

**Date:** December 31, 2012  
**To:** County Assessors; Nonprofit Organizations  
**From:** Information and Education Section, Property Tax Division  
**Subject:** **Review Board for Determining Property Tax Exemption of Institutions of Purely Public Charity**

As many of you are likely aware, the Minnesota Association of Assessing Officers, Minnesota Council of Nonprofits, and the Minnesota Department of Revenue formed an advisory board which would review exemption eligibility for properties owned by institutions of purely public charity. This board was developed in response to 2009 legislation. The review board has held eight meetings to date to consider applications for property tax exemption. At its most recent meeting, the board determined that there have been many points of consideration that would be beneficial to share with the assessment community and nonprofit community alike.

The purpose of this bulletin is to share with you some of the items that have been discussed regularly. Our hope is that this will be a helpful document when having discussions regarding specific properties' applications for exemption. We will also briefly describe some of the decisions that the board has made, as well as describe the general process of the review process.

### **Statutory Guidelines for Exemption**

[Minnesota Statutes, section 272.02, subdivision 7](#) outlines the requirements for property tax exemption as an institution of purely public charity. There are six basic requirements for property tax exemption in this subdivision. Also, taxation is the rule and exemption is the exception. With virtually any type of exempt property, the qualifying parcel must be owned by an exempt institution, used for exempt purposes, and ownership of the property must be reasonably necessary to further the mission of the exempt organization. This three-prong test is used when making these determinations.

Beyond the six statutory requirements for property tax exemption outlined in M.S. 272.02, subdivision 7, the organization seeking exemption must also be exempt from federal income taxes under section 501(c)(3). We have advised assessors that if an organization is able to verify that the organization is exempt from federal income taxes as a 501(c)(3) organization, it can be reasonably assumed that the property meets requirements 1, 4, and 6.

The review board then typically reviews whether the property meets requirements 2, 3, and 5.

*Requirement 2: The institution must be supported by material donations, gifts, or government grants for services to the public in whole or in part; or there may be a reasonable justification for failing to meet this requirement.*

*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 (both requirements do not need to be met); or there may be a reasonable justification for failing to meet this requirement.*

*Requirement 5: The beneficiaries of the charity are unrestricted, or, if restricted, the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives.*

### **General Agreements and Common Discussions**

*Membership fees that provide the “member” with market value goods or services are generally not considered donations.* In other words, a membership fee which provides a return of something of material value is not considered a donation, but is more similar to a fee-for-service. However, in some cases, the membership “fee” is greater than the value of goods or services received for membership. The amount of that membership fee that exceeds the amount of goods or services received may be considered a donation (organizations are able to lay out for members which portion of their fee/donation is considered an exempt donation – the portion of the fee that exceeds the return). For example, a non-profit radio station may host a “membership drive” as fundraising. “Members” of the public radio station may receive some goods or services for being a member, but in general the membership fee/donation exceeds the value of those goods or services. The portion of the fee/donation that exceeds the goods or services received would be considered a donation for purposes of property tax exemption determinations.

*The use of the property must fulfill the organization’s mission.* This is part of the umbrella requirement that for any property tax exemption, property must be owned by a qualifying organization, used for that organization’s purposes, and ownership of the property must be reasonably necessary to fulfill the organization’s mission. Bare land owned by an organization, for example, may not be exempted unless there is a clear use of the property that fulfills the mission of the organization (e.g., bare land that is used for camping by a youth camping organization).

If the property use changes to a mission-based use, exemption eligibility may be reconsidered.

*In the case of the lease, how does the tenant use the property? Does the tenant’s use coincide with the mission of the owner organization?* The board has not developed a bright-line test on how tenant/owner relationships must coincide for property tax purposes. We do know that if a nonprofit leases a portion of its property to a for-profit organization, the leased portion is taxable. However, if a nonprofit leases a portion of its property to another nonprofit, the lease is not necessarily taxable, but the review board would ask for much more information about the tenant’s use of the property, the lease fee, etc. In general, the lessee organization needs to meet the same statutory standards for property tax exemption on its own merits in order to qualify. We would also recommend that assessors get as much additional information as possible for their own purposes, as well.

