



MAINE REVENUE SERVICES PROPERTY TAX DIVISION PROPERTY TAX BULLETIN NO. 5

TAX EXEMPTIONS FOR BENEVOLENT AND CHARITABLE INSTITUTIONS

REFERENCE: 36 M.R.S. § 652(1), paragraphs A, B and C
November 13, 2017; replaces July 14, 2016 revision

Maine law, under 36 M.R.S. § 652, provides property tax exemptions for certain property of institutions and organizations. The parameters of the exemption have largely been shaped by case law. This bulletin explains the exemption for institutions incorporated by the State of Maine for benevolent and charitable purposes and is designed to assist the local assessor in determining the exempt status of property of benevolent and charitable institutions.

The Maine Supreme Court has defined benevolent and charitable as: “for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.” *Episcopal Camp Foundation v. Hope* (1995) 666 A.2d 108.

The court has also declared that the terms “benevolent” and “charitable” are synonymous. *Bangor v. Rising Virtue Lodge* (1882) 73 Me. 428.

The statute addresses several key requirements for exemption qualification. To qualify for the property tax exemption a benevolent and charitable institution must satisfy the legal tests of ownership, occupancy or use, and Maine incorporation.

1. Legal tests for qualification.

A. Ownership. An institution must own the property for which it requests an exemption. Ownership of the property by the institution is essential to the exemption and such ownership must be exclusively charitable. A property deed will show ownership.

B. Occupancy or use. Generally, property owned by the institution must be occupied by the institution or used solely for its own purposes.

(1) Occupancy. The word occupancy is used in its natural sense to mean an actual occupation; the institution must possess and hold the property. Occupancy is not synonymous with used or appropriated. Qualifying occupation that entitles the institution to an exemption requires possession or holding of that property for the charitable purposes for which the institution is incorporated. Ownership of the property must be concurrent with occupancy for an institution to qualify for a property tax exemption. Case law indicates that the courts will consider the extent

of the use and the nature of the occupation. Possession of a building with a plan and purpose for future benevolent and charitable use may not be sufficient to qualify for the exemption.

a. Property leased to a benevolent and charitable institution. An exception to the occupancy or use requirement exists. A benevolent and charitable institution that owns property and leases that property to another exempt institution under 36 M.R.S. § 652 is eligible for an exemption. If there is an existing lease, the agreement will show occupancy by a qualifying institution. The institution is not entitled to the exemption with respect to property owned by it, but not occupied by it, unless occupancy is by another qualifying benevolent and charitable institution.

b. Property temporarily rented. If a benevolent and charitable institution rents space to an entity that is not a benevolent and charitable institution, but the rental is temporary, occasional and doesn't interfere with the operation and use of that space by the owner, the exemption is not void.

(2) Use. The exemption for benevolent and charitable institutions has been construed by the courts as applying only to property used for the purpose for which the institution was created. All profits of the institution must be used exclusively for the purposes for which it is organized. Property held by the institution must be dedicated to the public, instead of private advantage or gain, and must be devoted to public use. An exception to the use rule exists in the situation where an institution occasionally uses a part of its property for purposes other than that for which it was incorporated. This occasional use for non-charitable purposes must be incidental, must not interfere with the institution's regular operation, and must generate only a de minimis revenue. The Maine Supreme Court has not established the upper limit of what it considers de minimis, but it has ruled that revenue representing 1% of an entity's operating budget is acceptable. *Hebron Academy, Inc. v. Town of Hebron (2013), 60 A.3d 774.*

C. Incorporated by the State of Maine. 36 M.R.S. § 652(1)(A) requires a benevolent and charitable institution be "incorporated by this State" to be eligible for an exemption. The Maine Nonprofit Corporation Act, 13-B M.R.S., provides the vehicle for organizing, registering and filing the Articles of Incorporation with the Secretary of State. An institution requesting exemption from property tax could possibly be organized and receive its charter pursuant to the Maine Business Corporation Act, 13-C M.R.S or by special act of the Legislature. Organizing as a for-profit business, however, ordinarily means that an institution is not "organized and conducted exclusively for benevolent and charitable purposes." Failure to incorporate in this state prohibits exemption from the property tax.

