



Bill Johnson 10/9/13

State of Vermont
Department of Taxes
133 State Street
Montpelier, VT 05633-1401

Agency of Administration

Memorandum

To: Members of the Property Tax Exemption Study Committee

From: Bill Johnson, Director PVR

Date: October 9, 2013

RE: Possible Issues for the Committee's Consideration

The uniform application of statutory exemptions are a constant issue that PVR has confronted over the years and Public, Pious and Charitable exemptions tend to present the most challenges. In large part this is because the Fly Fishing Test that governs the application of this type of exemption can be difficult to interpret as to how it applies to specific properties leading to uncertainty and frustration for taxpayers, municipal government officials, Tax Department staff and policymakers.

While one option would be for the Legislature to adopt a different standard than Public, Pious and Charitable, this would present a formidable task and we are not advocating that approach. On the other hand, there may be some specific issues related to the application of Public, Pious and Charitable exemptions that the Committee might wish to explore. Below is a list of these issues for the Committee's review.

- **Concurrence of ownership and use.** We are often confronted with the issue of whether there must be a concurrence of ownership and use of a property seeking exemption status. This is frequently the case where one non-profit organization owns a property but leases it to another non-profit.
- **Public use.** The definition of what is a public use is open to broadly different interpretations. That is, how open to the general public must the primary use of the property be in order to qualify for an exemption? This issue often arises participation is arguably selective due to a jury or application process.
- **Fractional exemptions of a property.** While the primary use of a property may allow it to qualify for an exemption, if there is a secondary use that does not qualify but restricts the use of a portion of the property, should that part of the property be taxable? This is often the case where a non-profit or municipality

leases a portion of the property to another party whose organizational purpose does not coincide with that of the owner.

- **Municipal exemptions.** There is no reference to municipally owned property being exempt from taxation in the “exemption chapter” of Title 32 and historically the Vermont Supreme Courts has said that municipal property was exempt if it qualified under the “Public” portion of the Public, Pious and Charitable exemption in 32 V.S.A. § 3802(4). With the passage of Act 60, a provision was added to statute that excludes municipal property from the definition of “nonresidential” property, thus exempting municipal property “used for municipal purposes” from the State education property tax. 32 V.S.A. §5401(10)(F). Some clarity would be helpful as to how § 3802(4) and § 5401(10)(F) are related and what is a “municipal use” (does it have to be a “public use?”).
- **Health and recreation property.** 32 V.S.A. § 3832 limits the eligibility for exempt status for Public, Pious and Charitable for specific types property. One of these limitations is for property used for health and recreation purposes. 32 V.S.A. § 3832(7). This presents a number of challenges particularly for properties whose primary use involves the provision of health related services. Because of this limitation nursing homes are not exempt but hospitals are exempt and properties owned by organizations that provide health services are exempt to the extent the property is used for a non-health related purpose (i.e., administrative office buildings are not taxable while properties used for the direct provision of health related services remain taxable).
- **Boards of civil authority and exemption status.** The courts have made it clear that Listers and Assessors are the gatekeepers in terms of the first line of authority for approving exemptions but it is unclear as to whether B.C.A.s have the authority to hear appeals by parties from the exemption decisions of municipal Listers and Assessors.
- **Municipally owned property located in another municipality.** Municipally owned property located outside a municipality’s borders generally is taxable under a provision in Title 32. 32 V.S.A. § 3659. The provision dates back to the early twentieth century and is difficult to interpret given current conditions. Beyond this statutory provision there are other old exemption statutes that are arguably archaic and in need of clarity.

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VERMONT PROPERTY TAX PUBLIC, PIOUS OR CHARITABLE EXEMPTION

Statutory Authority

Vermont law provides certain exemptions from property taxation in Title 32, Chapter 125 of the Vermont Statutes Annotated. Tax exemption statutes must be strictly construed against the party claiming the exemption. The most-often cited exemption is for property granted, sequestered or used for public, pious or charitable uses as set forth in 32 V.S.A. § 3802(4).

Primary Use

The analysis for determining whether property is exempt under Section 3802(4) as a public, pious or charitable use begins with an identification of the primary use of the property. *American Museum of Fly Fishing, Inc. v. Town of Manchester*, 151 Vt. 103, 110 (1989) (finding that “the crucial factor is the primary use to which the property is put”). Primary use refers to the “direct and immediate use” of the property as distinguished from a “remote” or “incidental” use. *Gifford Hospital v. Town of Randolph*, 119 Vt. 66, 72 (1955).

Public, Pious and Charitable Use Test

There are certain conditions, all of which must exist, in order for the public, pious or charitable use exemption under Section 3802(4) to apply:

- (1) the property must be dedicated unconditionally to public use;
- (2) the primary use must directly benefit an indefinite class of persons who are part of the public, and must also confer a benefit on society as a result of the benefit conferred on the persons directly served; and
- (3) the property must be owned and operated on a not-for-profit basis.

