2023 Municipal Law Seminar
MINI WORKSHOP B
Charitable and Religious Exemptions

DISCUSSION SUMMARY
(Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop B is provided for educational and training purposes. It does not constitute legal advice or represent Department of Revenue opinion or policy, except to the extent it reflects statements contained in a public written statement of the Department of Revenue.

1. A non-profit Teen Center purchased property located on Main Street in Hoovertown, Massachusetts in November 2021. Teen Center Inc. owns other properties in Hoovertown that are tax exempt. Teen Center Inc. did not file their initial application to the assessors on their Main Street location due to their new staff not being familiar with the process. As such, assessors then sent a tax bill to the Center for FY23. Teen Center Inc. did not file for abatement but did file their Form 3ABC in October 2022. Assessors now seek 8 of 58 consideration to abate the FY23 tax. Should the application be approved?

   A charitable organization must make an initial application to the assessors in the first fiscal year it claims exempt status for its personal property, or for a particular parcel of real property. The organization may use a charitable exemption application form (State Tax Form 1-B-3) or an abatement application (State Tax Form 128) to apply. The application deadline for any year is the same as the deadline for property tax abatement applications, i.e., the date the first actual tax installment for the year is due.

   This 8 of 58 request would likely be granted. This situation is similar to the following examples in IGR-2020-10:

   1. Where a charitable organization failed to file its required Form 3ABC and was assessed a tax for otherwise exempt property. Non-filing of the required forms and the subsequent failure to apply for abatement were attributable to volunteer staff turnover.

   2. A charitable nonprofit corporation that has received property tax exemptions in the past fails to timely file for an exemption or abatement due to high turnover in the volunteers serving in its administrative offices. The charity provides services to low-income families or other benefits to the community and the payment of taxes will severely impact its budget. In this case, the granting of abatement authority

would correct a substantial inequity, cure a grievous hardship and provide a public benefit.

As this was an unpaid tax, the additional requirement of an obvious clerical error is not required here.

G.L. c. 58, § 8
IGR-2020-10

2. A local College just purchased approximately 30 acres of vacant land that abuts their campus in Hoovertown. They are going to keep it in its natural state (it's all wooded). They may, in the future, put a road in connecting Main Road through the woods to their campus. Would this property be exempt for educational purposes?

   The assessors ultimately have the discretion to make the determination if this property qualifies.

   a. What is required for a charitable organization to occupy real property for property tax exemption purposes?

      As a general rule, real property owned by, or held in trust for, a charitable organization must also be occupied by the charitable organization or its officers in furtherance of its charitable purposes to qualify for exemption. G.L. c. 59, § 5, Clause 3. Officers are not necessarily limited to persons holding corporate offices, but they can include employees of the organization. *Trustees of Thayer Academy v. Board of Assessors of Braintree*, 232 Mass. 402 (1919).

      Occupancy "means something more than that which results from simple ownership and possession. It signifies an active appropriation to the immediate uses of the charitable cause for which the owner was organized. The extent of the use, although entitled to consideration, is not decisive. But the nature of the occupation must be such as to contribute immediately to the promotion of the charity and physically to participate in the forwarding of its beneficent objects." *Board of Assessors of Boston v. The Vincent Club*, 351 Mass. 10, 14 (1966).

      Assessors must determine how the property is actually used by the charity. Charitable use must be the principal use of the property. The occasional and incidental use of the property by a non-charitable organization does not impact the exemption. The use does not have to be intensive, and the officers generally have broad latitude to determine the amount of real estate needed to carry out the organization's mission. In *New England Forestry Foundation, Inc. v. Board of Assessors of Hawley*, 468 Mass. 138 (2014), the Court found that the Appellate Tax Board erred in denying an application by a nonprofit land-conservation organization that owned forest land for a charitable tax exemption under G.L. c. 59, § 5, Clause Third because it adequately showed that it occupied the land for a traditionally charitable purpose within the meaning of the statute, as it did not exclude the public from its land and used the land as a site on which it carried out sustainable forestry practices.

      In *Assessors of Dover v. Dominican Fathers Province of St. Joseph*, 334 Mass. 530 (1956), the taxpayer was an incorporated religious congregation, and the taxes at

issue were levied for two consecutive years. The real property at issue was a portion of a larger estate, and the taxpayer's purpose in acquiring the property was to use it for a priory and a seminary. The property was in a district zoned for residential uses, but the applicable zoning by-law allowed certain nonresidential uses including churches and, if non-sectarian, educational uses. The taxpayer maintained that non-sectarian limitation was invalid, and in a separate case, the court eventually agreed. In the interim, the taxpayer obtained a variance allowing it to use the property for church purposes and multiple dwelling purposes. The taxpayer later established a seminary on the premises. On appeal, the appellate court affirmed the abatement of the taxes levied on the taxpayer's property, holding (1) that the variance did not create a contractual obligation, and (2) that the property was exempt from taxation under G.L. c. 59, § 5, Clause Third, because it was being used for educational purposes.

