.[23]

Finally, we address an argument the City raises for the first time on appeal: whether NSHC's receipt of rental income from some staff residing at Property 1 negates any tax exemption.

A. NSHC's Apartment Building Is Used For Hospital Purposes.

We first consider whether Property 1 is used for nonprofit "hospital purposes." The City seems to argue in its opening brief that the property is not so used. But in its reply brief the City seems to concede that the property is used for hospital purposes while maintaining it is not exclusively used for such purposes because its units are also used as private residences. Despite the City's concession, we consider whether the property is used for hospital purposes because this analysis illuminates the more difficult question of exclusive use.

The exemption statute does not define the term "hospital purposes." The City argues that in the absence of a codified definition, words should be "interpreted as taking their ordinary, contemporary, common meaning."[24] It adopts the Board's rationale, asserting that the common understanding of the term "hospital" is "an institution in which sick or injured people are given medical or surgical treatment." A property therefore only qualifies for a hospital purposes exemption if medical or surgical treatment is performed there. The City suggests that a narrow definition is supported by the general policy of strictly construing tax exemptions.

NSHC argues that the City's definition improperly confines the analysis to determining whether Property 1 meets the definition of "hospital," as opposed to whether it is used for "hospital purposes." Invoking a dictionary definition cited by the

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[23] *City of Nome v. Cath. Bishop of N. Alaska*, 707 P.2d 870, 880-81 (Alaska 1985).

[24] *See Norville v. Carr-Gottstein Foods Co.*, 84 P.3d 996, 1001 n.3 (Alaska 2004) (quoting *State v. Niedermeyer*, 14 P.3d 264, 272 n.38 (Alaska 2000)).

superior court, NSHC notes that "purposes" includes "something set up as an object or end to be attained: intention."[25] Accordingly, NSHC argues, Property 1 is used for "hospital purposes" because it is used to keep medical staff close enough to the hospital to provide emergency medical care within minutes, at all hours of the day and night. NSHC also asserts that given Nome's remote location, small population, and dearth of short-term rental housing, operating housing that can accommodate the on-call schedules worked by doctors and nurses is necessary to attract them to Nome.

We find NSHC's argument more persuasive. In general, "statutes granting exemption from taxation are strictly construed" according to their plain meaning.[26] But the canon of strict construction for tax statutes does not support the City's suggestion that property used for "hospital purposes" includes only properties where medical care is performed. "The canon of strict construction 'is an aid to, not a substitute for, statutory interpretation; the interpretation must still be a reasonable one.' "[27] In *McKee v. Evans* we held that property used to train electrician apprentices qualified for the exemption for property used exclusively for educational purposes.[28] We declined to construe this exemption so narrowly as to include only programs of instruction comparable to those offered in public schools.[29] Acknowledging the canon

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[25] *See Purpose*, MERRIAM-WEBSTER COLLEGIATE DICTIONARY (10th ed. 1999).

[26] *Harmon v. N. Pac. Union Conf. Ass'n of Seventh Day Adventists*, 462 P.2d 432, 436 (Alaska 1969) (quoting *Cedars of Lebanon Hosp. v. Los Angeles Cnty.*, 221 P.2d 31, 34 (Cal. 1950)).

[27] *Cath. Bishop of N. Alaska*, 707 P.2d at 879 (quoting *Sisters of Providence in Wash., Inc. v. Mun. of Anchorage*, 672 P.2d 446, 447 (Alaska 1983)).

[28] 490 P.2d 1226, 1227 (Alaska 1971). We analyzed former AS 29.10.336(a) (1970), a predecessor statute to AS 29.45.030(a)(3). Former AS 29.10.336(a) (1970) provided: "[A]ll property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes . . . [is] exempt from taxation."

[29] *McKee*, 490 P.2d at 1230-31.

of strict construction, we reasoned that the canon should not be used to exclude uses within the plain meaning of "educational purposes."[30]

The plain meaning of property used for "hospital purposes" includes not only properties where medical or surgical care is performed, but also properties used to support such work. For example, even if a hospital's administrative offices were housed on a different parcel of property than the operating rooms, the administrative offices would plainly still be used for hospital purposes. The work of hospital administrators facilitates the provision of medical care to hospital patients. Indeed, without hospital administrators to hire and train staff, secure payment for care, seek and maintain essential regulatory approvals, and perform myriad other administrative jobs, a hospital could not function.

