

MINNESOTA • REVENUE

BULLETIN

Date: March 1, 2010
To: All City and County Assessors
From: Property Tax Division
Subject: **Property Tax Exemptions for Institutions of Purely Public Charity**

This bulletin is prepared in accordance with Minnesota Laws 2009, Chapter 88, Article 2, section 53.

BACKGROUND

Minnesota Statutes, section 272.01, subdivision 1, holds that

“All real and personal property in this state, and all personal property of persons residing therein, including the property of corporations, banks, banking companies, and bankers, is taxable, except Indian lands and such other property as is by law exempt from taxation.”

In other words, all property is taxable except for that which, by law, is exempt. A number of court cases have stated this requirement even more succinctly by consistently holding that “taxation is the rule and exemption is the exception.” For each property which is granted exemption, the tax burden associated with that property is shifted to others. When a charitable institution seeks property tax exemption, it must meet requirements outlined in Minnesota Statutes. Minnesota Statutes, section 272.02, subdivision 7 in 2008 provided that institutions of purely public charity may be exempt from property taxes if certain requirements were met. Namely,

“Institutions of purely public charity are exempt. In determining whether rental housing property qualifies for exemption under this subdivision, the following are not gifts or donations to the owner of the rental housing:

- (1) rent assistance provided by the government to or on behalf of tenants; and*
- (2) financing assistance or tax credits provided by the government to the owner on condition that specific units or a specific quantity of units be set aside for persons or families with certain income characteristics.”*

As with virtually any other entity seeking exemption from property taxes, three key items are that the property must be owned by an institution of purely public charity, used by the institution for charitable purposes, and must be reasonably necessary to the organization as a means to accomplish its charitable purposes. This is, in fact, a key concept for most property types seeking exemptions. Ownership and use are required, and an organization seeking property tax exemption must find the property reasonably necessary to accomplish its exempt purposes.

COURT CASES AS PRECEDENT

Under 2008 practice, most of the requirements for an institution of purely public charity to qualify for property tax exemption were provided by court decisions rather than statute. First and foremost, the definition of what constitutes a “charity” had been considered in many court cases.

For many years, the courts basically used a two-step analysis in determining exemption: that the organization does something which benefits people, and that the organization does this in a way that does not produce material profits for private interests. These criteria were greatly expanded under the guidelines set forth in the 1975 *North Star Research Institute v. County of Hennepin* case (306 Minn. 1, 6, 236 N. W. 2d 754, 757). These six guidelines have been extensively used in determining tax exempt eligibility of institutions of purely public charity. The *North Star* case held the following six guidelines as useful in deciding tax-exempt claims:

1. whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;
2. whether the entity involved is supported by donations and gifts in whole or in part;
3. whether the recipients of the “charity” are required to pay for the assistance received in whole or in part;
4. whether the income received from gifts, donations, and charges to users produces a profit to the charitable institution;
5. whether the beneficiaries of the “charity” are restricted or unrestricted, and if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; and
6. whether dividends, in form or substance, or assets upon dissolution are available to private interests.

Not all six guidelines needed to be met, and none of the six guidelines carried more weight than any other (*Mayo Foundation v. Commissioner of Revenue*, 1976, 236 N.W.2d 767). For institutions seeking property tax exemption, there was unpredictability in terms of whether the criteria would be met in a way which would qualify that property for exemption. Many counties noted the application of the *North Star* factors when determining property tax exemption eligibility in a 2008 survey, yet the unpredictability of criteria used in granting exemptions was very clear in those same survey results.

In *Junior Achievement of Minneapolis, Inc. v. State*, 1965 (271 Minn. 385, 390, 135 N.W.2d 881, 885), the Minnesota Supreme Court interpreted “lessening the burden of government” as a factor to consider for an institution of purely public charity to qualify for property tax exemption. This case, which predated the *North Star* decision, first articulated “lessening the burden of government” requirement, which has since been understood to be a subfactor of the fifth factor of the *North Star* case.

Another court case used as precedent was *Assembly Homes, Inc. v. Yellow Medicine County*, 1966 (273 Minn. 197, 140 N.W.2d 336). In its decision, the Court decided that a nursing home was exempt from property taxes as an institution of purely public charity. At issue in this case was whether the institution served as a charitable organization while charging rates to its clientele that were similar to the rates charged elsewhere in the State of Minnesota by non-exempt nursing homes. Some of the payments received by Assembly Homes, Inc. were made by county welfare boards and federal institutions such as the U.S. Veterans Administration. The court decided that the exemption was allowable because there were some free services provided.

In 2007, the Minnesota Supreme Court refined their definition of property tax-exempt qualifying institutions in two cases: *Under the Rainbow Child Care Center, Inc. v. County of Goodhue* and *Afton Historical Society Press v. County of Washington*. At issue in the *Afton* case was whether the organization was eligible for exemption from property taxes while maintaining for-profit book sales. Profits of the sales of some books were used to further the organization's charitable mission of providing reading materials and books to others for free or at below-cost. Minnesota Tax Court found the Afton Historical Society Press not exempt because they failed to meet factors 1, 4, and 6 of the North Star case. However, the Supreme Court disagreed and granted exemption. The Supreme Court found that the organization should be allowed to carry on its for-profit book sales, as long as those book sales were subordinate to the overall charitable activities of the organization.

