

# CHAPTER 7

## PROPERTY TAX EXEMPTIONS

### 1.0 OVERVIEW AND DEFINITION

#### 1.1 Exemptions

An exemption is a release or discharge from the obligation to pay all or a portion of a local property tax. Exemptions are established by the legislature for particular categories of property or persons and are generally found in General Laws Chapter 59, Section 5. However, a few are contained in other general laws and some are provided by court decisions. Exemption is a privilege and any claimant must demonstrate that it clearly qualifies.

#### 1.1.1 Exempt Properties

Properties that may qualify for exemption from local property taxes include public land and facilities, hospitals, schools, churches, and cultural institutions.

#### 1.1.2 Exempt Persons

Persons who may qualify for exemptions include disabled veterans, blind persons, surviving spouses, and seniors. There are also tax deferrals for seniors and those experiencing a temporary financial hardship.

### 1.2 Qualification Date

Exempt status is determined as of July 1. Ownership, occupancy, use, age or any other eligibility criteria must be met as of that date.

### 1.3 Procedural Requirements

There are varying application, or other filing requirements, that must be met depending on the type of exemption. Any procedural requirements that apply to the particular exemption must be met for the assessors to grant the exemption.

## 2.0 EXEMPT PROPERTIES

### 2.1 Overview

There are numerous categories of exempt real and personal property. Exemptions are usually dependent on ownership or property use. In some cases, the property may be exempt from property taxes, but taxed in some other manner. Table 1 summarizes the exemptions for property found in General Laws Chapter 59, Section 5 and the basic procedural requirements for claiming the exemption. This section addresses the most frequently granted of those exemptions.

## 2.2 **Public Property**

Real and personal property owned by the United States is exempt, unless Congress has expressly authorized its taxation.<sup>2</sup> Property owned by the Commonwealth of Massachusetts,<sup>3</sup> its political subdivisions<sup>4</sup> and public authorities,<sup>5</sup> and held for public purposes, is also exempt.

If government owned property is leased, occupied or used for business or non-public purposes, it can be taxed, but to the lessee, occupant or user, not the government owner.<sup>6</sup>

## 2.3

### **Charitable Organizations (Clause 3)**

Property owned by, or held in trust for, a charitable organization may qualify for exemption.<sup>7</sup>

#### 2.3.1 **Definition**

A charitable organization is a corporation, or trust, established for literary, benevolent, charitable, or temperance purposes. The organization must be organized for charitable purposes and must actually operate as a public charity. Non-profit status is not sufficient, nor is exempt status for state or federal tax purposes.

#### 2.3.1.1 **Public Benefit**

A charitable organization's dominant purposes and activities must benefit an indefinite class of the public. Organizations that primarily benefit a limited group or members are not charities.

#### **Examples**

**Non-profit private schools, colleges, universities, hospitals, museums and cultural facilities are charitable organizations because they benefit an indefinite class of the public.**

**Non-profit trade groups,<sup>8</sup> professional associations or social clubs are not charitable organizations because they primarily benefit their members.**

#### 2.3.1.2 **Private Inurement**

A charitable organization cannot distribute its income or assets to officers, directors or shareholders while it operates or use the income for non-charitable purposes. The organization may pay reasonable salaries for services rendered.<sup>9</sup> If the organization dissolves, its assets must be distributed to another charity.

## 2.3.2 **Exempt Property**

### 2.3.2.1 **Personal Property**

The organization's personal property is exempt regardless of use.

### 2.3.2.2 Real Property

The organization's real property is exempt only if:

- It is occupied by the organization or its officers for its charitable purposes,
- It is occupied by another charitable organization or its officers for its charitable purposes, or
- It was acquired by the organization with the intention of future relocation and charitable use. The organization has two years from the acquisition to construct a facility, or renovate the property, and occupy it. If it is not occupied for charitable use within that period, the property is taxable until it is occupied.