In a similar vein, property used to house medical personnel in close proximity to the hospital is used for hospital purposes. A hospital must have enough staff at all times to run its operations. Emergency situations make it necessary to have doctors and nurses on call nearby.[31] Because patients may come to the hospital at any hour of the day, "twenty-four hour service necessarily involves the presence at all time[s] of adequate help and trained personnel."[32] Property used to house medical staff close to the hospital, so that they can respond to medical emergencies within minutes, ensures that the hospital can perform its core function of providing medical care when needed. Therefore, Property 1, which is used to house doctors and nurses employed by

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[30] *Id.* (holding property used for nonprofit electrician training program was exempt in part because such training was education that benefitted public).

[31] *See Cedars of Lebanon Hosp.*, 221 P.2d at 38 (noting that "the administration of the affairs of [a hospital] requires that certain personnel and employees be located on or near its grounds to the end that its operation may be efficiently conducted and supervised, and that emergency cases may be effectively handled as they arise").

[32] *Id.*

NSHC on a short-term basis in close proximity to the hospital, is used for hospital purposes.

B. The Apartment Building Is Not Used Exclusively For Hospital Purposes.

Property is entitled to a tax exemption if it is used "exclusively" for an exempt purpose.[33] The rule of strict construction applies to the exclusive use requirement.[34] "All uses of the property must be for the 'direct and primary' exempt purpose."[35]

NSHC argues that because Property 1 is used for the "direct and primary" purpose of having staff live close to the hospital so they can quickly respond to medical emergencies, the property is used exclusively for hospital purposes. NSHC contends that the property's use is "entirely integrated with the hospital."

The City emphasizes our holding that it is not enough to show that the property is used in a way that is "highly related" to the exempt purpose; rather, the taxpayer must show that the property is used *only* for an exempt purpose.[36] The City argues that residential housing, even when supplied by an employer to meet the employer's own needs, is used for the residents' private residential purposes as well as for the hospital's purposes.

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[33] AS 29.45.030(a).

[34] *City of Nome v. Cath. Bishop of N. Alaska*, 707 P.2d 870, 879 (Alaska 1985).

[35] *Id.* (quoting *Evangelical Covenant Church v. City of Nome*, 394 P.2d 882, 883 (Alaska 1964)); *see also Sisters of Providence in Wash., Inc. v. Mun. of Anchorage*, 672 P.2d 446, 451-52 (Alaska 1983) (concluding that hospital's "leasing of the property for profit constituted a 'use' of the property which was not for non-profit hospital purposes").

[36] *Harmon v. N. Pac. Union Conf. Ass'n of Seventh Day Adventists*, 462 P.2d 432, 437 (Alaska 1969).

The answer to the exclusive-use question in this case is not entirely clear. On the one hand, there is merit to NSHC's contention that even if Property 1 serves its residents' private need for housing, this private purpose entirely overlaps the hospital's purpose of having medical staff be nearby the hospital at all times. In a sense, the purposes served are the same. An analogy can be drawn to various kinds of staff facilities in a hospital, such as staff parking or a staff kitchen. These facilities meet staff's needs for transportation or a quick meal between rounds so that they can carry out the hospital's purpose of providing care. The incidental benefit staff receive from a staff kitchen does not mean the kitchen is used for their private purposes to any substantial degree.

On the other hand, a personal apartment is used for the resident's private purposes to a far greater degree than an assigned parking spot or staff kitchen, where personal activities unrelated to the employer's purpose — a quick phone call or crossword puzzle — are largely de minimis. An apartment is used for dining, recreating, entertaining, storing personal items, and numerous other personal activities with no connection to the hospital's operations. So there is merit to the City's position that employer-provided apartments are not used only for the employer's exempt purpose.

Though the question is a close one, three points lead us to agree with the City's position: statutory text, the rule of strict construction for tax exemptions, and our precedent. While none of these points is decisive on its own, together they suggest that hospital-provided housing for medical staff is not used exclusively for hospital purposes.