Also in 2007, the Minnesota Supreme Court decided in *Under the Rainbow Child Care Center, Inc. v. County of Goodhue* that where a daycare center did not offer its services for free or at a reduced rate compared to the local market, it did not satisfy *North Star* factor three, and that the institution (Under the Rainbow Child Care Center) did not qualify for property tax exemption. In the past, numerous court cases have cited the *North Star* factors as a whole while providing that not all six factors needed to be met and that no one factor was more determinative of eligibility for exemption. The Supreme Court for the first time held in *Under the Rainbow* that because *North Star* factor 3 "...is a core characteristic of an institution of public charity, we now clarify that the third factor must be satisfied if an organization is to be deemed an institution of purely public charity [emphasis added]." The required expectation was that to be considered an "institution of purely public charity" for property taxation purposes, an institution must offer free or reduced rates for its goods or services. Among other issues, this was problematic for assessors if there was no definable local market to compare to, or when rates were pre-set by government entities.

Many nonprofit groups in the state felt that the *Under the Rainbow* decision could drastically change the ability of some organizations to be exempted from property taxes. The Department of Revenue did not feel that the decision represented a change. A memorandum to all county assessors following the decision stated that "For many years, we have held that for an entity to qualify as an institution of purely public charity there must be some sort of 'gift' or 'charity.'" The department did not interpret the court's decision as a change from what had been standard assessment practices.

2008 LEGISLATION AND SURVEY

In a response to 2008 legislation requiring a survey of assessment practices and providing a moratorium for granting exemptions to charitable institutions, the Department of Revenue invited various members of Minnesota nonprofit organizations to discuss their concerns about potential changes in exempt status for many institutions. Many charitable organizations felt at risk of losing their tax-exempt status if the third *North Star* factor was not met based upon the court's interpretation of necessary charitable activities. For example, organizations such as Meals on Wheels felt threatened based on the fact that there were no similar organizations with which to judge a market rate. It soon became clear that discussions would not be enough to address these concerns, and that clarifying legislation was likely needed.

The 2008 survey found that assessment practices widely varied. In response, nonprofit organizations and the department discussed in the spring of 2008 how it might be possible to introduce a bill to Legislature which would seek to clarify eligibility and to provide a more uniform standard by which property tax exemption eligibility would be determined. The potential for inconsistency was discussed, which would hinder equalization in the tax process. With the legislative session nearing an

end, it was determined that the best course would be to seek a moratorium on assessment practices with regards to institutions of purely public charity. This moratorium was granted in Minnesota Laws, Chapter 366, Article 6, Section 49, along with the directive to survey county assessors' practices. The moratorium has allowed the assessment and nonprofit communities to discuss concerns over how to prevent changes to the landscape of exempt charitable organizations.

2009 LEGISLATION

After conducting a survey of all counties' practices regarding property tax exemptions for institutions of purely public charity, the Department of Revenue met with members of Minnesota charitable organizations and members of the assessment community, including:

- Minnesota Council of Nonprofits
- Care Providers of Minnesota
- Aging Services of Minnesota (formerly Minnesota Health & Housing Alliance)
- Minnesota Association of Assessing Officers
- Minnesota House of Representatives staff
- Minnesota Senate staff
- Minnesota Department of Revenue Property Tax Division
- Minnesota Department of Revenue Appeals and Legal Services Division

Multiple meetings were held at which the groups discussed both the survey results and what actions were needed in response to the findings. The survey found that the following types of organizations were commonly exempted for property tax purposes:

- Nursing homes
- Daycare centers
- Group homes
- Youth activity centers (Boy Scouts, Girl Scouts, youth camps, etc.)
- Animal shelters (Humane Society)
- Nature and history preservation sites (museums, Nature Conservancy land, etc.)
- Sobriety-based organizations (AA, Alano, rehabilitation, etc.)
- Senior citizen centers
- Organizations devoted to the training of disabled persons
- YMCA buildings
- Crisis pregnancy centers
- Salvation Army locations
- American Red Cross sites
- Food shelf/food bank locations
- Land owned by Habitat for Humanity (after homes are built on the land, the property becomes taxable)
- Transitional housing facilities
- Housing and services for persons with physical and/or mental disabilities
- Art and cultural institutions

The groups also developed potential legislative language, which was brought before the Minnesota House of Representatives and the Minnesota Senate. This language was intended to neither expand nor contract the historical guidelines for granting property tax exemptions, but to make the language clearer and more predictable for assessors and charitable institutions alike, and to provide for greater consistency in exemptions statewide. The resulting language was signed into law in Minnesota Laws

2009, Chapter 88, Article 2, section 4. This language amended Minnesota Statutes, section 272.02, subdivision 7 to read:

*“Subd. 7. **Institutions of public charity.** (a) Institutions of purely public charity that are exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code are exempt if they meet the requirements of this subdivision. In determining whether real property is exempt under this subdivision, the following factors must be considered:*

- (1) whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;*
- (2) whether the institution of public charity is supported by material donations, gifts, or government grants for services to the public in whole or in part;*
- (3) whether a material number of the recipients of the charity receive benefits or services at reduced or no cost, or whether the organization provides services to the public that alleviate burdens or responsibilities that would otherwise be borne by the government;*
- (4) whether the income received, including material gifts and donations, produces a profit to the charitable institution that is not distributed to private interests;*
- (5) whether the beneficiaries of the charity are restricted or unrestricted, and, if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; and*
- (6) whether dividends, in form or substance, or assets upon dissolution, are not available to private interests.*

A charitable organization must satisfy the factors in clauses (1) to (6) for its property to be exempt under this subdivision, unless there is a reasonable justification for failing to meet the factors in clause (2), (3), or (5), and the organization provides to the assessor the factual basis for that justification. If there is reasonable justification for failing to meet the factors in clause (2), (3), or (5), an organization is a purely public charity under this subdivision without meeting those factors. After an exemption is properly granted under this subdivision, it will remain in effect unless there is a material change in facts.

