



MAINE REVENUE SERVICES PROPERTY TAX DIVISION PROPERTY TAX BULLETIN NO. 5

TAX EXEMPTIONS FOR BENEVOLENT AND CHARITABLE INSTITUTIONS

REFERENCE: 36 M.R.S. § 652(1), paragraphs A, B and C
December 9, 2022; replaces November 13, 2017 revision

Maine law provides a property tax exemption for property of certain institutions and organizations. This bulletin explains the exemption for benevolent and charitable institutions found in 36 M.R.S. § 652(1). It is designed to assist assessors and others in determining the exempt status of property of those institutions. As discussed below, to qualify for the property tax exemption, an institution must be benevolent and charitable, and it must satisfy the legal tests of ownership, occupancy or use, and incorporation for the property it is seeking to exempt.

1. Benevolent and Charitable

The statute does not specifically define the terms “benevolent and charitable.” As a result, the parameters of the exemption, and which types of institutions qualify, have largely been formed based on decisions of the Maine Supreme Judicial Court (the “Law Court”).

The Law Court has declared that the terms “benevolent” and “charitable” are synonymous. *Francis Small Heritage Trust v. Town of Limington*, 2014 ME 102, ¶ 14, 98 A.3d 1012, 1017. It has also defined charitable as being “for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.” *Episcopal Camp Foundation v. Hope*, 666 A.2d 108, 110 (Me. 1995).

Further, the Law Court has stated that “any institution which by its charitable activities relieves the government of part of its burden is conferring a pecuniary benefit upon the body politic, and in receiving exemption from taxation it is merely being given a ‘quid pro quo’ for its services in providing something which otherwise the government would have to provide.” *Francis Small Heritage Trust*, 2014 ME at ¶ 14. This “quid pro quo” factor, while not controlling, is a factor that the Law Court has stated should be considered when determining whether the charitable exemption applies. *Id.*

For additional Law Court decisions on the scope of what constitutes benevolent and charitable, see section 4 below.

2. Legal Tests for Qualification

A. Ownership. An institution must own the property for which it requests an exemption.

Ownership of the property by the institution is essential to the exemption and such ownership must be exclusively charitable. A property deed will show ownership.

- B. Occupancy or use. Generally, property owned by the institution must be either occupied by the institution or used solely for its own purposes. Ownership of the property by the institution must be concurrent with the occupancy or use.
- (1) Occupancy. The word occupancy means an actual occupation; in other words, the institution must possess and hold the property. Qualifying occupation that entitles the institution to an exemption requires possession or holding of that property for the charitable purposes for which the institution is incorporated. The extent of the use and the nature of the occupation is considered when determining whether it has been occupied for a qualified purpose. Possession of a building with a plan and purpose for future benevolent and charitable use may not be sufficient to qualify for the exemption.
- a. Property leased to other exempt institutions. Generally, an institution is not entitled to exemption for property that it owns, but does not occupy. However, there is an exception to the occupancy requirement, whereby property owned by a benevolent and charitable institution that leases the property to an institution that is also exempt under 36 M.R.S. § 652 would still be eligible for exemption. Examples of qualifying institutions include, but is not limited to, other benevolent and charitable institutions, literary and scientific institutions, organizations such as the American Legion and Veterans of Foreign Wars (VFW), chambers of commerce, churches, and certain fraternal organizations.
- b. Property temporarily rented. If a benevolent and charitable institution rents space to an entity that is not a benevolent and charitable institution, but the rental is temporary, occasional, and doesn't interfere with the operation and use of that space by the owner, the institution may still be eligible for exemption.
- (2) Use. The exemption for benevolent and charitable institutions applies only to property used for the purpose for which the institution was created. All profits of the institution must be used exclusively for the purposes for which it is organized. Property held by the institution must be dedicated to the public and must be devoted to public use and not for private advantage or gain. An exception to the use rule exists where an institution occasionally uses a part of its property for purposes other than that for which it was incorporated. This occasional use for non-charitable purposes must be incidental, must not interfere with the institution's regular operation, and must generate only de minimis revenue. The Law Court has not established the upper limit of what it considers de minimis, but it has ruled that revenue representing 1% of an entity's operating budget was considered de minimis. *Hebron Academy, Inc. v. Town of Hebron*, 2013 ME 15, 60 A.3d 774.
- C. Incorporated. 36 M.R.S. § 652(1)(A) requires a benevolent and charitable institution be incorporated to be eligible for an exemption. An institution requesting exemption from property tax could qualify if organized under a charter pursuant to the Maine Business Corporation Act, the laws of another state, or by special act of the Legislature. Organizing as a for-profit business, however, ordinarily means that an institution is not "organized and conducted exclusively for benevolent and charitable purposes." Failure to incorporate prohibits exemption from the property tax.

