



COUNTY OF FRANKLIN

BOARD OF ASSESSMENT

REVISION OF TAXES

272 NORTH SECOND STREET
CHAMBERSBURG, PENNSYLVANIA 17201
717 261-3801 Fax 717 264-5218

Franklin County Board of Assessment & Revision of Taxes

Memorandum of Procedure to Establish Tax Exempt Status Real Property Taxation

Exemptions from real property taxation are authorized by Article VIII, Section 2(a) of the Pennsylvania Constitution of 1968. The Pennsylvania Constitution authorizes the General Assembly to specify the exemptions by statute. The statutory exemptions are found in the General County Assessment Law, which may be found at 72 P.S. § 5020.204, and in the Consolidated County Assessment Law, which may be found at 53 Pa.C.S. § 8812. Generally, the following properties owned by an entity or group, described as follows, and utilized by the owner in the manner described are entitled to exemption:

1. All churches or actual places of regularly stated religious worship.
2. All burial grounds not used or held for private or corporate profit.
3. All hospitals, institutions of learning or charity, including fire and rescue stations founded, endowed, and maintained by public or private charity, provided the entire revenue derived be applied to the support of the institution.
4. All schoolhouses belonging to any county, borough, or school district.
5. All courthouses, jails, and poorhouses.
6. All public parks operated for the benefit of the public and used for amusements, recreation, sports, and other public purposes without profit.
7. All other public property used for public purposes.
8. All property owned, occupied, and used by any branch, post or camp of honorably discharged servicemen or servicewomen actually and regularly used for benevolent, charitable, or patriotic purposes.
9. Real estate owned by institutions of purely public charity and actually and regularly used for the purposes of the institution.
10. All playgrounds founded and maintained by public or private charity.
11. All property maintained by public or private charity and used exclusively for public libraries, museums, art galleries, or concert music halls.
12. Silos used for processing or storing animal feed on a farm.
13. All fire and rescue stations maintained by public or private charity along with their social halls.

Article VIII, Section 2 of the Pennsylvania Constitution provides in part that the General Assembly may exempt from real estate taxation:

(iii) that portion of public property which is actually and regularly used for public purposes;....

(v) Institutions of purely public charity, but in the case of any real property tax exemption, only that portion of the real property of such institution which is actually and regularly used for the purpose of the institution.

Title 72 P.S. Section 5020.204 (b) and (c) provide in part as follows:

(b) Except as otherwise provided in clause (11) and (13) of this section, all property real or personal, other than that which is actually and regularly used and occupied for the purposes specified in this section, and all such property from which any income or revenue is derived, other than from recipients of the bounty of the institution or charity, shall be subject to taxation, except where exempted by law for State purposes, and nothing herein contained shall exempt same therefrom. (Note: Clause (11) pertains to libraries and clause (13) pertains to fire companies.)

(c) Except as otherwise provided in clause (10) of this section, all property, real and personal, actually and regularly used and occupied for the purpose specified in this section shall be subject to taxation, unless the person or persons, association or corporation, so using and occupying the same, shall be seized of the legal or equitable title in the realty and possessor of the personal property absolutely. (Note: Clause (10) pertains to playgrounds.)

In order to establish that a particular piece of real estate is exempt from real property taxation, the entity or group claiming exemption must establish to the satisfaction of the Franklin County Board of Assessment & Revision of Taxes that they are one of the entities or groups itemized in paragraph 1 through 13 above and, further, that the particular parcel of real estate in question is actually being used by the tax exempt entity in its charitable activities. It is not sufficient that the rent proceeds are being used by the exempt entity or group nor is it sufficient that they intend to use the property at some future date. Pennsylvania courts have even held that property undergoing construction by the tax exempt entity or group is not being used by that entity or group until it is actually occupied and being employed by the entity or group in its tax exempt activities.

The seminal case in the area of what constitutionally constitutes a purely public charity is the Pennsylvania Supreme Court case of Hospital Utilization Project v. Commonwealth, 487 A.2d 1306 (Pa. 1985). In that case the Supreme Court adopted what has commonly become known as "the HUP Test." For an entity to qualify as a purely public charity pursuant to "the HUP Test" it must possess the following characteristics:

- advances a charitable purpose;
- donates or renders gratuitously a substantial portion of its services;
- benefits a substantial and indefinite class of persons who are legitimate subjects of charity;
- Relieves the government of some of its burden; and,
- operates entirely free from private profit motive.

Over the years, and notwithstanding "the HUP Test" laid out by the Supreme Court, considerable debate has developed concerning the entities or groups that would qualify under item 9 above as "institutions of purely public charity". To provide further guidance on this issue, the General Assembly enacted Act Number 55 of 1997, as amended, to provide a more useful definition of the term "institutions of purely public charity," and, in effect, codified "the HUP Test." Section 5 of that Act is entitled "Criteria for Institutions of Purely Public Charity". In this context, it is important to note that Act Number 55 of 1997, as amended, only serves to assist in defining statutory reference to an "institution of purely public charity". It does not determine the issue of taxation or exemption from taxation. In addition to determining whether an entity or group falls within the statutory definition of an "institution of purely public charity", there must be a determination whether the property in question is actually and regularly used for the purpose of the institution. Section 2, paragraph (A) subparagraph (6) of the Act provides in part that:

... this Act shall not in any way limit the responsibilities, prerogatives or abilities of political subdivisions with respect to the determination of, or challenges to, the taxable status of a parcel of property based on the use of the parcel or part of the parcel or property.