First, the tax exemption statute's treatment of religious housing offers a clue. The statute defines property "used exclusively for religious purposes" to include the residence of certain ministers.[37] This definition does not directly answer the

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[37] AS 29.45.030(b)(1).

question of whether medical staff residences are used exclusively for hospital purposes. But the absence of a similar definition for hospitals is at least some indication that the legislature did not intend to exempt such residences.[38]

Second, tax exemptions are to be construed strictly.[39] This rule reflects the policy that all properties benefit from the services funded by taxes.[40] For that reason, "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."[41] Alaska's statutes do not expressly exempt hospital staff housing from tax, nor is such an exemption necessarily implied by an exemption for property used exclusively for hospital purposes.

Third, our precedent supports the conclusion that medical staff housing is not used exclusively for hospital purposes.

The City relies heavily on our decision in *Greater Anchorage Area Borough v. Sisters of Charity of House of Providence*,[42] but the decision is not on point. In that case a hospital owned a building adjacent to the main hospital; portions of this building were rented to doctors not employed by the hospital for their private medical

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[38] The maxim *expressio unius est exclusio alterius* "establishes the inference that, where certain things are designated in a statute, all omissions should be understood as exclusions. The maxim is one of longstanding application, and it is essentially an application of common sense and logic." *Croft v. Pan Alaska Trucking, Inc.*, 820 P.2d 1064, 1066 (Alaska 1991) (quoting *Puller v. Mun. of Anchorage*, 574 P.2d 1285, 1287 (Alaska 1978)).

[39] *Harmon*, 462 P.2d at 436.

[40] *Greater Anchorage Area Borough v. Sisters of Charity of House of Providence*, 553 P.2d 467, 469 (Alaska 1976).

[41] *Id.* (quoting *Animal Rescue League of Boston v. Assessors of Bourne*, 37 N.E.2d 1019, 1021 (Mass. 1914)).

[42] 553 P.2d at 467-69.

practices.[43] We rejected the notion that "everything owned and used in some way by an exempt institution" must be deemed tax exempt.[44] The fact that leasing nearby space to private medical practices had benefitted patients and health care at the hospital was not enough to qualify the property for an exemption.[45] Because the rented space was used for private commercial medical practices, "a commercial enterprise only incidentally related to the hospital's function of providing health care to the community," we ruled that the properties were not used "exclusively" for hospital purposes.[46] Given the weak relation between the hospital's purposes and the purposes of the private physicians, that decision offers little guidance for the facts of this case, where the purposes are much more closely aligned.

In fact, *Sisters of Charity* contains some reasoning that could be read to support NSHC's position. We distinguished the facts in that case from the facts of a California case, *Cedars of Lebanon Hospital v. Los Angeles County*, which held that "provision of living quarters for resident doctors and hospital employees was institutionally necessary" and therefore exempt.[47] We also cautioned that our holding in *Sisters of Charity* did not address an exemption for office space that a hospital "must provide in order to secure doctor's [sic] services necessary to the functioning of the

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[43] *Id.* at 468-69.

[44] *Id.*

[45] *Id.*

[46] *Id.* at 472 (quoting *Genesee Hosp. v. Wagner*, 364 N.Y.S.2d 934, 943 (N.Y. App. Div. 1975)).

[47] *Sisters of Charity*, 553 P.2d at 470 (citing *Cedars of Lebanon Hosp. v. Los Angeles Cnty.*, 221 P.2d 31 (Cal. 1950)).

hospital."[48] These distinctions left open the possibility that housing for hospital staff might satisfy the exclusive use requirement.

But our subsequent decision in *Catholic Bishop*[49] tends to support the opposite conclusion. In that case we again considered *Cedars of Lebanon*, noting that the California court had determined that medical staff housing was "institutionally necessary" for the hospital and therefore tax-exempt under California law.[50] We relied on *Cedars of Lebanon* for our holding that there is a narrow exception to the exclusive use requirement for property "used for purposes directly incidental to and vitally necessary for the exempt use of other property."[51] If the medical staff housing in *Cedars of Lebanon* were used exclusively for hospital purposes, we likely would not have cited the case as a foundation for an exception to the exclusive use requirement. Our analysis in *Catholic Bishop* implies that medical staff housing is not used exclusively for hospital purposes and that such housing can be tax-exempt only if it is "directly incidental to and vitally necessary for" the hospital.[52]

