1967

Real Property Tax Exemptions of Non-Profit Organizations

Robert T. Bennett
Real Property Tax Exemptions of Non-Profit Organizations

Robert T. Bennett*

Although much has been written about non-profit organizations in the area of state and local taxation, very little has been written as to tax exemptions granted to these same organizations. This only indicates that the law on this subject is not well developed and remains a source of constant litigation.

This situation appears to exist for several reasons. Each state has its own tax statutes with its own definitions and interpretations, and litigation can usually be resolved by referring only to the particular state constitution involved or the Constitution of the United States. There is a limited degree of exchanging of concepts and definitions among the states. This is because case law follows the statutes and policies of the particular state involved; and consequently, little uniformity exists.

Other reasons are that local (county, township or municipal) administration of these taxes might be at variance within the state and that tax exemptions are granted for various reasons and purposes by each individual state—what is exempt in one state may not be exempt in another state.

Power To Exempt

It has been held that the power to tax includes the power to exempt, unless prohibited by the state constitution.1 Since the power to tax is an attribute of sovereignty, so also is the power to grant exemptions from taxation.2

Generally, these exemptions arise in several ways. State constitutional provisions may provide for the exemptions. These are usually self-executing, and the legislature has no authority to interfere; but if the state constitution makes no provision for granting tax exemptions, the legislature then has the sole power to grant them.3

* B.S., Ohio State University; Certified Public Accountant; Cuyahoga County (Cleveland) Ohio, Deputy Auditor, Supervisor, Property Tax Division; Fourth-year student at Cleveland-Marshall Law School of Baldwin-Wallace College.

3 84 C. J. S. Taxation, Secs. 216-218; People ex rel. Buffalo and Fort Erie Public Bridge Authority v. Davis, 277 N. Y. 292, 14 N. E. 2d 74 (1938). See also State v. Davis, 132 Ohio St. 555, 9 N. E. 2d 684 (1937), where the Ohio court quotes Corpus Juris on this subject.
PROPERTY TAX EXEMPTIONS

Between these two extremes, there are many degrees of variance. Some state constitutions will allow the legislature to grant exemptions at its discretion, in which case the exemption arises only when the legislature takes action. However, the prevailing rule followed in 23 states, including Ohio, is that the state constitution grants permissive authority to the legislature, to make specific exemptions at its discretion, and specifically forbids all other exemptions.4

This rule appears to be followed because the wording of the constitution is usually clear in its provisions and tax exemptions are intended to be exclusive.

Ownership vs. Use

Ownership is primarily the sole criterion used in exempting governmental-owned property.5 For example, in the case of property owned by the United States, the general rule is that no state has the authority to tax the federal government.6 Another example of ownership as the main criterion used in determining tax exemption, is property owned by a state and its political subdivisions, including school districts and other special districts.7 In some states, however, this may be limited to property devoted to public use or purpose.8

We can dispose of ownership as a sole criterion for tax exemption by stating that it is usually applicable only to governmental-owned property and usually has little bearing on other non-profit organizations.

Ordinarily, under state constitutional and statutory provisions for exempting non-profit organizations from taxation, it is the "use" of the property and not the "ownership" that determines the right to the exemption.

4 This rule is followed in:

Arizona    Illinois    North Carolina    Tennessee
Arkansas    Kentucky    Ohio    Utah
California    Louisiana    Oklahoma    Virginia
Colorado    Missouri    Oregon    Washington
Florida    Montana    Pennsylvania    West Virginia
Georgia    Nevada    South Carolina

There has been a change in this rule in Alabama, Minnesota and South Dakota. See, 84 C. J. S. Taxation, Sec. 220.

5 84 C. J. S. Taxation, Sec. 252.

6 Id. at 198.

7 Id. at 200.

8 See, for example, N. Y. Real Prop. Tax L., Sec. 406 (1). See also, Town of Harrison v. County of Westchester, 13 N. Y. 2d 258, 196 N. E. 2d 240 (1962) where the Court of Appeals held that several aircraft hangars owned by the county at the county airport, and leased to several private corporations, were not tax exempt because they were not used for a public purpose.
Charitable Organizations

Religious, educational, hospital, library, civic organizations and the like are said to be non-profit charitable organizations. Generally, this type of organization is exempt from real property taxation in all states. However, most statutes exempting the real property of these organizations state that the property must be used for charitable purposes. Therefore, "use" and not "ownership" will determine the right to the exemption. Thus, in some states, if the property is being used by a lessee for exempt purposes, the titled owner of the property can claim the exemption.

Other state statutes say that the property to be exempt must be "owned and used" by the organization claiming the exemption; therefore, ownership and use must concur. Usually, property sitting idle or unused is not entitled to exemption, and exemption will not be inferred from the fact that a company is organized for exempt purposes.