D. Profit. Directors, trustees, officers, and employees of a benevolent and charitable institution must not receive a portion of the institution's profit. 36 M.R.S. § 652(1)(C)(2).

E. Report filed with assessor. An entity claiming an exemption for benevolent and charitable institutions must file, on request, a report detailing the institution's preceding fiscal year. A copy of the financial statement of the institution requesting exemption will normally satisfy this requirement.

2. Maine case law. The following summaries relate to Maine Supreme Court cases pertaining to exemptions based upon the provisions of the benevolent and charitable institution exemption. The cases cited are included to assist the local assessor in making a decision to grant exempt status to property based upon benevolent and charitable reasons.

A. Francis Small Heritage Trust v. Limington (2014) 98 A.3d 1012.

(1) The plaintiff land trust is organized and conducted exclusively for benevolent and charitable purposes. It operates its “properties in the manner of a state park” and, therefore provides a benefit to the public that would otherwise be undertaken by the government.

(2) The Farm and Open Space Tax law and the benevolent and charitable exemption are not mutually exclusive. There is some overlap between the two benefits and neither preempts the use of the other.

B. Hebron Academy, Inc. v Hebron (2013) 60 A.3d 774.

(1) Academies – in this case a private high school – are included as literary institutions.

(2) Rental activity, which in this case generated approximately 1% of the institution’s operating budget, does not interfere with the institution’s purpose and is de minimis and incidental.

C. Cushing Nature and Preservation Center v. Cushing (2001) 785 A.2d 342.

(1) The plaintiff did not allow clamming on its property, which the lower court declared a disqualification for the charitable exemption. The Supreme Court ruled that, when the use of property is charitable, “the owner need not allow all public uses in order to qualify for an exemption.”

D. Salvation Army v. Standish (1998) 709 A.2d 727.

(1) Salvation Army qualified as benevolent and charitable organization entitled to exemption even though its purpose and mission was religious.

(2) Allowing Salvation Army officers to use buildings at summer camp for inexpensive vacation lodging constituted nothing more than compensations for the services the officers had performed on behalf of the charitable organization.

E. Lewiston v. Marcotte Congregate Housing (1996) 673 A.2d 209.

(1) A benevolent and charitable exemption applies only to property which is owned and *occupied or used* by the organization *solely* for its own purposes. Ownership by an organization with a charitable purpose alone without occupancy or use is not enough to claim exemption.

(2) Portion of building owned by nonprofit corporation which was leased to private physicians and residents paying full market rental value rendered the entire property subject to taxation.

F. Episcopal Camp Foundation v. Hope (1995) 666 A.2d 108.

(1) Purpose of church camp was benevolent and charitable, thus church camp was exempt from real property taxes.

(2) Charity is defined as: “for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or

maintaining public buildings or works or otherwise lessening the burdens of government.”

G. Pentecostal Assembly of Bangor v. Maidlow (1980) 414 A.2d 891.

(1) Independent local church is not organized and conducted exclusively for benevolent and charitable purposes. Instead, it is organized and conducted primarily as a church. For purposes of exemption from property taxation, religious purposes are not to be equated with benevolent and charitable purposes.

H. Nature Conservancy of Pine Tree State v. Bristol (1978) 385 A.2d 39.

(1) Property used solely for a charitable institution's own purposes where the grantors attempt to reserve private rights of use without the accompanying burden of paying property taxes has the effect of denying the exemption. The grantor(s) may not retain any private privilege or benefit in terms of use; otherwise the exempt status is defeated.

(2) Charitable institution was subject to grantor private entity's custodial control of the use of donated premises, notwithstanding that such control was to be harmonious with charitable institution purpose, was inconsistent with the "sole use" condition for tax exemption.

(3) Land held in its natural state does not become tax exempt by transfer to a charitable institution where the grantor retains the rights to access, passage or custodianship.

I. Maine Medical Center v. Lucci (1974) 317 A.2d 1.

(1) The use of property must be reasonable to the major purpose for which a benevolent and charitable institution is incorporated and the use not oriented toward pecuniary profit but, rather, toward providing necessary services and facilities will permit exemption from taxation.