(b) For purposes of this subdivision, a grant is a written instrument or electronic document defining a legal relationship between a granting agency and a grantee when the principal purpose of the relationship is to transfer cash or something of value to the grantee to support a public purpose authorized by law in a general manner instead of acquiring by professional or technical contract, purchase, lease, or barter property or services for the direct benefit or use of the granting agency.

(c) In determining whether rental housing property qualifies for exemption under this subdivision, the following are not gifts or donations to the owner of the rental housing:

- (1) rent assistance provided by the government to or on behalf of tenants; and*
- (2) financing assistance or tax credits provided by the government to the owner on condition that specific units or a specific quantity of units be set aside for persons or families with certain income characteristics.*

EFFECTIVE DATE. *This section is effective for taxes payable in 2010 and thereafter.*

It is not expected that this clarifying language will greatly change the number or type of exempt properties in any county. While a few properties may lose exemption based on new information an assessor gathers, other properties may gain exemption based on clarification of some guidelines. However, these changes are expected to be rare. The purpose of this bulletin is to outline these law

changes with respect to court precedent and to provide guidance to assessors in determining the applicability of exemption for institutions of purely public charity.

REQUIREMENTS

As stated above, taxation is the rule and exemption is the exception. Also, as with virtually any type of exempt property, the qualifying parcel must be owned by an exempt institution, used for exempt purposes, and the ownership must be reasonably necessary to further the mission of the exempt organization. This three-prong test must be kept in mind at all times when making these determinations.

Although the State of Minnesota has not adopted a statutory definition of a “charity” for property tax exemption purposes, it may be helpful to know that the United States Internal Revenue Service (IRS) outlines requirements for a charitable organization eligible for federal income tax exemption under section 501(c)(3) of the Internal Revenue Code. According to the IRS website (available at www.irs.gov), the requirements include that, “The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual.” The IRS further defines exempt purposes as:

“... [C]haritable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.”

The 2009 legislation requires that for an institution of purely public charity to meet requirements for exemption, it must first be exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. Any institution of purely public charity which is not a 501(c)(3) organization is ineligible for property tax exemption. However, being granted 501(c)(3) status by the IRS **does not** automatically qualify an organization for Minnesota property tax exemption.

Apart from the requirement of 501(c)(3) tax-exempt status, the six *North Star* factors, as previously noted, were modified and then codified in law in 2009. A qualifying organization must meet all six requirements, unless there is a “reasonable justification” for failing to meet requirement 2, 3, or 5. Assessors may request additional information from the applicants in order to prove that “reasonable justification” for failing to meet a requirement is met. As always, the onus is on the taxpayer to prove eligibility for exemption.

When reading the examples under requirements 2, 3, and 5, keep in mind that in the “real world”, it is unlikely that the exact same circumstances would be found among different institutions. For all of the examples therefore, it must be noted that determinations of failure to meet these requirements will be based on the unique facts of each individual case.

In practice, if an assessor determines that a requirement has not been met, the institution has the burden of proving to the assessor that it either (1) meets the requirement or (2) that the institution has a reasonable justification for failing the requirement. The assessor may request additional information.

Requirement 1: The stated purpose of the undertaking of the organization is to be helpful to others without immediate expectation of material reward.

- This factor MUST be met.
- This requirement is also necessary to receive 501(c)(3) exempt status from the IRS.
- Assessors may assume, given a 501(c)(3) determination letter, that this factor is met. Assessors may also refer to the organization’s Articles of Incorporation if necessary.

Requirement 2: The institution must be supported by material donations, gifts, or government grants for services to the public in whole or in part.

- Assessors may first refer to the Federal Form 990 and/or other income and expense statements to determine if this requirement is met.
- A “government grant” is defined for property tax exemption purposes under M.S. 272.02, subd. 7 as:

“a written instrument or electronic document defining a legal relationship between a granting agency and a grantee when the principal purpose of the relationship is to transfer cash or something of value to the grantee to support a public purpose authorized by law in a general manner instead of acquiring by professional or technical contract, purchase, lease, or barter property or services for the direct benefit or use of the granting agency.”

For instance, one example of an institution of purely public charity which would receive government grants would be a clinic receiving federal funds under section 330 of the Federal Public Health Code. Another example would be the Minnesota Pollution Control Agency providing grants for proposals for water quality management planning. The appropriation for grants to volunteer tax preparers by the State of Minnesota is another example of a government grant.

- “Reasonable Justification” may be given for not meeting this requirement.
- EXAMPLES.
 - An arts and culture center which operates as a 501(c)(3) nonprofit has a mission to support literary arts through educational opportunities, training, and showcasing local artists’ work. The organization receives community foundation support, individual gifts and donations, and government grants for its literacy program. The organization is supported by material donations, gifts, and government grants. This organization satisfies this requirement.
 - A 501(c)(3) non-profit conserves land for the public benefit. For properties donated to the non-profit, the donation of the land may qualify as a “gift” for purposes of this second requirement if the land is given freely or sold at materially below market value for to the non-profit organization. If the value of the gift (the land) is material, the organization would satisfy requirement 2.