American Museum of Fly Fishing, 151 Vt. at 110.

Exemption Limitations

Even if the above conditions are met, Section 3832 of Title 32 limits exemption from taxation for certain uses of property including:

- **Health and Recreational Uses** – Property that is used primarily for health or recreational purposes is not exempt unless it has been so voted by the legal voters of a town. 32 V.S.A. § 3832(7); see, e.g., *Central Vermont Hospital v. Town of Berlin*, 164 Vt. 456 (1995); *Middlebury College v. Town of Hancock*, 147 Vt. 259 (1986); *In re Aloha Found., Inc.*, 134 Vt. 239, 240 (1976).

- **Religious Society Property** – Property owned or kept by a religious society is only exempt as a pious use if it is used as a church edifice, a parsonage, the outbuildings of the church edifice or parsonage, a building used as a convent, school, orphanage, home or hospital, land adjacent to any of the buildings named in this subsection, kept and used as a parking lot not used to produce income, lawn, playground or garden and the so-called glebe lands. 32 V.S.A. § 3832(2); *see, e.g., Our Lady of Ephesus House v. Town of Jamaica*, 178 Vt. 35, 41 (2005); *In re Abbey Church*, 145 Vt. 227 (1984). Note that Section 3802(4) of Title 32 also exempts “real property owned by churches or church societies or conferences and used as parsonages and personal property therein used by ministers engaged in full time work in the care of the churches of their fellowship within the state.” 32 V.S.A. § 3802(4).

Who Decides Whether the Property is Exempt?

Listers make the initial determination of whether a parcel is eligible for exemption from taxation. This document is designed to help the property owner gather the information and documents necessary to present to the local listers. An appeal from the listers’ decision is to the superior court. The superior court’s decision may ultimately be appealed to the Vermont Supreme Court. As noted above, the Vermont Supreme Court has held that “[a]n exemption will be strictly construed against the party claiming it, and any doubts as to its application will be interpreted against the exemption. Exemption statutes must be construed reasonably, and not in a manner that defeats the purposes of the statute.” *American Museum of Fly Fishing*, 151 Vt. at 108. It is therefore very important that the property owner provide clear and detailed information regarding the property and its uses.

The following pages request information regarding the ownership and use of the property for which an exemption is being sought. Attach additional pages as necessary to fully respond to each question.

Incomplete information will result in the exemption being denied.

PROPERTY OWNER

Owner of Record:

Mailing Address:

Daytime Phone #:

E-mail Address:

If property owner is being represented by an attorney or agent, please complete the following:

Attorney/Agent Name:

Mailing Address:

Daytime Phone #:

E-mail Address:

******* REQUIRED ATTACHMENTS*******

If the applicant is an organization, attach at a minimum:

- (1) Organizational documents (for corporation—Articles of Incorporation & Bylaws; for LLC—Certificate of Formation and Operating Agreement; for partnership—partnership agreement);
- (2) Organization’s mission statement;
- (3) IRS tax-exempt determination letter, if applicable;
- (4) Deed to property (describing unconditional dedication to public/pious/charitable use and any restrictions on use, etc.); and
- (5) Any other relevant documents.

PROPERTY DESCRIPTION

Property Located in Town/City of:

SPAN (school property account number):

Location (street or road, etc):

Parcel Size (acres or square footage):

Describe all buildings on the parcel:

Listed Value of Property (assuming no exemption): \$

PROPERTY USE

The mission of the organization owning the property would best be described as supporting/benefiting (circle one):

1. Animal Welfare
2. Art
3. Children/Youth
4. Church
5. Conservation/Environment
6. Elder Services
7. Employment and Training
8. Health
9. Health and Health Care Advocacy
10. Higher Education
11. Housing
12. Land Conservation
13. Legal Services
14. Men
15. Mental Health and/or Substance Abuse
16. Museums
17. Recreation
18. Science and Research
19. Women
20. Other (please specify) _____

Describe in detail the organization's mission.

Provide a complete and detailed description of the **primary** use of the property.

Describe the portion of the property involved in the above **primary** use (*e.g.*, square footage used, proportion of users, hours of building time, etc.). Attach a diagram if there are multiple uses of a parcel or building(s).

Describe any secondary or incidental uses of the property.

Describe the portion of the property involved in secondary and/or incidental uses.

Is the property unconditionally and irrevocably dedicated to a public, pious or charitable use?

Yes ___ No ___

If yes, explain in detail and provide supporting documentation (*e.g.*, deed, Articles of Incorporation, etc.).

Is the property owned and operated by the same entity? Yes ___ No ___

If no, provide a detailed description of the operator and its relationship to the owner. Do the entities share a single mission? Provide supporting documentation.

WHO BENEFITS

What persons or group of people directly benefit from the primary use of this property?