Although *Catholic Bishop* did not involve medical staff housing, it applied that logic to other kinds of employer-provided housing. We considered whether on-premises housing of church radio station employees was entitled to a charitable tax exemption without asking whether the housing was used exclusively for charitable

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48 *Id.* at 471 n.12; *see also City of Nome v. Cath. Bishop of N. Alaska*, 707 P.2d 870, 892 (Alaska 1985) (describing *Sisters of Charity* as "carefully point[ing] out that the [hospital] was not obligated to provide the medical office space to accomplish its charitable purposes").

49 707 P.2d at 880-81.

50 *Id.* (citing *Cedars of Lebanon*, 221 P.2d at 35).

51 *Id.* (citing *Cedars of Lebanon*, 221 P.2d at 35).

52 *Id.*

purposes.[53] We asked only whether the housing was "directly incidental to and vitally necessary for" accomplishment of the radio station's charitable purposes.[54]

Therefore, our precedent, together with the statutory text and the rule of strict construction, lead us to conclude that apartments provided by a hospital to ensure staff proximity are not used *exclusively* for hospital purposes. Such apartments do not qualify for the statutory tax exemption unless they are "directly incidental to and vitally necessary for"[55] the hospital's operations.

C. Property 1 Is Directly Incidental To And Vitally Necessary To The Operation Of NSHC's Hospital.

Our conclusion that Property 1 is not used exclusively for hospital purposes does not necessarily mean it is taxable. To the contrary, the record in this case establishes that apartments in Property 1 are "directly incidental to and vitally necessary for" the hospital's operations.[56]

In its appeal of the denial of its application for the tax exemption, NSHC asserted the following unrebutted facts. Property 1 contains seven dwelling units. It is located within walking distance of the hospital. It primarily houses doctors and nurses who work at the hospital, who are always on call for medical emergencies and must be within a few minutes of the hospital.[57] There are no efficient or feasible short-term

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[53] *Id.* at 885.

[54] *Id.*

[55] *Id.* at 881.

[56] *Id.* at 874.

[57] According to NSHC 98% of the "occupancy of this building" is medical staff, while 2% is "temporary housing for new hires of the hospital system," who are allowed to stay there 30 days free of charge while they look for permanent housing, after which they are charged "nominal rent during that stay-over period." According to NSHC, it does not generate a profit from temporary rental to new hires. The City does not argue that this use of the property by nonmedical staff, as contrasted with medical staff, renders the property ineligible for exemption.

rentals in the Nome area. The housing is offered for doctors and nurses free of charge "and has been a necessary incentive to attract qualified medical personnel to work in the remote area of Nome." Finally, the provision of housing to medical personnel is required by NSHC's funding agreement with the federal government.

The findings made by the Board of Equalization do not contradict NSHC's assertions. The Board found that "[n]ot all NSHC employees are provided free housing" and that "NSHC employees are not required to live in the dwelling units on Property 1." It also found that NSHC "provided medical services for years without the use of Property 1."[58] However, the fact that NSHC managed to operate a hospital in the past, or the fact that most of its employees do not need short-term rentals, does not disprove NSHC's contention that currently there are no feasible short-term rentals in Nome. Nor does it disprove NSHC's contention that making such housing available is essential to ensure that the highly trained and specialized medical personnel needed to provide modern, high-quality medical care are willing and able to reside in Nome, within walking distance of the hospital. The City argues that Property 1 is not vitally necessary because NSHC could instead offer housing vouchers or subcontract other apartments. But if there are no feasible short-term rentals, vouchers will not solve that problem. And the fact that NSHC could subcontract an entire apartment building and use it in the manner it is using Property 1 does not disprove the need for such housing. It proves only that NSHC might provide such housing in a way that gives it less control and is less financially advantageous.