*Who is benefiting from the property?* While there are no requirements for “who benefits?” there have been discussions regarding cases where it has been unclear whether anyone benefits, whether anyone other than members benefit, and whether a good or service is provided that anyone “needs”. In general, the expectation is that qualifying organizations would primarily benefit the public, with incidental private benefit not disqualifying a property from exemption. However, a property that primarily benefits private interests with only incidental public interests would be questionable in terms of qualifying for property tax exemption. This is another instance where it is helpful to both the assessor and the review board if the organization is able to clearly outline who is benefitting from the good or service provided. [Please note that this is only in cases of properties seeking to qualify under clause 3 that *do not* alleviate burdens or responsibilities that would otherwise be borne by the government.]

## **Opinions of the Board**

**Group homes:** Group homes do not qualify for the exemption provided for nursing homes under [Minnesota Statutes, section 272.02, subdivision 90](#). Group homes must qualify for exemption based on the requirements for institutions of purely public charity. The board has found group homes to be taxable and exempt based on the specific facts of each scenario. In particular, the “necessity of ownership” requirement was particularly helpful in determining exemption eligibility for certain homes.

At its first meeting, the review board discussed two group home organizations. Each of these facilities was either an intermediate care facility, primarily engaged in providing active health or rehabilitation services to persons with developmental or physical disabilities; or, was a “waivered” facility for such persons, meaning that the residents of the facility were receiving services from the facility that, but for the provision of those services at this facility, the resident would likely have to be housed in a more expensive intermediate care facility, nursing home, or hospital. Therefore, the “necessity of ownership” test was part of the discussion related to these properties.

The board agreed that it appeared that the group homes met all of the statutory requirements except requirement 2 (that the organization is supported by material donations, gifts, or government grants). Some members felt that the group homes met this requirement because of the grants they received. Others disagreed and stated that the grants did not meet the definition of government grants for property tax exemption purposes. However, those that disagreed did believe that the organization had reasonable justification for failing to meet this second statutory requirement. Therefore, while members disagreed on whether the homes qualified based on the second requirement, the board’s overall opinion was that the group homes were exempt as described.

At another meeting, the review board did *not* recommend exemption for an assisted living group home because it appeared to fail to meet the third requirement: 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. Based on the information provided, it was not clear that a charity was provided to the public generally at reduced or no cost, or that the burdens of government were alleviated by home. While the assisted living facility did not qualify for the statutory exemption provided to nursing homes, it also did not meet the required standards of an institution of purely public charity in the board’s opinion. Rather, its operations resembled senior housing arrangements, which are taxable. Because of the nature of the operation, the “necessity of ownership” test was also not clearly met. The board’s consensus was that the third requirement was not met, nor was reasonable justification for failure to meet this requirement provided.

**Lake Association:** A 501(c)(3) lake association that was organized for water quality preservation was determined not eligible for exemption by the review board. In the case of the specific lake association, the board did not find that the second or third statutory requirements were clearly met, nor was there reasonable justification for failure to meet the requirements.

As part of the review process, the board determined that it was unclear whether there were donations beyond membership fees. The advisory review board was of the opinion that the membership fees used by the organization for support did not qualify as donations for purposes of property tax exemption. The board’s consensus was that the second requirement was not met, nor was reasonable justification for failure to meet this requirement provided.

As for the third requirement, based on the information provided, it was not clear that a charity was provided to the public generally, nor that the burdens of government were alleviated by the lake association. The stated purpose of maintaining property values for homeowners was not considered providing a charity. The other uses of the property that were described as charitable were not clearly attributable to the association, or did not clearly show a benefit to the public generally. It was not established that the organization alleviated burdens that would otherwise be necessarily borne by the government. The board's consensus was that the third requirement was not met, nor was reasonable justification for failure to meet this requirement provided.

Daycare Center: The board reviewed application for exemption by a daycare center. Based on the information provided, it was not clear that a charity was provided to the public generally at reduced or no cost, or that the burdens of government were alleviated by the daycare center. While the organization offered a crisis nursery, it was unused. The daycare center offered a minimal rate discount but did not offer scholarships to families who were unable to pay for the services. Some areas of the property were leased or made available to others for low cost, but this activity was not considered a charity provided by the daycare in furtherance of its mission. A food program offered by a local organization was considered a charity provided, but not by the center itself. Additionally, providing reduced rates to the center's employees was not considered a charity. The board's consensus was that the third requirement was not met, nor was reasonable justification for failure to meet this requirement provided.

