



PROPERTY TAX EXEMPTION

AN ASSESSOR'S GUIDE 2005

**ASSESSMENT COORDINATION DEPARTMENT
STATE OF ARKANSAS**

PROPERTY TAX EXEMPTION AN ASSESSORS GUIDE 2005

PURPOSE:

The Assessor is responsible for making the decision as to which properties qualify for exemptions. These guidelines are meant only to assist the Assessor in meeting his/her responsibilities and in no way are intended to be all-inclusive.

Admittedly, deciding what properties are exempt is an imprecise exercise involving a good deal of judgment on the Assessors part. Supreme Court and Court of Appeals cases are often very old and both case law and legislation in this area are subject to change from time to time. In addition, facts vary in significance with each case and there is always the human element to factor in. As a result, no one can predict with absolute accuracy how a court will rule in a particular matter.

The Assessor should always consult the County Attorney as to all exemption issues. The County Attorney will be defending the Assessor if a taxpayer challenges the decision of the Assessor in court. The Assessment Coordination Department does not have the authority to serve in that capacity, therefore, these Guidelines must be treated as advisory only.

HOW TO USE THIS GUIDE:

1. Immediately make several copies of the Guide as soon as you receive it and keep at least one copy in reserve.
2. Everyone in the office should read the guide from start to finish as soon as possible.
3. Keep a permanent copy of the guide in a location convenient and easily accessible to all the office staff.
4. Have all taxpayers requesting an exemption fill out the application found at the end of the guide.
5. Ask for documentary evidence supporting their claim of entitlement.
6. Each exemption provided in the constitution is set out below followed by a series of short paragraphs concerning the exemption.

7. Following the short paragraphs is a series of questions for you to resolve in order to determine whether or not the property in question is exempt.
8. If all the answers are yes, the property should be exempted.
9. A particular question may be so basic that a no answer may automatically disqualify the property. As to other questions, the no answer may only cause doubt in your mind and you may wish to broaden your investigation. You may wish to make a personal visit to the site. You may require additional documentation. You may wish to confer with the County Attorney, the ACD, or others.
10. Remember, the burden is on the taxpayer to satisfactorily show that his/her property should be exempt.

EXEMPTIONS ALLOWED:

Although property owned by the federal government is immune from property tax rather than exempt, the effect is essentially the same except that "use for a public purpose" is not a factor.

The only exemptions allowed are those set out in the Arkansas Constitution as follows:

- Public property used exclusively for public purposes
- Churches used as such
- Cemeteries used exclusively as such
- School buildings and apparatus
- Libraries and grounds used exclusively for school purposes
- Buildings and grounds and materials used exclusively for public charity

IN GENERAL:

1. In addition to the constitution one must look to court decisions and statutes when contemplating whether a property is eligible for an exemption.
2. Applicants for exemptions have the burden of proving entitlement to the exemption based on one or more of the six categories listed previously.
3. Exemptions are matters of grace and are to be strictly construed against allowance.
4. When property is assessed, the lien for the taxes attaches to the property as of January 1 of the assessment year. If the property is transferred during the assessment year the lien of the tax continues to be attached and transfers

