

Board Talking Points: Real Estate Tax Exemption for Nonprofit Organizations

Nonprofit organizations in New York State are eligible to receive exemption from New York State real estate taxes for property the organization owns and uses for exempt purposes. Nonprofits sometimes do not apply for real property tax exemption because they are unaware of the exemption or they lack the time and resources to apply. Lawyers Alliance is here to help you understand, apply for and retain your real estate tax exemption.

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Below are answers to the most commonly asked questions regarding an organization's eligibility to receive the exemption and the procedures to follow to obtain and maintain the exemption.

What types of organizations are entitled to receive a real estate tax exemption?

What other criteria are considered when obtaining the exemption?

How does a nonprofit obtain a real estate tax exemption?

When is the real estate tax exemption effective?

How does a nonprofit retain its real estate tax exemption?

If a nonprofit leases space from a for-profit landlord does the nonprofit have to pay real estate taxes?

Answers

1. What types of organizations are entitled to receive a real estate tax exemption?

Nonprofit organizations whose purposes and activities are "exclusively . . . religious, charitable, hospital, educational, or moral or mental improvement of men, women or children...." are entitled to real property tax exemption under Section 420-a of the RPTL for real property owned and operated by the organization and used for its exempt purposes. These organizations may also be eligible for exemption from water and sewer charges.

Other nonprofit organizations such as housing projects, cemeteries, patriotic organizations or parsonages are entitled to real estate tax exemption under other provisions of New York State law.

2. What other criteria are considered when obtaining the real estate tax exemption?

There are considerations, other than the organization's purpose, to be taken into account when determining whether a nonprofit is eligible to receive real estate tax exemption in addition to the organization's purpose(s). Those considerations are as follows:

First, the real property must be *owned* by a nonprofit and the space must be used exclusively for carrying out its purposes.

Second, an organization's officer, member or employee cannot receive any profit from the organization's operations other than reasonable compensation for services rendered to further the exempt organization's purposes.

Third, the property must be "used exclusively" to further the organization's purposes. If any part of the property is not used exclusively for exempt purposes, then that portion of the property shall be subject to taxation and only the remaining portion shall be exempt. If a nonprofit organization leases space to a third party tenant, then that portion of the property will be tax-exempt *only if* (i) the tenant's purposes fall under those set forth in Section 420-a of the RPTL and (ii) the rent paid by the lessee does not exceed the amount of the carrying charges, maintenance and depreciation of the property or the portion thereof. If a nonprofit decides to rent property or a portion of their space to a business entity or individual, it is prudent to either (i) include a "pass-along" clause regarding the real property taxes owed or (ii) ensure that the tenant's rent will cover the real estate taxes that may be assessed. Additionally, a nonprofit that leases space it owns to a third party tenant may be responsible for the payment of unrelated business income tax.

Fourth, the property must be "devoted to such exempt purposes." If the nonprofit owner (or its nonprofit lessee) uses all or part of the property in a manner that does not further the relevant organization's exempt purposes, then the property (or a portion thereof) will not qualify for the exemption. For example, if a charitable organization owns a three-story building and rents out the first floor for commercial or business use (e.g. a restaurant owned by a business entity), then that portion of the property used for commercial or business purposes will be ineligible for tax exemption.

Fifth, the property must be in "actual use." A nonprofit organization that owns a vacant building or a vacant lot is only eligible for tax exemption under certain circumstances. However, a property owner may be entitled to an exemption if it proves that the construction of such buildings or improvements is in progress or is contemplated by the organization in good faith. An owner must provide evidence of plans to develop the parcel (e.g. board minutes approving development of the property, contracts for the development of the property, blueprints, bank accounts, and fundraising campaigns).

3. How does an organization obtain a real estate tax exemption?

In order to receive the exemption, a nonprofit organization must file an application. The exemption is not granted automatically. The website address for information on the exemption and links to the application and renewal forms is:
http://www.nyc.gov/html/dof/html/property/property_tax_reduc_non_profit.shtml

To apply for a tax exemption, you must submit an “Exemption from Real Estate Taxation for Property Owned by Nonprofit Organizations Application” with the New York City Department of Finance and provide information and supporting documentation relating to the organization’s (i) ownership of the property, (ii) purposes and organizational documents, (iii) federal income tax status and (iv) use of the property. Lawyers Alliance is available to help you prepare and file the application

4. When is the real estate tax exemption effective?

Provided that an application for exemption is filed and the exemption becomes effective, the Commissioner of Finance may establish it retroactively to the date the property was purchased.

5. How does an organization maintain the real estate tax exemption?

After a nonprofit organization is granted a real estate tax exemption for its property, it must file an annual report with the NYC Department of Finance. The form, entitled the “Renewal Form Not-for-Profit Full Exemption” must be filed with the New York Department of Finance. The form is intended to update the Department of Finance on the property's use. There are different forms for properties receiving partial exemption and for properties receiving an exemption based on contemplated use. In the event there is any change in the use of the property that impacts the exemption between filings, the taxpayer is obligated to notify the Department of Finance in writing at the following address:

NYC Department of Finance
Exemptions Unit - NFP (CU)
PO Box 3120
Church Street Station
New York, NY 10008-3120

Lawyers Alliance can help you complete and file the renewal forms or prepare correspondence to the Department of Finance regarding a change in use.

6. If a nonprofit leases space from a for-profit landlord, does the nonprofit have to pay real estate taxes?

If a nonprofit rents space in a building (or rents an entire building) from a for-profit entity, then the property will be subject to real estate taxes. The landlord is not eligible for an exemption because it leases space to a nonprofit. The rent paid by the nonprofit will either include the real estate tax payment or the nonprofit will receive a separate bill from the landlord for the real estate tax payment. Nonprofits should review their leases since it is very likely that landlords will be entitled to pass along the recently passed increases in real estate taxes to their tenants.