

REAL PROPERTY EXEMPTION FOR NONPROFIT ORGANIZATIONS

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I. QUALIFYING FOR A REAL PROPERTY TAX EXEMPTION:

- a. Constitutional Provision: Article VIII, Section I, paragraph 2
- b. N.J.S.A. 54:4-3.6 – the General Exemption Statute
- c. Ownership and Use as of October 1 of the pre-tax year. *See Atlantic County New School, Inc. v. Pleasantville*, 2 N.J. Tax 192, 196 (Tax 1981) (holding that exemptions are determined as of October 1 of the pre-tax year unless the legislature has specifically provided an alternate date).
 - i. Note: several statutory provisions do specifically address the date for determining exemption, including the transfer of property from an exempt owner to a non-exempt owner (N.J.S.A. 54:4-63.26 to 63.28), and the transfer of property from one exempt owner to another (N.J.S.A. 54:4-3.6b).
 - ii. If the property is transferred from one exempt entity to another, the property does not lose its tax exempt status. *See Emanuel Missionary Baptist Church v. Newark*, 1 N.J. Tax 264, 268-69 (Tax 1980).

II. OBTAINING/RETAINING THE EXEMPTION:

- a. N.J.S.A. 54:4-4.4 – application to the Municipal Assessor
 - i. Application for exemption must be obtained by the Assessor on or before November 1
 - ii. Subsequent Reapplication is required by November 1 of every third year
 - iii. Assessor may at any time inquire into the right of a claimant to the continuance of an exemption and may require the filing of additional statements as deemed necessary – addressing (i)

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whether there has been any change in use of the property and (ii) whether any additional property has been purchased for which a further exemption is claimed.

b. Real Property Tax Appeal

- i. If Assessment is \$750,000 or less – must appeal to the County Board of Taxation
- ii. If Assessment is **greater than** \$750,000 the assessment may be appealed directly to the Tax Court
- iii. Failure to file initial or triennial application for exemption with the Assessor is not automatically fatal to claimants appeal for an exemption
 1. Court will not strictly construe the filing requirements of N.J.S.A. 54:4-4.4 against a claimant because it would defeat the “clear legislative intent of N.J.S.A. 54:4-3.6 [the General Exemption Statute].” *Renaissance Plaza Associates, Ltd. Partnership v. Atlantic City*, 18 N.J.Tax 342, 363 (Tax 1998).
 2. Complying with N.J.S.A. 54:4-4.4 is not a condition precedent to obtaining an exemption under N.J.S.A. 54:4-3.6. *See Emanuel Missionary Baptist Church v. Newark*, 1 N.J.Tax 264 at 268; *see also Blair Academy v. Blairstown*, 95 N.J.Super. 583 (App. Div. 1967); *see also Renaissance Plaza Associates, Ltd. Partnership v. Atlantic City*, 18 N.J.Tax at 363.

III. **STATUTORY CONSTRUCTION/BURDEN OF PROOF**

- a. Tax exemption statutes are ***strictly construed against*** those claiming the exemption – because exemption is a departure from the principle that all property should bear its just share of taxation. *See Princeton Univ. Press. v. Princeton Bor.*, 35 N.J. 209, 214 (1961).

- b. Even if taxpayer prevails at the County Board and the municipality appeals the decision to the Tax Court, the burden of proof remains with the taxpayer seeking exemption. *See Long Branch v. Ohel Yaacob Congregation*, 20 N.J.Tax 511, 518 (Tax 2003) (citing *Friends of Ahi Ezer Congregation, Inc. v. Long Branch*, 16 N.J.Tax 591, 596 (Tax 1997)).
- c. All doubts are to be resolved against the party applying for the exemption. *Id.*

IV. CONSTITUTIONAL REQUIREMENTS OF ARTICLE 8 SECTION II OF THE NEW JERSEY STATE CONSTITUTION

- a. Exemption from taxation may be granted only by general laws.
- b. Exemptions from taxation may be altered or repealed, except those exempting real and personal property used exclusively for religious, educational, charitable or cemetery purposes, as defined by law, and owned by any corporation or association organized and conducted exclusively for one or more of such purposes and not operating for profit.

