

Background Report on Income and Property Tax Exemptions  
For the Senate Joint Resolution No. 23 Study

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## MONTANA LAWS

Property and income tax exemptions for charitable, religious, and educational organizations are provided for in the Montana Constitution, the Montana Code Annotated, and the Administrative Rules of Montana.<sup>1</sup> This section provides an overview of the state laws addressing these tax exemptions along with a brief legislative history.

### **Property Tax Exemption Laws**

Property tax exemptions for charitable, religious, and educational organizations have existed since the 19th century, before the adoption of the federal Internal Revenue Code (IRC). In fact, concepts related to property tax exemption in the IRC are derived from state policies. This means that federal tax exemption under section 501(c)(3) of the IRC, though required by some states as a necessary condition to receive a property tax exemption, is often not the sole factor for determining whether to grant an exemption.<sup>2</sup> Use of the property for the charitable, religious, or educational purpose for which the exemption is granted is required for the property tax exemption. The full text of the constitutional provisions, statutes, and administrative rules discussed below is in the appendix.

### **Constitutional Provisions**

The 1972 Montana Constitution establishes the right of the Legislature to exempt certain property from property taxation. Article VIII, section 5, of the 1972 Montana Constitution reads as follows:

**Section 5. Property tax exemptions.** (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such

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<sup>1</sup> A note on language: SJ 23 refers to exemptions for "nonprofit corporations or organizations." Tax exemptions are generally for organizations that fulfill a charitable, religious, or educational purpose. Montana law often requires that the exempt entity is "not operated for gain or profit." This briefing includes information on exemptions for nonprofit organizations that do not exactly fall under the charitable, religious, or educational purpose umbrella, such as a nonprofit irrigation district. It is important to note, however, that nonprofit status is not generally sufficient for a tax exemption. In this briefing exemptions will be referred to as "charitable," for example, or "educational," as that is how they are identified in law.

<sup>2</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 10.

improvements and maintenance against tax exempt property directly benefited thereby.

The 1889 Montana Constitution gave the Legislature less discretion to exempt property from taxation than does the current 1972 Montana Constitution.<sup>3</sup> While the 1972 Montana Constitution lets the Legislature decide whether to exempt property listed in Article VIII, section 5(1)(a), the 1889 Montana Constitution mandated those exemptions. The 1889 Montana Constitution also gave the Legislature the option to exempt property listed in the current constitution in Article VIII, section 5(1)(b), but also included "agricultural and horticultural societies. . .and evidences of debt secured by mortgages of record upon real or personal property in the state of Montana". The 1889 Montana Constitution did not give the Legislature the authority to exempt other classes of property as the 1972 Montana Constitution does in Article VIII, section 5(1)(c).

## **Statutory Provisions**

### Section 15-6-201

Section 15-6-201, MCA, is the main statute that provides for exemption from property taxes for government, charitable, religious, and educational property. This section was originally enacted in 1891 to implement Article XII, section 2, of the 1889 Montana Constitution. The 1889 Constitution limited the Legislature's authority to create property tax exemptions so section 15-6-201 did not change significantly until after the adoption of the 1972 Montana Constitution. Section 15-6-201 has been amended considerably since the 1972 Constitution gave the Legislature broader authority to exempt property from taxation.<sup>4</sup>

The section of law dealing with property tax exemptions was significantly reorganized in the 2005 legislative session. Prior to that time, section 15-6-201 contained most of the categories of property exempt from the property tax. The 2005 revisions included removing some categories of property and recodifying them in separate sections of law, leaving exemptions for governmental, charitable, religious, and educational categories of property in section 15-6-201. The bill to reorganize this section of law originated in a property tax exemption study committee created by House Bill No. 429 (2003). The committee was composed of four members from the Legislature and members appointed by the Governor who represented local government, schools, property tax-exempt organizations, business, and the executive branch. The committee was attached to the Department of Revenue (DOR) for administrative purposes and the DOR provided staff support to the committee. Part of the support included raising areas of concern or issues for the committee to consider. Some of those concerns resulted in committee recommendations for substantive changes to the property tax exemption law and committee-requested bill drafts, which are discussed below.

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<sup>3</sup>1889 Montana Constitution, Article XII, section 2.

<sup>4</sup>Lee Heiman, "Origins of Exempt Classes in 15-6-201, MCA," Dec. 16, 2003, memo to Property Tax Exemption Study Committee.

In the following annotation of relevant portions of section 15-6-201, the statute appears in bold and is followed by explanatory comments and a review of the history of the exemptions in normal type. A 2011 amendment to this section goes into effect on October 1, 2011, and applies to tax years after December 31, 2011. The following reflects the amended version of the law. Sections of law other than 15-6-201(1) that are reproduced for additional explanation appear in italics. Section 15-6-201 appears in its entirety in the appendix.

***15-6-201. Governmental, charitable, and educational categories -- exempt property.*** (1) **The following categories of property are exempt from taxation:**

- (a) except as provided in 15-24-1203, the property of:**
  - (i) the United States, except:**
    - (A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or**
    - (B) as provided in 15-24-1103;**

Property owned by the United States government is exempt under the U.S. Constitution and was exempt under the 1889 Montana Constitution. The 1972 Montana Constitution gives the Legislature the discretion to exempt property owned by the United States. Sections 15-24-1103 and 15-24-1203 refer to the beneficial use tax, which provides that federally owned property used commercially is a property right subject to taxation.<sup>5</sup>

- (ii) the state, counties, cities, towns, and school districts;**
- (iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;**
- (iv) municipal corporations;**
- (v) public libraries;**
- (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;**
- (vii) special districts created pursuant to Title 7, chapter 11, part 10; and**
- (viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public transit, and public parks and recreational facilities.**

Sections 15-6-201(1)(a)(ii) through 15-6-201(1)(a)(v) are carryover exemptions from the 1889 Montana Constitution. These state governmental and public entities are exempt based on the idea

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<sup>5</sup>Lee Heiman, "Origins of Exempt Classes in 15-6-201, MCA," Dec. 16, 2003, memo to Property Tax Exemption Study Committee.

that it is illogical to tax entities supported by taxation.<sup>6</sup> The exemptions for rural fire districts and special districts are more recent, enacted in 1993 and 2009, respectively.<sup>7</sup>

The 2011 Legislature added section 15-6-201(1)(a)(viii) to exempt the property of federally recognized Indian tribes that is located entirely within the reservation and used for the enumerated essential government services.<sup>8</sup> Subsection (2)(a)(i) restricts the property subject to the subsection (1)(a)(viii) exemption:

*(2) (a) (i) For the purposes of tribal property under subsection (1)(a)(viii), the property subject to exemption may not be:*

*(A) operated for gain or profit;*

*(B) held under contract to operate, lease, or sell by a taxable individual;*

*(C) used or possessed exclusively by a taxable individual or entity; or*

*(D) held by a tribal corporation except for educational purposes as provided in subsection (1)(f).*

*(ii) For the purposes of parks and recreational facilities under subsection (1)(a)(viii), the property must be:*

*(A) set aside by tribal resolution and designated as park land, not to exceed 15 acres, or be designated as a recreational facility; and*

*(B) open to the general public.*

**(b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;**

The 1889 Montana Constitution allowed the Legislature to exempt "places for actual religious worship"<sup>9</sup> and the 1972 Constitutional Convention left the Legislature with the same authority. The exemption in section 15-6-201(1)(b) requires the church to own the land, buildings, and furnishings and use them for actual religious worship or convenient use of the buildings.

The property tax exemption study committee "identified some areas where exemption statutes

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<sup>6</sup>Lee Heiman, "Origins of Exempt Classes in 15-6-201, MCA," Dec. 16, 2003, memo to Property Tax Exemption Study Committee.

<sup>7</sup>Rural fire districts, Ch. 575, L. 1993, and special districts, Ch. 286, L. 2009.

<sup>8</sup>Ch. 278, L. 2011.

<sup>9</sup>1889 Montana Constitution, Article XII, section 2.

needed revisions to prevent possible abuse and to provide a more fair and equitable property tax system."<sup>10</sup> Sources of concern raised by the DOR included: the possibility that more than one residence for a single clergy member could qualify for the exemption, churches' ability to claim an unlimited amount of land for use for religious worship, and lack of a definition of "clergy."<sup>11</sup> The committee drafted House Bill No. 115 (2005) to address these issues. The bill, which passed the Legislature nearly unanimously and was signed by the Governor, required the property to be identified in the application for exemption and:

- limited the exemption to 1 parsonage per clergy member;
- limited the amount of property exempt for a parsonage to 1 acre per parsonage;
- limited the total amount of exempt real property for a church to 15 acres, including land used for educational or youth recreational activities if the facilities are generally available for use by the general public; and
- added the following definition for "clergy" to section 15-6-201(2)(a): "*For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:*
  - (i) *an ordained minister, priest, or rabbi;*
  - (ii) *a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;*
  - (iii) *a member of a religious order who has taken a vow of poverty; or*
  - (iv) *a Christian Science practitioner."*

**(c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used exclusively for religious purposes;**

The 2011 Legislature enacted subsection (1)(c) to exempt tribal land and improvements used for religious purposes.<sup>12</sup> The 15-acre limit for the exemption is the same as the limit for churches in subsection (1)(b).