In many states, a non-exempt use will destroy the exempt status of the property. However, in other states, an incidental use for non-exempt purposes, as distinguished from the primary use, will not usually destroy the tax exemption. Other states even go further and will permit exemption of that part of the property used for exempt purposes while taxing the remainder.

It is interesting to note the similarities and differences that exist among the various states in their granting of property tax exemptions to certain types of non-profit organizations.

Inasmuch as California, Illinois, New York and Ohio are probably the four most influential states in granting tax exemp-

9 Oleck, Non-Profit Corporations, Organizations and Associations 8 (2d ed., 1965).
10 Id. at 437.
11 See, for example, Cal. Revenue & Tax. Code 17214; Ill. Rev. Stat., Ch. 120, Sec. 500.7; N. Y. Real Prop. Tax L., Sec. 420 (1); Ohio Rev. Code, Sec. 5709.12. See also Bowers v. Hadassah, 2 Ohio St. 2d 65, 206 N. E. 2d 201 (1965), where the court said, no exemptions allowed where there are no substantial charitable activities in the state.
13 Scott v. Society of Russian Israelites, 59 Neb. 571, 81 N. W. 624 (1900).
16 Wis. Catholic Woman's Club v. City of Green Bay, 180 Wis. 102, 192 N. W. 479 (1923).
18 People v. Muldoon, 306 Ill. 234, 137 N. E. 863 (1923).
tions to non-profit organizations, these states have been chosen for comparison.

(A) California

The California Constitution specifically provides for the exemption of certain property such as governmental, church, college, orphanages and other sundry classifications. In addition, the constitution grants to the legislature power to exempt from taxation, property used exclusively for religious, hospital or charitable purposes.

In line with this permissive authority, California has enacted what is known as the welfare exemption law, which provides:

Property used exclusively for religious, hospital, scientific or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation.

The term "charitable," as used above, is defined by the California courts to include property owned and operated by religious, hospital or charitable funds, foundations or corporations and used exclusively for school purposes below the college grades.

The welfare exemption law clearly provides that the property should be exclusively dedicated to religious and charitable "purposes" rather than "uses." Therefore, it would appear that California leans more toward "purpose" than either "use" or "ownership" in its specific exemptions. This is also shown to be the case in other California exemption laws, as the word "purpose" appears to be the deciding criterion.

This is best defined in the California test for determining whether property is used exclusively for religious or charitable purposes. The question is not whether the property is "essential, indispensable, and necessary," but rather "incidental to and reasonably necessary" for accomplishment of said purpose.

---

21 Ibid., Sec. 1 1/2.
22 Id., Sec. 1a.
23 Id., Sec. 1 1/2a.
24 See other subdivisions under Cal. Const. Art. XIII, Sec. 1.
29 Ibid.
Interpretations of the term “use” and “purposes” in California court decisions appear to be broader in scope than that intended by the statutes, as shown in the following cases.

California courts declared hospital property to be tax exempt, which property was devoted to the housing of essential hospital personnel, to the conduct of a nurses' training school operated in connection with the hospital, and to a tennis court maintained as a recreational facility for hospital employees. 30

The entire retreat house of a qualified non-profit religious institution was declared exempt, including that part used for living quarters for priests and lay brothers, whose presences on the retreat property was deemed essential in carrying out the religious and charitable activities of the retreat. 31

Property used principally for religious instruction and the sale of religious books, the profit of which was dedicated towards religious purposes, was deemed exempt. 32

Portions of Y. M. C. A. buildings devoted to dormitory accommodations were declared exempt. The court stated that there was no real profit motive, and that the dormitory portions operated at a loss and were incidental to and reasonably necessary for the accomplishments of the organization's religious and charitable purposes. However, portions of Y. M. C. A. buildings devoted to a restaurant, a barber shop, a valet shop and a “gym store,” all of which were open to the public as well as to Y. M. C. A. members, and a meeting room where meals were served to outside groups, and office rooms rented to the Selective Service Board, were not entitled to the exemption. 33

A non-profit corporation operating a home for aged people on a “life care contract” basis, was entitled to the welfare exemption even though it required that each applicant pay an entry fee for admission and meet the approval of the Board of Directors after a three-month probationary period. There was no element of private gain, and all the income of the corporation was devoted exclusively to affording a reasonable standard of care to the aged persons. 34 The portion of the corporation's property used to house personnel, whose presence on its property constituted an institutional necessity, was also entitled to the exemption. 35

30 Cedars of Lebanon Hospital v. Los Angeles County, 35 Cal. 2d 729, 221 P. 2d 31 (1950).
33 Young Men's Christian Ass'n v. Los Angeles County, 35 Cal. 2d 760, 221 P. 2d 47 (1950).
35 Ibid.
The above-mentioned cases give the impression that "intent" along with "purpose" carries more weight in California than in some of the other states.