- A 501(c)(3) non-profit works with homeless populations to provide job training. By design, the organization conducts an annual fund drive every other year. It utilizes funds raised at its bi-annual drive through the next two years in advancement of its charitable mission. The funds raised through the drive were material. Although the organization has not participated in fund-raising for one year, the donations received through its bi-annual drive are material and this second requirement is met.

- A 501(c)(3) was organized two years ago under a significant endowment. During the last year, dividends and interest from the original endowment were sufficient enough to run the operation. Because of the endowment, the organization did not devote time to fundraising last year, as it was able to perform its exempt activities through the dividend and interest income. In other words, the endowment is considered the “fundraiser” for this organization. In the prior to the assessment year, the organization fails this factor. However, the organization is able to articulate the use of the endowment instead of other active fundraising for its financial support. The organization is able to prove to the assessor that it has reasonable justification for not receiving donations, gifts, or government grants in the previous year and the property may qualify for exemption.

- A non-profit printing press publishes some materials for retail sale for a profit, some materials are sold below cost, and some materials are donated. The organization has raised some funds through donations and gifts; however the printing press also uses the commercial sale of some of its books to offset the cost of making and distributing the educational materials which are available in a charitable manner. The organization is able to prove to the assessor that it is supported by material gifts and donations and that its revenue-generating activities are secondary and incidental to its charitable activities. The organization may be eligible for property tax exemption.

- A 501(c)(3) organization provides training and materials to disadvantaged persons so that they can create gift items (e.g. bird houses, dolls, candles, etc.) for sale. The items are created by participants of the organization and sold at the organization’s property. The participants are low income, and many are disabled or elderly. The organization receives very little donations, but does receive small government grants. The organization uses the income received from the sales of these gift items to pay the participants and also to purchase more materials to continue with its mission. The assessor determines that the organization does not meet the requirements under clause 2. The organization feels that they have reasonable justification for not clearly meeting this requirement due to the nature of its mission, given their needy clientele the gainful employment provided to people who were otherwise not readily employable. The organization does give up some profits, and the support it receives is used for the furtherance of the organization’s mission. In other words, the organization has provided evidence of a reasonable justification for failing to meet this requirement and may be eligible for property tax exemption.

- A children’s theater is organized as a 501(c)(3) nonprofit and its mission is to provide meaningful educational and cultural theater experiences for young people. The theater’s sole source of revenue is from ticket sales, which are \$30 per ticket. The theater does not attempt to fundraise and never applied for grants or other public financial support. Similar theater companies have received material donations; however

this organization does not try to raise funds in this manner. The organization does not meet the second requirement, nor does it have reasonable justification for failing to meet it; therefore it does **not** qualify for property tax exemption.

- The test of reasonable justification only applies if the factor is not met. A non-profit may first work to demonstrate that it does, in fact, meet the requirement. If it cannot do that, it must demonstrate a reasonable justification for failure to do so. Each case of “reasonable justification” is to be looked at based on the unique facts of each individual situation. The onus is on the property owner to prove “reasonable justification” for failing to meet any requirement based on the nature of the organization. For example, if an organization chooses not to fundraise, while other organizations of the same type actively fundraise and receive donations and gifts, there is no reasonable justification for the organization to **not** fundraise. It was the choice of the organization not to engage in fundraising activities; it is not the nature of the organization or any other reasonable factor which precluded it from doing so.

Requirement 3: A material number of the recipients of the charity must receive benefits or services at reduced or no cost, or the organization must provide services to the public that alleviate burdens or responsibilities that would otherwise be borne by the government.

- “Reasonable justification” may be given for not meeting this requirement.
- An organization must either provide its goods or services at reduced or no cost to a material number of the recipients **or** must provide services that alleviate burdens or responsibilities that would otherwise be borne by the government to satisfy this factor. It does not need to meet both requirements.
- **EXAMPLES.**
 - A 501(c)(3) nonprofit childcare center cares for ten children from eight families. The organization makes free or reduced-cost childcare services available through a sliding-scale fee program. At any point, a material number children may utilize this program. Because the organization offers services at reduced or no cost to a material number of recipients, the organization satisfies this requirement.
 - A 501(c)(3) nonprofit youth diversion program provides court-ordered placement and services for youths as an alternative to a government-provided detention program. Because this organization alleviates the burden of government by providing alternative placement, this requirement is met.
 - A 501(c)(3) group home provides daily living supports for brain trauma patients, but does not provide its services for free or at a reduced cost. The institution accepts government payments at the rates set by government. Although the group home does not have proof of providing services for free or at a reduced cost in this case, based on the actual charitable activities of the organization and the recipients of the charity, the assessor determines that the organization has reasonable justification for failing to clearly meet the third requirement and may be eligible for property tax exemption.
 - A 501(c)(3) group home provides daily living supports for persons with developmental disabilities, but is unable to prove that those supports and services are provided for free or at reduced cost. The organization accepts government payments at the rates set by

government. Although the group home does not have proof of providing services for free or at a reduced cost in this case, based on the actual charitable activities of the organization and the recipients of the charity, the assessor determines that the organization has a reasonable justification for failing to meet the third requirement and may be eligible for property tax exemption.