**(d) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;**

This exemption was permitted in the 1889 Montana Constitution but was not included in the 1972 Constitution. The delegates may not have known what agricultural and horticultural societies were and felt that if an exemption was warranted, the exemption could be handled in

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<sup>10</sup>"Legislative Property Tax Exemption Study Committee Final Report," Aug. 12, 2004, p. 7-8.

<sup>11</sup>Rocky Haralson, "Property Tax Exemptions: Analysis and Points of Concern," presented at Feb. 18, 2004, Property Tax Exemption Committee meeting.

<sup>12</sup>Ch. 278, L. 2011.

statute.<sup>13</sup> The DOR recommended to the property tax exemption study committee that the exemption for agricultural and horticultural societies require nonprofit status and ownership of the exempt property (previously only use was required). The committee included these recommendations in House Bill No. 115 and the changes became law in 2005.

**(e) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:**

- (i) is not operated for gain or profit;**
- (ii) has an attendance policy; and**
- (iii) has a definable curriculum with systematic instruction;**

The 1889 Montana Constitution allowed an exemption for property used for "educational purposes"<sup>14</sup> and this exemption remained in the 1972 Constitution. Prior to 2005, there was no limit on the amount of property that could be exempt for educational purposes and no requirement that the organization granted the exemption be nonprofit. The DOR recommended that additional restrictions be placed on the exemption for property used for educational purposes.<sup>15</sup> The committee's final report recommended making most of the DOR proposed changes.<sup>16</sup> House Bill No. 115 (2005) amended section 15-6-201 to limit the exemption for educational purposes to 80 acres and require the institution not be operated for gain or profit, have an attendance policy, and have a curriculum with systematic instruction.

As drafted in the 1889 Constitution, the exemption for educational purposes only required exclusive use of the property but not ownership. Section 15-6-201 also requires only use, not ownership. The DOR suggested language for the acreage limitation and nonprofit status also include a requirement that the property be owned by the entity claiming exemption for educational use. The property tax exemption study committee decided against requiring ownership of property for the educational purpose exemption. One of the reasons cited during the committee's discussion for not mandating ownership was that public and private K-12 schools often lease equipment and there was a concern that, if this property became taxable, the lessor (as the entity responsible for payment of the tax) would pass on the cost of the tax to the schools.<sup>17</sup>

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<sup>13</sup> Lee Heiman, "Origins of Exempt Classes in 15-6-201, MCA," Dec. 16, 2003, memo to Property Tax Exemption Study Committee.

<sup>14</sup>1889 Montana Constitution, Article XII, section 2.

<sup>15</sup>Rocky Haralson, "Property Tax Exemptions: Analysis and Points of Concern," presented at Feb. 18, 2004, Property Tax Exemption Committee meeting, p. 4.

<sup>16</sup>"Legislative Property Tax Exemption Study Committee Final Report," Aug. 12, 2004, p. 8.

<sup>17</sup>Property Tax Exemption Committee, Minutes of Meeting, April 28, 2004, p. 13-14.

The Montana Supreme Court held in 1965 that church camps fell under the educational use property tax exemption.<sup>18</sup> The committee also discussed whether the changes in House Bill No. 115 would affect church camps. DOR staff indicated that the addition of the attendance policy and curriculum requirements could affect church camps' educational exemption but that it was also possible the church camps could meet these requirements.<sup>19</sup> Since these changes went into effect in 2005, there have not been any applications by a church camp for an educational exemption.<sup>20</sup> DOR did not review the educational exemptions granted to church camps prior to 2005 unless there was a change in ownership or use.<sup>21</sup>

**(f) property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities if the property meets the requirements of subsection (1)(e);**

The 2011 Legislature added this exemption for property owned by a tribal corporation and used for establishing schools, colleges, or universities. Unlike the exemption in subsection (1)(e), there is no limit on the amount of land exempt but the land does have to meet the other requirements of subsection (1)(e).

**(g) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.**

The exemption for health care facilities requires that the property be used exclusively for nonprofit health care facility purposes, be organized under the statutes governing nonprofit corporations or religious corporations, and be licensed by the Department of Public Health and Human Services. Section 50-5-101 provides the following definition of "health care facility":

*"(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care*

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<sup>18</sup>Flathead Lake Methodist Camp v. Webb, 144 Mont. 565, 399 P. 2d 90 (1965).

<sup>19</sup>Property Tax Exemption Committee, Minutes of Meeting, April 28, 2004, p. 14.

<sup>20</sup>Aug. 8, 2011, email from Cynthia Monteau Moore, Property Assessment Division Administrator, Department of Revenue.

<sup>21</sup>Aug. 15, 2011, email from Cynthia Monteau Moore, Property Assessment Division Administrator, Department of Revenue.

*facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.*

*(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors."*

The 1889 Montana Constitution allowed a property tax exemption for hospitals and the 1972 Constitution also gives the Legislature the authority to exempt hospital property. A 1987 amendment to section 15-6-201 substituted "nonprofit health care facilities" for "hospitals" and inserted the language about organization under Title 35 and state licensure.<sup>22</sup>

The DOR specifically recommended that there not be a requirement for ownership for health care facility property, "at least for their personal property, because much of the equipment that they lease is very expensive and requiring the hospital to pay property taxes on it could force them out of business."<sup>23</sup> The property tax exemption study committee did not recommend any changes to the portion of 15-6-201 dealing with the health care facility exemption.

**(h) property that is:**

**(i) (A) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21; or**

**(B) owned by a federally recognized Indian tribe within the state and set aside by tribal resolution; and**

**(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and**

**(iii) not maintained and not operated for gain or profit;**

The exemption for cemeteries requires ownership and use of the property for cemetery purposes. The 1889 Constitution mandated an exemption for "places of burial not used or held for private or corporate profit".<sup>24</sup> The 1972 Constitution carried forward the same language for the cemetery exemption. The 2011 Legislature added subsection (1)(h)(i)(B), allowing an exemption for tribal land used for cemetery purposes.<sup>25</sup>

**(i) subject to subsection (2), property that is owned or property that is leased from**

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<sup>22</sup>Ch. 455, L. 1987. This amendment required licensure by the Department of Health and Environmental Sciences, the former name of the Department of Public Health and Human Services.

<sup>23</sup>Rocky Haralson, "Property Tax Exemptions: Analysis and Points of Concern," presented at Feb. 18, 2004, Property Tax Exemption Committee meeting, p. 4.

<sup>24</sup>1889 Montana Constitution, Article XII, section 2.

<sup>25</sup>Ch. 278, L. 2011.

**a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;**

To qualify for an exemption for institutions of purely public charity, the property must be directly used for purely public charitable purposes and must be owned by the institution or leased from federal, state, or local government. Section 15-6-201(2)(c)(i) describes "institutions of purely public charity" as follows:

*"(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:*

*(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.*

*(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities."*

The 1889 Constitution allowed the exemption for institutions of purely public charity and the 1972 Constitution continues to give the Legislature authority to exempt such property. The law was clarified by the 1991 Legislature, which added a description of institutions of purely public charity and the requirements that the property be owned by an institution of purely public charity and be used for charitable purposes.<sup>26</sup> The 1995 Legislature further amended the statute to allow property leased from a federal, state, or local government to qualify for the exemption as well as property owned by the institution of purely public charity.<sup>27</sup> The description of "institutions of purely public charity" was updated in 1999 to require that the organization provide services without regard to race, religion, creed, or gender. The 1999 amendment also added a restriction on agricultural property owned by a purely public charity and used to produce unrelated business income.<sup>28</sup> That language is found in 15-6-201(2)(c)(ii) and reads as follows:

*(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.*

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<sup>26</sup>Ch. 123, L. 1991.

<sup>27</sup>Ch. 585, L. 1995.

<sup>28</sup>Ch. 438, L. 1999.

The property tax exemption study committee final report included two recommendations that passed the Legislature and became law in 2005.<sup>29</sup> The first recommendation was to allow up to 15 acres of property purchased for use by an institution of purely public charity to be exempt for up to 8 years even if the property had to be improved before its use for charitable purposes. In the event the property is not used for charitable purposes after 8 years or is sold prior to being put in charitable use, the institution is liable for property taxes for each year the property was exempt in the amount at which the property is valued at the time of sale or after the 8-year period. The specific language is found in 15-6-201(2)(c)(iii):

*(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.*

The other recommendation in the final report was to limit the agricultural acreage for the purely public charity exemption to 160 acres for exemptions applied for after December 31, 2004.<sup>30</sup> That amendment was a part of House Bill No. 38 (2005) and the subsection added to 15-6-201(2)(c) is the following:

*(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.*

**(j) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;**

The 1889 Constitution allowed the Legislature to exempt the property listed in section 15-6-

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<sup>29</sup>"Legislative Property Tax Exemption Study Committee Final Report," Aug. 12, 2004, p. 8.