The exemption statutes of California are not as numerous, explicit, or as well defined as those of New York, Illinois or Ohio. One of the reasons for this may be that it is a comparatively young state with a basically different population, economy and political make-up; therefore, California tends to rely on her courts for interpretation rather than be bound by the language in a statute.

(B) Illinois

The Illinois Constitution provides that property used for agriculture and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemptions shall be only by general law. This constitutional provision grants to the legislature authority to enact legislation for tax exemption within stated limits. It does not in itself exempt any property. Therefore, the enumeration in the constitution of certain classes of property which may be exempted from taxation is a limitation upon the power of the legislature to exempt any other property, and it is beyond the power of the legislature to add to or broaden these exemptions.

As a result of this constitutional provision, the Illinois statutes relating to non-profit organizations are similar to the California welfare exemption law in that the main criterion for exemption in most cases is "use." However, in the case of religious institutions, the statutes specify that all property used exclusively for religious purposes, or for orphanages, including property owned by churches, or religious institutions, including housing facilities for everyone whose vocation is connected with the church or institution, shall be exempt. Thus, it would appear that in the matter of granting tax exemptions to religious institutions, Illinois leans more towards "ownership" as a criterion; although property used for religious purposes would also be exempt. Ownership in this sense would be broader in scope, in that it would cover property used for housing of personnel or held for future needs as they might arise.

A separate statute exempts all property of "beneficent" and "charitable" organizations, including institutions of public
charity, when such property is used exclusively for charitable or beneficent purposes. One exception to the statute is that any hospital which has been found guilty, by a court of law, of having denied admission to any person because of his race, color or creed, will not be entitled to the exemption.\(^\text{41}\)

Two things are absolutely essential before the property may be exempt from taxation. It must be owned by a charitable institution, and it must be used exclusively for charitable purposes.\(^\text{42}\) The mere fact that a charitable institution owns a certain property, or uses the property, is not enough for it to warrant exemption.\(^\text{43}\) This is a good example where "ownership" and "use" must concur.

Whereas California courts would look to "use" or "purposes" in construing her statutes, Illinois courts appear to deal more with what is charity and what is not charity. "Use" of the property is also considered by the courts, but this does not appear to be as much a problem as in some states; and they have held that what is for public good and what is for public purposes are questions to be determined first by the legislature, and they will not interfere unless the legislative action is evasive of or contrary to some constitutional prohibition.\(^\text{44}\)

Charitable purposes, as defined by the Illinois courts, in a broad sense means an application of property for the benefit of an indefinite number of persons by relieving them of one or more forms of hardship, by assisting them to help themselves, and thus generally lessening the burdens of government.\(^\text{45}\)

The mere fact that property is held by an institution of public charity is insufficient to exempt it from taxation. Said property must be in actual use by the institution in carrying out its charitable purposes.\(^\text{46}\) It is proper procedure to consider the provisions of an organization's charter in order to determine if the said organization is charitable in its purpose.\(^\text{47}\)

In all cases, it is incumbent upon the property owner to show clearly that its organization and use of property come with-

\(^\text{41}\) Ibid., Sec. 500.7. See also People ex rel. Greer v. Thomas Walters Chapter of D. A. R., 311 Ill. 304, 142 N. E. 566 (1924); People ex rel. Nelson v. Rockford Lodge No. 64, B. P. O. E., 348 Ill. 528, 181 N. E. 432 (1932), where the courts held "beneficent" to mean same as "charitable."


\(^\text{43}\) International College of Surgeons v. Brenza, 8 Ill. 2d 141, 133 N. E. 2d 269 (1956). See similar decisions in Trustees of Wofford College v. City of Spartanburg, 201 S. C. 315, 23 S. E. 2d 9 (1942); New Orphans' Asylum of Colored Children of Cincinnati v. Board of Tax Appeals, 150 Ohio St. 213, 80 N. E. 2d 761 (1948).

\(^\text{44}\) People ex rel. Gutknecht v. Chicago Regional Port Dist., 4 Ill. 2d 363, 123 N. E. 2d 92 (1955).


\(^\text{46}\) International College of Surgeons v. Brenza, supra note 43.