- with the property to the new owner. The new owner is responsible for those taxes, even if the new owner uses the property for an exempt purpose. There is no provision in the law, for a waiver of the taxes for the acquisition year.
5. You may split the property when part is exempt and the other is not.
 6. Exemption depends upon the actual primary use to which the property is being put. In the case of a public property exemption, the property must also be owned by a governmental body.
 7. The legislature may classify property, i.e. real or personal, tangible or intangible. The legislature may not declare which properties are exempt or declare the use of a property. The Supreme Court has stated on more than one occasion that notwithstanding the applicable statute, the right of exemption must be found in the constitution. However, when confronted with such a statute you should consult your County Attorney and follow his/her written advice as there is a general rule of construction to the effect that all statutes are presumed to be constitutional until they are declared unconstitutional by a court of competent jurisdiction.
 8. It may be helpful to know that an entity holds a "501(c)(3)", or other tax exemption designation, from the Internal Revenue Service but it is absolutely not determinative of whether the property of that entity is exempt from property tax.
 9. Likewise, it is helpful to know that an entity holds a charter from the Secretary of State as a "Nonprofit" corporation, but such fact alone is not determinative of the question as to whether or not the entity is exempt from property tax. An entity can, for example, be a church or a charity without being incorporated.
 10. Attorney General opinions are helpful in determining whether a property is entitled to an exemption, but these opinions are not law. A government official may have protection from an accusation of misfeasance or a charge of malfeasance if he can show he acted in reliance on an opinion of the Attorney General.
 11. The Attorney General has opined that the decision of the Assessor as to exemptions may be appealed to the Equalization Board as with any other appraisal decision.

FEDERAL PROPERTY:

1. Property owned by the United States is immune from taxation and there is no requirement that the property be used for a public purpose.

2. Immunity ceases when title passes from the United States.
3. The federal government sometimes agrees to make payments in lieu of property tax.
4. A statute provides that where the construction of an eight or more unit residential housing project is financed by the United States Government and is owned by a nonprofit corporation or association for persons 62 years of age and above or the handicapped, they are to be valued on the basis of the equity owned in the project. This, of course does not mean that the property may not otherwise qualify for an outright exemption if it meets the criteria of a charity.
5. The National Housing Act provides that HUD (Federal Housing and Urban Development) makes loans and grants for the construction of certain types of multi family housing projects. The Government does not own these projects so they are not immune from property tax. You will find that those constructed under Sections 202 and 811 of the Act prior to 1992 are taxable on the value of the equity as set out above. The law changed in 1992 and those properties constructed thereafter are set up so that they have no equity or taxable value, therefore no tax will be owed. You may obtain from HUD a list of all such projects existing in your county. The HUD Agency also finances projects that do have regular amortizing loans and therefore do build equity, have taxable value and should be put on the tax books. You may also obtain a list of these properties from HUD.

If the application is for federal immunity, determine:

- Is the property owned by the Federal Government?

PUBLIC PROPERTY:

1. Ownership by a governmental entity is not alone sufficient to make a property exempt; it must also be used exclusively for a public purpose.
2. The courts have determined that Act 9 bond financed property is exempt because it is owned by a government entity and the purpose, being for creating jobs, is sufficient to meet the requirement of a public purpose.
3. Even though the provision calls for the use to be "exclusively for a public purpose" some incidental nongovernmental use may be permitted.
4. If the incidental nongovernmental use portion is being operated with an eye toward profit, that portion should be taxed.
5. If the primary use of the property is nongovernmental such as, private sector office or residential rental space, or manufacturing or a commercial use

space, the fact that the property is owned by a state or local governmental entity is irrelevant. This is true even if the proceeds are used for a legitimate public purpose.

If the application is for a public purpose exemption, determine:

- Is the property owned by some type of governmental body?
- Is the public purpose also the primary and predominant purpose?
- Is commercial enterprise prohibited or is no part of the property used with an eye toward profit?
- Are all funds that are received used for operation and maintenance or expansion of the public service or for charity?

CHURCH PROPERTY:

1. In a 1997 case the Arkansas Court of Appeals said that ownership of the property by a church is not necessary to entitle it to an exemption; use is determinative of entitlement. The property must be used for church purposes.
2. If the property is being used by the owner with a view toward profit it will not be exempt.
3. Church property held separately and distinctly from that being used as a place of actual public worship, and utilized for the production of profits, will be taxable even if the gain derived there from is in turn used for religious purposes.
4. A primarily secular use of property used incidentally for actual public worship would probably prevent exemption.
5. If a church property is being used primarily for religious purposes, a mere incidental secular use, such as social functions to raise money for church purposes should not affect exemption.
6. Although a statute provides that parsonages used solely as residences for pastors are exempt, the Supreme Court, has held that the legislature does not have the power to declare that a particular kind of property is exempt. However, the test for exemption still remains, whether the property is used for church purposes or not.