#### Examples

Properties not occupied for charitable purposes include:

- Offices located in a non-profit hospital and used by doctors for the private practice of medicine because the doctors, not the organization or its officers, occupy them.<sup>10</sup>
- A parking garage used jointly by personnel, patients and visitors of a non-profit hospital and a private medical building is not fully occupied by the organization.<sup>11</sup>
- Property used to publish a commercial newspaper, which used its profits for charitable purposes, is not occupied and used directly for charitable purposes.<sup>12</sup>
- Subsidized housing owned by a charitable organization and rented below market to low-income elderly persons because the tenants, who have a possessory interest in their units, occupy their units, not the organization or its officers.<sup>13</sup>

Properties occupied for charitable purposes include:

- A group home, shelter or halfway house is occupied by the charitable organization because the residents do not have a possessory interest in the property and have little expectation of privacy.
- Housing for an officer or employee of the organization is occupied by the organization, not the officer or employee, if (1) the occupant pays minimal or no rent, (2) the occupancy is a condition of employment, and (3) the residency contributes substantially to the organization's mission.<sup>14</sup> If the housing is for the officers or faculty of a charitable educational institution, it must also be contiguous to the principal location of the school.<sup>15</sup>

Generally, all other real estate is taxable. This includes real estate leased to individuals and non-charitable entities, including governmental entities, or occupied or used for non-charitable purposes.

### **2.3.3 Procedural Filing Requirements**

#### **2.3.3.1 Initial Application**

An organization seeking an exemption for personal property, or a particular parcel of real property, must apply to the assessors in the first fiscal year exempt status is claimed. An exemption application,<sup>16</sup> or a standard abatement application,<sup>17</sup> may be used. The application is due the same date as abatement applications for the fiscal year, *i.e.*, on or before the due date of the first installment of the actual tax bill.

The organization must provide supporting documentation information to establish eligibility. This information may include, but is not limited to:

- Articles of incorporation, charter or declaration of trust.
- Organization by-laws.
- Identification of officers, directors or trustees.
- Description of charitable activities.
- Description of the use of the property, including use by all lessees or other occupants.

Once an exemption is granted for that property, no further application is required unless there is a change in organizational mission, occupancy or other eligibility factor.

#### **2.3.3.2 Annual Return**

A charitable organization owning property on January 1 that it claims is exempt for the fiscal year that begins on the next July 1 must file a property return<sup>18</sup> with the assessors in order to receive an exemption. The return must be received in the assessors' office by March 1.<sup>19</sup> The assessors can extend that deadline if the organization applies and demonstrates a good reason for not filing on time. The latest date the filing deadline can be extended is 30 days after the mailing of the tax bills for the fiscal year.

If the organization is required to be registered with, and report annually to, the Public Charities Division of the Attorney General's Office, it must also include a copy of its most recent report with the annual return.<sup>20</sup>

**2.4 Fraternal Organizations (Clauses 3 and 7)**

**2.4.1 Definition**

A fraternal organization operates under the lodge system, or for the exclusive benefit of its members, and provides life, sick, accident or other benefits for members or their families.

**2.4.2 Personal Property**

All of the organization's personal property is exempt.<sup>21</sup>

**2.4.2 Real Property**

The organization's real property is exempt only if the organization qualifies as a charitable organization and the property is occupied for charitable purposes. See Section 2.3 above. Only that portion of the space devoted to charitable purposes qualifies.<sup>22</sup>

**2.5 Veterans' Organizations (Clauses 5, 5A or 5B)**

**2.5.1 Exempt Property**

Real and personal property owned by, or held in trust for, an incorporated veterans' organization is exempt if the organization:

- Actually occupies and uses the property, and
- Devotes its net income from the property for charitable purposes.<sup>23</sup>

**2.5.2 Exemption Amount**

The basic exemption is for up to \$200,000 worth of real and personal property.<sup>24</sup> By accepting a local option statute, a municipality may increase the exemption to \$400,000<sup>25</sup> or \$700,000.<sup>26</sup>

**2.5.3 Annual Return**

A veterans' organization owning property on January 1 that it claims is exempt for the fiscal year that begins on the next July 1 must file a property return<sup>27</sup> with the assessors in order to receive an exemption. The return must be received in the assessors' office by March 1.<sup>28</sup> The assessors can extend that deadline if the organization applies and demonstrates a good reason for not filing on time. The latest date the filing deadline can be extended is 30 days after the mailing of the tax bills for the fiscal year.

