

What property is entitled to a “charitable” or “educational” property tax exemption?

- Tax-Property Article , Section 7-202:

“Property necessary for and actually used exclusively for a charitable or educational purpose benefitting the general public welfare of the people of the State”.

History of the Current Property Tax Exemption Statutes

- 1970 Report, Md. Leg. Council Committee on Taxation and Fiscal Matters
- The new statutes enacted in 1972 had fundamentally rewritten the prior statutes and were intended to “sweep away prior exemptions and significantly narrow the range of exempt property” (Report, p.114). The insertion of the new words “actually” and “exclusively” in the statutes evidenced this restrictive intent.
- The General Assembly also specifically codified in the law the directive that the tax exemption statutes are to be “strictly construed”. Tax-Property Article, Section 7-101
- The exemption provisions establish a much stricter standard for exemption than the requirements for an Internal Revenue Service 501 (c)(3) determination.
- These statutes were recodified unchanged in the new Tax-Property Article Volume created in 1986.

History of the Current Property Tax Exemption Statutes

- Beginning in the 1980s, SDAT litigated a series of cases to the Md. Tax Court, the Court of Special Appeals, and the Court of Appeals that established the standards used to this day for determining whether a property is entitled to a charitable or educational exemption.
- The leading Court of Appeals decision describing the history of the property tax exemption statutes is actually a religious exemption case, Supervisor of Assessments v. Trustees of Bosley Methodist Church Graveyard, 293 Md. 208 (1982). The Bosley Court held: “Churches, religious institutions, fraternal, benevolent, or charitable groups enjoy no inherent right to exemption from property taxation, for all real property within the State is liable to taxation, unless it is expressly exempt”.

- Throughout the 1980's, the 1990's, and to the current date, the Department has continued to litigate a series of court cases which, as a practical matter, define what each of these specific terms in the exemption statutes meant and required (i.e. actually, exclusively, charitable, educational, and general public welfare).
- **WHAT DOES THE TERM “ACTUALLY” MEAN?**
- Md. Tax Court decision in JHP, Inc./The Johns Hopkins University v. Supervisor of Assessments of Baltimore City, Md. Tax Court (Case No. 5887 (1-3)) (1988) held that there must be an “immediate prospect” of the intended use of the property for the exempt purposes. This was an important case that litigated the Department’s requirement of a building permit being obtained coupled with actual construction for properties being renovated.
- For a case interpreting the term “actually” under the Tax-Property Article, Section 7-204 exemption for religious groups, see King’s Contrivance Interfaith Campus v. State Department of Assessments and Taxation, Md. Tax Court (Case No. 01-Mi-H0-0601) (2002).
- Other cases the Department litigated in this matter held that the building permit and the actual construction must start no later than November in the first half of the tax year to be eligible for tax exemption that year.

What does the term “exclusively” mean?

- The requirement of exclusive use may be generally satisfied where there is a showing that the property is used “primarily” for exemption purposes, with only incidental or occasional use for other purposes. Friends School v. Supervisor of Assessments of Baltimore City, 314 Md. 194 (1988).
- The Department may grant exemptions only on “**components**” of large scale charitable organizations where the purposes being served by the components are themselves charitable. Supervisor of Assessments of Montgomery County v. Asbury Methodist Home, Inc., 313 Md. 614 (1988).

A hospital owned medical arts building where 55% of the space is occupied by private doctors offices for seeing patients on a fee for service basis is not primarily used for exempt purposes and ineligible for exemption even though the remainder of the building is used for exempt hospital purposes. Board of Governors of Memorial Hospital of Cumberland v. Supervisor of Assessments of Allegany County, Md. Tax Court (Misc. Case No. 53) (1983).

What does the term “exclusively” mean?

- The Court of Special Appeals allowed a charitable exemption to a hospital’s land and improvements that involved an unrecorded ownership of the improvements by a for-profit company and the hospital’s ownership of land that involved leases and leaseback agreements between the hospital and the company.
Supervisor of Assessments of Baltimore County v. Greater Baltimore Medical Center, 202 Md. App. 282 (2011).

What is the “general public welfare”?