(2) The fact that the medical center charged a variety of parking fees to staff, employees, patients and patients' visitors did not defeat rights to tax exemption where dominant purpose of parking lot and garage was eleemosynary (relating or devoted to charity or alms).

J. Holbrook Island Sanctuary v. Brooksville (1965) 214 A.2d 660.

(1) The motive of donor who gives property to the intended benevolent and charitable institution is not material in determining whether the property is tax exempt.

K. Green Acre Baha'i Institute v. Eliot (1963) 193 A.2d 564.

(1) Missionary societies possess the attributes of benevolent and charitable institutions for property tax exemptions.

(2) Exemption of property of benevolent and charitable institutions from taxation is not defeated by the fact that use of property by a charitable institution for its own purposes is seasonal.

L. Green Acre Baha'i Institute v. Eliot (1954) 110 A.2d 581.

(1) The court established a four-part test to determine exemption eligibility. A benevolent and

charitable institution:

- a. Must be organized and conduct operations purely for benevolent and charitable purposes in good faith;
- b. Must not have a profit motive;
- c. Must not have pretense to avoid taxation;
- d. May generate revenue only incidental to its benevolent and charitable purpose.

M. Osteopathic Hospital of Maine v. Portland (1942) 26 A.2d 641.

(1) The actual appropriation of property of benevolent and charitable institutions for purposes for which institution was incorporated, and not a physical use on exact date of assessment, controls in determining whether property is exempt from taxation.

N. Calais Hospital v. Calais (1942) 24 A.2d 489.

(1) The hospital, a charitable institution, permitted the use of a room in the hospital by the treasurer and manager as his headquarters in connection with service to the institution, and in addition to carrying on private medical practice did not interfere with the general use and occupation of the building – so as to exclude room from exemption from taxation where use of room was for mutual convenience of hospital and physician.

O. Camp Emoh Associates v. Lyman (1933) 166 A. 59.

(1) A benevolent and charitable corporation under the laws of this state, whose members are nonresidents and whose clerk is the only officer residing in this state, is not thereby deprived of the right of exemption.

(2) Property of a benevolent and charitable institution is exempt from taxation when occupied or used for its own purposes.

(3) Immunity of property of benevolent and charitable institution from taxation depends on such exclusive occupation as contributes immediately to promotion of benevolence and charity.

(4) Property of a benevolent and charitable institution need not be in actual use on day of assessment to be exempt from taxation.

3. Proof of entitlement for property tax exemption.

The statute is vague on what constitutes proof of entitlement for property tax exemption for benevolent and charitable institutions. The attached “Application for Exemption from Local Taxation” is a sample document that an assessor may use or adapt to have proof on record that a benevolent and charitable organization has been granted a property tax exemption for the purposes stated. Each application should be reviewed annually.

A local assessor may also require copies of the entity's Articles of Incorporation, property deed, and bylaws along with an exemption application.

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed, contact the Property Tax Division of Maine Revenue Services.

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APPLICATION FOR EXEMPTION FROM LOCAL TAXATION

Property of Institutions and Organizations

Pursuant to 36 M.R.S. § 652

Attach copies of Articles of Incorporation, bylaws and property deed if not on file with the assessor.

1. To the assessor(s) of _____, Maine.
2. Pursuant to 36 M.R.S. § 652, the undersigned requests exemption from the property tax for the below described real estate/personal property.

3. Institution or organization

NAME: _____

ADDRESS: _____

4. Location of real estate or personal property.

MAP: _____ LOT: _____

5. The real estate and personal property is owned, occupied or used solely for the following purposes:

6. Person filing application.

NAME: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

TELEPHONE: _____ EMAIL: _____

Check List for Assessor

Property of Institutions and Organizations

Pursuant to 36 M.R.S. § 652

1. Incorporated by State of Maine _____
(Attach copy of incorporation as filed with state)

2. Property owned by this organization _____
(Attach copy of deed)

3. Property occupied by this organization _____
or other exempt organization _____
(Attach copy of lease agreement)

4. Property used for incorporated purposes _____
(Attach copy of bylaws)

5. Financial report for preceding year _____
(Attach copy of financial report)