**2.6 Religious Organizations (Clauses 3, 10 and 11)**

**2.6.1 Personal Property**

All personal property owned by, or held in trust for use by, a religious organization for religious or charitable purposes is exempt.<sup>29</sup>

**2.6.2 Real Property**

**2.6.2.1 House of Worship**

A church or house of religious worship owned by, or held in trust for the exclusive benefit of, a religious organization and used and

occupied for religious services or instruction is exempt.<sup>30</sup> The exemption also applies to parking lots and halls used for religious classes and other church activities. The exemption is not affected by incidental or occasional use by an organization exempt from federal taxes under Section 501(c)(3) of the Internal Revenue Code for other purposes, but any portion regularly leased or occupied for other purposes is taxable.

**2.6.2.2 Parsonage**

A parsonage owned by, or held in irrevocable trust for the exclusive benefit of, a religious organization and used and occupied as a residence for clergy regularly conducting services for the organization is exempt.<sup>31</sup>

**2.6.2.3 Other Real Property**

Other real property of a religious organization is taxable unless it qualifies for a charitable exemption. See Section 2.3 above.

**Example**

A religious organization operates an elementary school on a parcel adjacent to the church. The church is organized for religious and charitable purposes and education benefits an indefinite class. The church qualifies for a charitable exemption on the property if it meets the procedural requirements for the exemption.

**2.6.3 Filing Requirements**

Religious organizations do not have to meet any special filing requirements to obtain an exemption for their personal property, houses of worship and parsonages.

**2.7 State Reimbursement**

The Commonwealth reimburses municipalities for loss of tax revenue on some state owned property depending on the agency holding it and its use.<sup>32</sup> It does not reimburse municipalities for other exemptions for property.

**3.0 EXEMPT PERSONS**

**3.1**

**Overview**

There are several categories of individuals who may qualify for tax exemptions or deferrals because of their personal status. For each personal exemption, there are specific clauses, or locally adopted optional clauses, in General Laws Chapter 59, Section 5 that establish the exemption amount, eligibility requirements and state reimbursement procedures. Local option clauses are accepted by vote of the

**3.12.2 Co-owners**

If two or more co-owners of a property qualify for different exemptions, they may receive the exemption for which each co-owner qualifies. If they qualify for the same exemption, however, only one may receive it<sup>53</sup> with the following exceptions:

- Clause 22 (veterans) - If both spouses qualify, each receives the full exemption.
- Clauses 41, 41B, 41C (seniors) - If two or more co-owners who are not married to each other qualify, each will receive an exemption equal to the percentage of his or her ownership interest in the property.

**3.13 Minimum Tax**

No exemption can reduce the amount of tax paid to less than 10 percent of the total tax bill.<sup>54</sup> If the application of any exemption would result in a tax of less than the 10 percent minimum due, the total exemption cannot be allowed.

Exceptions are Clause 18 hardship exemptions and the full exemptions granted to paraplegic veterans and their surviving spouses, and the surviving spouses and minor children of a firefighter or police officer killed in the line of duty.

**3.14 State Reimbursement**

The Commonwealth reimburses municipalities for loss of tax revenue due to personal exemptions. Table 6 summarizes the reimbursements for the different exemptions.

Assessors must report the exemptions granted to DOR each year in order for their municipality to be reimbursed.<sup>55</sup> The reports are submitted to the Municipal Data Bank. Assessors should submit the reports as soon as possible after an exemption application has been processed. Reimbursements are subject to annual appropriation and any balances revert to the state's general fund on August 30.