- An independent living unit complex for the elderly, which included health care and nursing facilities, was not entitled to tax exemption where all of the residents had the ability to fully pay the substantial entrance and monthly fees. The lower court in this decision had observed that other citizens financially excluded from residency would be asked to indirectly subsidize residents with the means to pay by the granting of a property tax exemption. Supervisor of Assessments v. Ashbury Methodist Home, Inc., 313 Md. 614 (1988).
- A nonprofit health maintenance organization whose primary purpose is to provide high quality medical care to its members for a fee and whose educational aspects are only incidental to its main function of providing health care services to its members is not exempt from taxation as a charitable organization. Supervisor of Assessments of Montgomery County v. Group Health Association, 308 Md. 151 (1986).
- A nonprofit corporation operating low income housing (using federal rent subsidies) that performed only minimal other services, most of which were only for its tenants, did not qualify for the exemption as a “charitable” organization under this section of the law. Supervisor of Assessments of Baltimore City v. Har Sinai W. Corporation, 95 Md. App. 631 (1993).
- A private golf course owned by a fraternal organization and reserved for the exclusive use of its fraternal organization members and guests is not “necessary for or fairly incidental” to the charitable and benevolent purposes of the organization and therefore, not exempt under this section. Supervisor of Assessments of Wicomico County v. Lodge No. 817, Trustees, Benevolent Protective Order of Elks, 48 Md. App. 319 (1982).
- Serving the general public means serving an indefinite number of persons and includes those without the financial means to pay for the services provided.

What property is entitled to an exemption for actually and primarily serving “charitable” purposes?

- In order to grant a charitable exemption, the stated purposes of the organization as evidenced by its Articles of Incorporation or bylaws must be those traditionally thought of as public charity (i.e. “almsgiving and relief to the aged, infirm, sick and poor”). An organization must be organized and operated to benefit an indefinite number of people, and the service rendered to those eligible must act to relieve the public of a moral or economic obligation where it would otherwise have to such beneficiaries.
- The actual work performed requires the organization be engaged in public works and otherwise lessening the burden upon the State to care for or advance the interest of its citizens.

- The extent which the work performed benefits the community and the public welfare in general requires a showing that the work performed is for the general public good and not to benefit the organization's members or a limited class of persons. "Terms 'benevolent' and 'charitable' are virtually synonymous and neither encompasses a form of beneficence or largess from which the public is actively excluded." Lodge 817, Trustees BPOE v. Supervisor of Assessments, 292 Md. 533 (1982).
- Another important holding in the Lodge 817 decision states that "the dedication of the funds generated by the non-exempt use of a property to the overall exempt purposes of the organization will not entitle that property to tax exemption" (see footnote 4 of the opinion).
- The mere providing of services on a nonprofit basis to persons with the means to pay for those services is not deemed charitable under this statute. Supervisor of Assessments v. Asbury Methodist Home, Inc., 313 Md. 614 (1988).
- The level of charitable contributions received by the organization is only one factor to be considered. State Department of Assessments and Taxation v. North Baltimore Center, Inc., 361 Md. 612 (2000). Cf. Supervisor of Assessments of Baltimore County v. Har Sinai W. Corporation, 95 Md. App. 631 (1993).

What property is entitled to an exemption for actually and primarily serving “educational” purposes?

- “Educate” defined . – Formal instruction for purposes of a property tax exemption may be the heart of education, but it is not the entire body; the verb “educate” is defined as: (1) to give knowledge or training to, (2) train or develop the knowledge, skill, mind, or character of, especially by formal schooling or study, (3) teach, and (4) instruct. That allows for other methods of imparting knowledge and training. Baltimore Science Fiction Society, Inc. v. State Department of Assessments and Taxation, 384 Md. 402 (2004).
- Science fiction society was entitled to a property tax exemption for its property as the property was used as library, for writing workshops, and to encourage students to compose literature. Baltimore Science Fiction, supra.
- But property used primarily for social or recreational purposes will be denied exemption even though the activities of the organization do impart some knowledge or information. Northwest Family Sports Center, Inc. v. State Department of Assessments and Taxation, Md. Tax Court (Case No. 996) (1997), North Baltimore Aquatic Club, Inc. v. State Department of Assessments and Taxation, Md. Tax Court (Case No. 99-PP-00-0748) (2001). See also, Lodge No. 817, supra.
- Generally, organizations promoting individual “hobbies” (e.g. coin collecting, ham radio club, gun ranges) are not sufficiently “educational” to receive a property tax exemption.