- D. Profit. Directors, trustees, officers, and employees of a benevolent and charitable institution must not receive a portion of the institution's profit. 36 M.R.S. § 652(1)(C)(2).
- E. Report filed with assessor. An entity claiming an exemption for benevolent and charitable institutions must file, on request of the assessor, a report detailing the institution's preceding fiscal year. A copy of the financial statement of the institution requesting exemption will normally satisfy this requirement.

3. Proof of Entitlement for Property Tax Exemption

It is the responsibility of the assessor to determine whether an institution qualifies as a benevolent and charitable institution. The attached "Application for Exemption from Local Taxation" is a sample document that an assessor may use or adapt to have proof on record that a benevolent and charitable institution has been granted a property tax exemption for the purposes stated. Each application should be reviewed annually.

The assessor may determine what proof is required to document eligibility for the exemption, and may require documentation in addition to the application, including, but not limited to, a copy of the institution's Articles of Incorporation, the property deed, and the institution's bylaws.

4. Maine Case Law

The following Law Court cases provide additional guidance on the parameters of the benevolent and charitable exemption. The cases are briefly summarized and are included to assist assessors in making a decision to grant exempt status to property based on the benevolent and charitable exemption. The descriptions do not include all of the details of each case, and assessors should use care to read and evaluate the cases based on their own judgment and their own specific circumstances.

A. *Francis Small Heritage Trust v. Town of Limington*, 2014 ME 102, 98 A.3d 1012.

- The plaintiff land trust was organized and conducted exclusively for benevolent and charitable purposes. It operated its "properties in the manner of a state park" and, therefore provided a benefit to the public that would otherwise be undertaken by the government.
- The Farm and Open Space Tax law and the benevolent and charitable exemption are not mutually exclusive. There is some overlap between the two benefits and neither preempts the use of the other.

B. *Hebron Academy, Inc. v. Hebron*, 2013 ME 15, 60 A.3d 774.

- Academies, in this case a private high school, are considered literary institutions.
- Rental activity, which in this case generated approximately 1% of the institution's operating budget, does not interfere with the institution's purpose and is de minimis and incidental.

C. *Cushing Nature and Preservation Center v. Cushing*, 2001 ME 149, 785 A.2d 342.

- The plaintiff did not allow clamming on its property, which the lower court declared a disqualification for the charitable exemption. The Law Court ruled that when the use of property is charitable “the owner need not allow all public uses in order to qualify for an exemption.”

D. Salvation Army v. Standish, 1998 ME 75, 709 A.2d 727.

- Salvation Army qualified as benevolent and charitable institution entitled to exemption even though its purpose and mission was religious.
- Allowing Salvation Army officers to use buildings at summer camp for inexpensive vacation lodging constituted nothing more than compensation for the services the officers had performed on behalf of the charitable institution.

E. Lewiston v. Marcotte Congregate Housing, 673 A.2d 209 (Me. 1996).

- A benevolent and charitable exemption applies only to property which is owned and *occupied or used* by the institution *solely* for its own purposes. Ownership by an institution with a charitable purpose alone without occupancy or use is not enough to claim exemption.
- Portion of building owned by nonprofit corporation which was leased to private physicians and residents paying full market rental value rendered the entire property subject to taxation.

F. Episcopal Camp Foundation v. Hope, 666 A.2d 108 (Me. 1995).

- Church camp’s purpose was benevolent and charitable and was therefore exempt from real property taxes.
- Charity is defined as “for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.”

G. Pentecostal Assembly of Bangor v. Maidlow, 414 A.2d 891 (Me. 1980).

- Independent local church is not organized and conducted exclusively for benevolent and charitable purposes. Instead, it is organized and conducted primarily as a church.
- For purposes of exemption from property taxation, religious purposes are not to be equated with benevolent and charitable purposes.

H. Nature Conservancy of Pine Tree State v. Bristol, 385 A.2d 39 (Me. 1978).

- Property used solely for a charitable institution's own purposes where the grantors attempt to reserve private rights of use without the accompanying burden of paying property taxes has the effect of denying the exemption. The grantor(s) may not retain any private privilege or benefit in terms of use; otherwise the exempt status is defeated.