V. THE GENERAL EXEMPTION STATUTE – FIVE VARIATIONS ON EXEMPTION

- a. N.J.S.A. 54:4-3.6 is an intricate statute that must be consulted as part of every exemption case. In general, there are five general categories of exemptions contained within the language of the Statute.
 - i. All buildings **ACTUALLY USED** for:
 - 1. colleges, schools, academies or seminaries - provided that if any portion of such buildings are leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt
 - 2. historical societies, associations or exhibitions, when owned by the State, county or any political subdivision

thereof or when located on land owned by an educational institution which derives its primary support from State revenue

- ii. All buildings **ACTUALLY AND EXCLUSIVELY USED** for:
 - 1. public libraries
 - 2. asylum
 - 3. schools for feebleminded or idiotic persons and children
 - 4. **and owned** by volunteer first-aid squads, incorporated as associations not for pecuniary profit
- iii. All buildings **USED EXCLUSIVELY** by any **ASSOCIATION OR CORPORATION FORMED FOR THE PURPOSE AND ACTUALLY ENGAGED** in the work of:
 - 1. preventing cruelty to animals
- iv. All buildings **ACTUALLY USED** in the work of **ASSOCIATIONS AND CORPORATIONS ORGANIZED EXCLUSIVELY** for:
 - 1. moral and mental improvement of men, women and children - provided that if any portion of a building used for that purpose is leased to profit-making organizations or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt
 - 2. religious purposes, including religious worship, or charitable purposes - provided that if any portion of a building used for that purpose is leased to a profit-making organization or is otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion shall be exempt from taxation - and provided further that if any portion of a building is used for a different exempt use by an exempt entity, that portion shall also be exempt from taxation

3. hospital purposes - provided that if any portion of a building used for hospital purposes is leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, that portion shall be subject to taxation and the remaining portion only shall be exempt
 4. charitable or religious purposes - owned by a corporation created under or otherwise subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes - which associations or corporations may or may not pay rent for the use of the premises or the portions of the premises used by them
- v. All buildings owned or held by an *association or corporation created for the purpose of holding the title* to such buildings as are *actually and exclusively used* in the work of *two or more associations or corporations organized exclusively*:
1. moral and mental improvement of men, women and children
- b. The Statute also creates the “parsonage exemption,” which exempts a maximum of two building occupied as parsonages by the officiating clergymen of any New Jersey religious corporation.
- c. All of the above referenced exemptions address only the exemption of buildings. The Statute does, however, exempt the **land** whereon any of these buildings are erected which “*may be necessary for the fair enjoyment thereof, and which is devoted to the purposes mentioned above and to no other purpose and does not exceed five acres in extent.*”
- i. The statute has been interpreted to provide that each exempt building is entitled to five acres of property devoted to the exempt use. *See Fairleigh Dickinson University v. Florham Park Bor.*, 5 N.J.Tax 343 (Tax 1983).

- ii. Necessary for the fair enjoyment thereof has been generously interpreted by the courts. "Fair enjoyment has consistently been equated with "use," and to be considered "necessary" land need not be absolutely indispensable to the exempt buildings as long as it is "reasonably necessary" to accomplish the purposes of the organization seeking exemption." *Id.* (citing *Boys Club of Clifton, Inc. v. Jefferson Tp.*, 72 N.J. 389, 401 (1977)).

VI. ARTICLES OF INCORPORATION – BEWARE THE BYLAWS

- a. In order to qualify for the majority of exemptions under N.J.S.A. 54:4-3.6, the applicant must demonstrate that it was either formed exclusively for the tax-exempt purpose or formed for the tax-exempt purpose.
- b. The documents of incorporation must ***reveal an intent to be organized exclusively for an exempt purpose.*** See *Black United Fund v. East Orange*, 339 N.J.Super 462, 465-466 (App.Div. 2001).
- c. In *Black United Fund*, the Appellate Division ruled that an organization organized exclusively to raise and distribute funds to non-profit organizations is not an exempt purpose under the exemption statute.
- d. In *Black United Fund*, the Court further ruled that BUF was not entitled to exemption because the bylaws referred only to exemption from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, but failed to reference any New Jersey exemption statutes. *Id.* The Standards of 501(c)(3) have no relation to the state law governing tax exemption – and non-profit status cannot be equated with charitableness. *Id.* Accordingly, because no mention of the exempt purposes under N.J.S.A. 54:4-3.6 was mentioned in the bylaws, the Appellate Division ruled that there was insufficient evidence of an intent to warrant an exemption. *Id.*
- e. A taxpayer is free to organize his affairs as he chooses, “nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not.” *Sodexo Operations, LLX, v. Director*,

Division of Taxation, 21 N.J.Tax 24, 49 (2003) (citing *General Trading Co. v. Director, Div. of Taxation*, 83 N.J. 122, 136-37 (1980)).