However, the use must be substantial enough for the property to be considered dedicated to the charitable purposes of the organization. So here, in the case of the college purchasing vacant wooded land and not using it for educational purposes, the assessors could make a strong argument that this property would not qualify for the exemption.

G.L. c. 59, §5
Trustees of Thayer Academy v. Board of Assessors of Braintree, 232 Mass. 402 (1919)
Board of Assessors of Boston v. The Vincent Club, 351 Mass. 10, 14 (1966)
New England Forestry Foundation, Inc. v. Board of Assessors of Hawley, 468 Mass. 138 (2014)
Assessors of Dover v. Dominican Fathers Province of St. Joseph, 334 Mass. 530 (1956)

3. On July 20, 2023 a church in Hoovertown purchased a home, not previously exempt, to be used as a parsonage. Can they receive exempt status as of July 20th?

   Exempt status is determined as of July 1, which is the first day of the fiscal year. To qualify for an exemption from the taxes assessed for that fiscal year, the charitable organization must meet all eligibility criteria as of that date. G.L. c. 59, § 5. It is not entitled to a pro-rata exemption for property acquired after July 1 and should ensure that any taxes for that fiscal year are addressed when closing on the acquisition. It is very important to note that in this type of transaction the taxes need to be worked out at the closing.

   This is similar to the case of *Sunshine Village, Inc. v. Board of Assessors of Agawam* which notes that the introductory paragraph of G.L. c. 59, § 5 specifically states that "the date of determination as to age, ownership or other qualifying factors required by any clause shall be July 1 of each year." As a result, a taxpayer who becomes an owner of property after the July 1st date is beyond the date of determination for the fiscal year at issue. The ATB further notes that taxation is the general rule and exemption is the exception. The taxpayer is bound to comply with all prerequisites.

   G.L. c. 59, §5
   Sunshine Village, Inc. v. Board of Assessors of Agawam, ATB Findings of Fact and Report (January 30, 2023)

4. A church bought a property in Hoovertown in March of 2022. To date, they have not had services and are not open to the public (construction is pending and there are 'do not enter' signs everywhere). They have applied for a FY24 exemption. Should this property be exempt?

   Property acquired and held by a religious organization for a future house of worship is not exempt unless construction or renovation is underway on the July 1 exemption qualification date. See *All Saints Parish v. Inhabitants of Town of Brookline*, 178 Mass. 404 (1901) (Land acquired for future house of worship is not exempt where construction has not begun) and *Trinity Church v. Boston*, 118 Mass. 164 (1875) (Land for future house of worship upon which construction was underway by driving piles for the foundation is exempt).

   There is no grace period found in G.L. c. 59, § 5, Clause 11 as there is in G.L. c. 59, § 5, Clause 3 for real property acquired by a charity for purposes of relocation. As such, this parcel would likely not qualify.

   A religious organization is not required to file an annual Form 3ABC to obtain a property tax exemption. Unless it is seeking an exemption as a charitable organization for real property it owns and uses for purposes other than a house of worship or parsonage, for example, a school, health care or social service facility. In that case, it must follow the same procedures as a charitable organization to obtain the exemption. A religious organization does not have to file any specific application form to establish exempt status for a house of worship or parsonage. If it is claiming exemption for the first time, or for property not previously exempt as a house of worship or parsonage, however, it would want to contact the assessors' office and provide the information needed to establish exempt status and have the property removed from the tax rolls. If a tax bill is issued for any fiscal year, however, the organization must apply on or before the due date for abatement applications for that year in order for the assessors to grant the exemption. Abatement applications are due the same day as the first installment payment of the actual, not preliminary, tax bill for the fiscal year.