Given these facts, we conclude that Property 1 is directly incidental to and vitally necessary to the hospital's operation. In *Catholic Bishop* we rejected a church's argument that on-premises housing of radio station personnel and nurses was vitally

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[58] The Board styled this as a legal conclusion, but it seems more correctly viewed as a finding of historical fact.

necessary to the radio station's charitable use.[59] We reasoned that although the radio station could "some day be asked to broadcast instructions during a public emergency," this possibility did "not require housing volunteers year-round on church property" near the station.[60] By contrast, doctors and nurses are routinely required to respond to medical emergencies. And given the lack of feasible short-term rentals in Nome and the need to supply such housing to ensure the availability of qualified providers, the record establishes that Property 1 is directly incidental to and vitally necessary for the hospital's operations.

D. Nominal Rent Paid By Some Employees Does Not Preclude The Hospital Purposes Exemption.

Property otherwise exempt from taxation may lose its exemption if rent or income is derived from the property's use.[61] Under AS 29.45.030(c), otherwise exempt property "from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups." The City argues that because NSHC derives rental income from individuals' use of Property 1 as a residence, the income is not "solely from" NSHC's use. Therefore, the City argues, the rental income disqualifies the property's tax exemption. NSHC responds that the income derives solely from its own use of the property to house hospital staff, and because it is a nonprofit hospital group, the income does not taint the exemption.

The City did not make this argument before the Board, and thus the Board made no findings specifically addressing this issue. Nevertheless, we may affirm an

[59] *City of Nome v. Cath. Bishop of N. Alaska*, 707 P.2d 870, 885 (Alaska 1985).

[60] *Id.*

[61] AS 29.45.030(c).

agency's decision on any ground supported by the record.[62] But we will do so only if the record conclusively supports the alternative ruling.

We begin the analysis by looking back to a previous version of this statute, which we interpreted in *Matanuska-Susitna Borough v. King's Lake Camp.*[63] The income limitation statute at the time provided that property from which rentals or income were derived was not exempt "unless the rentals or income [were] derived from the rental of the property by religious or educational groups for classroom space."[64] We were persuaded that "a benevolent or charitable undertaking is not shorn of tax-exempt status because it charges fees and thereby realizes rent or income from its property."[65]

Despite the seemingly plain statutory text, we adopted a "reasonable interpretation" of the statute to mean that "property which is used exclusively for nonprofit charitable purposes does not thereby become disqualified for a charitable tax exemption solely because rents or income are derived therefrom."[66] What matters, we reasoned, is whether the organization possesses a "dominant profit motive" in the undertaking.[67]

Later, in *Catholic Bishop*, we distilled the reasoning of *King's Lake Camp* into a test for determining when leased or rented property is exempt:

> (1) the property is leased or rented for an exempt activity;
> (2) the lease or rental payments are not the product of an

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[62] *See Conkey v. State, Dep't of Admin., Div. of Motor Vehicles*, 113 P.3d 1235, 1237 (Alaska 2005) ("Where the superior court acts as an intermediate court of appeal for an administrative decision, we directly and independently review the underlying administrative decision, and may affirm the decision below on any ground supported by the record.").

[63] 439 P.2d 441, 442-44 (Alaska 1968).

[64] Former AS 29.10.336(c) (1964).

[65] *King's Lake Camp*, 439 P.2d at 444.

[66] *Id.*

[67] *Id.*

> owner's dominant profit motive; and (3) the lease or rental payments are incidental to and reasonably necessary for the exempt use of the property and do not exceed the operational requirements of the exempt activity.[68]

Applying the test in this case is not entirely straightforward because, as we have held, Property 1 is used for both hospital purposes and for private residential purposes. Deriving income from the residential use of the building by those who live there arguably runs afoul of AS 29.45.030(c)'s requirement that the income be *solely* from use of the property by a nonprofit group.

However, we conclude that this income is not disqualifying so long as it meets the other elements of the *Catholic Bishop* test. Because Property 1's residential housing is directly incidental to and vitally necessary for the hospital's operation, and therefore satisfies subsection (a)'s exclusive use requirement, income derived from this use of Property 1 satisfies the income restrictions of AS 29.45.030(c).[69]

Our discussion in *Catholic Bishop* of what "exclusive use" entails is instructive here.[70] Although AS 29.45.030(a)(3) plainly states that property be "used exclusively" for an exempt purpose, we acknowledged two narrow exceptions: where the use is de minimis or where the use is directly incidental to and vitally necessary for

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[68] *City of Nome v. Cath. Bishop of N. Alaska*, 707 P.2d 870, 892 (Alaska 1985) (discussing *King's Lake Camp*, 439 P.2d at 444-45). In *Catholic Bishop* we observed that the legislature had amended the income-limitation statute after our decision in *Kings's Lake Camp*, but we concluded that "nothing suggests that the legislature intended to modify the *King's Lake Camp* test." *Id.* at 888-89.