PROPERTY TAX EXEMPTIONS

in the provisions of the statutes exempting charitable organizations from taxation. The burden of proving this right to exemption rests entirely with the owner.48

The consequence for not fulfilling this obligation is the loss of tax exemption, as illustrated in the case of a national fraternal organization. The local clubs of said organization were actively engaged in charitable and educational programs, but failed to establish proof that its national headquarters building was entitled to the property tax exemption as being a charitable organization.49

In granting exemptions to property used for public educational purposes, a private institution seeking tax exemption as a school must first offer a course of study which fits into the general scheme of education followed by Illinois, and must offer a course which substantially lessens what would otherwise be a governmental obligation.50

It has been held that the primary use of school property, and not its incidental uses, is the determining factor for its tax exemption status.51 The real estate of a physical education society which conducted classes in swimming and gymnastics was not granted tax exemption as such, for the activities by themselves were not sufficient to bring the society within the meaning of "schools" as defined in the statutes.52

In summary, the Illinois statutes exempting property from taxation must be strictly construed and cannot be extended by judicial interpretation.53 The provisions granting tax exemptions must come not only within the terms of the statute but also within the authority given by the constitution, in determining whether the property in question is included within the scope of tax exemption.54 However, all debatable questions are to be resolved in favor of taxation and against the exemption.55 The legislature has the sole authority in Illinois to create exemption from taxation and the courts are powerless to extend exemption by judicial interpretation.56

50 Milward v. Paschen, supra n. 48.
54 Rogers Park Post, etc. v. Brenza, supra n. 42.
55 Ibid.
56 Follet's Ill. Book & Supply Store, Inc. v. Isaacs, supra n. 53.
(C) New York

The New York constitution provides that tax exemptions may be granted only by the legislature, and it does not provide for any specific exemptions. However, exemptions granted to property used exclusively for religious, educational or charitable purposes as defined by law, or owned by any corporation or association organized or conducted exclusively for such purposes, may not be altered or repealed.\(^{57}\)

One can readily see that the constitution of New York grants an extremely broad power to the legislature in the area of tax exemption. It does not state certain classes of property to be exempt, nor does it prohibit exemption. Thus, it is well settled that in New York it is within the power of the legislature to determine what real property is to be exempt. However, the courts have applied the rule of strict construction whereby the exemption must be clearly expressed in the statute and not just implied.\(^{58}\)

In the State of New York, real property owned by a corporation or association which is organized for either religious, charitable, educational, scientific, or similar purposes, and which is being used exclusively for such purposes, is exempt; however, the operations of these organizations must be on a strictly non-profit basis.\(^{59}\)

A New York hospital was first organized as a profit organization and, several years later, reorganized as a non-profit organization, seeking tax exemption. A New York City tax assessor denied the exemption, with the lower court upholding this decision, stating that no genuine claim to charity could exist because the hospital accepted a limited number of free patients, appearing to "just get by" for the exemption. The appellate court overruled these decisions and granted exemption by stating that the legal meaning of charitable purposes is not necessarily limited to free services to the poor, that hospitals devoted to the care of the sick and where contributions are made to the advancement of medical science, are rightly charitable.\(^{60}\)

Thus, in New York "ownership" and "use" are both necessary criteria of the tax exemption, but "ownership" and "use" must also concur.

The courts have consistently held that any corporation or association that attempts to qualify for tax exemption, under the exclusive organization section of the statute, must meet all the

\(^{57}\) N. Y. Const. Art. XVI, Sec. 1.


\(^{59}\) N. Y. Real Prop. Tax L., Sec. 420(1).

\(^{60}\) People ex rel. Doctors Hospital, Inc. v. Sexton, 267 A. D. 736, 48 N. Y. S. 2d 201 (1944), aff'd. without op. 295 N. Y. 553, 64 N. E. 2d 273 (1945).
PROPERTY TAX EXEMPTIONS

requirements and specifications laid down by the statute.\(^{61}\) All of the purposes for which the corporation or association was organized must be exclusively exempt purposes and must be within the meaning of the statute.\(^{62}\)

If some of the purposes of the corporation or association are not exempt purposes, then the corporation or association forfeits its right to tax exemption under the statute.\(^{63}\) For example, if a corporation is organized for religious purposes and also for social purposes, then it does not qualify for tax exemption under the exclusive organization section of the statute, as social purposes are not exempt purposes, even though religious purposes are exempt.\(^{64}\)

An association had headquarters in Brooklyn and was the governing body of Jehovah's Witnesses. The group owned a large home in Brooklyn which served as a dormitory for the employees of its large printing plant. The group owned several farms in another county, to grow food for this home, and sought tax exemption of these farms for the 1947 tax year. They claimed that all people working for the group were ministers. Exemption was denied. One reason was that only a small percentage of food was grown and consumed by the group; the large surplus was being sold in the market at a handsome profit. The court also stated that exemption statutes must be construed strictly, and property used partially for exempt purposes and partly for non-exempt purposes is wholly subject to taxation.\(^{65}\) However, in 1956, this same group asked for exemption on this same property for the years 1954, 1955 and 1956. The tax assessor denied the exemption on the same basis as the previous case. The court, however, granted the exemption, stating that the facts were different in that a large surplus of food was not being sold on the open market; and that in this case, the 5 to 10 percent sold was considered an incidental and insubstantial amount. The court went on to say that the exemption statute should not be interpreted so narrowly as to defeat its settled purpose.\(^{66}\)

The statutes also require that real property owned by a corporation which is organized exclusively for exempt purposes


\(^{63}\) Ibid.