All Saints Parish v. Inhabitants of Town of Brookline, 178 Mass. 404 (1901)
G.L. c. 59, §5 Clause 11
G.L.c. 59 §5 Clause 3
Trinity Church v. Boston, 118 Mass. 164 (1875)

5. In Hoovertown, there is a parcel owned by a trust and claims to be leased to several educational and religious organizations, solely for charitable uses. They claim that each of the organizations occupies land under a "ground lease" and uses that acreage for its exempt purposes, including the construction and operation of buildings for those purposes. The trust that owns the property is not an exempt entity itself. One organization that leases the property is a church, and uses its leased property for religious and charitable purposes, including for the purposes of religious music and literature publishing by its wholly owned subsidiary. Another organization that uses this parcel is a charter school. Both organizations are 501(c)(3) public charities. Would the personal property be considered exempt under G.L. c. 59, § 5 and what documents would be necessary to establish an exemption? What would be necessary to make these parcels exempt?

There is a way for this property to be exempt, if the charity has a lease for 100 years, under G.L. c. 186, §1A. If land is demised for the term of 100 years or more, the term shall, so long as 50 years thereof remain unexpired, be regarded as an estate in fee simple as to everything concerning the descent and devise thereof upon the decease of the owner, the sale thereof by personal representatives, guardians, conservators or trustees, the levy of execution thereon and the redemption thereof if mortgaged or taken on execution. Whoever holds as lessee or assignee under such a lease shall, so long as 50 years of the term remain unexpired, be regarded as a feeholder for all purposes. The lease should be recorded, and there is a statutory requirement that it be recorded.

DLS has opined that G.L. c. 186, § 1A makes lessees under a lease for a hundred years the owners for assessment purposes if the lease has at least fifty years left to run. Under G.L. c. 71, §89(j), charter schools are bodies corporate and politic with the power to acquire real estate by purchase or lease. Charter school trustees are public agents. These provisions make it clear that property owned by a charter school is held for a public purpose, which makes it exempt from local taxation as a matter of common law. See *Middlesex County v. City of Waltham*. It would be useful to have the lease recorded as soon as possible to help establish the charter school as the owner of record of the property. See G.L. c. 59, § 5, Clause 11. Assuming therefore that the charter school's interest in the property meets the requirements of G.L. c. 186, §1A, we believe that it should be exempt from local property taxes.

G.L. c. 186, §1A
G.L. c. 71, §89(j)
Middlesex County v. City of Waltham, 278 Mass. 514 (1932)
G.L. c. 59, §5

6. Hope Church has a large parking lot that abuts the Woodland College of Art, an exempt college. The College has been using the church lot on special occasions. The lot has fallen into disrepair. The College has recently offered to repair the church lot in order to use it on most weekdays and weeknights.

   a. In past years, should the lot have received tax exemptions as a part of the church?

      Yes, while the Woodland College of Art has on occasion used the parking lot, if the church can demonstrate that the parking lot's dominant use is to support the religious purposes of the Hope Church as a house of worship, the Church should be entitled to exemption under G.L. c. 59, § 5, Clause 11.

   b. If the agreement is entered into and implemented, would you allow the religious exemption for the full parking lot? A portion?

      The Woodland College of Art uses the parking lot for occasional use, and it is proposing to spend substantial sums of money to improve the lot, and for which it provides snowplowing and other winter maintenance. The College seeks to use the lot on a regular basis for overflow parking and run a shuttle bus service from the parking lot. This arrangement would begin in the next fiscal year.

There is little question that the parking lot would not be exempt if the church leased it to a for-profit entity that operated the parking lot on a commercial basis Monday through Friday, even if such commercial operation did not interfere with the church's use of it on the weekends. In such circumstances, the dominant use would be the commercial use rather than the exempt use, which would disqualify it for exemption.

Here, we have a Clause 3 charitable organization using the property owned by the Church, a Clause 11 religious entity. Tax-exempt entities can lease properties from other tax-exempt entities and not lose tax-exempt status. Although the church is apparently receiving no rent, it would be receiving substantial consideration from the College in return for the use of the parking lot. Clause 11 provides that the exemption for houses of religious worship "...shall not . . . extend to any portion of any such house of religious worship appropriated for purposes other than religious worship or instruction. The occasional or incidental use of such property by an organization exempt from taxation under the provisions of 26 USC 501(c)(3) of the Federal Internal Revenue Code shall not be deemed to be an appropriation for purposes other than religious worship or instruction." Section 501(c)(3) of the Internal Revenue Code provides for income tax exemptions for charitable institutions.

The more fundamental issue is that the information provided suggests that the College's proposed use of the parking lot would not be occasional or incidental. Indeed, it would seem to be the dominant use. Where the dominant use of property is not case that would qualify it for exemption, if the College weren't a Clause 3 entity, the exemption would have been denied. In that case, an allocation of value between the parking lot and the church would have been made. The fact that the College is an exempt entity, however, would allow an exemption for the College.