<sup>1</sup> G.L. Ch. 59 §5 first paragraph.

<sup>2</sup> G.L. Ch. 59 §5, cl. 1.

<sup>3</sup> G.L. Ch. 59 §5, cl. 2.

<sup>4</sup> *Tax Collector of North Reading v. Reading*, 366 Mass. 438 (1974); *Board of Gas and Electric Commissioners of Middleborough v. Board of Assessors of Lakeville*, 355 Mass. 387 (1969); *Collector of Taxes of Milton v. Boston*, 278 Mass. 274 (1932); *Middlesex County v. City of Waltham*, 278 Mass. 514 (1932); *Somerville v. Waltham*, 170 Mass. 160 (1898).

<sup>5</sup> Generally found in enabling legislation creating authority.

<sup>6</sup> G.L. Ch. 59 §2B.

<sup>7</sup> G.L. Ch. 59 §5, cl. 3.

<sup>8</sup> *Boston Chamber of Commerce v. Assessors of Boston*, 315 Mass. 712 (1944).

<sup>9</sup> See *Fisher School v. Assessors of Boston*, 325 Mass. 529 (1950) regarding excessive salaries paid to conceal a distribution of profits; *Sturdy Memorial Foundation, Inc. Board of Assessors of North Attleborough*, 47 Mass. App. Ct. 519 (1999) regarding requirements for establishing salaries.

<sup>10</sup> *Milton Hospital and Convalescent Home v. Board of Assessors of Milton*, 360 Mass. 63 (1971).

<sup>11</sup> *Lynn Hospital v. Board of Assessors of Lynn*, 383 Mass. 14 (1981).

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- <sup>12</sup> *Hairenik Association v. City of Boston*, 313 Mass. 274 (1943).
  - <sup>13</sup> *Charlesbank Homes v. City of Boston*, 218 Mass. 14 (1914).
  - <sup>14</sup> *Board of Assessors of New Braintree v. Pioneer Valley Academy, Inc.*, 355 Mass. 610 (1969); *Wheaton College v. Town of Norton*, 232 Mass. 141 (1919).
  - <sup>15</sup> G.L. Ch. 59 §5, cl. 3(e); *Bay Path College v. Board of Assessors of Longmeadow*, 57 Mass. App. Ct. 807 (2004).
  - <sup>16</sup> State Tax Form 1B-3.
  - <sup>17</sup> State Tax Form 128.
  - <sup>18</sup> State Tax Form 3ABC.
  - <sup>19</sup> G.L. Ch. 59 §29.
  - <sup>20</sup> State Tax Form PC; G.L. Ch. 12 §8F.
  - <sup>21</sup> G.L. Ch. 59 §5, cl. 7.
  - <sup>22</sup> *Assessors of Worcester v. Knights of Columbus Religious, Educational, Charitable & Benevolent Association of Worcester*, 329 Mass. 532 (1952).
  - <sup>23</sup> G.L. Ch. 59 §5, cls. 5, 5A and 5B.
  - <sup>24</sup> G.L. Ch. 59 §5, cl. 5.
  - <sup>25</sup> G.L. Ch. 59 §5, cl. 5A.
  - <sup>26</sup> G.L. Ch. 59 §5, cl. 5B.
  - <sup>27</sup> State Tax Form 3ABC.
  - <sup>28</sup> G.L. Ch. 59 §29.
  - <sup>29</sup> G.L. Ch. 59 §5, cl. 10.
  - <sup>30</sup> G.L. Ch. 59 §5, cl. 11.
  - <sup>31</sup> G.L. Ch. 59 §5, cl. 11.
  - <sup>32</sup> G.L. Ch. 58 §§13-17.
  - <sup>33</sup> G.L. Ch. 59 §5 first paragraph.
  - <sup>34</sup> G.L. Ch. 59 §59.
  - <sup>35</sup> G.L. Ch. 59 §60.
  - <sup>36</sup> G.L. Ch. 59 §60; G.L. Ch. 66 §10.
  - <sup>37</sup> G.L. Ch. 59 §64
  - <sup>38</sup> G.L. Ch. 59 §64.
  - <sup>39</sup> *Thayer v. Shorey*, 287 Mass. 76 (1934).
  - <sup>40</sup> *Kirby v. Board of Assessors of Medford*, 350 Mass. 386 (1966).
  - <sup>41</sup> G.L. Ch. 59 §5, cls. 41, 41B and 41C.
  - <sup>42</sup> G.L. Ch. 59 §5, cl. 41C½.
  - <sup>43</sup> G.L. Ch. 59 §5, cls. 17, 17C, 17C ½ and 17D.
  - <sup>44</sup> G.L. Ch. 59 §5, cls. 42 and 43.
  - <sup>45</sup> G.L. Ch. 59 §5, cls. 22, 22A, 22B, 22C, 22D and 22E.
  - <sup>46</sup> G.L. Ch. 4 §7, cl. 43.
  - <sup>47</sup> G.L. Ch. 59 §5, cls. 37 and 37A.
  - <sup>48</sup> G.L. Ch. 59 §5, cl. 18.
  - <sup>49</sup> G.L. Ch 59 §5, cl. 41A.
  - <sup>50</sup> G.L. Ch. 59 §5, cl. 18A.
  - <sup>51</sup> Chapter 73 §4 of the Acts of 1986, as amended.
  - <sup>52</sup> G.L. Ch. 59 §5 first paragraph.
  - <sup>53</sup> *Anthony J. DeCenzo v. Board of Assessors of Framingham*, 372 Mass. 523 (1977).
  - <sup>54</sup> G.L. Ch. 59 §5C.
  - <sup>55</sup> Assessors' certification form, Form MDM-1 (all exemptions) and Form R-VP (veterans).



