Who is exempt from real estate taxes? Now that is the question

By Kimberly S. Tague

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Most property owners in Pennsylvania pay real estate taxes which are due to the county, the city/municipality, and to the school district in which the property is located. But not all property owners pay real estate taxes. To become exempt from real estate taxes, the property at issue must be owned by a certain type of entity and almost always must be used in a certain way. Without both – proper ownership and use, a property is generally subject to real estate taxes. It is simply not true that nonprofits don't have to pay real estate taxes, some do, and some pay for certain properties but not for others.

Real estate tax exemption begins with the Pennsylvania Constitution, which provides that the General Assembly may by law exempt from taxation a list of five categories of properties: places of religious worship, places of burial, public property, property owned and occupied by honorably discharged servicemen or servicewomen, and institutions of purely public charity Pa. Const. art. VIII, § 2(a). The Pennsylvania Constitution does not define what is meant by a "purely public charity" and much of the litigation related to real estate tax exemption in Pennsylvania results from a purely public charity determination.

In 1985, the Pennsylvania Supreme Court set forth five criteria that must be satisfied to be considered an institution of "purely public charity" in Hospital Utilization Project vs. Commonwealth of Pennsylvania, 487 A.2d 1306 (Pa. 1985). This case established the five-prong "HUP" test, which provides that the property owner 1) must advance a charitable purpose, 2) must donate or render gratuitously a substantial portion of its services, 3) must benefit a substantial and indefinite class of persons who are legitimate subjects of charity, 4) must relieve the government of some of its burden, and 5) must operate entirely freely from a private profit motive. Any of these criteria can be difficult for a nonprofit to meet and different types of charities may have difficulty proving different criterion.

Then in 1997, the legislature passed the "Institutions of Purely Public Charity Act," also known as "Act 55" which further defined what it means to be a "purely public charity" in Pennsylvania. 10 P. S. §§ 371-385 (1997).

In addition to demonstrating a constitutional basis for exemption, an entity must also be entitled to exemption under the applicable county assessment law. Allegheny County, as a larger county, is governed by the General County Assessment Law, 72 Pa. Stat. § 5020-204 which lists 13 categories of property which are exempt from all real estate taxes. The list includes: schools, places of worship, libraries, fire stations, public parks, courthouses and jails and "institutions of purely public charity."

There are more statutory exclusions for other types of property owners and uses. For example, common areas in a planned community are usually not subject to real estate taxation. 68 Pa.C.S. § 5105(b). Charter school properties, and property owned by nonprofits which lease buildings to charter schools are exempt from real estate taxes so long as the property is being used for charter school purposes. 24 P.S. § 17-1722-A (e).

So who decides? In Allegheny County, a property owner may submit an application for real estate exemption which is due by March 31 of the year in which you are seeking exemption so long as the applicant owned the property on January 1 of that year. The application is filed with the Board of Property Assessment Appeals and Review (BPAAR) where the application is reviewed and then granted or denied. If the property owner, or one of the taxing bodies, is dissatisfied with the BPAAR determination, they can appeal to the Court of Common Pleas (and then to Commonwealth Court and on from there). If an organization is ultimately successful in the exemption application, the property will become exempt and stay exempt until it is conveyed (transfers to other nonprofit entities – including a parent or subsidiary nonprofit – and transfers to for profit entities will trigger taxability) or until one of the taxing bodies files an appeal challenging the property's exempt status.

In conclusion, the application process and the law governing real estate tax exemption is more complicated than many property owners realize. Property owners should perform a

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taxability analysis of a property prior to purchase rather than assume that a property will be exempt from real estate taxes because it will be owned by a nonprofit entity. Even if property ultimately becomes exempt, it might be taxable for some portion of the year depending on the sale date, or when the date of use begins, and there may be litigation involved to obtain an exemption. ■

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with any provision of the location agreement, the property owner has the immediate right to halt production until a resolution is agreed upon. If no resolution can be achieved, then the agreement terminates immediately, and the property owner is entitled to any location fee earned up until the point of termination. The property owner forgoes the right to be able to halt distribution or use of the recording.

While the above are merely a sampling of provisions that go into a well drafted and well negotiated location agreement, there are several provisions and nuances not touched on in this article. If you'd like to learn more about filming location agreements, you can request a free copy of my book, "Filming Location Agreements: An Overview and Approach" by heading to *www.muslaw.com/filming.* ■

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