\(^{64}\) Application of Peace Haven, etc., 175 Misc. 753, 25 N. Y. S. 2d 974 (1941); see also Great Neck v. Board of Assessors, supra n. 62.

\(^{65}\) People ex rel. Watchtower Bible & Tract Soc. v. Mastin, supra n. 58.

must be used exclusively for those exempt purposes laid down in the statutes.\textsuperscript{67} This means that all of the uses of the property must be for exempt purposes. Any portion of real property owned by an exempt corporation that is not used exclusively for tax exempt purposes is taxable, even though the corporation itself may be exempt.\textsuperscript{68} This is an instance of "use" prevailing over "ownership."

New York courts have held that corporation property is entitled to exemption where such property is necessary to the carrying out of the corporation's exempt purposes, even though such property is incidental to the overall corporate purposes.\textsuperscript{69} The courts have also held that in situations where residences must be furnished for faculty members of educational corporations, such residences are entitled to exemption.\textsuperscript{70} In another case, it was ruled that apartment buildings which are owned by a New York hospital for housing the hospital staff were entitled to tax exemption; however, if any portion of real property is not being used by an exempt corporation for any purpose, but is held for possible future use or is being used with a view to profit, then such property or portion of it would not be tax exempt.\textsuperscript{71} Again, we see an instance of "use" prevailing over "ownership," but both depending upon each other.

To summarize the requirements of this statutory provision on exemption laws in New York, we can say that property must be owned by a corporation or association, and such corporation or association must be organized exclusively for exempt purposes within the meaning of the statute. An organization is either all charitable or all non-charitable. A partial tax cannot be levied upon a partially charitable organization. In addition to the corporation being run on a non-profit basis, the property owned must be used exclusively for exempt purposes.

(D) \textit{Ohio}

The Ohio constitution permits the enactment of general laws exempting from taxation public property used exclusively for public purposes, cemeteries, school houses, houses used ex-

\textsuperscript{67} Good Will Club of Amsterdam New York, Inc. v. City of Amsterdam, 31 Misc. 2d 1096, 222 N. Y. S. 2d 896 (Sup. Ct. 1960).
\textsuperscript{68} Town of Harrison v. County of Westchester, supra n. 8.
\textsuperscript{70} Clarkson Memorial College of Technology v. Haggert, 191 Misc. 621, 77 N. Y. S. 2d 182, affd. without op. 300 N. Y. 555, 89 N. E. 2d 882 (1949); New York University v. Temporary State Housing Rent Commission, 304 N. Y. 124, 106 N. E. 2nd 44 (1952); see also Pratt Institute v. Boyland, 16 Misc. 2d 58, 174 N. Y. S. 2d 112, affd. 8 A. D. 2d 625, 185 N. Y. S. 2d 753 (1959) where court also included other administrative employees.
\textsuperscript{71} St. Luke's Hospital v. Boyland, supra n. 69.
\textsuperscript{72} Ibid.
exclusively for public purposes, and institutions used exclusively for public charity.\textsuperscript{73}

The Ohio statutes are very detailed and explicit as to what property is to be tax exempt. In fact, it appears that in the case of charitable institutions, the statutes are more restrictive than the constitutional provisions. For instance, the Code provides for tax exemption of property, "belonging" to institutions, that is used exclusively for charitable purposes. Thus, the statute introduces an "ownership" factor that is not present in the constitution.\textsuperscript{74}

In line with this statute, the Ohio Attorney General ruled in 1928 that property, to be exempted from taxation must, in addition to being used exclusively for charitable purposes, be titled in the institution's name.\textsuperscript{75} The courts have supported this ruling, by stating that in the case of private property leased to a charitable institution whose property is exempt, this does not cause the leased property to be exempt, even though the institution may have arrived at an agreement with the lessor to pay the taxes.\textsuperscript{76} However, if property that is already tax exempt because of its charitable uses is sold, but possession is retained and such uses continued pending payment of the purchase price, the vendors continue to be the owners under the tax laws until payment is final. An agreement by the vendee to pay taxes means only legal tax and does not affect the right to exemption.\textsuperscript{77}

Thus, it is clear that the rule in Ohio regarding charitable organizations parallels that of New York and Illinois, in that "ownership" and "use" must concur.

