



For Charities, Property Tax Exemption No Sure Thing

COURTS USE STRICT TEST TO MAKE SURE NON-PROFITS CONFORM TO STATE LAW

By **MONTE E. FRANK** and
JASON A. BUCHSBAUM

The Connecticut General Statutes provide for a number of tax exemptions from municipal property taxes, including a charitable tax exemption set forth at General Statutes §12-81(7).

As with all tax exemption statutes, §12-81(7) is strictly construed by the courts. Simply being a 501(c)(3) organization is not sufficient to qualify for a property tax exemption. The assessor's analysis goes well beyond federal tax exemption status. Instead, the assessor must consider various factors to determine whether an entity is entitled to a charitable property tax exemption, including not only the application of an entity seeking to be exempt, but also the purpose of the entity and the manner in which that entity actually uses the property.

Likewise, an entity that seeks to be tax exempt as a charitable organization must take care to set up its organizational documents to make it clear that it is being organized exclusively for a charitable purpose, and must actually use the property at issue exclusively to carry out that stated purpose.

This article provides a summary and overview of the statutory criteria considered in evaluating whether an entity is entitled to a charitable tax exemption under §12-81(7).

Quadrennial Report

General Statutes §12-81(7) contains two absolute and unrelated prerequisites to a claim for a charitable tax exemption. First,

a quadrennial report must be filed. Also, no officer, member or employee of an entity seeking an exemption may receive any pecuniary profit (although reasonable compensation for services is permitted).

Three-Part Analysis

General Statutes §12-81(7) requires that the organization seeking an exemption be organized exclusively for charitable purposes, and that it use the property at issue exclusively to carry out those purposes. The Connecticut Supreme Court analyzed the various factors that must be evaluated to determine whether an organization in fact qualifies for a charitable tax exemption, most recently, in *St. Joseph's Living Center Inc. v. Town of Windham*, 290 Conn. 695 (2009).

The initial inquiry is to determine whether an entity is organized exclusively for a charitable purpose. This inquiry requires a three-part analysis.

First, and most importantly, the court will analyze an entity to determine if it is in fact organized exclusively for charitable purposes. In conducting this analysis, the court will first determine the purpose for which the entity is organized by evaluating the organizational documents. Exclusivity is material. Thus, the organizational documents should not include both a charitable purpose and a non-charitable purpose.

Once the entity's purpose is determined,



Monte E. Frank



Jason A. Buchsbaum

the court will then evaluate whether that purpose is charitable. This factor is interpreted broadly. In *St. Joseph's*, the court determined that the provision of long-term health care and spiritual support to the elderly in a non-profit, non-discriminatory manner, without regard to individual financial circumstances, is a charitable purpose.

Second, the court will consider whether a charitable entity is entirely self-supporting. Though this factor is considered to a lesser extent than the first factor, an entity that is entirely self-supporting is not exempt for municipal tax purposes. See *Common Fund v. Fairfield*, 228 Conn. 375 (1994). According to the court in *St. Joseph's*, an entity must be "structured in such a way that it is intended to function with the aid of at least some private charitable support and must, in fact, seek out and receive such support." The court will analyze each case to determine whether an entity's receipt of outside financial support, including volunteer in-kind services, warrants an exemption. An entity should carefully organize itself so that it will rely on, or at least seek out, outside support, and the assessor

Monte E. Frank is a shareholder and co-chair of the Municipal Group at Cohen and Wolf P.C. in Danbury. Jason A. Buchsbaum is an associate at Cohen and Wolf, P.C. and a member of the Municipal Group.

should determine whether it is entirely self-supporting.

According to the court in *St. Joseph's*, the final factor considered is whether the entity relieves a state or municipal burden "by pursuing a publicly mandated moral obligation" in exchange for the privilege of receiving a municipal tax exemption. The entity need not, though, completely relieve the state or municipality of its obligation.

Fact-Intensive Inquiry

Once an assessor determines that an entity is organized exclusively for charitable purposes, a further inquiry is required to determine whether the entity actually uses the municipal property at issue exclusively to carry out those charitable purposes. This is a fact-intensive inquiry, based on a strict construction of the statutory requirement of exclusive use.

Though exclusive use is required, a non-charitable use that is necessary for the entity to carry out its charitable purpose will not defeat a tax exemption. Further, a non-primary use which is merely incidental to the operation is also unlikely to defeat a tax exemption.

In *St. Joseph's*, the court found the entity to be charitable, but upheld the trial court's denial of a tax exemption because the property was not used exclusively for charitable purposes. In addition to the provision of long-term care to the elderly as stated in its charter, the entity in *St. Joseph's* also provid-

ed short-term rehabilitative services, a purpose that was not set forth in its charter, in the same portions of the property. Hence, the property was not used exclusively to carry out the stated charitable purposes and the tax exemption was denied.

Partial Exemption

General Statutes §12-88 provides the assessor with the ability to grant a partial exemption. If it is determined that all of the property is not used exclusively to carry out the charitable purpose, a tax exemption can be claimed for that portion of the property that is so used, but only if that portion is so used

exclusively. The portion of property claimed to be exempt must be physically segregated from the rest of the property.

Thus, in *St. Joseph's*, since the provision of long-term care (the charitable purpose) and short-term rehabilitative care (the non-charitable purpose) were physically intertwined and the provision of each was not segregated to specific portions of the property, a partial exemption was not warranted.

A charitable entity, to the extent it carries out any activity that is not necessary or incidental to its charitable purpose, should segregate that activity to a separate portion of the property, so that it is not in jeopardy

of losing its ability to claim a municipal tax exemption.

Conclusion

Today, the assessor is looking carefully at tax exempt entities and re-evaluating whether they qualify for a municipal property tax exemption as a charitable organization. This trend is likely to continue, especially as municipal budgets are being stretched to their limit. Accordingly, entities claiming a tax exemption must be diligent and should re-examine their organizational documents to ensure compliance with §12-81(7). They also must be mindful

Municipal & Educational Law

of the statutory requirements when structuring their corporate operations so they do not lose their tax exemption.

Conversely, the assessor should review whether entities previously granted a property tax exemption, and entities applying for an exemption for the first time, are entitled to an exemption in light of the *St. Joseph's* factors. If the entities and the assessor pay close attention to the *St. Joseph's* factors, then only those entities that can properly demonstrate their charitable purpose and property use will receive a tax exemption, and those that cannot will be obligated to pay their municipal property taxes. ■