- A 501(c)(3) nonprofit theater trust has a mission to engage the community in a diverse array of live performances and educational experiences so as to enrich lives, inspire an affinity for our historic theaters, and to contribute to the economic vitality of the community. The theater trust owns several theater properties. The trust receives monetary support from the local municipality to rehabilitate and maintain the historic theaters. The theater trust also provides material community education services at reduced or no cost that are in accordance with its stated mission. However, the theater trust gives away relatively few tickets for free or at a reduced cost. The theater trust engages community members in several other ways for free or at a reduced cost. Although the organization does generate revenue on ticket sales the organization provides its services for reduced or no cost to a material number of persons. Therefore, this third requirement is met.
 - A 501(c)(3) childcare facility does not provide reduced rates for its families who are unable to pay and are referred to social services, and the same rate is charged whether the recipients of the childcare are paying directly or are using social assistance. The childcare center does not provide a sliding-scale fee setup (so that some recipients could receive rates below market rate), nor does the center provide vouchers or scholarships for those unable to pay market rates. Failure to provide payment assistance in any way to private individuals receiving the service is a failure to meet this requirement, and may make an institution ineligible for property tax exemption. The organization is given the opportunity to provide evidence of a reasonable justification for failing to meet the requirement, but cannot. The facility does **not** qualify for property tax exemption.
 - A 501(c)(3) group home for the elderly that does not receive government grants (and the rates they charge are not mandated by government reimbursement rates) does not have a practice of reducing rates for clients unable to pay the full amount. The group home would not meet this factor. Because the group home does not provided services for free or at reduced cost, and because the group home does not have reasonable justification for not meeting this requirement, the group home would **not** qualify for exemption.
- Each case of “reasonable justification” is to be looked at based on the unique facts of each individual situation. The onus is on the taxpayer to prove “reasonable justification” for failing to meet any requirement based on the nature of the organization. Organizations that could- but choose not to- provide goods or services for free or at reduced cost do not have reasonable justification for failure to do so.

Requirement 4: That the income received, including material gifts and donations, must not produce a profit to the institution which is distributed to private interests.

- This factor MUST be met.

- To be eligible for 501(c)(3) exemption, the Internal Revenue Code requires that “The organization must not be organized or operated for the benefit of private interests, and no part of a section 501(c)(3) organization's net earnings may inure to the benefit of any private shareholder or individual.” As such, a 501(c)(3) organization applying for property tax exemption may be assumed to have met this requirement.

- This is not to say that the organization must operate at a loss or at zero profit. Rather, the profits may be redistributed back into the organization for the organization’s purposes.

Requirement 5: That the beneficiaries of the charity must be unrestricted. If the beneficiaries are restricted, the class of persons to whom the charity is made available must be one having a reasonable relationship to the charitable objectives.

- “Reasonable justification” may be given for not meeting this requirement.

- EXAMPLES
 - A 501(c)(3) nonprofit works worldwide to preserve ecologically important wildlife habitat for nature and for people. Part of the organization’s Minnesota-based operations include preserving a large tract of prairie in Northern Minnesota which has been identified as ecologically fragile, home to several endangered species, and critical to the health of the local watershed. In addition to preserving and maintaining this prairie land, the organization makes the land available for education, research, and low-impact recreational activities. The beneficiaries of the organization’s conservation practices are unrestricted as the general public benefits from this preservation and the general public is awarded the opportunity to use the lands. This requirement is met, and the organization may be eligible for property tax exemption.

 - A property is owned by a 501(c)(3) organization whose mission is to provide cultural and educational opportunities for inner-city Native American youth. The beneficiaries of this organization’s charity are restricted to inner-city Native American youth. However, in this specific case, the restriction is found to be directly related to the organization’s genuine charitable mission. The “class of persons to whom the charity is made available” is one “having a reasonable relationship to the charitable objectives” and this requirement is met.

 - A 501(c)(3) organization’s mission is to provide camping opportunities to disadvantaged youth and to promote wildlife preservation. The organization has fenced off access to its land and is awaiting future sale or development; however, the organization has not had any youth groups camp on this land. The organization’s owners allow access to a neighbor and that neighbor’s small group of friends or to private hunting parties each year. The beneficiaries of this wildlife area are restricted, but not in a manner which furthers the organization’s charitable cause. This property would **not** meet this factor and therefore would **not** qualify for exemption.

- In our opinion, the only case where it is acceptable to restrict the beneficiaries of a charity is when “the class of persons to whom the charity is made available [is] one having a reasonable relationship to the charitable objectives.” This is the only case of a “reasonable justification” for restricting the beneficiaries of a charity.

Requirement 6: That dividends, in form or in substance, or assets upon dissolution are not available to private interests.

- This requirement MUST be met.
- An organization must also meet this requirement to be a 501(c)(3) tax exempt organization under the Internal Revenue Code. The IRS website (www.irs.gov) states:

“... [I]f an organization dissolves, its assets must be distributed for an exempt purpose, to the federal government, or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, its organizing documents should contain a provision insuring their distribution for an exempt purpose in the event of dissolution. If a specific organization is designated to receive the organization's assets upon dissolution, the organizing document must state that the named organization must be a section 501(c)(3) organization when the assets are distributed.”

Because only 501(c)(3) organizations are eligible for exemption as institutions of purely public charity, a 501(c)(3) organization applying for property tax exemption will have met the sixth requirement.