What property owned by a “religious group or organization” is not subject to property tax?

- The property is exempt if it is “actually used exclusively for” one of three purposes: (1) public religious workshop; (2) a parsonage or convent; or (3) educational purposes.
- Ancillary property used as a caretaker’s residence and deemed “necessary for” maintaining the other admittedly exempt property of a religious organization is not itself used for “public religious worship” and therefore ineligible for exemption under this section. Supervisor of Assessments of Baltimore County v. Trustees of Bosley Methodist Church Graveyard, 293 Md. 208 (1982). Significantly, the Court noted the removal of the “necessary for” language from the religious exemption statute in the 1972 enactment by the General Assembly.

- To qualify for an organization as a “parsonage” there must be a minister with an “identifiable congregation” and church that has provided that house for his residency. A minister who has described himself as “congregation nucleus builder” will not receive a parsonage exemption on the house the national church has provided because the minister did not have a regular “identifiable congregation”. East Coast Conference of the Evangelical Convent Church of America, Inc. v. Supervisor of Assessments of Montgomery County, 40 Md. App. 213 (1978).
- An ordained minister who primarily served as the “minister of music” for a congregation is serving a “secular” function and the house provided as a residence by the congregation is not entitled to a parsonage exemption. While churches may have more than one parsonage, it must be occupied by a minister who serves as a “spiritual counselor” for the congregation. There are two Maryland Tax Court decisions here. Supervisor of Assessments of Anne Arundel County v. Trustees of Annapolis District Parsonage, Md. Tax Court (Case No. 194) (1979); Trustees of the First Baptist Church Silver Spring v. Supervisor of Assessments of Montgomery County, Md. Tax Court (Case No. 1094-B) (1980).

- Housing built and donated to the church by “lay ministers” and subsequently used as their residences is not a parsonage or convent within the meaning of the statute. Md. Tax Court decision in Life In Jesus, Inc. v. Supervisor of Assessments of Frederick County, Md. Tax Court (Case No. 06-MI-FR-0610) (2007).
- The Court of Appeals exempted, by writing its own definition of what constitutes a “convent”, a 46 unit garden apartment complex purchased by a national church organization and used as temporary housing for up to two years for retired church members from across the country who volunteer as “ordinance workers” at a national cathedral and who donate \$600 per month toward the cost of their housing. Supervisor of Assessments of Montgomery County v. Church of Jesus Christ Of Latter-day Saints, 430 Md. 119 (2013).

- The Department has made a concerted effort in the subdivisions throughout the State to find churches that have space in the church steeple leased to cellular companies for cell towers. The amounts of the leases are capitalized at a 10% rate to produce assessments and appropriate tax bills.

See Handout on Class
Codes
For Categories of
Ownership and Use of
Exempt Properties

Department's Property Tax Exemption Procedures

1. The organization seeking the exemption must apply on the standard exemption application form required by the Department for each type of exemption requested.
2. The applicant organization must attach to the form a copy of the Articles of Incorporation and operating by-laws so that the Department can carefully examine the stated purposes of the organization.
3. Depending on the type and nature of the organization, the Department will very likely subsequently request a copy of the organization's most recent audited financial statement to determine those specific purposes or activities on which the funds are primarily expended.

4. For charitable exemption applications, the Department specifically inquires how the applicant organization is serving the “general public” and what percentage of the beneficiaries do not have the ability to pay.
5. The Supervisor of Assessments or his/her designee will then schedule an appointment to physically inspect the subject property.
6. Each property granted or denied an exemption must be “signed off” by the Supervisor of Assessments in the jurisdiction where the property is located.
7. The Supervisor of Assessments is advised to consult with the Associate Director of the Department if there is any question about the action being taken on the requested exemption.

8. The Associate Director may represent the Department at the Property Tax Assessment Appeals Board if requested by the Supervisor for a denial of an application, and then appear as the Department's principal witness if an appeal is taken to the Md. Tax Court by either party.
9. At its annual meeting for Supervisors of Assessment, the Department discusses the new court decisions and any changes to procedures involving exempt properties. The higher level of review for exemptions by the Associate Director ensures uniformity of application of the exemption laws throughout the Assessment Offices in the State.