<sup>30</sup>"Legislative Property Tax Exemption Study Committee Final Report," Aug. 12, 2004, p. 8.

201(1)(j) to avoid double taxation of property.<sup>31</sup> The provision was dropped from the 1972 Constitution but remains in statute under the broad authority in Article VIII, section 5(1)(c), for the Legislature to exempt any other class of property.

**(k) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;**

This exemption requires nonprofit status and includes real and personal property owned by the exempt entity that is "reasonably necessary for use in connection with the public display or observatory use." Those details are outlined in section 15-6-201(2)(d):

*(d) For the purposes of subsection (1)(k), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:*

- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;*
- (ii) held for future display; or*
- (iii) used to house or store a public display.*

Public art galleries and observatories became exempt in 1911.<sup>32</sup> The 1889 Constitution did not specifically allow an exemption for such entities but the Legislature may have considered art galleries and observatories as fulfilling an educational purpose. The 1972 Constitution allows exemption for any class of property. In 1991, the Legislature added the exemption for public museums and zoos and changed the definition from "those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only"<sup>33</sup> to a definition similar to the current form. House Bill No. 115 (2005) added an ownership requirement and also standardized the "not operated for gain or profit" language, which previously read "not used or held for private or corporate profit."

**(l) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its**

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<sup>31</sup>Lee Heiman, "Origins of Exempt Classes in 15-6-201, MCA," Dec. 16, 2003, memo to Property Tax Exemption Study Committee, p. 2.

<sup>32</sup>Ch. 97, L. 1911.

<sup>33</sup>Ch. 271, L. 1991.

**members or customers for uses other than the irrigation of agricultural land;**

This exemption was added by the 1983 Legislature and requires ownership of the exempt property.<sup>34</sup>

**(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;**

The 1983 Legislature also amended section 15-6-201 to exempt the right of entry for mining exploration.<sup>35</sup>

**(n) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and**

**(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and**

The exemption provided for in section 15-6-201(1)(n)(i) was added in 1983 to clarify that the property of nonprofit organizations that own and operate facilities for the care of the developmentally disabled, mentally ill, and vocationally handicapped are exempt.<sup>36</sup> The exemption provided in section 15-6-201(1)(n)(ii) became more explicit in 1991 when it was removed from the definition of "purely public charity."<sup>37</sup>

**(o) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(o), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.**

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<sup>34</sup>Ch. 170, L. 1983.

<sup>35</sup>Ch. 323, L. 1983.

<sup>36</sup>Lee Heiman, "Origins of Exempt Classes in 15-6-201, MCA," Dec. 16, 2003, memo to Property Tax Exemption Study Committee, p. 4.

<sup>37</sup>Lee Heiman, "Origins of Exempt Classes in 15-6-201, MCA," Dec. 16, 2003, memo to Property Tax Exemption Study Committee, p. 4.

This exemption for the United States High Altitude Sports Center in Butte was added in 1987.<sup>38</sup>

### Additional Statutes

The following sections of Title 15, chapter 6, provide additional property tax exemptions. The statutes appear in italics with explanations in normal text.

***15-6-203. Veterans' exemptions -- clubhouse -- land -- incompetent veterans' trusts.*** (1) (a) *A clubhouse, building, or land erected by or belonging to any society or organization of honorably discharged United States military personnel that is used primarily for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit is exempt from taxation.*

*(b) The clubhouse or building exemption provided for in this section applies:*

*(i) to the personal property necessarily used in the building; and*

*(ii) even if a business, intended primarily for the use of the members, is required to be open to the public and is operated in a portion of the building.*

*(c) The land exemption provided for in this section applies only to land owned by the society or organization continuously since January 1, 1960.*

(2) *All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of the veterans, when the property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, is exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in the minor's own right on account of removal of legal disability.*

This section providing an exemption for veterans' organization clubhouses used primarily for educational, fraternal, benevolent, or purely public charitable purposes rather than gain or profit originally appeared in 1931. The 2011 Legislature amended the section to allow an exemption for land owned by the veterans' organization continuously since January 1, 1960.<sup>39</sup> Otherwise, the section has remained largely the same since enactment, with the exception of the addition of this language in subsection (1), which was rearranged by the 2011 amendment: *The exemption provided for in this section applies even if a business, intended primarily for the use of the members, is required to be open to the public and is operated in a portion of the building.* This provision was added by the 1999 Legislature.

***15-6-209. Community services buildings exempt.*** (1) *The building and appurtenant land, not exceeding 3 acres, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (4) and (5), if the organization:*

*(a) is a lodge of a nationally recognized fraternal organization;*

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<sup>38</sup>Lee Heiman, "Origins of Exempt Classes in 15-6-201, MCA," Dec. 16, 2003, memo to Property Tax Exemption Study Committee, p. 4.

<sup>39</sup>Ch. 107, L. 2011.

*(b) (i) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities that are recognized in the state plan on aging adopted by the department of public health and human services; and*

*(ii) does not furnish living accommodations to senior citizens; or*

*(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.*

*(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1981.*

*(3) A community service organization exempted under this section may sell food and beverages under license from the state.*

*(4) A building and land exempted under this section must be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or land.*

*(5) The exemption provided under this section may not be extended to any property owned by a community service organization described in this section that is leased in whole or in part to any person for business or profitmaking purposes.*

The exemption for nonprofit community service organizations was enacted in 1977. The 1981 Legislature amended subsection (2) to change the year from which the organization must be in continuous existence from 1976 to 1981. A 1997 amendment deleted the prohibition against selling food and beverages and added subsection (3) allowing the sale of food and beverages.

***15-6-221. Exemption for rental housing providing affordable housing to lower-income tenants.*** *(1) That portion of residential rental property that is dedicated to providing affordable housing for lower-income persons is exempt from property taxation in any year that:*

*(a) the property is owned and operated by an entity, including but not limited to a limited partnership, limited liability corporation, or limited liability partnership in which a general partner is a nonprofit corporation exempt from taxation under section 26 U.S.C. 501(c)(3), as amended, and incorporated and admitted under the Montana Nonprofit Corporation Act as provided in Title 35, chapter 2, or is a housing authority as defined in 7-15-4402 and the nonprofit general partner actively participates in accordance with the definition found in 26 U.S.C. 469(i). Section 26 U.S.C. 469(i) is applicable without reference to section 26 U.S.C. 469(i)(6).*

*(b) the board of housing, established in 2-15-1814, has allocated low-income housing tax credits to the owner under 26 U.S.C. 42, which requires that:*

*(i) at least 20% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to tenants whose household incomes do not exceed 50% of the median family income, adjusted for family size, for the county in which the property is located; or*

*(ii) at least 40% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to persons whose household incomes do not exceed 60% of the median income, adjusted for family size, for the county in which the property is located;*

*(c) a deed restriction or other legally binding instrument restricts the property's usage and provides that the units designated for use by lower-income households must be made available to or occupied by lower-income households for the period required to qualify for*

*low-income housing tax credits at rents that do not exceed those prescribed by the terms of the deed restriction or other legally binding instruments;*

*(d) the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50% of the units in the property to tenants at 50% of the median family income for the area, with rents restricted to a maximum of 30% of 50% of median family income, as calculated under 26 U.S.C. 42; and*

*(e) the owner's partnership or operating agreement or accompanying document provides that at the end of the compliance period, as that term is defined in 26 U.S.C. 42, the ownership of the property may be transferred to the nonprofit corporation or housing authority general partner as provided for in 26 U.S.C. 42(i)(7).*

*(2) Prior to the allocation of low-income housing tax credits to the owner, as provided in subsection (1)(b), the unit of local government where the proposed project is to be located shall give due notice, as defined in 76-15-103, and hold a public hearing to solicit comment on whether the proposed qualifying low-income rental housing property meets a community housing need. A record of the public hearing must be forwarded to the board of housing for consideration in granting the allocation of tax credits.*

*(3) For purposes of this section the following definitions apply:*

*(a) "Median family income" means the household income, adjusted for family size, determined annually by the United States department of housing and urban development, or its successor agency, to be the median family income for persons residing within each county of the state.*

*(b) A residential unit is "rent-restricted" if it satisfies the criteria of 26 U.S.C. 42(g)(2).*

The 1999 Legislature enacted section 15-6-221 to provide an exemption for residential rental property provided as affordable housing to people with low incomes if the property is owned and operated by an entity in which a general partner is a nonprofit corporation or a housing authority. The term housing authority is defined as follows in section 7-15-4402:

*(1) "Authority" or "housing authority" means a public body and a body corporate and politic organized in accordance with the provisions of this part for the purposes, with the powers, and subject to the restrictions set forth in part 45 or this part.*

The exemption requires that the exempt entity be allocated low-income housing tax credits by the Board of Housing under 26 U.S.C 42, that the property meet a public purpose by providing housing to an underserved community, and that the local government where the housing is to be located hold a public hearing to solicit comment on whether the proposed low-income rental housing meets a community need.