The courts in Ohio, as in the above states, usually must interpret the terms "use," "purposes," or "charity" within the meaning of the statute. The following situations will illustrate some of the difficulties the Ohio courts have had in applying these terms.

The courts have held that the "use" of property exclusively for charitable purposes is the criterion for tax exemption.\textsuperscript{78} Thus, where the exercise of private rights constitutes the primary use of property owned by a charitable institution, a charitable purpose is no longer the primary function of the property.\textsuperscript{79}

\textsuperscript{73} Ohio Const. Art. XII, Sec. 2.
\textsuperscript{74} Ohio Rev. Code, Sec. 5709.12.
\textsuperscript{75} 1928 Ops. Atty. Gen. (Ohio) 2327.
\textsuperscript{76} Humphries v. Little Sisters of Poor, 29 Ohio St. 201 (1876).
\textsuperscript{77} Emily W. Myers v. Albert E. Akins, Auditor, 8 Ohio C. C. 228, 4 Ohio C. D. 425 (Cir. Ct. 1894).
\textsuperscript{78} In re Complaint of Taxpayers, 138 Ohio St. 287, 34 N. E. 2d 748 (1941); East End Hospital v. Evatt, 139 Ohio St. 608, 41 N. E. 2d 569 (1942); Wehrle Foundation v. Evatt, 141 Ohio St. 467, 49 N. E. 2d 52 (1943); Hospital Service Assoc. v. Evatt, 144 Ohio St. 179, 57 N. E. 2d 928 (1944).
\textsuperscript{79} Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 91 N. E. 2d 497 (1950).
The test for the exemption of certain property claimed to be used for charitable purposes is the present use of the property.\(^80\) If the property is appropriated to uses other than a charitable purpose, then the exemption is forfeited.\(^81\) This holds true even if the property is used to produce income, though the income may be used exclusively for charitable purposes.\(^82\) Thus, property held by a merely non-profit organization to produce income for the purpose of distribution to certain charitable, religious, scientific or educational organizations, is not entitled to property exemption under the statute.\(^83\) Also, charitable property will not be exempt if it is rented for a commercial or residential purpose, this not being a charitable use.\(^84\)

In Ohio, hospitals generally are treated as charitable institutions devoted exclusively to charitable purposes, as they usually meet the necessary requirements of caring for the poor, needy and distressed who may be unable to pay. However, where a hospital extends its facilities and services largely to those who are able to pay established rates for their accommodations, and makes a profit in so doing, it becomes a business enterprise liable to taxation although many unfortunates may have been cared for free of any charges. Even if this profit is used for the purpose of paying off indebtedness and for improving and enlarging its facilities, it still does not become a tax exempt charitable institution; it is use of property and not use of proceeds which is the criterion of tax exemption.\(^85\)

By strict construction of tax exemption statutes, property used for residential purposes has been generally held not to be exempt, even though owned by a charitable organization in furtherance of its charitable purposes. This applies to church-owned parish houses.\(^86\) But, an Ohio statute provides that property used

---

\(^{80}\) Incorporated Trustees of the Gospel Worker Soc. v. Evatt, 140 Ohio St. 185, 42 N. E. 2d 900 (1942); Battelle, Memorial Institute v. Dunn, 148 Ohio St. 53, 73 N. E. 2d 88 (1947); Orphans' Asylum v. Board, 150 Ohio St. 219, 80 N. E. 2d 761 (1948); Lutheran Book Shop v. Bowers, 164 Ohio St. 359, 131 N. E. 2d 219 (1955).

\(^{81}\) Goldman v. Bentley Post, 158 Ohio St. 205, 107 N. E. 2d 528 (1952).

\(^{82}\) Orphans’ Asylum v. Board, supra n. 80.

\(^{83}\) Wehrle Foundation v. Evatt, supra n. 78.

\(^{84}\) Benjamin Rose Institute v. Myers, 92 Ohio St. 252, 110 N. E. 924 (1915); court discusses the history of legislation and adjudications with respect to exemptions. State ex rel. Boss v. Hess, 113 Ohio St. 52, 148 N. E. 347 (1925).

\(^{85}\) Cleveland Osteopathic Hospital v. Zangerle, 153 Ohio St. 222, 91 N. E. 2d 261 (1950). But, see Vick v. Cleveland Medical Foundation, 2 Ohio St. 2d 30, 209 N. E. 2d 127, cert. den. 382 U. S. 956 (1965); court granted exemption, even though hospital had surplus from patient charges; however, no part of surplus was diverted to private profit.