Finally, we would note that exemptions are the exception to the rule that all property is taxable, and those seeking exemption must show that they clearly meet all eligibility requirements.

G.L. c. 59, § 5, Clause 11

7. The Croninville Youth Sports, Inc. is a small, local non-profit providing recreational activities for the town's youth. There was a rift among board members that led to the departure of the group's secretary and clerk. The acting treasurer failed to file the Form 3ABC for FY24, reflecting the group's real and personal property assets. No extension to file was requested. The assessors treated the real and personal property as subject to tax and issued bills. The new permanent treasurer called the assessors for help. What if the assessors allowed the filing of a Form 3ABC before March 1? What if March 1 passes, and the group still has not filed a Form 3ABC? Assuming the tax was unpaid, would the assessors have a viable application for authority to abate, under G.L. c. 58, § 8? What are the chances for approval of G.L. c. 58, § 8 abatement authority if a kind donor had paid the taxes?

a. What if the assessors allowed the filing of the Form 3ABC before March 1st?

The entity would have met its filing obligation.

b. What if March 1 passes and the group still had not filed its Form 3ABC? In other words, what is the due date for filing the Form 3ABC and may it be extended or waived by the assessors?

The Form 3ABC must be received in the assessors' office on or before March 1. However, the assessors can extend the March 1 deadline if the charitable organization makes a written request and demonstrates a good reason for not filing on time. The latest the filing deadline can be extended to is the last day for applying for abatement of the tax for the fiscal year to which the return relates (the date the first actual tax installment for the year is due). G.L. c. 59, § 29. The requirement to file the return is a jurisdictional prerequisite to an exemption for any property owned by the charitable organization on January 1. An organization that fails to file the return is not exempt for the year. G.L. c. 59, § 5, Clause 3(b); *Children's Hospital Medical Center v. Assessors of Boston*, 388 Mass. 832 (1983). No exemption can be granted by the assessors or appeal reviewed by the Appellate Tax Board (ATB).

Assuming the tax was unpaid, would the assessors have a viable application for authority to abate under G.L. c. 58, § 8?

Where a charity files late or not at all, consideration should be given to the 8 circumstances of the non-profit entity. Here – we have a charity that had long been receiving an exemption from property tax. The turnover in their volunteer staff resulted in a non-filing of records required by chapter 59. An 8 of 58 application may be allowable in these specific circumstances, should the assessors decide to seek 8 of 58 authority.

c. What if the tax due had been paid?

There was no "obvious clerical error" by the assessors in assessing the tax given the late-filing or non-filing of the Form 3ABC. Therefore, the statutory language precludes a grant of authority to abate a paid tax.

G.L. c. 58, s 8
G.L. c. 59, § 5, Clause 3(b)
G.L. c. 59, § 29
Children's Hospital Medical Center v. Assessors of Boston, 388 Mass. 832 (1983)

8. Due to the closing of the nearby Browne Memorial Hospital, Mercyville General Hospitality is in dire need of a new surgical building to accommodate its new patients. Mercyville's board members have approached local real estate developer Will Norton for solutions. Norton has proposed the following: Create the Norton-Mercyville Trust, a for-profit entity, to build the new surgical building; Mercyville Hospital, an exempt non-profit entity, will lease land for the new building to the Norton-Merryville Trust; the Trust will lease the building to Merryville Hospital and Mercyville Hospital will build out the interior of the new surgical building and install and construct furnishings and equipment to utilize the new surgical building for hospital purposes.

a. Inez Garcia, the local assessor, thinks that Mercyville's new surgical building should be taxable, as it was built by a for-profit Trust. Would you agree?

Pursuant to G.L. c. 59, § 5, Clause 3, the building should be tax-exempt. That's only assuming that the business trust was created mainly for construction financing reasons and would engage in no other activity beyond constructing a building that would be used for charitable purposes consistent with those of a non-profit hospital, the arrangement appears to fit within the phrase "real estate … held in trust for a charitable organization…," as quoted in G.L. c. 59, § 5, Clause 3. With respect to the land on which the new surgical building sits, we know from the fact pattern that the tax-exempt Mercyville Hospital owns the land.

b. Inez Garcia thinks that Mercyville Hospital should be exempt from personal property taxes for the furnishings and equipment used to build out the surgical building constructed by a for-profit Trust. Would you agree?

The personal property for the furnishings and equipment is owned directly by the tax-exempt Mercyville Hospital and used in furtherance of its charitable purposes. Therefore, the furnishings and equipment are tax-exempt, as well.

G.L. c. 59, § 5, Clause 3