***15-6-227. Property on railroad land leased by nonprofit organizations.*** *(1) A building and appurtenant land or just the appurtenant land, not exceeding 2.5 acres, owned by a railroad as defined in 69-14-101 and leased for less than \$100 a year to a nonprofit organization exempt from taxation under section 26 U.S.C. 501(c)(3) or to a government entity is exempt from property taxation if:*

*(a) the building was constructed on a railroad right-of-way by a railroad prior to the*

year 2000; and

(b) *the property is directly used for purely public charitable purposes.*

(2) *A building and land exempted under this section are subject to fees and assessments for services and special improvements that are collected with property taxes.*

Section 15-6-227 was enacted by the 2003 Legislature to provide an exemption for a building and appurtenant land up to 2.5 acres owned by a railroad and leased for less than \$100 a year to a nonprofit organization exempt under section 26 U.S.C. 501(c)(3) or to a government entity. The building must have been constructed on a railroad right-of-way by a railroad before the year 2000 and the property must be used for purely public charitable purposes.

### Local Economic Development Organizations

Sections 15-24-1802, 15-24-1902, and 15-24-2002 provide for property tax exemptions for certain property owned or leased and operated by a local economic development organization.

Section 15-24-1802 provides a property tax exemption for a business incubator owned or leased and operated by local economic development organization. Section 15-24-1801 defines these terms as follows:

(1) *"Business incubator" means a facility in which space is leased to new small businesses and that provides shared services and business assistance to the new businesses in order to improve their chances of success. The services provided may include but are not limited to receptionist, copying, computer, telephone, secretarial, and meeting services. The assistance provided may include but is not limited to advice concerning marketing plans, business plans, accounting, and administration.*

(2) *"Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.*

To qualify for the exemption, the governing body of the local government in which the property is located must approve the exemption by resolution. The exemption applies only to the number of mills levied and assessed by the governing body approving the exemption. Prior to holding a hearing on whether to approve an exemption, the governing body must determine that the local economic development organization:

- is a private, nonprofit corporation that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;
- is engaged in economic development and business assistance work in the area; and
- owns or leases and operates or will operate the business incubator.

This property tax exemption for business incubators became law in 1989 but originally applied just to a business incubator owned by a local economic development organization.<sup>40</sup> A 1991

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<sup>40</sup>Ch. 666, L. 1989.

amendment extended the exemption to a leased business incubator.<sup>41</sup> The 2005 Legislature added a provision for recapturing the abated property taxes if the requirements outlined above are not met.<sup>42</sup>

Section 15-24-1902 allows a property tax exemption for an industrial park owned and operated by a local economic development organization or a port authority. Section 15-24-1901 provides the same definition of "local economic development organization" as section 15-24-1801 and also includes the following definitions:

*(1) "Industrial park" means property zoned for light and heavy industry. The term includes fully developed or partially developed land and improvements and undeveloped land. The term also includes undeveloped land owned by a local economic development organization if the local economic development organization provides reasonable evidence and the governing body is satisfied that the property is suitable for development as an industrial park and that the local economic development organization will develop the land as an industrial park.*

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*(3) "Port authority" means a port authority created under 7-14-1101 or 7-14-1102.*

The qualifying factors for the exemption provided in 15-24-1902 are the same as those outlined above for 15-24-1802 except that the property must be owned and not leased for an exemption under 15-24-1902. There is an additional provision in 15-24-1902(5) that outlines a termination procedure for the exemption in the case of a sale or change in lessee to an entity that is not a local economic development organization.

Section 15-24-1902 was enacted in 1989<sup>43</sup> and amended in 1991<sup>44</sup> and 2005.<sup>45</sup> The 1991 changes addressed procedures related to gaining approval for the exemption and assessment if the exemption is terminated. The 2005 amendment added subsection (6), which allows for recapture of the abatement if certain requirements are not met.

Section 15-24-2002 provides an exemption for building and land owned by a local economic development organization that it intends to sell or lease to "a profit-oriented, employment-stimulating business." The definition of "local economic development organization" that applies to this section is the same as in sections 15-24-1802 and 15-24-1902. Section 15-24-2001 defines "building and land":

*(1) "Building and land" means commercial improvements and land sold or donated to a local economic development organization for subsequent sale or lease to a profit-oriented,*

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<sup>41</sup>Ch. 669, L. 1991.

<sup>42</sup>Ch. 597, L. 2005.

<sup>43</sup>Ch. 679, L. 1989.

<sup>44</sup>Ch. 702, L. 1991.

<sup>45</sup>Ch. 597, L. 2005.

*employment-stimulating business. The term includes commercial property that has not been used in a business for 6 months immediately preceding the sale or donation of the building and land to the local economic development organization.*

The requirements for a local economic development organization to receive an exemption in section 15-24-2002 are the same as in section 15-24-1802, outlined above, and the exemption also only applies to the mill levies over which the local governing body has sole discretion. Subsection (5) includes a termination provision in the case of sale or lease to an entity not eligible for exemption that is the same as the one in section 15-24-1902 and the recapture provision is the same for all three sections.

The exemption in section 15-24-2002 was enacted in 1991<sup>46</sup> and amended in 2005 to include the recapture provision.<sup>47</sup>

### **Administrative Rules**

Administrative Rule 42.20.102 addresses applications for property tax exemptions. The following is a summary of the rule:

Subsection (1) addresses timing of the application.

Subsection (2) lists the required documentation:

- (2) The following documents must accompany the application:*
  - (a) articles of incorporation (if incorporated);*
  - (b) Internal Revenue Service tax-exempt status letter, if they have one (501 determination letter);*
  - (c) deed or security agreement which is evidence of ownership (for real property only);*
  - (d) title of motor vehicle or mobile home or letter of explanation if title is not applicable which is evidence of ownership (for personal property only);*
  - (e) letter explaining how the organization or society qualifies for property tax exemption and the specific use of the property; and*
  - (f) photograph of the property, if available.*

Subsection (3) outlines the procedure following application: a field evaluation, approval or denial of the application, and written notice of the decision.

Subsection (4) lists the exemption criteria for property owned by a governmental entity, the federal government, a nonprofit irrigation district, a municipal corporation, a public library, or a

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<sup>46</sup>Ch. 693, L. 1991.

<sup>47</sup>Ch. 597, L. 2005.

rural fire district when the exemption is based on section 15-6-201:

*(a) the properties will be tax-exempt as of the purchase date that is reflected on the deed or security agreement;*

*(b) if a property is tax-exempt as of January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable upon the transfer of the property. The tax is prorated according to 15-6-203, MCA; and*

*(c) if property is tax-exempt, as stated in (4)(b), and is sold as tax-deed property to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable on January 1 following the execution of such contract or deed as provided in 7-8-2307, MCA.*

Subsection (5) states the exemption criteria for real property when considering exemptions under section 15-6-201, 15-6-203 (veterans' clubhouses), or 15-6-209 (community service organization property):

*(a) Real property purchased by a qualifying exemption applicant after January 1 of the current tax year will become exempt on the date of acquisition as evidenced by the deed and realty transfer certificate, if an application (if one is required for the exemption) is filed by the application deadline for that tax year and the property meets statutory requirements.*

### **Income Tax Exemption Laws**

The Montana State Constitution does not address the income tax. Income tax provisions and exemptions are contained in statute and administrative rule. The full text of the statutes and administrative rules are in the appendix.

### **Statutory Provisions**

Section 15-31-102 provides for exemption from the corporate license and income tax. The section includes exemptions for some corporations or organizations that are specifically required to be nonprofit as well as exemptions for organizations for which there are no specifications as to whether the organization operates for profit. The statute is reproduced below in italics with comments on the relevant portions in regular text.

***15-31-102. Organizations exempt from tax -- unrelated business income not exempt. (1)***  
*Except as provided in subsection (3), there may not be taxed under this title any income received by any:*

*(a) labor, agricultural, or horticultural organization;*

*(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;*

*(c) cemetery company owned and operated exclusively for the benefit of its members;*

*(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;*

*(e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;*

*(f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;*

*(g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;*

*(h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;*

Subsections (1)(a) through (1)(h) were enacted in 1917 when the exemptions first appeared in statute.<sup>48</sup> The language has remained essentially the same since enactment. Many of the organizations exempt in these sections are also exempt from the property tax. The exemptions contained in subsections (1)(d) through (1)(g) for an organization with a religious, charitable, scientific, or educational purpose; a business league, a chamber of commerce, or board of trade; a civic league; or a club all require the organization or corporation not be organized for profit, though the language varies somewhat for each subsection. The exemptions provided for in subsections (1)(a) through (1)(c) for a labor, agricultural, or horticultural organization; a fraternal beneficiary, society, order, or association operating under the lodge system; or a cemetery company do not require not-for-profit status. Subsection (1)(h) gives an exemption to farmers' mutual insurance companies, a mutual ditch or irrigation company, or a mutual or cooperative telephone company and does not require nonprofit status but does limit income to assessments, dues, and fees for the sole purpose of meeting expenses.

*(i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;*

Subsection (1)(i) was enacted in 1961.<sup>49</sup> The statute does not require the exempt entity to be nonprofit.