APPLICATION PROCESS

Attached to this bulletin is the updated application for property tax exemption for institutions of purely public charity. All six requirements should be met, unless the organization is able to provide reasonable justification for failing to meet the second, third, or fifth requirement. If a charitable organization is able to provide evidence of reasonable justification, the assessor should review that documentation before making a determination. If the assessor feels that there is insufficient evidence of reasonable justification, the assessor may allow additional time to produce such evidence. We recommend that the assessor allow for up to 60 days to receive the additional information. If the assessor denies the original application, or denies an application based on the additional information provided, the assessor should respond in writing, clearly outlining the assessor’s determination for denying exemption. The letter informing the applicant of denial should also include information regarding the taxpayer’s opportunities for appeals. This includes both the formal Tax Court appeal and the advisory review board appeal discussed later in this bulletin.

Applicants are to fill out each section of the application. For the sections pertaining to requirements 2, 3, and 5, there is space for the organization to provide additional information. This is because these factors may not be met in the traditional sense, but there may be reasonable justification for the organization failing to have met them, if the justification provided is reasonable in terms of the charitable goals of the institution.

Applications must be provided to the assessor’s office with the determination letter from the IRS granting status as a 501(c)(3) organization, income and expense statements (such as Federal Form 990), and the Articles of Incorporation. If the applicants do not meet requirements 2, 3, or 5, they may

also wish to provide additional documentation outlining why these requirements are not met (or if such documentation is not provided, it may be helpful for the assessor to request this information).

There is also space on the application for the organization to outline uses of the property which are not directly related to the charitable mission of the organization. If there is a substantial use present that is not part of the organization's charity, the exemption is provided *pro rata*. For example, if there is a substantial residential use of an otherwise exempt building, but the residential portion is not part of the exempt mission of the institution, that residential portion is not exempt from taxation.

APPEAL OPTIONS

First and foremost, it is the assessor's duty to determine eligibility for property tax exemption. The assessor must consider all documentation provided by an applicant, including any documentation relating to a "reasonable justification" for failing to meet requirements 2, 3, or 5 above. The assessor must request any information he or she deems necessary before making this determination.

If an applicant applies for exemption as an institution of purely public charity but does not meet the six requirements and the assessor does not find that reasonable justification applies, there are two options for appeal: an appeal to an advisory review board, which will provide advice to the assessor and/or the organization; or an appeal to Minnesota Tax Court, which may grant or deny property tax exemption. Exemption determinations are made only by assessors, the Tax Court, or the Minnesota Supreme Court. Exemptions may not be granted by the Department of Revenue, by local boards of appeal and equalization, by county boards of appeal and equalization, or by any other local or county board.

Option 1: Advisory Review Board

The institution or assessor may request through the Department of Revenue that the eligibility for exemption be reviewed by an advisory board comprised of members of the Minnesota Council of Nonprofits, the Department of Revenue, and the Minnesota Association of Assessing Officers. This review board will assess which factors the institution meets, and will determine if any of the factors are not met, and for which reasonable justification for the failure has not been given. The review board may also determine whether the facts of the organization would be considered sufficient to either meet the statutory requirements or qualify for reasonable justification. The review board will issue a written response to the assessor and the institution, outlining its advisory opinion as to whether or not the organization meets the requirements for property tax exemption. This opinion is non-binding, as the review board is not able to formally grant or deny exemption.

The review board will not hear appeals which have not first been reviewed by the assessor. The review board will also not hear appeals which are presented to Minnesota Tax Court prior to or at the same time as being presented to the review board.

Either the assessor or the applicant may request that the board review the application for exemption as an institution of purely public charity. The party seeking review should contact the Department of Revenue Property Tax Division via written request:

Department of Revenue
Property Tax Division, Information and Education Section
Mail Station 3340
Saint Paul, MN 55146

The written review requests must be accompanied with all documentation appropriate to the organization's application. This includes, but is not limited to:

- The application for exemption;
- All supporting documents requested by the assessor or provided by the applicant;
- The Federal Form 990 and/or other income and expense statements;
- The IRS 501(c)(3) determination letter or substitute;
- The Articles of Incorporation;
- A detailed description of the organization's function, outlining why the organization believes it qualifies for property tax exemption;
- The assessor's letter of denial, explaining the reasoning for the assessor's decision (if any).

Based on each request for review, the Department of Revenue will determine which cases will be heard before the board. The board will meet quarterly (in February, May, August, and November of each year) to discuss and review requests.

The board will be made up of three primary members, each with one "vote". The three board members will be one each from the Department of Revenue, the Minnesota Association of Assessing Officers, and the Minnesota Council of Nonprofits. Each point person for these groups will be able to assign an alternate in case of inability to attend a meeting, and each person may bring along one or two additional field experts (e.g. an attorney) if necessary to provide input or further information to the review board. The assessor and the applicant will **not** typically be asked to appear in person before the board.

An informal opinion will be issued by the board within 60 days of a meeting. Again, this opinion is not binding on the assessor. Minnesota Tax Court (or Supreme Court) is the only authority eligible to make exemption determinations which must be acted upon by the assessor. However, the opinions of the board should be carefully considered by the assessor when making a determination whether to follow the board's advice regarding acceptance or denial for exemption as an institution of purely public charity.

Option 2: Minnesota Tax Court

The applicant may appeal its tax exempt status to Minnesota Tax Court. The deadline for appealing to Tax Court is April 30 of the year in which taxes become payable. The deadline is statutory and is not subject to change even if the property owner has applied for an informal appeal to the review board.

The decision of the Tax Court is official for property tax purposes. Tax Court appeal information can be found online at www.taxcourt.state.mn.us.