If the application is for a church exemption, determine:

- Is the church operated by a religious group or organization?
- If the church does not own the property, is the owner letting the church use the property for free, or leasing or selling it on contract to the church for only a nominal amount?

- Is the property used for church purposes?
- Is the use of the property for church purposes the primary and predominant use of the property?
- Is commercial enterprise prohibited or is no part of the property used or operated with an eye toward profit?
- Are any funds received used for operation and maintenance or expansion of the church or other church or charitable purposes?
- If the property in question is a parsonage, are religious activities conducted on the property?

CEMETERIES:

The court has adopted the legislative definition of a cemetery. It is a public burying ground held with no view to making a profit. Such cemeteries continue to be exempt even though no bodies have been buried there for several years.

If the application is for a cemetery exemption, determine:

- Is the property used for a public burying ground?
- Is commercial enterprise prohibited or is no part of the property used with an eye toward profit?
- Are all funds received used for operation and maintenance or for expansion of cemetery services or for charity?

SCHOOL PROPERTY:

This exemption applies to all schools whether publicly or privately administered. The school should be available to the public generally although tuition may be required. If the school is operated with an eye toward profit it should be denied the exemption.

If the application is for a school exemption, determine:

- Is there an organized curriculum or course of studies provided to the students?
- Are there teachers provided which are certified by the State or some other certifying agency?
- Is the school available to the public even though tuition may be required?
- Is commercial enterprise prohibited or is no part of the property used with an eye toward profit?
- Are all funds that are received used for operation and maintenance or expansion of the school or for charity?

LIBRARIES:

1. It is probably safe to say that most libraries are owned by the city, county, state, or the federal government and that they serve a public purpose. There is no question that such libraries would qualify for the public property exemption or immunity as in the case of the federal government.
2. Other libraries may qualify for an exemption in that they are owned and operated by a charity.
3. The framers of the constitution saw fit to carve out a separate category for libraries and grounds used exclusively for school purposes. There certainly are private schools and colleges that have libraries that might fall under this exemption.

If the application is for a library exemption, determine:

- Is the library covered under the public property or charitable property exemption provisions of the constitution?
- If not, is the library used for school purposes?
- Are the school purposes the primary and predominant use of the property?
- Is commercial enterprise prohibited or is no part of the library property used with an eye toward profit?
- Are all funds received used for operation and maintenance or for expansion of the library, library services, or for charity?

CHARITY:

1. This exemption is based on the proposition that charitable institutions, to some extent, relieve the state of its obligation to care for its indigent citizens.
2. This exemption is limited to the buildings and grounds and materials used exclusively for public charity. There is no definition provided for the word "materials," and one might wonder if an automobile is to be considered a "material." However if the entity is indeed a charity and the automobile is used primarily in the operation of the charity, best practices would probably dictate the allowance of the exemption.
3. Property used for a commercial purpose is not exempt, even though the proceeds, rents, and profits derived from it are devoted entirely to the operation of the charity.
4. The actual function of the organization, not just its aims and purposes, must be charitable in nature, but the fact that it is charitable, is not sufficient alone to entitle the organization to exemption from taxation. The primary use of the property must be charitable.

5. Although the courts have not defined the phrase "charitable organization," it should be safe to say that it is one which has charity as its primary, if not sole, purpose. Whether the applicant is a charitable organization is a fact question that must be determined on a case-by case basis. From existing court decisions, it appears that an entity's proof of its use of property for charitable purposes weighs in favor of a finding that it is a charitable organization.
6. A building used as the headquarters of a lodge or fraternal order is normally taxable, the use of the building being primarily for the social enjoyment of its members, meetings and office administration. The entity would have the burden of proving that the primary and predominant use of the premises was for charity to the public.
7. To be exempt, the services, facilities, or products of the charity must be open to the public. However, the charity is not required to furnish such services, facilities or products gratuitously to all who seek them. Fees or charges may be required to be paid by those members of the public who can afford to pay them.
8. In the case of hospitals the court has held that a charitable organization's property used as a hospital may be exempt: if it is open to the general public; if no one may be refused services on account of inability to pay; and, if all profits from paying patients go toward maintaining the hospital and extending and enlarging its charity.

