

CHARITABLE ORGANIZATIONS' PROPERTY TAX EXEMPTIONS

The Constitution of North Dakota provides in Article X, Section 5, that ". . . property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation."

North Dakota Century Code (NDCC) Section 57-02-08(8) provides an exemption for:

All buildings belonging to institutions of public charity, including public hospitals and nursing homes licensed pursuant to section 23-16-01 under the control of religious or charitable institutions, used wholly or in part for public charity, together with the land actually occupied by such institutions not leased or otherwise used with a view to profit

The statutory requirement that buildings and land, to be exempt, must be property "belonging to" institutions of public charity requires that the property must be owned by the institution of public charity to be eligible for the exemption and ownership by an individual renders property ineligible for the charitable property tax exemption. Vacant lots owned by institutions of public charity are not exempt because the lots are not "actually occupied" by a charitable institution.

In *Riverview Place, Inc. v. Cass County*, 448 N.W.2d 635 (N.D. 1989), the Supreme Court of North Dakota said:

[T]he determination of whether an institution falls within the exemption is, essentially, a two-step process in which it must be determined "whether the organization claiming the exemption is in fact a charitable one, and whether the property on which the exemption is claimed is being devoted to charitable purposes." . . . ownership of the property in question by an institution of public charity does not, by that fact alone, exempt the property from taxation . . . it is the **use** made of the property . . . which determines whether the property is exempt from taxation. [emphasis in text] The property's use must be devoted to charitable purposes and it must actually be used in carrying out the charitable purposes of the organization claiming the exemption.

The following conclusions have been reached in application of the exemption by the Attorney General and the Tax Commissioner:

1. Only the amount of land which is reasonably required for a site for the buildings and improvements used for charitable purposes is eligible for the exemption. Excess land used to pasture cattle is "used with a view to profit."
2. The meaning commonly given to "not used with a view to profit" is that no individual stockholder or investor will receive any kind of profit or gain

or dividend from the operation of the charity. It does not mean that the charity cannot make some type of charge for certain services.

3. Occasional rental of property owned by a public charity and rented for nonexempt purposes does not destroy the tax-exempt status of the property.
4. If a charitable organization leases a building to another charitable organization at rent substantially below market rental rates so as to constitute financial assistance to the lessee charitable organization, then a charitable use by the lessor can be established.
5. A used clothing store operated by a public charity is not exempt because it is used for profit rather than the charitable uses of the charitable institution.

LEGISLATIVE HISTORY

In 1997 two bills were introduced which would have amended NDCC Section 57-02-08(8)--House Bill Nos. 1460 and 1289. Both failed to pass in the House.

House Bill No. 1460 would have changed the test to determine if a building is exempt from property taxation on charitable grounds to provide that if the building belongs to "an organization organized and operated exclusively for charitable purposes, but any portion of that building is not exempt if it is not used exclusively for charitable purposes." In addition, the bill provided that "[a]n organization is not organized and operated exclusively for charitable purposes if it . . . pays wages . . . exceeding seventy-five thousand dollars to any person employed in this state during the taxable year."

House Bill No. 1289 would have required a charitable exemption to be specifically approved by the governing body of the city, if the property is located within city limits, or by the governing body of the county in which the property is located, if not within city limits. The bill would have grandfathered existing exemptions so that city or county approval was not required to continue the exemption.

In 1999 the interim Taxation Committee recommended House Bill No. 1051 to allow imposition of special assessments by cities against exempt property of charitable organizations. The bill would have allowed a city to establish a special assessment district composed only of property of charitable organizations. The bill would have allowed imposition of special assessments by the governing body of a city for the proportionate share of costs of police and fire protection and infrastructure expenditures paid from the budget of the city. The bill would have limited the amounts that may be levied against subject properties based on comparison of the value of those properties to the value of taxable property in a city. Committee

members said the bill would provide local flexibility in determining whether and at what level special assessments would be imposed. The bill would have given cities an option to require charitable organizations to pay for the value of certain city services in the same manner they pay special assessments for property improvements under existing law because the services contribute to the value of the property. House Bill No. 1051 failed to pass in the House.

2005-06 INTERIM STUDY

During the 2005-06 interim, the Advisory Commission on Intergovernmental Relations received testimony on the use of the phrase "in part," as used in "used wholly or in part for public charity," as it applies to charitable organizations' property tax exemptions. A letter from the Tax Commissioner's office to the Grand Forks state's attorney in 1979 stated that "If a property is used partly for the charitable purposes of the public charity owner of the building and partly for other uses, the dominant use determines the use of the property." The commission was informed that the use of the words "in part" are inherently unclear; however, if the standard were "used wholly" for charitable purposes, there may be difficulty in having support for that proposition.

Whether a property is exempt from property taxation is first decided by the local assessor and then the claim is appealed up the chain. Most of the decisions relating to the use of the term "in part" are handled at the local level and there is lack of uniformity among the local decisionmakers. The commission was informed that although there may be flexibility in the terms for political reasons, flexibility can result in inequity and everyone in the same circumstance should be treated the same regarding taxation.

The commission was informed that the purpose of a charity may not be monetary, but a charity may make money. For example, a secondhand store that sells clothing but is staffed by the developmentally disabled may have a dominant purpose of providing training to the developmentally disabled to enter retail employment. The commission was informed that there are controversies in other states over whether hospitals and YMCAs should have charitable status. A major issue as of late is whether assisted living facilities are charitable. Commission discussion included that another issue is development of university campuses which extends the exemption for the educational use beyond what seems to be the original intent of the exemption.