NURSING HOMES

As part of clarifying property tax exemption requirements for institutions of purely public charity, it was determined that nursing homes be granted a separate exemption under law. Under Minnesota Statutes, section 272.02, subdivision 90:

“ A nursing home licensed under section 144A.02 or a boarding care home certified as a nursing facility under title 19 of the Social Security Act that is exempt from federal income

taxation pursuant to section 501(c)(3) of the Internal Revenue Code is exempt from property taxation if the nursing home or boarding care home either:
(1) is certified to participate in the medical assistance program under title 19 of the Social Security Act; or
(2) certifies to the commissioner of revenue that it does not discharge residents due to the inability to pay.”

Title 19 of the Social Security Act concerns Medicare and Medicaid. Based on previous Department of Revenue surveys, we believe that most nursing homes meet the requirements for exemption. This exemption is applicable for the 2009 assessment, for taxes payable in 2010.

**If you have any questions regarding this bulletin, please direct them to
proptax.questions@state.mn.us.**

Institution of Purely Public Charity Application for Property Tax Exemption

Please read the back of this form before completing. If you are not applying for exemption as an institution of purely public charity, please fill out the "Application for Property Tax Exemption" form.

Form is to be completed by all applicants. Please provide the following information for the organization that owns the property on which exemption is being claimed.

Owner(s) of the property	Name of organization		Date property acquired by organization	
	Name of representative or owner	Title	Date of application	
	Mailing address of organization			
	City	State	Zip	County
	Are you claiming exemption as an institution of purely public charity? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please file for exemption using the "Application for Property Tax Exemption" form.			

Is the above organization exempt from federal income tax under section 501(c)(3)? Yes No

Please include with this application your Articles of Incorporation and your Federal Form 990

Property Information	Property address of property for which exemption is sought			
	City	State	Zip	County
	Legal Description of the property (attach additional paper if needed)		Parcel ID number	

Property Uses	What is the principal use of the above-described property?
	Additional uses of the above-described property (please give percentage of use):
	Are these uses directly related to the mission of the organization? <input type="checkbox"/> Yes <input type="checkbox"/> No

How is the property used to achieve or further the organization's mission?

Charitable Organization Information	Is the stated purpose of your undertaking to be helpful to others without expectation of material reward? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Please list the amounts of donations, gifts, or government grants you received last year: Donations: \$ _____ Gifts (monetary value): \$ _____ Government grants: \$ _____
	If you do not receive any donations, gifts, or government grants, please describe how this organization is supported in the space below:
	Do you provide your goods or services for reduced or no cost? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide an example:
	If any of the recipients pay market value for your services, please explain:
	Are any of the organization's profits (including donations, gifts, or income) distributed to private interests? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Are the beneficiaries of the charity restricted to any group of persons? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain the reason for restriction:

Upon dissolution, are dividends or assets made available to private interests? Yes No

Sign here	Signature of owner or authorized representative. By signing below, I certify that the above information is true and correct to the best of my knowledge, and I am the owner of the property or authorized representative of the organization that owns the property for which exemption is being claimed.	
	<p>Making false statements on this application is against the law.</p> <p>Minnesota Statute 609.41 states that anyone giving false information in order to avoid or reduce their tax obligations is subject to a fine of up to \$3,000 and/or up to one year in prison.</p>	
	Applicant's signature	Daytime phone

Name of organization

Exemption is Approved Denied for assessment year: _____

For office use only to be completed by the county assessor.

Assessor's signature

Date

Please see the back of this form for required documentation that must be attached to your application.

Institution of purely public charity: Applying for exemption from property tax

Filing for exemption

An institution claiming exemption from property taxes as an institution of purely public charity must file an application for exemption with the assessor in the district where the property is located on or before February 1 of the assessment year.

This application must be filed every third year. No matter what year the taxpayer initially files for exemption, applications will again be due in 2010, 2013, 2016, etc.

You may attach any additional information you feel is necessary to complete this application, including descriptions of the charitable activities of your organization.

If you are filing for property tax exemption as something other than an institution of purely public charity, please inquire at your assessor's office for the appropriate application form.

What type of property qualifies for exemption?

Minnesota Statute 272.02, subdivision 7 describes the qualifications necessary for an institution of purely public charity to be eligible for property tax exemption. The organization must be a 501(c)(3) organization under the Internal Revenue Code and provide a charity to the public. The filing requirements for applications for exemption can be found in Minnesota Statute 272.025.

No property will be exempt from taxation under Minnesota Statute 272.02 if the taxpayer claiming the exemption knowingly violates any of the provisions of this section.

Required Documentation

The following documentation must be included with your application for exemption as a purely public charity.

- IRS letter granting exempt status as a 501(c)(3) corporation, or an explanation of why the letter is not available.
- Articles of Incorporation for the facility (and the parent corporation if applicable).
- Financial statements or other documents showing the most recent three years of donations for the facility, the total income and total expenses. (Federal Form 990 with schedules or certified financial statements show this information. Sworn statements from the donors may be used to show donations.)

Assessor may request additional information

Upon written request by the assessor, taxpayers must make available to the assessor all necessary books and records relating to the ownership or use of property which can help verify whether or not the property qualifies for exemption. The assessor may also ask for any information which would clarify explanations provided under "Charitable Organization Information."