VII. EDUCATIONAL INSTITUTIONS

- a. As noted above, Schools fit in the first variation of the general exemption statute – All buildings actually used for colleges, schools, academies or seminaries. N.J.S.A. 54:4-3.6
- b. There is no requirement that schools be of a charitable, benevolent or religious purpose – the statute only requires that the institution be not-for-profit and actually used for the institution. *See Kimberly School v. Town of Montclair*, 2 N.J. 28 (1949).
- c. The issue of whether a school can operate at a profit while maintaining an exemption has been examined by the courts on several occasions.
 - i. In *Kimberly School*, the Supreme Court found the test is whether the institution is “conducted for the purpose of making a profit.” *Id.* (internal quotation marks eliminated.) The Court ruled that in each case, the past and present scheme of the school must be considered, instructing courts not to look at whether income exceeds costs, but whether the charges were fixed “with the obvious intention of yielding profit.” *Id.* The court should also consider the background and nature of the board of trustees, and examine the actual and possible use of the excess income and surplus. Lastly, the Court instructed courts to compare the relative salaries of the officials and teachers with both private and public institutions.
 - ii. In *City of Trenton v. Director, Division of Taxation*, 65 N.J.Super 1, 10-13 (1960), the Appellate Division held that schools are not required to operate at a loss. For the school to be ineligible for the exemption it must be motivated by profit, which can be seen through the existence of excessive salaries, fees or bonuses. The Appellate Division stated the ultimate inquiry is “Who gets the

money?” If it goes to individuals as opposed to being reinvested in the school, then the school is not entitled to an exemption.

VIII. EXEMPTIONS FOR CHARITIES

- a. Charities fall into Category IV of the Statute, requiring the buildings to be ***ACTUALLY USED*** in the work of ***ASSOCIATIONS AND CORPORATIONS ORGANIZED EXCLUSIVELY FOR CHARITABLE PURPOSES***
- b. It is important to note that an individual cannot be a charity under this statute - only associations and organizations are eligible for the exemption. *See* N.J.S.A. 54:4-3.6.
- c. In 2001, the Statute was amended to remove the requirement that the buildings be ***exclusively*** used for the charitable purpose. Now, the statute states that if any portion of the property is used for a non-exempt purpose or is leased to a profit-making organization, the property does not lose its exemption, but only that portion is now taxable.
- d. Organized Exclusively: As discussed above – an exemption will be denied if the formation documents fail to demonstrate an intent to be organized exclusively for charitable purposes. For example, the Tax Court denied an appeal for an exemption where a corporation, formed for “general and medical missionary purposes, for an education purpose and to engage in benevolent and charitable activities” because one of the corporation’s stated purposes in its certificate of incorporation was to establish and maintain homes for the use of missionaries on temporary leave. *See Ventnor City v. Interdenominational Foreign Missionary Society of New Jersey*, 13 N.J.Tax 445, 454 (1993).
 - i. ***Charitable Purpose:*** There is no statutory definition of “charitable purposes.” The Supreme Court has concluded that the term is multi-faceted and depends on the facts or circumstances of each case. *Presbyterian Homes v. Division of Tax Appeals*, 55 N.J. 275, 261 (1970). The Court did note that a “sometimes justification . . . is that if the charitable work were not being done by a private

party, it would have to be undertaken at public expense. *Id*; see also *Renaissance Plaza Associates, Ltd. Partnership v. Atlantic City* 18 N.J.Tax 342 at 356

IX. EXEMPTIONS FOR RELIGIOUS ORGANIZATIONS

- a. Prior to 2001, the General Exemption Statute provided that to qualify for the religious exemption, the buildings had to be actually and *exclusively* used for religious purposes. Under that language, the Tax Court ruled in *Roman Catholic Archdiocese of Newark v. East Orange*, 17 N.J.Tax 298 (Tax 1998), aff'd, 18 N.J.Tax 649 (App.Div. 2000), that if any portion of the property were leased, even to a different exempt entity, the entire property lost its exemption.
- b. In response to the ruling in *Roman Catholic Archdiocese of Newark*, the Legislature amended N.J.S.A. 54:4-3.6 so that (i) if a portion of the land is leased or used for a non-exempt purpose, only that portion becomes taxable, and (ii) if a portion of the building is being used by a different exempt entity for an exempt purpose, the entire property will remain exempt.
- c. The amendment has been characterized as remedial legislation and has therefore been accorded liberal construction. See *Catholic Community Services v. NewarkI*, 21 N.J.Tax 633, 637 (2004) (finding it consistent with the legislative intent to grant an exemption when a portion of the property was leased to an immune -- as opposed to an exempt -- taxpayer).

