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## Ask DLS

This month's Ask DLS features frequently asked questions regarding the property tax exemptions available to charitable organizations. Please let us know if you have other areas of interest or send a question to [cityandtown@dor.state.ma.us](mailto:cityandtown@dor.state.ma.us). We would like to hear from you.

### **Does a charitable organization qualify for a property tax exemption?**

The following property of a charitable organization is exempt from local property taxes:

1. All personal property regardless of use.
2. Real property:
  - A.) Owned by, or held in trust for, the charitable organization and occupied by it, or another charitable organization, for charitable purposes;
  - B.) Purchased by the charitable organization with the intention of future relocation and charitable use for no more than two years from the acquisition; or
  - C.) Upon local acceptance, owned by, or held in trust for, a charitable organization for the purpose of creating community housing, as defined in [MGL c. 44B, sec. 2](#), if it was purchased from an entity that acquired it by a mortgage foreclosure sale, until it is rented or sold, but for not more than seven years after the purchase. [MGL c. 59, sec. 5, Clause 3](#)

### **What is the qualification date for a charitable organization property tax exemption?**

Exempt status is determined as of July 1st, 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. MGL c. 59, sec. 5  
It is not entitled to a pro-rata exemption for property acquired after July 1st and should ensure that any taxes for that fiscal year are addressed when closing on the acquisition.

### **What is a charitable organization?**

A charitable organization for property tax exemption purposes is a corporation or trust established for literary, benevolent, charitable, or temperance purposes. A limited liability company (LLC), disregarded entity or other non-corporate entity is not eligible for exemption as a charitable organization under [MGL c. 59, sec. 5, Clause 3](#).

The actual work done by the organization must be consistent with its stated charitable purposes and must benefit a sufficiently large or indefinite class such that society at large benefits, i.e., it must operate as a public charity. [Harvard Community Health Plan, Inc. v. Board of Assessors of Cambridge](#), 384 Mass. 536 (1981) and [Cummington School of the Arts, Inc. v. Board of Assessors of Cummington](#), 373 Mass. 597 (1977). Its status as a non-profit corporation under

[MGL. c. 180](#) or exemption from federal taxes under sec. 501(c)(3) of the Internal Revenue Code is, without more, insufficient to satisfy this requirement. [Western Mass. Lifecare Corp. v. Assessors of Springfield, 434 Mass. 96, 102 \(2001\)](#)

In addition, the organization cannot distribute its income or assets to officers, directors or shareholders, or use them for non-charitable purposes while it operates, i.e., there can be no private inurement. If the organization dissolves, its assets must be distributed to another charity.

### **What purposes are charitable for property tax exemption purposes under [MGL c. 59, sec. 5, Clause 3?](#)**

"A charity...may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government." [Boston Symphony Orchestra, Inc. v. Assessors of Boston, 294 Mass. 248, 254-255 \(1936\)](#), quoting [Jackson v. Phillips, 96 Mass. 539 \(1867\)](#). It includes more than almsgiving and assistance to the needy. It includes a wider field of activities for the improvement of man. [Massachusetts Medical Society v. Assessors of Boston, 340 Mass. 327, 331 \(1960\)](#).

Traditional charitable purposes include relief for low-income individuals, medical care, religious works, natural resource conservation, education, and public works. Less traditional charitable purposes include advancement of arts and sciences, promotion of culture, and providing an essential function for a charity. The further away an organization's purposes are from the traditional understanding of charitable activities, the more strictly it is held to the requirement that its operations primarily benefit a sufficiently large and indefinite class of the public.

An "auxiliary" organization created to raise funds for a related charitable organization or to reduce the overall cost of operation of that related charitable organization by performing a necessary function for it, may qualify as a public charity for exemption purposes. [Children's Hospital Medical Center v. Board of Assessors of Boston, 353 Mass. 35 \(1967\)](#).