*(j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;*

This exemption was included in the original 1917 enactment.<sup>50</sup>

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<sup>48</sup>Ch. 79, L. 1917.

<sup>49</sup>Ch. 155, L. 1961.

<sup>50</sup>Ch. 79, L. 1917.

*(k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.*

Subsection (1)(k) was enacted in 1979.<sup>51</sup>

*(l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.*

This section was enacted in 1981.<sup>52</sup>

*(m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;*

The farmers' market association exemption requires the association not be organized for profit. This subsection became law in 1985.<sup>53</sup>

*(n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a).*

This section became law in 1997.<sup>54</sup>

*(2) In determining the license fee to be paid under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.*

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<sup>51</sup>Ch. 284, L. 1979.

<sup>52</sup>Ch. 537, L. 1981.

<sup>53</sup>Ch. 604, L. 1985.

<sup>54</sup>Ch. 368, L. 1997.

Subsection (2) was part of original enactment in 1917.<sup>55</sup>

*(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue.*

The requirement that an exempt organization pay unrelated business income tax on a tax liability of greater than \$100 became law in 1979.<sup>56</sup> The statute refers to the federal definition contained in section 512 of the Internal Revenue Code which defines "unrelated business taxable income" as:

"the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b)."<sup>57</sup>

Section 513 of the Internal Revenue Code defines "unrelated trade or business" as follows:

"(a) General rule

The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business -

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the

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<sup>55</sup>Ch. 79, L. 1917.

<sup>56</sup>Ch. 267, L. 1979.

<sup>57</sup>The modifications provided in subsection (b) relate to the exclusion of dividends, interest, payments with respect to securities loans, annuities, deductions directly connected with such income, royalties, rents from real property, certain rents from personal property, gains or losses from the sale or exchange of property other than stock in trade or property held primarily for sale to customers in the ordinary course of business, and income derived from research for the U.S., a state, or political subdivision thereof.

case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or  
(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions."

## **Administrative Rules**

Administrative Rule 42.23.103 provides additional guidance on exemption from the corporate income and license tax. The rule outlines the documentation required for an exemption application.

### **42.23.103 EXEMPTIONS**

*(1) A corporation is not exempt from this tax merely because it is not organized and operated for profit. A corporation seeking the benefits of exemption must prove strict compliance with all statutory conditions authorizing the classification claimed.*

*(2) In order to establish its exemption and thus be relieved of the duty of filing returns and paying the tax, each organization claiming exemption must file with the department an affidavit showing: \_*

*(a) the character of the organization;*

*(b) the purpose for which it was organized;*

*(c) its actual activities;*

*(d) the sources and the disposition of its income;*

*(e) whether or not any of its income may inure to the benefit of any private shareholder or individual;*

*(f) a copy of the articles of incorporation;*

*(g) a copy of the by-laws; and*

*(h) copies of the latest financial statements showing the assets, liabilities, receipts, and disbursements must be submitted with the affidavit.*

*(3) In addition, if the IRS has granted the organization exemption from the federal income tax, a certified copy of the exemption certificate or letter shall also be filed.*

## A 50-STATE OVERVIEW

This section of the briefing provides an overview of income and property tax exemption laws in all 50 states. A state-by-state rundown of forms and categories of property tax exemption is available in the appendix. There is also a discussion of tax exemption theory and of how states define which organizations are exempt. The section concludes with information on whether states limit nonprofit land ownership.

### **Property Tax Exemptions**

#### Forms of Exemption

State treatment of charitable property tax exemptions take four different forms: states that include specific property tax exemptions in the state constitution, states that grant the legislature the authority to create property tax exemptions, states that include some exemptions in the state constitution and specifically give the legislature authority to create additional exemptions, and states that are silent on property tax exemptions.

Sixteen states include property tax exemptions in the state constitution: Alabama, Alaska, Arkansas, Kansas, Kentucky, Louisiana, Michigan, New Jersey, New Mexico, New York, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, and Virginia.

Twenty-two state constitutions give the state legislature the authority to grant property tax exemptions: Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Washington, and West Virginia.

Three state constitutions include some property tax exemptions in the state constitution and give the legislature authority to create additional exemptions: California, Minnesota, and Wyoming.

Nine state constitutions are silent on property tax exemptions for charitable purposes: Connecticut, Hawaii, Iowa, Maryland, New Hampshire, Oregon, Rhode Island, Vermont, and Wisconsin. Courts in these states have ruled that the state legislature may grant property tax exemptions even with no constitutional provision.<sup>58</sup>

In general, states provide a property tax exemption to property owned by the exempt entity and used for the purpose for which the exemption was granted. Leased property and property owned for investment purposes are often not eligible for exemption.<sup>59</sup> The treatment of property that is owned and partially occupied by the exempt organization with the remainder leased to another

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<sup>58</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 4.

<sup>59</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 6.

organization varies widely from state to state. Some states do not provide an exemption in this case (Maine) while others apportion the property and provide a partial exemption (South Dakota). A state may overlook a small amount of use for nonexempt purposes. For example, Colorado allows exempt religious property to remain exempt as long as it does not produce more than \$10,000 in gross rental income or is not used for more than 208 hours for nonexempt purposes.<sup>60</sup>

A few states allow local control of property tax exemptions: Vermont requires town meeting approval, Massachusetts requires consent of local authorities, and Virginia requires the assistance of local officials.<sup>61</sup>

### Categories of Exemption

Many state legislatures define classes of organizations that are exempt from the property tax and some states name specific exempt organizations. For example, Virginia lists more than 800 nonprofit organizations that are exempt.<sup>62</sup> Exemptions in addition to the charitable property tax exemption can be divided into several classes common in most states. The following is a summary of the number of states that provide the type of exemption specified, either in the state constitution or in statute:

- Religious organizations, 50;
- Educational institutions, 49;
- Cemeteries, 44;
- Hospitals/health care organizations, 38;
- Libraries, 33.<sup>63</sup>

These are broad classifications; specific definitions of which entities are covered vary by state. See the separate state-by-state summary for detailed information on which state provides which exemptions and notes on which organizations qualify.

A state's authority to provide exemptions for other than charitable, educational, or religious purposes depends on the latitude allowed the state legislature in the state constitution. Many states list the exemptions the legislature may grant and there is a trend away from allowing exemptions for noncharitable nonprofits. States that allow the legislature more freedom in

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<sup>60</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 6-7.

<sup>61</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 11-12.

<sup>62</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 11.

<sup>63</sup>The common constitutional exemptions are, in descending order, with the number of states indicated in parenthesis: religious (35), charitable (33), educational (33), cemeteries (27), libraries (12), literary and scientific organizations (8), hospitals (4), cultural organizations and museums (4), agricultural and horticultural societies (3), and patriotic and veterans' organizations (3). Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others, 44 *New England Law Review* 621, 2010, p. 638.

providing exemptions are more likely to exempt noncharitable nonprofits. The most common types of noncharitable nonprofits to receive exemptions are membership organizations that do not have section 501(c)(3) federal tax exemption, for example fraternal societies or veterans' organizations.<sup>64</sup> Hospital and health care organization exemptions have been challenged at the local level, driving such organizations to seek specific exemptions rather than relying on exemptions for charitable organizations.<sup>65</sup>

### Defining Exempt Organizations

As noted at the beginning of this briefing paper, the Senate Joint Resolution 23 language requesting a summary of how nonprofits are different than for-profits and institutions of purely public charity does not quite get to the question of how exempt entities are identified and distinguished from for-profits. These types of exemptions existed in state law before the federal Internal Revenue Code and state statutes addressing nonprofit corporations. Nonprofit status is often one of the considerations when determining which entities are exempt but the exemptions are generally granted for charitable, educational, and religious purposes, not simply because an organization does not operate for profit. With that in mind, this section explores how states identify and define which entities are eligible for exemption.

All 50 states have constitutional or statutory provisions exempting from taxation property owned by charitable organizations and used for charitable purposes, but there are differences in the extent and wording of the exemptions.<sup>66</sup> There are two general theories on the rationale for a charitable property tax exemption: the idea that charities relieve a government burden and the belief that the charitable exemption is warranted because charity benefits the community. A state that follows the theory that charities relieve a government burden is more likely to place stricter requirements on an exempt organization.<sup>67</sup>

State laws relating to charitable exemption often include an aspect of "gift or giving," which might take the form of a requirement that an organization's financial support include charitable contributions or that some services be offered for free or below cost. State courts are often left to interpret charitable exemption laws and may consider whether the organization serves a charitable class, confers a private benefit on founders, or relieves a government burden.<sup>68</sup> A

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<sup>64</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 6.

<sup>65</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 5.

<sup>66</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 4.

<sup>67</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 10.

<sup>68</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 10.