X. EXEMPTIONS FOR HOSPITAL PURPOSES

- a. As noted above, the Statute exempts all buildings *ACTUALLY USED* in the work of *ASSOCIATIONS AND CORPORATIONS ORGANIZED EXCLUSIVELY* for hospital purposes.
- b. Hospital Purpose: To qualify, the facility must provide services which “advance the aims and goals of a functioning hospital.” *Woodstown Bor.*

- v. Woods Court*, 12 N.J.Tax 197, 203 (1997) (citing *New Brunswick v. Rutgers Comm. Health Plan, Inc.*, 7 N.J.Tax 491, 505-506 (Tax 1985).
- c. In *New Brunswick*, the Tax Court ruled that a HMO is not a hospital because hospitals provide twenty four hour continuous care, including “essential medical services such as emergency room, coronary care, intensive care, x-ray facility, laboratory, operating rooms, recovery rooms . . . [and] a hospital also provides the essential services of a hotel.” 7 N.J.Tax 491 at 501 (internal citation omitted).
 - d. Many purposes if performed in conjunction with a functioning hospital can qualify as hospital purposes – including laundry services, accounting services, housing facilities, etc. *Id.*
 - e. To qualify as a hospital purpose, the purpose must be “reasonably necessary for the proper and efficient operation of the hospital facility.” *Long Branch v. Monmouth Medical Center*, 138 N.J.Super 524, 535 (App.Div. 1976).
 - f. In response to the many cases ruling that nursing homes were not hospitals and accordingly not exempt from taxation, the statute was amended to provide that hospital purposes includes “health care facilities for the elderly, such as nursing homes; residential health care facilities; assisted living residences; facilities with a Class C license pursuant to P.L.1979, c. 496 (C.55:13B-1 et al.), the "Rooming and Boarding House Act of 1979"; similar facilities that provide medical, nursing or personal care services to their residents; and that portion of the central administrative or service facility of a continuing care retirement community that is reasonably allocable as a health care facility for the elderly.” N.J.S.A. 54:4-3.6.
 - g. In *Southern Jersey Family Medical Center v. Pleasantville*, 351 N.J.Super. 262 (App.Div. 2002), the Appellate Division addressed the issues of whether receipt of substantial government funds precludes exemption and whether failure to raise/rely on charitable donations precludes exemption.
 - i. Southern Jersey received the majority of its income from Medicare and Medicaid. The Appellate Division distinguished this scenario

from *Presbyterian Homes*, and found that the payments were for services, not merely grants of federal funds. Accordingly, the Court ruled Southern Jersey was not precluded from obtaining the exemption. *Id.* at 273-274.

- ii. Southern Jersey received less than 1 percent of its income from donations. Nevertheless, the court granted the exemption, holding that “[w]e find no authority to require significant private donations as a determining factor for a property tax exemption under *N.J.S.A. 54:4-3.6*” *Id.* at 278-79.

XI. EXEMPTION FOR THE MORAL AND MENTAL IMPROVEMENT OF MEN, WOMEN AND CHILDREN

- a. BUILDINGS MUST BE ***ACTUALLY USED*** in the work of an ***ASSOCIATIONS OR CORPORATIONS ORGANIZED EXCLUSIVELY*** for this purpose
- b. There is no statutory definition or legislative history to serve as a guide to the meaning of the moral and mental improvement exemption in *N.J.S.A. 54:4-3.6*. *Paper Mill Playhouse v. Millburn*, 95 N.J. 503, 512 (1983).
- c. In *Paper Mill Playhouse* the Supreme Court ruled that a theatre fit within the definition of moral and mental improvement. The Court ruled that the exemption was not lost because the Playhouse ran a surplus because (1) there was no intent to run a surplus, (2) no one received excessive compensation, (3) the board of trustees was unpaid and (4) there was no attempt to limit the financial losses of unsuccessful shows. *Id.*