\(^{86}\) Gerke v. Purcell, 25 Ohio St. 229 (1874); See also Watterson v. Holliday, 77 Ohio St. 150, 82 N. E. 962 (1907); Ohio Society of the Precious Blood v. Board of Tax Appeals, 149 Ohio St. 62, 77 N. E. 2d 459 (1948).
PROPERTY TAX EXEMPTIONS

for non-exempt purposes may be split from tax exempt property.\textsuperscript{87}

In cases of property devoted to recreational uses, it has been held that land belonging to a charitable institution, which is used as an athletic field or playground for students of the institution, is tax exempt.\textsuperscript{88} This rule, however, appears to have been stretched recently where the court held that land owned by a local chamber of commerce was exempt because the property was devoted to a public use as a recreation park, which is a charitable purpose. What is disturbing about this case is that the court stated that the chamber of commerce is an "institution" within the meaning of the exemption statute, even though it was not organized exclusively for charitable purposes.\textsuperscript{89}

In some states, veterans' organizations are considered charitable in purpose.\textsuperscript{90} In Ohio, these organizations are not considered to be exclusively used for charitable purposes so as to come within the provisions of the Code applicable to property devoted to charitable purposes. Ohio, however, makes a special consideration in the Code, declaring that real estate held or occupied by a war veterans' organization, which is organized exclusively for charitable services and incorporated under the law of the state or the United States, except property used with a view to income, shall be exempt from taxation.\textsuperscript{91} However, it has been ruled that property of such organizations not used exclusively for charitable purposes cannot be exempted.\textsuperscript{92}

Most states include schools and churches within their charitable tax exemption laws, but Ohio provides a separate statute to cover "public school houses" and "houses used for public worship." Again, it appears that "ownership" and "use" must concur.\textsuperscript{93}

It is interesting to note that Ohio courts have held all universities to be public within the meaning of the statute, saying that "public" does not refer to ownership, but to the use to which the property is put.\textsuperscript{94} This rule has also been extended to dormitories for students at private colleges.\textsuperscript{95} With the Ohio statute

\begin{itemize}
  \item \textsuperscript{87} Ohio Rev. Code, Sec. 5713.04.
  \item \textsuperscript{88} College Preparatory School for Girls v. Evatt, 144 Ohio St. 408, 59 N. E. 2d 142 (1945).
  \item \textsuperscript{89} Bryan Chamber of Commerce v. Board of Tax Appeals, 5 Ohio St. 2d 195, 214 N. E. 2d 812 (Mar. 1966).
  \item \textsuperscript{90} See, for example, Cal. Revenue & Tax. Code 17215.
  \item \textsuperscript{91} Ohio Rev. Code, Sec. 5709.17.
  \item \textsuperscript{92} National Headquarters, Disabled American Veterans v. Bowers, 171 Ohio St. 312, 170 N. E. 2d 731 (1960).
  \item \textsuperscript{93} Ohio Rev. Code, Sec. 5709.07.
  \item \textsuperscript{94} Denison University v. Board of Tax Appeals, 2 Ohio St. 2d 17, 205 N. E. 2d 896 (1965).
  \item \textsuperscript{95} Thomas v. Board of Tax Appeals, 5 Ohio St. 2d 182, 214 N. E. 231 (Feb. 1966).
\end{itemize}
being so specific, the courts have not looked for "organization purpose" when considering requests for tax exemption, but look only to the use to which the property is put.96

In summary, the Ohio law closely parallels New York in that the exemption statutes are very specific as to what is and what is not exempt. Whereas New York follows the rule of strict construction, Ohio courts appear to be more lenient in interpreting their state statutes, with California and Illinois being even more liberal in their granting of tax exemptions.

**Merely Non-Profit Organizations**

Trade associations (labor unions, chambers of commerce and the like), political organizations and social organizations (including fraternal orders, mutual benefit societies and the like), are sometimes referred to as "merely non-profit" organizations.97 These organizations are usually taxable to a greater extent than charitable organizations.98 However, it would be impossible to even begin comparing the various state statutes as to which of these organizations might be exempt or non-exempt.

In general, most states provide real property tax exemptions to certain "merely non-profit" organizations, but not to all such organizations.99 In some cases, if a portion of the real property of a merely non-profit organization is devoted to a charitable use or purpose, it may be exempt; but this would depend entirely upon the particular state involved and its tax exemption statutes.100 If such a statute exists, it will usually be clear and explicit in its language.

California, New York, Illinois and Ohio exempt the real property of some "merely non-profit" organizations, either by statute or by court interpretation, putting certain property or organizations into what amounts to a charitable classification.101 However, reference must be made to that particular state's constitution, statutes and case law before determining what is to be exempt in a particular case.