"commerciality" doctrine has evolved in some states, in which courts consider whether the organization seeking exemption behaves differently than a business that offers similar goods or services.<sup>69</sup>

Courts in some states have established multifactor tests to guide charitable tax exemption considerations. The Minnesota Supreme Court established the following six-factor test in *North Star Research Institute v. County of Hennepin* (1975):

1. whether the stated purpose of the undertaking is to be helpful to others without immediate expectation of material reward;
2. whether the entity involved is supported by donations and gifts in whole or in part;
3. whether the recipients of the "charity" are required to pay for the assistance received in whole or in part;
4. whether the income received from gifts, donations, and charges to users produces a profit to the charitable institution;
5. whether the beneficiaries of the "charity" are restricted or unrestricted, and if restricted, whether the class of persons to whom the charity is made available is one having a reasonable relationship to the charitable objectives; and
6. whether dividends, in form or substance, or assets upon dissolution are available to private interests.<sup>70</sup>

In 2007, the Minnesota Supreme Court ruled in *Under the Rainbow Child Care Center v. County of Goodhue* that "the organization must demonstrate that its intended purpose is to provide a substantial proportion of its goods or services on a charitable basis."<sup>71</sup> This led the 2009 Minnesota Legislature to add the six-factor test to statute along with a clarification that a charitable organization must meet all six requirements unless there is a "reasonable justification" for not meeting the requirements in 2, 3 or 5.<sup>72</sup>

Two other examples of states with multifactor tests are Pennsylvania and Illinois. The Illinois and Pennsylvania constitutions are similar to Montana's in that they allow the legislature to exempt certain classes of property.

Pennsylvania's Supreme Court established what became known as the "HUP test" in *Hospital Utilization Project v. Commonwealth* (1985). The five-part test requires that a purely public charity demonstrate that it "(a) advances a charitable purpose; (b) donates or renders gratuitously

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<sup>69</sup>Janne Gallagher, "The Legal Structure of the Property-Tax Exemption." Property-Tax Exemption for Charities. Ed. Evelyn Brody. Urban Institute Press, 2002. p. 11.

<sup>70</sup>Minnesota Department of Revenue, "Assessment and Classification Practices Report: Institutions of Purely Public Charity," Feb 2009, p. 5-6.

<sup>71</sup>Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," 44 *New England Law Review* 621, 2010, p. 630-631.

<sup>72</sup>Minnesota Statutes section 272.02 subd. 7(a).

a substantial portion of its services; (c) benefits a substantial and indefinite class of persons who are legitimate subjects of charity; (d) relieves the government of some of its burden; and (e) operates entirely free from private profit motive."<sup>73</sup> In 1997, the Pennsylvania legislature passed "The Institutions of Purely Public Charity Act," which was designed around the HUP test but expanded the standards for exemption. Uncertainty still exists, however, with the state supreme court seeming to give greater weight to the legislation and lower courts favoring the narrower HUP test.<sup>74</sup>

The Illinois Supreme Court created a multifactor test in its holding in *Methodist Old Peoples Home v. Korzen* (1968). The requirements are: (1) the benefits extend to an indefinite number of persons for their general welfare or in some way reduce the burdens on government; (2) the organization have no capital, capital stock, or shareholders and not profit from the enterprise; (3) funds derive mainly from private and public charity and be held in trust for the objects and purposes expressed in the organization's charter; (4) charity be dispensed to all who need and apply for it; (5) no obstacles be placed in the way of those seeking the benefits; and (6) the exclusive (i.e. primary) use of the property is for charitable purposes. The Illinois Legislature passed a property tax statute in 1984 that included an exemption for senior citizen living facilities that are 501(c)(3) organizations.<sup>75</sup> The Illinois Supreme Court, however, overturned a lower court in *Eden Retirement Center Inc. v. Department of Revenue*, stating that "It is for the courts and not for the legislature, to determine whether property in a particular case is used for a constitutionally specified purpose."<sup>76</sup>

The above examples indicate that multifactor tests established by courts often still contain ambiguity that subsequent legislatures try to remedy in statute. These cases also show how state courts, both within and across states, differ in whether they give greater weight to case law interpreting constitutional provisions or statute enacted by the legislature.

### **Income Tax Exemptions**

All states with a corporate income tax offer exemptions to certain nonprofit entities. Because most states piggyback on the federal income tax exemption provided in section 513 of the Internal Revenue Code, states differ less in which entities they exempt from the corporate

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<sup>73</sup>Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," 44 *New England Law Review* 621, 2010, p. 626-627.

<sup>74</sup>Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," 44 *New England Law Review* 621, 2010, p. 627-628.

<sup>75</sup>Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," 44 *New England Law Review* 621, 2010, p. 628-629.

<sup>76</sup>Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," 44 *New England Law Review* 621, 2010, p. 629.

income tax than in which entities receive a property tax exemption.<sup>77</sup> As in Montana, a nonprofit entity's unrelated business income is taxable and the definition is generally tied to the definition in the Internal Revenue Code (discussed in the section about Montana income tax exemptions).

### **Limits on Nonprofit Land Ownership**

North Dakota appears to be the only state with a law limiting nonprofit land ownership.<sup>78</sup>

North Dakota statute generally prohibits corporations from owning or leasing land used for farming and ranching and from engaging in the business of farming or ranching. Exceptions exist for certain entities, including certain grandfathered nonprofit organizations.<sup>79</sup> Section 10-06.1-09, subsection (2) allows a nonprofit for which farming and ranching is essential to the organization's charitable purpose and that was engaged in farming or ranching on January 1, 1983, to continue farming or ranching after January 1, 1983. Nonprofit organizations that owned farmland or rangeland for the preservation of unique historical, archaeological, or environmental land before January 1, 1983, may continue ownership of the land according to section 10-06.1-09, subsection (3).

Section 10-06.1-10 lists the conditions under which a nonprofit organization may acquire farmland or rangeland:

- The nonprofit must have been incorporated in North Dakota or issued a certificate to do business in the state before January 1, 1985, or be a trust for wetlands enhancement and preservation in the form of a nonprofit corporation incorporated before January 1, 1987. An organization created as a wetlands enhancement nonprofit may not acquire more than 12,000 acres of land from interest derived from state, federal, and private sources held in its trust fund.
- The land must be acquired for conservation purposes and must be maintained and managed for that purpose, and the nonprofit must make payments in lieu of property taxes on the property.
- The Governor must approve any proposed land acquisition after a process that includes a recommendation from an advisory committee convened by the agriculture commissioner. The advisory committee must hold a public hearing with the board of county commissioners.

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<sup>77</sup>Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," 44 *New England Law Review* 621, 2010, p. 626.

<sup>78</sup>Research methods included an information request from the National Conference of State Legislatures and Web searches of various combinations of relevant words.

<sup>79</sup>The prohibition is in Section 10-06.1-02 of the North Dakota Century Code. Exceptions are in sections 10-06.1-06 through 10-06.1-12.

## APPENDIX

### Constitutional Provisions

#### Article VIII, Section 5

**Section 5. Property tax exemptions.** (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

### Statutory Provisions

**15-6-201. Governmental, charitable, and educational categories -- exempt property.**<sup>80</sup> (1)

The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

(v) public libraries;

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(vii) special districts created pursuant to Title 7, chapter 11, part 10; and

(viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public transit, and public parks and recreational facilities.

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<sup>80</sup>Reflects version of bill that goes into effect October 1, 2011. Changes are in Ch. 278, L. 2011.

(b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;

(c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used exclusively for religious purposes;

(d) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;

(e) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:

(i) is not operated for gain or profit;

(ii) has an attendance policy; and

(iii) has a definable curriculum with systematic instruction;

(f) property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities if the property meets the requirements of subsection (1)(e);

(g) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(h) property that is:

(i) (A) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21; or

(B) owned by a federally recognized Indian tribe within the state and set aside by tribal resolution; and

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and not operated for gain or profit;

(i) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(j) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(k) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

(l) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative

association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(m) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(n) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and

(o) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(o), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(2) (a) (i) For the purposes of tribal property under subsection (1)(a)(viii), the property subject to exemption may not be:

(A) operated for gain or profit;

(B) held under contract to operate, lease, or sell by a taxable individual;

(C) used or possessed exclusively by a taxable individual or entity; or

(D) held by a tribal corporation except for educational purposes as provided in subsection (1)(f).

(ii) For the purposes of parks and recreational facilities under subsection (1)(a)(viii), the property must be:

(A) set aside by tribal resolution and designated as park land, not to exceed 15 acres, or be designated as a recreational facility; and

(B) open to the general public.

(b) For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:

(i) an ordained minister, priest, or rabbi;

(ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;

(iii) a member of a religious order who has taken a vow of poverty; or

(iv) a Christian Science practitioner.

(c) For the purposes of subsection (1)(i):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.

(d) For the purposes of subsection (1)(k), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

**15-6-203. Veterans' exemptions -- clubhouse -- land -- incompetent veterans' trusts. (1) (a)**

A clubhouse, building, or land erected by or belonging to any society or organization of honorably discharged United States military personnel that is used primarily for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit is exempt from taxation.

(b) The clubhouse or building exemption provided for in this section applies:

(i) to the personal property necessarily used in the building; and

(ii) even if a business, intended primarily for the use of the members, is required to be open to the public and is operated in a portion of the building.

(c) The land exemption provided for in this section applies only to land owned by the society or organization continuously since January 1, 1960.