If the application is for a charitable exemption, determine?

- Is the owner organization charitable in nature?
- If the charity does not own the property, is the owner letting the charity use the property for free, or leasing or selling it on contract to the charity for only a nominal amount?
- Is commercial enterprise prohibited or is no part of the property used with an eye toward profit?
- Are all funds received used for operation and maintenance or expansion of the charity?
- Are the services or goods available to everyone regardless of their ability to pay?
- Is a charitable use made of the property?
- Is the charitable use also the primary and predominant use of the property?

CONSTITUTIONALITY OF EXEMPTION STATUTES

IN GENERAL:

1. Statutes are constitutional until they are declared unconstitutional by a court of competent jurisdiction. If you choose to ignore a statute on the grounds that it is unconstitutional you should be prepared to defend your position in court. This does not mean that you should blindly follow the statute. If after consulting with your County Attorney you feel strongly that the statute is unconstitutional then you may well choose to turn down the applicant for the exemption. The applicant may then appeal your decision and the stage will be set for a challenge of the statute. More court decisions in this area are needed to give us better guidance in making exemption decisions.
2. All portions of any statute that creates an exemption not found in the constitution, or enlarges an exemption that is found in the constitution, or as those constitutional provisions have been construed by the Supreme Court, are at least constitutionally suspect.
3. The Court has held that the legislature may classify property but does not have the power to designate which properties are exempt or to say categorically that a particular property is used for exempt purpose.

ACA SEC. 26-3-301:

1. Subsection (4) of this section provides that all property belonging exclusively to this state, including property of state agencies, institutions, boards, or commissions, or the United States is exempt. This provision appears to eliminate, on its face, the requirement that any such state property be used for a public purpose. This subsection is therefore constitutionally suspect. In addition, property of the United States is not mentioned in the constitution as being exempt. However, the federal government, being sovereign, enjoys immunity from all state and local taxation and "use for a public purpose" is not a factor.
2. Subsection (5) of this section has been amended by Act 1281 of 2005 to provide that all property owned by the county is exempt. The provision appears to eliminate the requirement that the property be used for a public purpose and therefore is constitutionally suspect. Of course, if all of the property was used for a public purpose it would be exempt and constitutionality would not be an issue.
3. Subsection (7) appears to grant exemption to the property of purely public charities without regard to the use of the property and thus is constitutionally suspect.

4. Subsection (10) of this section purports to exempt all property owned by the Girls' 4-H house, Boys' 4-H house, and the Future Farmers of America houses when the houses are used for the sole purpose of occupancy and use and enjoyment by students thereon and not leased or otherwise used with a view to profit. This subsection declares particular property exempt which appears to have no relation to any exemption contained in the constitution and would therefore probably be held unconstitutional.
5. Subsection (11)(A) of this section provides that all dedicated church property including buildings used for administrative or missional purposes, the land upon which the church buildings are located, all church parsonages, any church educational building operated in connection with the church, including a family life or activity center, a recreation center, a youth center, a church association building, a day care center, a kindergarten, or a private church school shall be exempt. The statute is constitutionally suspect as it purports to designate property as exempt without regard to its use for a constitutional purpose.
6. Subsection (11)(B) of this section is constitutionally suspect in that it would appear to allow more than an incidental use of church property for investment, commercial or business purposes and thus an enlargement upon the constitutional provision as construed by the Court.

ACA 26-3-302:

This statute provides that intangible property is exempt and is constitutional because of wording contained in Amendment 57 to the Constitution.