Lake Recreation Center/Campground: The board reviewed a campground for recovering alcoholics, their family and friends owned by a 501(c)(3) organization. The review board did not find that this property qualified for exemption based on not clearly meeting the second or third statutory requirements, and failing to provide reasonable justification.

The organization's funding was primarily from membership donations, volunteer hours, suggested donations for camping, and donations of supplies. It was unclear whether the level of donations beyond members' donations and user fees rose to the level necessary to qualify for exemption as an institution of purely public charity. The members' donations certainly helped to maintain the property that they used, but whether these donations constituted a donation in terms of providing something for the public benefit was not clearly established. Based on the information provided, the public's donations to the organization were minimal, and often times more closely represented fees for services provided (e.g., for use of the campground facility). The board's consensus was that the second requirement was not clearly met, nor was reasonable justification for failure to meet this requirement provided.

As for the third requirement, based on the information provided, it was not clear that a charity was provided to the public generally, nor that the burdens of government were alleviated by the recreational center/campground. The primary beneficiaries of the property appeared to be the members of the organization, and not the public generally. Because it was unclear whether a material number of people benefited from a charity being provided by the organization, it was difficult to establish that this requirement was met. A charitable benefit or service that is provided to the public was not outlined sufficiently for the review board's purposes. It was not established that the organization alleviated burdens that would otherwise be necessarily borne by the government. The board's consensus was that the third requirement was not met, nor was reasonable justification for failure to meet this requirement provided.

## **Review Board Process**

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 statutory requirements 2, 3, or 5. 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.

The institution or the assessor may request through the Department of Revenue that the eligibility for exemption be reviewed by the 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 assesses 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 issues 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 does 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. The mailing address for requests is:

Review Board – Institutions of Purely Public Charity  
c/o Property Tax Division  
Mail Station 3340  
600 N. Robert Street  
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 for the three previous years;
- 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);
- Aerial photos of the property and/or a building diagram/site plan, if available.

**We ask that the applicant (assessor or organization) please not staple the documents prior to sending, and please avoid the use of post-its or other attached notes. The documents are electronically scanned for distribution and staples, paper clips, and post-its will have to be removed prior to scanning.** Using staples in particular damages the documents and makes scanning difficult.

The Department of Revenue organizes the meetings and disseminates all of the documentation for the institution(s) to be reviewed. The board generally meets every two to three months to discuss and review requests. In 2012, meetings have been held in January, May, August, and October.

The board is made up members from three organizations: the Department of Revenue, the Minnesota Association of Assessing Officers, and the Minnesota Council of Nonprofits. Each group has one “vote” for purposes of determining exemption eligibility. The groups 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 are **not** asked to appear in person before the board.

The board reviews the organization’s documents and determines whether the organization meets the six statutory requirements for exemption. The board has a history of determining that if an organization is exempt by the Internal Revenue Service as a 501(c)(3) nonprofit, then the organization meets statutory requirements 1, 4, and 6. The board then focuses on requirements 2, 3, and 5. The organization may be determined to meet or not meet any of those requirements, or the organization may be determined to not meet one of those requirements but have reasonable justification for failure to do so. The board also determines whether the property meets the traditional understanding that ownership, use, and necessity of ownership are the three key elements in determining exemption. Absence of any of the three elements would likely disqualify a property from exemption unless specifically allowed by law. For example, a property may be owned by an exempt institution, but if it is not used for that institution’s stated mission and purposes, exemption would be denied.

An informal opinion is 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 are to 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.

The review board is neither required nor funded by legislation. Board members serve voluntarily and are not reimbursed by the state for travel or other expenses. Property Tax Division staff schedule and organize the meetings, share organizations’ documentation, record the final decision of the review board, and communicate the board’s decision with the institution(s) seeking a review.

### **Additional Information**

Additional information related to determining exemptions for institutions of purely public charity may be found in the Property Tax Administrator’s Manual, *Module 5 – Exempt Property*. The manual is available on the Department of Revenue website and via the following link:

[http://www.revenue.state.mn.us/local\\_gov/prop\\_tax\\_admin/Pages/ptamanual.aspx](http://www.revenue.state.mn.us/local_gov/prop_tax_admin/Pages/ptamanual.aspx)

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