---

96 Denison University v. Board of Tax Appeals, *supra* n. 94.
97 Oleck, *Non-Profit Corporations, Organizations and Associations*, ch. 1 (2d ed. 1965), for discussion of "Nature and Classification of Non-Profit Organizations."
98 Id. at 435, State Exemptions for Non-Profit Organizations.
99 See, for example, Cal. Revenue & Tax. Code 17215, 17221; Ill. Rev. Stat., Ch. 120, Sec. 500.10, 500.12, 500.18; N. Y. Real Prop. Tax L., Sec. 422-489; Ohio Rev. Code, Secs. 5709.13, 5709.15, 5709.18.
100 See, for example, Ohio Rev. Code, Sec. 5709.17.
101 Bryan Chamber of Commerce v. Board of Tax Appeals, *supra* n. 89 where court held chamber of commerce to be an "institution," using property for charitable purposes within the meaning of the statute (Ohio Rev. Code, Sec. 5709.12).
PROPERTY TAX EXEMPTIONS

Conclusion

Needless to say, volumes could be written on the subject of granting real property tax exemptions to non-profit organizations. These organizations, already very numerous, are rapidly multiplying and spreading over the entire country. One exemption in itself may appear quite harmless; however, looking back to the turn of the century, it appears that one exemption has led to another, until now countless thousands of properties have attained tax exempt status.

As only a limited number of states keep actual figures, approximations must be used, but it is generally agreed that there is an enormous difference between the total value of all property in the United States and the value of property actually taxed.102

Very few localities have made an effort to investigate the situation or to suggest remedies; however, in 1964, the Cuyahoga County Auditor (in Cleveland, Ohio) conducted a countywide reappraisal program. It was discovered that over 21% of all real property in Cleveland and 17% of the entire county's property was tax exempt.103 The approximate market value of this exempt property was over two billion dollars.104 Of this amount, over 40% represented exempt property owned by non-governmental agencies, which would normally be classified as charitable institutions.105

In the matter of exemptions for non-profit religious, charitable and educational institutions, it is almost traditional that these organizations be given tax exempt status; because they are performing services for the public which ordinarily would have to be undertaken by the government. Many authorities believe, however, that the institutional tax exemption has been used, and abused, far beyond its basic purpose, as it has become a simple task for almost any organization, involved to some degree with charitable, religious, cultural or educational pursuits, to achieve tax exempt status.

102 U. S. Bureau of Census, "Property Tax Assessments in the United States," showing aggregate of locally taxable assessed valuation to be $355.7 billion in 1961 (inclusive of intangibles); as compared with an estimated national wealth by National Bureau of Economic Research of $1,682.1 billion in 1958. The contrast is not as extreme as the figures indicate, because of Fractional Assessment, but it is still quite large. See also "Inventory Report on Real Property owned by the United States throughout the World," prepared by General Services Administration, as of June 30, 1965; showing cost of property owned by the Federal Government in the United States to be $58.8 billion.

103 "Report of Reappraisal of all Exempt Real Property in Cuyahoga County" for 1964 Tax Year. See also Philada v. Board of Tax Appeals, 5 Ohio St. 2d 135, 214 N. E. 2d 431 (Feb. 1966), where court noted that 13% of all property in Ohio is tax exempt.

104 Based on report received from Mr. Ralph J. Perk, Cuyahoga County Auditor; showing taxable assessed value to be approximately 40% of market value.

105 Cuyahoga County, Reappraisal Report, supra n. 103.
Another reason given for all the various exemptions that now exist is the goal of tax justice, i.e., some organizations are better able to pay taxes than others. Unfortunately, the easing of the tax burden on one organization puts an undue increase on the tax burden of other organizations or individuals.

It has been established that many tax exemptions are the direct result of action of pressure groups influencing certain politicians or legislators. These exemptions not only create inequities or special privileges, but they unnecessarily complicate the tax systems, with increases in administrative expense.

There is some thought that tax exemption is a poor method of providing aid to the aforementioned institutions. In some instances, a community must bear the exemption for an institution serving a much wider area, because exemptions must be absorbed by individual local tax bases.

Moreover, legislatures are imposing forced contributions on taxpayers without their consent and outside the processes of local budgets. It is clear that the various state legislatures must review the area of property tax exemptions in order to bring about some semblance of uniformity and equality.

It has been suggested that perhaps outright government grants may be the answer to tax exemption, together with the abolition of exemptions for which grants could not be justified.\textsuperscript{106}

However, a more forthright solution would appear to be the abolition of all non-governmental property tax exemptions, completely. Otherwise, in time we will come to the point where most property, except that belonging to the small home owner, will be exempt from taxation.

\textsuperscript{106} For a general discussion of the historical reasoning behind property tax exemptions and the limits to further extension of such exemptions, see, Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax, Vol. 1, Ch. 8 (June 1963).