ACA 26-3-303:

This statute exempts "parsonages owned by churches and used as homes for pastors." The Supreme Court has said that this statute is constitutional as long as the property is used "exclusively for church purposes."

ACA 26-3-304:

This statute exempts textile mills and is probably constitutional under Amendment 12 to the Constitution.

ACA 26-3-305:

This statute exempts from property taxation the property of waterworks associations owned by nonprofit property owner associations. This statute

appears to have no constitutional basis and is therefore constitutionally suspect.

ACA 26-3-306:

This statute exempts the property of certain veterans, their surviving spouses, and their minor dependent children from property tax. This provision appears to have no constitutional basis and the Attorney General has opined that it is therefore constitutionally suspect.

ACA 26-3-308:

This statute is constitutionally suspect in that it provides that all property owned by the State Highway Commission or the State Highway and Transportation Department is public property used exclusively for public purposes and thus not subject to property taxes. This statute appears to conflict with decisions of the Supreme Court that provide that each exemption stands on its own and "use for public purposes" is a fact question to be decided by the court, not the legislature.

ACA 26-26-1207:

This statute provides that where the construction of an eight or more unit residential housing project is financed by the United States Government and is owned by a nonprofit corporation or association for persons 62 years of age and above or the handicapped, it is to be valued on the basis of the equity owned in the project. This statute is constitutionally suspect in that the property that is the subject of the statute is not owned by the federal government, and the statute calls for the property to be taxed on a basis other than 20 percent of market value.

QUESTIONS and ANSWERS

Q. A Housing Authority, formed by the city, owns and operates a low income housing complex as a slum clearing project. Is the property exempt?

A. Yes. There is case law to the effect that the Housing Authority is an arm of the city and uses the property for public purpose.

Q. Is the building owned and occupied by the local Chamber of Commerce exempt?

A. Probably not. There is nothing in the question that indicates that the owner, property, or use, fits any of the six constitutional exemptions or is federally owned.

Q. Is an apartment complex for the elderly, which is owned and operated by a private nonprofit corporation, exempt? The tenants are charged rent which is paid by the tenants or a governmental agency. The owner says that their bylaws state that they may not turn anyone away because they cannot pay. However, there is no evidence that they have ever allowed any tenants to live there without their rent being paid by someone. There is no evidence that they have conducted any charitable activities except that the owner has given some free diapers to tenants who were in need. The complex has never shown a profit.

A. Probably not. The organization must be charitable in nature and the giving away of some services probably does not meet the exclusivity test for a charitable exemption. The fact that it is a nonprofit corporation is irrelevant if it conducts no charity. It is not owned by a governmental agency, and even if it was determined that the owner was using the property for a public purpose it would not qualify, because to receive a public use exemption the property would have to be owned by a public (governmental) entity.

Q. The local college owns a large farm that was willed to them by a wealthy alumnus. The college leases the farm out and uses the proceeds to fund scholarships for needy students. Is the property exempt?

A. Probably not. The primary use is renting out property with an eye toward profit which means the college is in competition with other farm land owners. True, the secondary use is charitable but the courts have been clear that the assessor must look to the primary use.

Q. Are the local Masonic Lodges, American Legion buildings, or other fraternal order meeting places, which are owned and operated by the organizations, exempt?

A. Probably not, unless the owners can prove that the properties are used exclusively for charity. More than likely they are used predominantly for meetings and social functions for the members and the only charitable uses are incidental.

Q. If the county becomes the owner of a parcel of land that they intend to use as an industrial park but have done nothing with it at the present time, is it exempt?

A. Probably not. The Supreme Court has said that contemplated use is not sufficient. The Legislature has recently adopted Act. 1281 of 2005 which provides that all property owned by the county is exempt. However this Act is constitutionally suspect because it may be found to have eliminated the requirement of use for a public purpose.

Q. Where a building and land is owned by an industrial development agency of the City and leases it to a private corporation which uses it to manufacture products for sale, is the property exempt?