[69] In *Henash II* we stated that "in the special case of income-deriving properties, these remain exempt if . . . the entities using a specific property are all nonprofit religious, charitable, hospital, or educational groups." 265 P.3d 302, 305 (Alaska 2011). But that case did not involve a lessee's use that was directly incidental to and vitally necessary to the owner's use, so it did not resolve the question before us in this case.

[70] *See Cath. Bishop of N. Alaska*, 707 P.2d at 874.

the use of other exempt property.[71] We explained that such exceptions were necessary to avoid applying the exclusive use rule "so literal[ly] and narrow[ly] that it defeats the exemption's settled purpose."[72]

The same logic applies when considering AS 29.45.030(c), which authorizes a tax exemption for income-producing property if the income is "solely from use of the property by nonprofit . . . hospital . . . groups." We do not read this proviso so narrowly as to prohibit a nonprofit hospital from collecting some rent from medical staff to defray the cost of providing housing that is directly incidental to and vitally necessary for hospital operations. As we explained above, hospitals must maintain adequate staff at all times to run their operations. Particularly in remote areas like Nome, this may require hospitals to provide staff housing. Because staff housing under these circumstances is essential to the hospital's operation, denying a tax exemption for Property 1 would functionally contravene the legislature's intent to avoid taxing property used exclusively for hospital purposes.

As in *Catholic Bishop*, we adopt a reasonable interpretation of the statutory text that aligns with the overall legislative purpose. The key is whether income is merely "used to defray operating expenses," not to generate profit.[73] Therefore, the rent NSHC derives from Property 1 does not disqualify the property's tax-exempt status if it meets the criteria described in *Catholic Bishop*: it must not be the product of a dominant profit motive; it must be reasonably necessary and incidental to NSHC's use of the property to support its hospital operations; and it must not exceed operational requirements.[74]

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71 *Id.*

72 *Id.* at 880 (quoting *Ass'n of the Bar of the City of N.Y. v. Lewisohn*, 313 N.E.2d 30, 35 (N.Y. 1974)).

73 *King's Lake Camp*, 439 P.2d at 444.

74 *Cath. Bishop of N. Alaska*, 707 P.2d at 892.

Because the City did not make this argument below, we lack findings on those other criteria for the income limitation.[75] Therefore, on this record, we cannot say that the rental income NSHC receives from Property 1 disqualifies its tax-exempt status.[76]

V. CONCLUSION

We AFFIRM the superior court's judgment granting NSHC a hospital purposes exemption for Property 1.

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[75] The record indicates that NSHC generated roughly $103,000 in rental income in 2021. NSHC claimed that it charges "nominal rent" to new hires who stay longer than 30 days when looking for permanent housing. It also claimed that only two percent of the "occupancy" of the building was used to house new hires. Accepting NSHC's numbers at face value, the rental amount charged seems substantial. If NSHC charged rent for just one of the seven units for an entire year, which would be a higher rate of occupancy by paying tenants than NSHC claims, the monthly rental amount would be over $8,500. It is hard to square that figure with NSHC's representation that the rental amount it charges is "nominal." Yet it also appears that NSHC operated the property at roughly a $200,000 loss. Because the City does not appear to have asked the Board of Equalization to make findings on whether the rents charged satisfied the *Catholic Bishop* test, and the Board made no such findings, we cannot affirm the Board's denial of tax exemption on the alternative ground of rent received from Property 1.

[76] The parties dispute whether NSHC waived its claim that the assessor erred by not granting Property 1 a charitable purposes exemption. Because we conclude that Property 1 qualified for a hospital purposes exemption, we need not address whether the property was also used for charitable purposes. For the same reason, it is unnecessary for us to consider whether taxing this property was precluded by the doctrine of implied federal preemption, as the superior court ruled.

We extend our appreciation to all amici for their written and oral comments discussing the issues before us.