

Property Exemption Today: A Taxing Talk with America's Charities

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Real Estate as a Strategic Charitable Asset

A broad audience: more than 1.4 million 501(c)(3)s

Diverse mission types and organization sizes

Many organizational, operational, and funding models

Full range of occupancy footprints: own, lease, host, share, virtual

THE ROOFTOPS PROJECT

Real Estate as a Strategic Charitable Asset

The Rooftops Project mission

Raising awareness about the role of real estate – owned, leased, or hosted physical space – in the operations, financial performance, and achievement of mission of not for-profit organizations of all sizes and mission types, from the arts to places of worship, from social and human services to education and advocacy.

Resource Challenges for Many Charities

Limited staff (with seldom a defined real estate function)

Frequent dependence on volunteers (board, programs, operations)

Limited resources: time, knowledge, experience, funding

Limited opportunities to gain relevant transactional experience

Limited outside paid or pro bono resources (advisor gaps)

Frequent personnel turnover (staff and volunteers)

Imperfect institutional memory, poor recordkeeping

Multiple voices, fragmented authority

“Unofficial” community/public input

Starting Point “Myths and Muddles”

Federal tax exempt recognition versus state/local exemptions

Web/public/commercial information sources

Origins (no constitutional right to exemption)

Entity (organizational) test and charter document provisions

Operational (use) text (“exclusivity” and its state law meanings)

Ownership/title holding entities (basic title; 501(c)(2) vehicles)

(non-income producing and income producing)

Practical property attributes (zoning; private restrictions; regulation)

Starting Point “Myths and Muddles”

Sources and current state of the law:

Statutes/regulation

Judicial interpretation

Taxing authority positions (settlements; quasi-legislative effects)

Procedural possibility of advance ruling/determination/informal inquiry?

Starting Point “Myths and Muddles”

Non-discrimination tests

Partial exemptions

Economic tests (e.g. *Sisters of St. Joseph v. City of N.Y.* (1980))

Ability to charge (or sliding scale)?

Distinguishing between federal UBIT and state property exemption tests

Alternative Occupancy Structures

Traditional, outright ownership

Leased space in a commercial building

Treatment of “long leases”

Commercial condos/vertical subdivisions/air rights

Shared space (in its many meanings and forms)

Revenue opportunities/funding pressures

“Entrepreneurial/commercial” trend to support mission

Business incubators/sheltered workshops

Thrift stores; repurposed materials centers

University spots facilities

(and associated skyboxes, dining, TV rights, sponsorships)

Admission fees/property tours/“tourism”

Properties in Transition/Development

Properties **at beginning of lifecycle:**

Properties under construction or development

Land held for buffer/future expansion/future development

Land held pending rezoning/regulatory change

Donated (“gifted”) properties held for resale/redeployment

State/local limitations on land holdings

Mission Related Uses that May Cause Concerns

1. Gift shop
2. Restaurant
3. Fundraising events
4. Day-care centers
5. Residential uses

Specialized considerations for health care complexes

Shared Space

Use by affiliated entities

Use by other not-for-profits with complementary missions

Use by others (not-for-profit/for profit) to generate operating funds/capital for repairs

Non-mission-related Uses that May Cause Concerns

1. Event space rentals
2. Member facility use (without charge/charge at cost)
3. Outside (non-program) events for revenue generation
4. Use of parking facilities
4. Political and public (non-revenue) events

Properties in Transition/Development

Properties **at end of lifecycle:**

Closed (dark) facilities

Properties being market for sale

(also delays associated with legal/regulatory approval)

Hybrids (property being redeveloped/retained in part)

M&A situations

Procedural Matters: Questions of Timing

How long does an exemption last?

Do I need to monitor and renew?

What is the transition timing when acquiring property?

Is that timing different if property is already exempt?

What is the transition timing when disposing of property?

Procedural Matters: Questions of Process

How and when may I learn or “discover” the loss or challenge of my exemption?

How will the problem first mature into contact with “the system”?

Conversation/call? Informal inquiry? Revocation of exemption?
Retroactivity? Penalties?

Does good faith reliance on private legal opinion, advice, etc. matter?

Procedural Matters: Tactical Choices/ Consequences

Are there disadvantages to challenging/appealing?

Social/relational with taxing authorities?

Cost?

Uncertainty?

Possible more adverse outcome in judicial determination?

Is there a procedural possibility of requesting an advance determination/ruling?

The Opportunity for Not-for-Profit Organizations

Awareness of the role of real estate in organizational performance

Understanding the standards and process for exemption

Engagement and communication with the tax community

Advance planning for transactional events/change

Building a base of knowledge and institutional memory