A. No. The courts have held that the property is not being used for a public purpose even though the city claimed that helping provide jobs is a public purpose.

Q. Does a day care center qualify for an exemption as a school?

A. No. As long as any school type activities conducted are incidental. Whether such activities are incidental or a part of a significant planned learning curriculum with reasonably qualified teachers is a judgment call you must make.

Q. A local Catholic Diocese owns and operates a residential facility free of charge for retired priests. Is it exempt?

A. Probably not. To be exempt as a charity the facilities would have to be open to the public. According to case law, to be exempt as a church the facilities would have to be used in some way as a church. Even if the Priests were not retired there would have to be some church activities on the premises.

Q. A local industry was financed by Act 9 bonds that have recently been paid off. Does the property continue to be exempt?

A. Maybe. The courts have held that the pay off of the bonds does not automatically trigger an end of the public use and thus the exemption. In some cases the city has passed an ordinance saying that the continued operation of the plant provides jobs and that this is important to the health and welfare of the community. The court found that the exemption should continue.

Q. A man and his wife own a building located on a city block and lease it to a church group at the prevailing market rate. The church group conducts religious services on the property. Is the property exempt?

A. Probably not. Even though ownership is not required, it still can be said that the property is being primarily used with a "view toward profit" which is prohibited by the statute. The result would probably be the same if the property were sold to the church group on a contract for sale, for the same reason.

NOTE: THESE GUIDELINES ARE ADVISORY ONLY

UNLESS OTHERWISE AUTHORIZED BY LAW, ONLY THE ATTORNEY GENERAL OF THE STATE OF ARKANSAS HAS THE AUTHORITY TO GIVE LEGAL OPINIONS FOR AN AGENCY OF THE STATE. THE ASSESSMENT COORDINATION DEPARTMENT HAS NOT BEEN SO AUTHORIZED.

PROPERTY EXEMPTION APPLICATION

FOR OFFICE USE ONLY
 APPROVED DENIED

According to the Constitution of the State of Arkansas Article 16 Section 5B, the following property shall be exempt from taxation:

Public property used *exclusively* for public purposes

Churches, used as such

Cemeteries, used *exclusively* as such

School buildings and apparatus

Libraries and grounds used *exclusively* for school purposes

Buildings, grounds and materials used *exclusively* for public charity

Please check one of the following:

- Real Estate
 Business Personal Property

Please PRINT legibly and fill out ENTIRE FORM completely. Incomplete applications will be rejected A separate application is required for each exemption request.

Request Organization:

Full Name

Address

City

State

Zip

Contact Person

Phone

Email Address

Fax

Full physical address of the ACTUAL PROPERTY being applied for Exemption Status:

Address

City

State

Zip

Note: Exemption depends upon the *USE* of the property, not the non-profit status or 501(c)(3) status of the organization.
Your property must be used for one of the following categories.

Please check one of the following:

- Church Cemetery School Building and Apparatus
 Library and Grounds Building, Grounds and Materials used EXCLUSIVELY for PUBLIC CHARITY
 Public Property used as such

Please state your reason for requesting an exemption (use back if more space is needed):

Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief, the statements and information in this application are true and correct, and are made for the purpose of exempting the property here described from taxation. APPLICATION WILL BE REJECTED IF AFFIRMATION IS NOT SIGNED.

Signature of Owner, Responsible Officer or Agent

Title

Phone

Additional space for reason for exemption: _____

Describe in detail the present uses of the property _____

Describe in detail any uses of the described property which produce income, such as rent or fees for use, admission charges, sale or lease of space, items, or services, etc.

Attach to this application any brochures describing activities which occur on the described property, and any other pertinent information which may assist in determining whether the property qualifies for exemption from ad valorem taxation.

For Official Use Only

The above described property is classified as:

_____ Exempt from ad valorem taxation.

_____ Subject to ad valorem taxation.

Date _____

_____ County Assessor