An organization or group seeking exemption has the affirmative burden to prove that it or they are entitled to exemption under the constitutional and statutory criteria referenced above. The mere fact that an organization is a "nonprofit" corporation as defined by Pennsylvania law or that it is exempt from income taxation as an entity described in Section 501(c)(3) of the Internal Revenue Code does not mandate that it should be exempt from real estate tax under Pennsylvania law. While these may be factors to assist in the determination of whether a particular entity is one of those described in paragraph 1 through 13 above, the issue of tax exemption under Pennsylvania law requires more.

Procedure to Claim Exemption

To claim tax exempt status for a particular parcel of real estate, the entity or group claiming the exemption must:

1. File an appeal with the Franklin County Board of Assessment & Revision of Taxes identifying the property for which the exemption is being claimed on the forms prescribed by the Board for such purpose, copies of which are incorporated herein by reference (the two required forms which must be completed to request an exemption are the standard Appeal Form and the Purely Public Charities Real Estate Tax Exemption);
2. Provide evidence of ownership of the property;
3. Establish that the owner is described in one of the thirteen categories referenced above; and
4. Establish that the real property for which exemption is claimed is actually and regularly being used for the purposes of the entity or group.

To support the request, at a minimum the following documentation, where appropriate, and in addition to any other supporting documentation, should be submitted along with the appeal to the Tax Assessment Board of Appeals:

1. A copy of the deed to the property for which exemption is being claimed.
2. A copy of the charter, articles of incorporation or other organizing document of the entity or group claiming tax exempt status. If the entity or group is claiming tax exempt status as an "institution of purely public charity," documentation to support the inquiry described in Section 5 of Act Number 55 of 1997, as amended, should also be provided where applicable to the request being made.
3. There should be a description of the present use of the property provided in sufficient detail for there to be made a judgment as to whether the present use of the property is for the tax exempt purpose of the entity or group claiming the tax exempt status. In this context, if less than the whole property is being used for the purposes of the entity or group claiming tax exemption, that must be noted or an affirmative statement must be made that the whole property is so used if that is the case.
4. If any part of the property is being leased to or from another person or entity, a copy of the lease.

Upon receipt of the appeal claiming tax exempt status, the matter will be scheduled to be presented to the Franklin County Board of Assessment & Revision of Taxes. A representative or representatives of the entity or group claiming tax exempt status, knowledgeable in the affairs of and authorized to and should attend the appellate proceeding at the time and place the matter is scheduled to be presented to the Franklin County Board of Assessment & Revision of Taxes. The person(s) designated to represent the entity should be authorized in writing and on letterhead of the entity or group claiming tax exempt status as provided in the Franklin County Board of Assessment Appeals: Appeal Procedures, Rules and Regulations, a copy of which are incorporated herein by reference. The designation of representation should be submitted along with the documentation accompanying the original appeal.

Date of Exemption

If tax exempt status is recognized, the effective date of the exemption will be prospective only. The basic law in Pennsylvania is well established that the tax status and value of property is set for the entire fiscal year on the assessment date. The taxable status of property ordinarily becomes fixed as of the date designated by law as assessment day, and, unless expressly provided to the contrary.....

The law is clear that if property is taxable on the assessment date, it remains taxable for the entire year. Conversely, once property is determined to be tax exempt for a tax year, it cannot be altered for the remaining period of the year even if its tax exempt use is altered. [See W.G. Halkett Co. v. Philadelphia, 115 Pa. Super. 209 (1934); Appeal of Title Services, Inc., 433 Pa. 535 (1969)].

For purposes of the foregoing principle, the tax assessment date for which revisions will be effective is August 1 of each year unless an appeal is taken within the statutory time frame. If an appeal is timely taken, the tax assessment date will be the date established by the final resolution of an appeal.

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Purely Public Charities Real Estate Tax Exemption

The Pennsylvania Supreme Court provides the guidelines that are used to determine whether an organization qualifies for tax exemption as a charitable organization.

The five-point test is listed below. Please include an explanation of qualification in the space provided, listing the documents supplied to support each point. Please indicate in each document supplied, the data which you feel satisfies each qualification. If additional space is required for an explanation, please include a sheet listing the qualification and explanation and indicate that additional data is included in the space below.

1. Advance a Charitable Purpose: _____

2. Donates or renders gratuitously a substantial portion of its service: _____

3. Benefits a substantial and indefinite class of persons who are legitimate subjects of charity:

4. Relieves the government of some of its burden: _____

5. Operates entirely free from private profit motive: _____

If charitable organizations meet the above Supreme Court Test, they must then meet the requirements of the Institutions of Purely Public Charity Act to qualify for exemption in the State of Pennsylvania.

If you have a letter from the IRS providing you with a 501(c)(3) designation, please include a copy of that letter. If you have received a sales tax exemption from the PA Department of Revenue, please include a copy of that Exemption Certification