The assessor will provide you with a reasonable amount of time to provide this additional information. You will be notified in writing of your approval or denial for property tax exemption. If you disagree with the assessor's determination, you may request an advisory opinion from the Minnesota Department of Revenue, or you may appeal the assessor's decision to Minnesota Tax Court.

Sale or purchase of exempt property

Property which is exempt from property tax on January 2 and, due to sale or other reason, loses its exemption prior to July 1 of that year, will be placed on the current assessment rolls for that year.

Property which is subject to property tax on January 2 that is acquired by a government entity, institution of purely public charity, church or educational institution before July 1 of the year is exempt for that assessment year if the property is to be used for an exempt purpose.

How we use information

Some of the information contained on this form may be shared with the county assessor, the county attorney, the Commissioner of Revenue or other federal, state or local taxing authorities to verify your eligibility for exemption.

You do not have to provide this information. However, refusal will disqualify you from consideration for exemption.

Penalties

Making false statements on this application is against the law.

Minnesota Statute 609.41 states that anyone giving false information in order to avoid or reduce their tax obligations is subject to a fine of up to \$3,000 and/or up to one year in prison.

Application for Property Tax Exemption for Nursing Homes and Boarding Care Homes

To qualify for exemption, the nursing home must be licensed under section 144A.02 or the boarding care home must be certified as a nursing facility under title 19 of the Social Security Act. The facility must also meet other statutory requirements Please read the back of this form before completing.

Owner(s) of the property	This section is to be completed by all applicants. Please provide the following information for the organization that owns the property on which exemption is being claimed.			
	Name of organization			Date property acquired by organization
	Name of representative or owner	Title		Date of application
	Mailing address of organization			
	City	State	Zip	County

Property info	This section is to be completed by all applicants. Please fill out the following information about the property on which exemption is being claimed.	
	Parcel ID number(s)	County

Certifications	This section is to be completed by all applicants. Please check the appropriate boxes below.	
	I certify that the above organization is exempt from federal income tax under section 501(c)(3). <input type="checkbox"/> Yes <input type="checkbox"/> No	
	You must be able to certify one of the following as being true in order to qualify for the exemption:	
	I certify that this facility is certified to participate in the medical assistance program under title 19 of the Social Security Act. <input type="checkbox"/> Yes <input type="checkbox"/> No	
I certify that this facility does not discharge residents due to the inability to pay. <input type="checkbox"/> Yes <input type="checkbox"/> No		

Please include with this application a designation from the IRS proving status as a 501(c)(3) organization. Also include with this application a copy of the facility's discharge policy or proof that the facility is certified to participate in the medical assistance program under title 19 of the Social Security Act.

Sign here	Signature of owner or authorized representative. By signing below, I certify that the above information is true and correct to the best of my knowledge, and I am the owner of the property or authorized representative of the organization that owns the property for which exemption is being claimed.	
	Making false statements on this application is against the law. Minnesota Statute 609.41 states that anyone giving false information in order to avoid or reduce their tax obligations is subject to a fine of up to \$3,000 and/or up to one year in prison.	
	Applicant's signature	Daytime phone

For office use only to be completed by the county assessor.

Name of organization
 Exemption is Denied Approved
 Assessor's Signature
 Date

Please return completed application to your county assessor by February 1.

Applying for exemption from property tax

Filing for exemption

Minnesota Statutes 272.02, subdivision 90 provides a property tax exemption to qualifying nursing homes and boarding care homes. The facility must be exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, and must meet one of the following requirements:

- The facility is certified to participate in the medical assistance program under title 19 of the Social Security Act; or
- The facility certifies that it does not discharge residents due to the inability to pay.

Applications are due February 1 of the assessment year. This application must be re-filed every third year. No matter what year the taxpayer initially files for exemption, applications will again be due in 2013, 2016, 2019, etc.

In cases of sickness, absence, disability or for other good cause, the assessor may extend the deadline for filing the statement of exemption for a period not to exceed 60 days.

Required Documentation

You must provide the following documentation with this application:

- A designation from the IRS proving status as a 501(c)(3) organization; and either

- a copy of the facility's discharge policy showing that residents are not discharged due to the inability to pay; or
- proof that the facility is certified to participate in the medical assistance program under title 19 of the Social Security Act.

No property will be exempt from taxation under Minnesota Statute 272.02 if the taxpayer claiming the exemption knowingly violates any of the provisions of this section.

Assessor may request additional information

Upon written request by the assessor, taxpayers must make available to the assessor all necessary books and records relating to the ownership or use of property which can help verify whether or not the property qualifies for exemption.

Sale or purchase of exempt property

Property which is exempt from property tax on January 2 and, due to sale or other reason, loses its exemption prior to July 1 of that year, will be placed on the current assessment rolls for that year.

The valuation will be determined with respect to its value on January 2 of such year. The classification will be based on the use to which the property was put by the purchaser, or

in the event the purchaser has not utilized the property by July 1, the intended use of the property, as determined by the county assessor, based upon all relevant facts.

How we use information

Some of the information contained on this form may be shared with the county attorney, the Commissioner of Revenue, or other federal, state, or local taxing authorities to verify your eligibility for exemption.

You do not have to give this information. However, refusal will disqualify you from consideration for exemption.

Penalties

Making false statements on this application is against the law.

Minnesota Statute 609.41 states that anyone giving false information in order to avoid or reduce their tax obligations is subject to a fine of up to \$3,000 and/or up to one year in prison.

Additional resources

Your county assessor's office should be able to assist you with properly filling out this form.