### **Can an organization that does charitable work as an incidental or secondary aspect of its mission qualify for a charitable exemption?**

No, the dominant purpose of the organization must come within the definition of "charitable." Providing commendable, laudable and socially useful services is not sufficient. [Western Massachusetts Lifecare Corp. v. Board of Assessors of Springfield, 434 Mass. 96 \(2001\)](#); [Jewish Geriatric Services Inc. v. Board of Assessors of Longmeadow, 61 Mass. App. Ct. 73 \(2004\)](#). In addition, if the organization is created and operated primarily for the mutual improvement of its members, or for social and recreational purposes, it is not a public charity for exemption purposes, even if there is some incidental benefit to the public. [Massachusetts Medical Society v. Assessors of Boston, 340 Mass. 327 \(1960\)](#) and [Boston v. Boston Pilots' Relief Society, 311 Mass. 232 \(1942\)](#). The dominant purpose of the work governs.

### **Can organizations that do not serve a large and indefinite class of the public (e.g., due to high fees or user costs or limited membership) be exempt under [MGL c. 59, sec. 5, Clause 3?](#)**

An organization with purposes and methods close to the traditional understanding of charitable activity is less likely to forfeit charitable status because it serves a relatively small number of beneficiaries.

There is no precise number of persons who must be served, and at any given moment a small number may be served, but generally membership in the class served must be fluid and must be drawn from a large segment of society or all walks of life. [Western Massachusetts Lifecare Corp. v. Board of Assessors of Springfield](#), 434 Mass. 96 (2001). The benefit does not have to be to the people in the community granting the exemption, but to the public generally. [Board of Assessors of City of Quincy v. Cunningham Foundation](#), 305 Mass. 411 (1940).

A class may be considered limited if it is stable and consists of the same members for a relatively extended period of time, especially where the stability is a result of a membership policy of the organization.

### **Under what circumstances might private inurement occur for a Chapter 180 non-profit corporation?**

A non-profit corporation may pay reasonable salaries for services rendered. However, if payment of salaries or provision of fringe benefits to officers or professional employees operates merely as a device to benefit the officers or distribute profits, a non-profit corporation claiming charitable status would be ineligible for the exemption. [Fisher School v. Assessors of Boston](#), 325 Mass. 529 (1950); [Sturdy Memorial Foundation, Inc. Board of Assessors of North Attleborough](#), 47 Mass. App. Ct. 519 (1999); ([on remand](#)), 60 Mass. App. Ct. 573 (2004).

### **What information is relevant in determining if an organization is a charitable organization?**

Whether an organization is charitable under [MGL c. 59, sec. 5, Clause 3](#) depends upon the specific facts. Assessors may require whatever additional information is reasonably relevant to determining whether the organization's purposes and activities are charitable.

Relevant characteristics include the entity's form of organization, stated purposes, actual operation, persons served and how its income or revenue is spent or distributed. Generally, the purposes of an organization are set forth in its articles of organization and by-laws. A description of its activities and information about its officers and employees can also be derived from the information contained in its public charity filing ([Form PC](#)) with the Office of the Attorney General. Generally, for all charitable exemption applications, such information may include, but is not limited to:

- Articles of incorporation, charter or declaration of trust,
- Organization by-laws,
- Identification of officers, directors or trustees,
- Description of charitable activities,
- Description of the use of the property, including use by all lessees or other occupants,
- Information about compensation arrangements for officers and key employees, and

- Whether the organization has a federal tax exemption under sec. 501(c)(3) of the Internal Revenue Code.

**Whose obligation is it to demonstrate qualification for a charitable exemption under [MGL c. 59, sec. 5, Clause 3](#)?**

The burden is on the applicant. "Exemption statutes are strictly construed, and the burden lies with the party seeking an exemption to demonstrate that it qualifies according to the express terms or the necessary implication of a statute providing the exemption." [New England Forestry Foundation, Inc. v. Board of Assessors of Hawley](#), 468 Mass. 138, 148 (2014).