Is the property open to the general public? Yes ___ No ___

Are there any restrictions on who may use the property? Yes ___ No ___

If yes, describe any restrictions on use.

Are there any restrictions on when the property can be used? Yes ___ No ___

If yes, describe any restrictions.

Is an application, pre-approval or membership required prior to use? Yes ___ No ___

If yes, describe in detail any requirements and the organization's decision-making criteria in approving users.

Is society as a whole benefited as a result of the benefits conferred on the above persons or group? Yes ___ No ___

If yes, how does society as a whole benefit as a result of the benefit conferred on the persons directly served?

FEES AND USE CHARGES

Is the property described above owned and operated on a not-for-profit basis? Yes ___ No ___

Is any of the property subject to a lease, rental or management agreement? Yes ___ No ___

If yes, attach a copy of all lease, rental and/or management agreements.

Other than lease or rental charges, are any fees, admission or membership charges levied for the use of this property? Yes ___ No ___

If yes, provide details.

I hereby declare the foregoing to be true and accurate, and request that ALL / A PORTION (cross out term that does not apply) of the property described above be exempt from property taxation under 32 V.S.A. § 3802(4).

Date: _____

Signature

Name (please print or type)

New Law: Exempt Property Owners Must Report Insurance Replacement Costs to Municipal Assessors

Act 73 Now in Effect

Earlier this year, Governor Peter Shumlin signed into law Act 73. Pursuant to the new law, owners of certain tax exempt properties are required to provide assessing officials with the insurance replacement cost of each exempt property. If the property is uninsured, the owner must provide a written explanation of why it is not insured. The new requirement applies to most, but not all, exempt properties. On the reverse side of this fact sheet is a list of property owners to which the new law applies.

The new requirement is effective for 2014 grand lists. Property owners are required to provide assessors with the above information before April 1st of next year. This is an annual filing requirement for property owners.

This new requirement is in addition to other provisions of Vermont law. The municipality's grand list must include either (i) the fair market value of each exempt property; or, (ii) the insurable value reported to assessor. As before, the grand list must also include the statutory authority for each exemption, the date the exemption became effective, and the year in which the exemption ends. These requirements are found at 32 V.S.A. § 4152(4), (6). The insurance replacement cost value required by Act 73 may be helpful in arriving at an estimate of the fair market value of a property. For example, if the insurance value for a landed parcel is used, the Department of Taxes would encourage the municipality to also incorporate a land value derived from the its land schedule to that value.

New Form for Easy Reporting Coming Soon!

The Department of Taxes will assist with collecting the insurance replacement values and ensuring property owners meet their obligations under Act 73. Before the end of this year, the Department will distribute a new form that can be used by the owners of these exempt properties. The form will align with the new data field on NEMRC so that municipalities can conveniently record the information required by Act 73. The Department of Taxes is committed to supporting this effort.

For questions or suggestions on how the Department can assist with the reporting process, please contact Jim Knapp at 828-6638.

Please see the reverse side for a list of property owners who must report insurance values

Disclaimer: This fact sheet is intended to provide an overview only. Vermont tax statutes, regulations, Vermont Department of Taxes rulings, or court decisions supersede information provided in this fact sheet.

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DEPARTMENT OF TAXES

Property Owners Who Must Report Insurance Values	Statutory Cite
Owners of property used for public purposes	32 V.S.A. § 3802(4)
Property owners that own land used for pious purposes	32 V.S.A. § 3802(4)
Charitable organizations that own land used for charitable purposes	32 V.S.A. § 3802(4)
Churches, church societies, conferences that own land used for parsonages, if the property is used by minister in full time operation of fellowship	32 V.S.A. § 3804(4)
Libraries (public and private circulating libraries, not operated for profit)	32 V.S.A. § 3802(4)
Towns that lease property for educational purposes	32 V.S.A. § 3802(4)
Colleges, academies, and other public schools	32 V.S.A. § 3802(4)
College fraternities and the societies and corporations that own their property	32 V.S.A. § 3802(5)
YMCA and YWCA	32 V.S.A. § 3802(6)
Agricultural societies who own land used for annual fairs	32 V.S.A. § 3802(9)
Operators of facilities/land for the abatement of pollution of the waters of the state of Vermont or waters within the purview of the New England Interstate Water Pollution Control Compact	32 V.S.A. § 3802(12)
Charitable/non-profit organizations operating facilities for the humane treatment of animals	32 V.S.A. § 3802(15)
Owners of personal property, machinery, inventory and equipment, ski lifts and snow-making equipment for a ski area	32 V.S.A. § 5401(D)
Municipalities (property of the municipality, located within the municipality and used for the provision of municipal services including utility services)	32 V.S.A. § 5401(F)
Owners of machinery and equipment used for processing whey.	32 V.S.A. § 5401(G)
Owners of buildings and fixtures of wind-powered electric generating facilities taxed under section 5402c of title 32	32 V.S.A. § 5401(J)