(2) All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of the veterans, when the property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, is exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in the minor's own right on account of removal of legal disability.

**15-6-209. Community services buildings exempt.** (1) The building and appurtenant land, not exceeding 3 acres, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (4) and (5), if the organization:

(a) is a lodge of a nationally recognized fraternal organization;

(b) (i) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities that are recognized in the state plan on aging adopted by the department of public health and human services; and

(ii) does not furnish living accommodations to senior citizens; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate that it has been an active community service organization continuously from January 1, 1981.

(3) A community service organization exempted under this section may sell food and beverages under license from the state.

(4) A building and land exempted under this section must be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or land.

(5) The exemption provided under this section may not be extended to any property owned by a community service organization described in this section that is leased in whole or in part to any person for business or profitmaking purposes.

**15-6-221. Exemption for rental housing providing affordable housing to lower-income tenants.** (1) That portion of residential rental property that is dedicated to providing affordable housing for lower-income persons is exempt from property taxation in any year that:

(a) the property is owned and operated by an entity, including but not limited to a limited partnership, limited liability corporation, or limited liability partnership in which a general partner is a nonprofit corporation exempt from taxation under section 26 U.S.C. 501(c)(3), as

amended, and incorporated and admitted under the Montana Nonprofit Corporation Act as provided in Title 35, chapter 2, or is a housing authority as defined in 7-15-4402 and the nonprofit general partner actively participates in accordance with the definition found in 26 U.S.C. 469(i). Section 26 U.S.C. 469(i) is applicable without reference to section 26 U.S.C. 469(i)(6).

(b) the board of housing, established in 2-15-1814, has allocated low-income housing tax credits to the owner under 26 U.S.C. 42, which requires that:

(i) at least 20% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to tenants whose household incomes do not exceed 50% of the median family income, adjusted for family size, for the county in which the property is located; or

(ii) at least 40% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to persons whose household incomes do not exceed 60% of the median income, adjusted for family size, for the county in which the property is located;

(c) a deed restriction or other legally binding instrument restricts the property's usage and provides that the units designated for use by lower-income households must be made available to or occupied by lower-income households for the period required to qualify for low-income housing tax credits at rents that do not exceed those prescribed by the terms of the deed restriction or other legally binding instruments;

(d) the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50% of the units in the property to tenants at 50% of the median family income for the area, with rents restricted to a maximum of 30% of 50% of median family income, as calculated under 26 U.S.C. 42; and

(e) the owner's partnership or operating agreement or accompanying document provides that at the end of the compliance period, as that term is defined in 26 U.S.C. 42, the ownership of the property may be transferred to the nonprofit corporation or housing authority general partner as provided for in 26 U.S.C. 42(i)(7).

(2) Prior to the allocation of low-income housing tax credits to the owner, as provided in subsection (1)(b), the unit of local government where the proposed project is to be located shall give due notice, as defined in 76-15-103, and hold a public hearing to solicit comment on whether the proposed qualifying low-income rental housing property meets a community housing need. A record of the public hearing must be forwarded to the board of housing for consideration in granting the allocation of tax credits.

(3) For purposes of this section the following definitions apply:

(a) "Median family income" means the household income, adjusted for family size, determined annually by the United States department of housing and urban development, or its successor agency, to be the median family income for persons residing within each county of the state.

(b) A residential unit is "rent-restricted" if it satisfies the criteria of 26 U.S.C. 42(g)(2).

**15-6-227. Property on railroad land leased by nonprofit organizations.** (1) A building and appurtenant land or just the appurtenant land, not exceeding 2.5 acres, owned by a railroad as defined in 69-14-101 and leased for less than \$100 a year to a nonprofit organization exempt from taxation under section 26 U.S.C. 501(c)(3) or to a government entity is exempt from property taxation if:

(a) the building was constructed on a railroad right-of-way by a railroad prior to the year 2000; and

(b) the property is directly used for purely public charitable purposes.

(2) A building and land exempted under this section are subject to fees and assessments for services and special improvements that are collected with property taxes.

**15-24-1801. Definitions.** Unless the context requires otherwise, the following definitions apply to 15-24-1802:

(1) "Business incubator" means a facility in which space is leased to new small businesses and that provides shared services and business assistance to the new businesses in order to improve their chances of success. The services provided may include but are not limited to receptionist, copying, computer, telephone, secretarial, and meeting services. The assistance provided may include but is not limited to advice concerning marketing plans, business plans, accounting, and administration.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

**15-24-1802. Business incubator tax exemption -- procedure.** (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required

under state law.

(5) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1801, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

**15-24-1901. Definitions.** Unless the context requires otherwise, the following definitions apply to this part:

(1) "Industrial park" means property zoned for light and heavy industry. The term includes fully developed or partially developed land and improvements and undeveloped land. The term also includes undeveloped land owned by a local economic development organization if the local economic development organization provides reasonable evidence and the governing body is satisfied that the property is suitable for development as an industrial park and that the local economic development organization will develop the land as an industrial park.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

(3) "Port authority" means a port authority created under 7-14-1101 or 7-14-1102.

**15-24-1902. Industrial park tax exemption -- procedure -- termination.** (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(5) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1901, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

**15-24-2001. Definitions.** Unless the context requires otherwise, the following definitions apply to this part:

(1) "Building and land" means commercial improvements and land sold or donated to a local economic development organization for subsequent sale or lease to a profit-oriented, employment-stimulating business. The term includes commercial property that has not been used in a business for 6 months immediately preceding the sale or donation of the building and land to the local economic development organization.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

**15-24-2002. Building and land tax exemption -- procedure -- termination.** (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating

business are eligible for an exemption from property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as defined in 76-15-103, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(4) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(5) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

**15-31-102. Organizations exempt from tax -- unrelated business income not exempt. (1)**

Except as provided in subsection (3), there may not be taxed under this title any income received

by any:

- (a) labor, agricultural, or horticultural organization;
- (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents;
- (c) cemetery company owned and operated exclusively for the benefit of its members;
- (d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net income of which inures to the benefit of any private stockholder or individual;
- (f) civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
- (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;
- (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or similar organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses;
- (i) cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis;
- (j) corporations or associations organized for the exclusive purpose of holding title to property, collecting income from the property, and turning over the entire amount of the income, less expenses, to an organization that itself is exempt from the tax imposed by this title;
- (k) wool and sheep pool, which is an association owned and operated by agricultural producers organized to market association members' wool and sheep, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose, does not include expenses and money distributed to members contributing wool and sheep.
- (l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods for which the election is effective.
- (m) farmers' market association not organized for profit, no part of the net income of which inures to the benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;
- (n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26

U.S.C. 584(a).

(2) In determining the license fee to be paid under this part, there may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code, 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section shall file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue.

### **Administrative Rules**

#### **42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS**

(1) The property owner of record or the property owner's agent must make application through the department in order to obtain a property tax exemption. An application must be filed on a form available from the local department office before March 1 of the year for which the exemption is sought or within 30 days after receiving an assessment notice, whichever is later. Applications postmarked after March 1 or more than 30 days of receiving the assessment notice, whichever is later, will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) the taxpayer is notified after March 1 by AB-34 (Removal of Property Tax Exemption Letter) that the property will be placed on the tax roll. The taxpayer shall have 30 days after receipt of the notice to submit an application for exemption;

(b) the local department office refuses to accept an application a taxpayer or organization is attempting to submit before March 1;

(c) the local department office gives the applicant incorrect application information; or

(d) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. Extensions will be granted through July 1, or up to 30 days after the last general mailing of real property assessment notices has occurred in that county, for the current year for those impediments.

(2) The following documents must accompany the application:

(a) articles of incorporation (if incorporated) ;

(b) Internal Revenue Service tax-exempt status letter, if they have one (501 determination letter) ;

(c) deed or security agreement which is evidence of ownership (for real property only) ;

(d) title of motor vehicle or mobile home or letter of explanation if title is not applicable which is evidence of ownership (for personal property only) ;

(e) letter explaining how the organization or society qualifies for property tax exemption and the specific use of the property; and

(f) photograph of the property, if available.

(3) Upon receipt of the application and supporting documents, the local department office will perform a field evaluation. The department will approve or deny the application. The applicant and the local department office will be advised, in writing, of the decision.

(4) If the property is owned by a governmental entity (such as city, county, or state) , the federal government (unless Congress has passed legislation allowing the state to tax property owned by a federal entity) , nonprofit irrigation districts organized under Montana law, municipal corporations, public libraries, or rural fire districts and other entities providing fire protection under Title 7, chapter 33, MCA, the department will employ the following exemption criteria for real property when considering exemption claims based upon [15-6-201](#), MCA:

(a) the properties will be tax-exempt as of the purchase date that is reflected on the deed or security agreement;

(b) if a property is tax-exempt as of January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable upon the transfer of the property. The tax is prorated according to [15-16-203](#), MCA; and

(c) if a property is tax-exempt, as stated in (4) (b) , and is sold as tax-deed property to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable on January 1 following the execution of such contract or deed as provided in [7-8-2307](#), MCA.