**TABLE 1. Exempt Property and Filing Requirements**

| Type  | Clause    | Initial application   | Annual filing                                    |
|---|-----------|---|--|
| United States property                          | 1         | None  | None   |
| Commonwealth property                           | 2         | None  | None   |
| Charitable organizations                        | 3         | Form 1-B-3 or 128   | 3ABC   |
| Horticultural and agricultural societies        | 4, 4A     | None*   | None   |
| Veterans' organizations                         | 5, 5A, 5B | None*   | 3ABC   |
| Fraternal societies                             | 7         | None (personal property)*<br>Form 1-B-3 or 128 (real property)  | None (personal property)<br>3ABC (real property) |
| Religious organizations                         | 10, 11    | None*   | None   |
| Corporate personal property                     | 16        | Corporations register with Secretary of State's office<br>Form 355Q with DOR for manufacturing status | Form 2 (Form of list of taxable property)        |
| Individual's personal property                  | 20        | None*   | Form 2HF (Form of list of taxable property)      |
| Livestock                                       | 21        | None*   | None   |
| Classified forest land                          | 26        | Form CL-1   | Form CL-4 (forest products return)               |
| Manufactured housing located in licensed park   | 36        | None*   | None   |
| Pollution abatement devices                     | 44        | Certification by DEP  | None   |
| Solar and wind devices                          | 45        | Form 128  | None   |
| Water power facilities                          | 45A       | Agreement with community  | Gross income                                     |
| Urban redevelopment corporations                | 47        | Agreement with community  | Corporate excise payment to the state            |
| Classified recreational land                    | 48        | Form CL-1   | Form CL-1  |
| Classified agricultural and horticultural land  | 49        | Form CL-1   | Form CL-1  |
| Residential improvements to house older persons | 50        | Form 97EH   | Form 97EH  |
| Economic development exemption                  | 51        | Agreement with community  | None   |

\* There is no specific application form to file initially, but if a tax bill is issued for a fiscal year that exemption is claimed, a timely filed abatement application (Form 128) must be filed.