- Charitable institution was subject to grantor private entity's custodial control of the use of donated premises; notwithstanding that such control was to be harmonious with charitable institution purpose, it was inconsistent with the "sole use" condition for tax exemption.
 - Land held in its natural state does not become tax exempt by transfer to a charitable institution where the grantor retains the rights to access, passage, or custodianship.
- I. Maine Medical Center v. Lucci, 317 A.2d 1 (Me. 1974).
- The use of property must be reasonable to the major purpose for which a benevolent and charitable institution is incorporated, providing necessary services and facilities rather than oriented toward profit.
 - The fact that the medical center charged a variety of parking fees to staff, employees, patients, and patients' visitors did not defeat rights to tax exemption where dominant purpose of parking lot and garage was eleemosynary (relating or devoted to charity or alms).
- J. Holbrook Island Sanctuary v. Brooksville, 161 Me. 476, 214 A.2d 660 (1965).
- The motive of a donor who gives property to the intended benevolent and charitable institution is not material in determining whether the property is tax exempt.
- K. Green Acre Baha'i Institute v. Eliot, 159 Me. 395, 193 A.2d 564 (1963).
- Missionary societies possess the attributes of benevolent and charitable institutions for property tax exemptions.
 - Exemption of property of benevolent and charitable institutions from taxation is not defeated by the fact that use of property by a charitable institution for its own purposes is seasonal.
- L. Green Acre Baha'i Institute v. Eliot, 150 Me. 350, 110 A.2d 581 (1954).
- The Law Court established a four-part test to determine exemption eligibility. A benevolent and charitable institution:
 - 1) Must be organized and conduct operations purely for benevolent and charitable purposes in good faith;
 - 2) Must not have a profit motive;
 - 3) Must not have pretense to avoid taxation; and
 - 4) May generate revenue only incidental to its benevolent and charitable purpose.
- M. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A.2d 641 (1942).
- The appropriation of property of benevolent and charitable institutions for purposes for which the institution was incorporated controls in determining whether property is exempt from taxation. Physical use on exact date of assessment is not a controlling factor.

N. *Calais Hospital v. Calais*, 138 Me. 234, 24 A.2d 489 (1942).

- The hospital, a charitable institution, permitted the use of a room in the hospital by a doctor to carry on a private medical practice. The room was also used by that doctor in his capacity as treasurer and manager of the hospital.
- The Law Court ruled that the doctor's private practice did not interfere with the general use and occupation of the building and the hospital remained in "dominant control." As a result, the room used by the doctor was tax exempt, as was the rest of the hospital.

O. *Camp Emoh Associates v. Lyman*, 132 Me. 67, 166 A. 59 (1933).

- A benevolent and charitable corporation, whose members are nonresidents and whose clerk is the only officer residing in Maine, may be eligible for an exemption.
- The property of a benevolent and charitable institution is exempt from taxation when that property is occupied or used for the institution's own purposes.
- Exemption depends on occupation that is exclusive enough to contribute immediately to promotion of benevolence and charity.
- Property of a benevolent and charitable institution need not be in actual use on the day of assessment to be exempt from taxation.

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed, contact the Property Tax Division of Maine Revenue Services.

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APPLICATION FOR EXEMPTION FROM LOCAL TAXATION

Property of Institutions and Organizations

Pursuant to 36 M.R.S. § 652

Attach copies of Articles of Incorporation, bylaws and property deed if not on file with the assessor.

1. To the assessor(s) of _____, Maine.
2. Pursuant to 36 M.R.S. § 652, the undersigned requests exemption from the property tax for the below described real estate/personal property.

3. Institution or organization

NAME: _____

ADDRESS: _____

4. Location of real estate or personal property.

MAP: _____ LOT: _____

5. The real estate and personal property is owned, occupied or used solely for the following purposes:

6. Person filing application.

NAME: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

TELEPHONE: _____ EMAIL: _____

Check List for Assessor

Property of Institutions and Organizations

Pursuant to 36 M.R.S. § 652

1. Incorporated _____
(Attach copy of incorporation documentation)
2. Property owned by this organization _____
(Attach copy of deed)
3. Property occupied by this organization _____
or other exempt organization _____
(Attach copy of lease agreement)
4. Property used for incorporated purposes _____
(Attach copy of bylaws)
5. Financial report for preceding year _____
(Attach copy of financial report)