(5) The department will employ the following exemption criteria for real properties when considering exemption claims based upon [15-6-201](#), [15-6-203](#), and [15-6-209](#), MCA.

(a) Real property purchased by a qualifying exemption applicant after January 1 of the current tax year will become exempt on the date of acquisition as evidenced by the deed and realty transfer certificate, if an application (if one is required for the exemption) is filed by the application deadline for that tax year and the property meets statutory requirements.

#### 42.23.103 EXEMPTIONS

(1) A corporation is not exempt from this tax merely because it is not organized and operated for profit. A corporation seeking the benefits of exemption must prove strict compliance with all statutory conditions authorizing the classification claimed.

(2) In order to establish its exemption and thus be relieved of the duty of filing returns and paying the tax, each organization claiming exemption must file with the department an affidavit showing:

(a) the character of the organization;

(b) the purpose for which it was organized;

(c) its actual activities;

(d) the sources and the disposition of its income;

(e) whether or not any of its income may inure to the benefit of any private shareholder or individual;

(f) a copy of the articles of incorporation;

(g) a copy of the by-laws; and

(h) copies of the latest financial statements showing the assets, liabilities, receipts, and

disbursements must be submitted with the affidavit.

(3) In addition, if the IRS has granted the organization exemption from the federal income tax, a certified copy of the exemption certificate or letter shall also be filed.

## Summary of State Property Tax Exemptions, 2011

State	Constitutional mandate	Constitution gives legislature authority	Constitution silent	Educational exemption <sup>1</sup>	Religious exemption	Cemetery exemption	Hospital exemption <sup>2</sup>	Library exemption
Alabama	x			x	x	x	x <sup>3</sup>	x
Alaska	x			x	x	x	x	
Arizona		x		x	x	x	x	x
Arkansas	x			x	x	x		x
California	x	x		x	x	x	x <sup>4</sup>	x
Colorado		x		x	x	x	x <sup>5</sup>	x
Connecticut			x	x	x	x	x	x
Delaware		x		x	x	x		
Florida		x		x	x		x	x
Georgia		x		x	x	x	x	x
Hawaii			x	x	x	x	x	x
Idaho		x		x	x	x	x <sup>6</sup>	x
Illinois		x		x	x	x		x
Indiana		x		x	x	x	x <sup>7</sup>	x
Iowa			x	x <sup>8</sup>	x	x	x <sup>9</sup>	x
Kansas	x			x	x	x	x	x
Kentucky	x			x	x	x		x
Louisiana	x			x	x	x	x	
Maine		x			x		x <sup>10</sup>	
Maryland			x	x	x	x	x <sup>11</sup>	x
Massachusetts		x		x	x	x		
Michigan	x			x	x	x	x	x
Minnesota	x	x		x	x	x	x	
Mississippi		x		x	x	x	x	x
Missouri		x		x	x	x		
Montana		x		x	x	x	x	x

State	Constitutional mandate	Constitution gives legislature authority	Constitution silent	Educational exemption	Religious exemption	Cemetery exemption	Hospital exemption	Library exemption
Nebraska		X		X	X	X	X	
Nevada		X		X	X	X		
New Hampshire			X	X	X	X		
New Jersey	X			X	X	X	X	X
New Mexico	X			X	X		X <sup>12</sup>	
New York	X			X	X		X <sup>13</sup>	X
North Carolina		X		X	X	X	X <sup>14</sup>	
North Dakota	X			X	X	X	X	
Ohio		X		X	X			
Oklahoma	X			X	X	X	X	X
Oregon			X	X	X	X	X <sup>15</sup>	X
Pennsylvania		X		X	X		X	
Rhode Island			X	X	X	X	X	X
South Carolina	X			X	X	X	X	X
South Dakota	X			X	X	X	X	
Tennessee		X		X	X	X		
Texas		X		X	X	X	X	X
Utah	X			X	X	X		X
Vermont			X	X	X	X	X <sup>16</sup>	X
Virginia	X			X	X	X		X
Washington		X		X	X	X	X	X
West Virginia		X		X	X	X	X	X
Wisconsin			X	X	X	X	X <sup>17</sup>	X
Wyoming	X	X		X	X	X	X	X

## Notes

<sup>1</sup>A state marked in the educational, religious, cemetery, hospital, or library column may have either a constitutional or statutory provision providing the exemption.

<sup>2</sup>Hospitals may fall under the charitable category. These are states that specifically list nonprofit hospitals or healthcare organizations as exempt.

<sup>3</sup>"All property, real or personal, used exclusively for hospital purposes, to the amount of \$75,000, where such hospitals maintain wards for charity patients or give treatment to such patients; provided, that the treatment of charity patients constitutes at least 15 percent of the business of such hospitals..." Code of Alabama Section 40-9-1

<sup>4</sup>Considered not organized for profit if operating revenue (exclusive of gifts, endowments, and grants-in-aid) did not exceed operating expenses by 10 percent in previous fiscal year. However, 1998 California Attorney General's opinion views this provision as an additional protection for nonprofit hospitals "rather than the exclusive means by which they can qualify for the welfare exemption." Evelyn Brody, "All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others," 44 *New England Law Review* 621, 2010, p. 677-678.

<sup>5</sup>" (3) (a) When any property of a health care facility, real or personal, or any portion thereof, which is otherwise exempt from the levy and collection of property tax pursuant to the provisions of paragraph (b) of subsection (1) of this section, is used for any purpose other than the purposes specified in sections 39-3-106 to 39-3-113, such property or portion thereof shall be exempt from the levy and collection of property tax if the use of the property or portion thereof does not result in gross income derived from any unrelated trade or business to the owner which is in excess of fifteen percent of the total gross revenues derived from the operation of the property. Gross income derived from any unrelated trade or business shall be determined pursuant to the provisions of sections 511 through 513 of the federal "Internal Revenue Code of 1986", as amended.

(b) If the use of any property or portion thereof results in gross income derived from any unrelated trade or business in excess of fifteen percent of the total gross revenues to the owner derived from the operation of the property, the administrator shall determine the value of the nonexempt portion of the property for property tax purposes." Colorado Revised Statutes, Section 39-3-108.

<sup>6</sup> If 3% or less of hospital property is use for nonexempt purposes, the property is exempt. If more than 3% is used for nonexempt purposes, the property is apportioned and tax paid on the portion used for nonexempt purposes. Idaho Code Annotated, Section 63-602D.

<sup>7</sup>A physician's office owned by a hospital is not exempt unless it is "substantially related to or supportive of the inpatient facility" or provides or supports the provision of charity care or "community benefits including research, education, or government sponsored indigent health care" (participation in Medicaid or Medicare alone is not sufficient). Indiana Code, Section 6-1.1-10-16.

<sup>8</sup>State university and school lands are exempt but real estate owned by an educational institution as part of its endowment is not exempt. Iowa Code Sections 427.1(1) and 427.1(9).

<sup>9</sup>Hospitals are not specifically mentioned as exempt but are mentioned in statute addressing commercial use and assessment (hospital entitled to full exemption for portion used for nonprofit health-related purposes). Iowa Code 427.1(14).

<sup>10</sup>For property tax years beginning April 1, 2012, the exemption for nonprofit hospitals does not include real property. Maine Revised Statutes, Title 36, section 652.

<sup>11</sup>"Not more than 100 acres of real property of a nonprofit hospital that is appurtenant to the hospital is exempt from property tax." Maryland Code Annotated Section 7-702(c)(2).

<sup>12</sup>Nursing homes and intermediate care facilities (including for the developmentally disabled) that are nonprofit are exempt. New Mexico Statutes Section 7-36-7.

<sup>13</sup>"Such real property owned and actually used for hospital purposes by a free public hospital which depends for maintenance and support upon voluntary charity, shall be so exempt from taxation although a portion thereof is leased or otherwise used for the purposes of income, if such income is necessary for and is actually applied to the maintenance and support of such hospital." New York Real Property Tax Law, Section 420-A.

<sup>14</sup>"However, the fact that a qualifying hospital charges patients who are able to pay for services rendered does not defeat the exemption granted by this section" North Carolina General Statutes, Section 105-278.8.

<sup>15</sup>Certain rural health care facilities are exempt. Oregon Revised Statutes, Section 307.804.

<sup>16</sup>"Real and personal property owned by a federally qualified health center or a free standing, federally-designated rural health clinic, provided such center or clinic is governed by a community board of directors; offers care on a sliding scale based on ability to pay; is owned and operated on a nonprofit basis; is unconditionally dedicated to public use which directly benefits an indefinite class of the public and confers a benefit on society. Notwithstanding any provision of law to the contrary, this exemption shall apply without the need for a vote of the town or municipality in which such property is located. Vermont Statutes Annotated Title 32, Section 3802(16).

<sup>17</sup>"...and which hospital is not operated principally for the benefit of or principally as an adjunct of the private practice of a doctor or group of doctors. This exemption does not apply to property used for commercial purposes, as a health and fitness center or as a doctor's office." Wisconsin Statutes, Section 70.11(4m)(a).

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