The purpose of this memorandum is to provide a comprehensive overview of the statutes and judicial opinions that will govern a tax payer’s claim that its real property is exempt from taxation because that property is being used exclusively for charitable purposes. To the extent possible, our analysis will be directed to the use of real property as a “group home” by a charitable entity. It is important to understand, however, that the Connecticut Supreme Court has identified the issue of tax exemption based on charitable use as being both complicated and intensely fact driven. Thus, this memorandum should not be considered as an opinion of the authors as to whether any particular situation will justify an exemption from taxation under Connecticut law.

A. Background Regarding Tax Exemptions

Under Connecticut law, no one is entitled to a tax exemption. Rather, the entity or individual must apply for a tax exemption, and if granted, the exemption request must be continually renewed.

When the assessor or board of assessors is determining whether to grant a tax exemption, all provisions of the statute are “construed strictly against the party claiming the exemption.” The tax payer bears the burden of proving entitlement to any claimed exemption. See St. Joseph’s Living Center, Inc. v. Town of Windham, 290 Conn. 695, 707 (2009) (internal citations omitted.) “Exemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others…. It is also true, however, that such strict construction neither requires nor permits the contravention of the true intent and purpose of the statute as expressed in the language used…” Id.

B. Statutes Governing Tax Exemption For Property Used For Charitable Purposes

Property can be exempt from taxation for many reasons, but those relevant to this memorandum are included in Conn. Gen. Stat. § 12-81(7) and Conn. Gen. Stat. § 12-88. Section 12-81(7) has two parts, both of which impose requirements upon the claimed property and/or the organization seeking exemption.

Generally, all property in Connecticut is subject to taxation unless specifically excepted by statute. Conn. Gen. Stat. § 12-81 provides exceptions. It states, “the following-described property shall be exempt from taxation.” Subsection 7, applicable to this memorandum,
provides that property of, or held in trust by, a corporation organized exclusively for “scientific, educational, literary, historical, charitable or open space land preservation purposes” shall be exempt from taxation. The specific requirements that must be satisfied in order to qualify for an exemption under this provision are expressed in two subsections, (A) and (B).

Subsection (A) requires that the property must be of, or held in trust for, a corporation organized “exclusively for scientific, educational, literary, historical, or charitable purposes” or for two or more such purposes and used “exclusively for carrying out one or more of such purposes”. Additionally, the officers, members, and employees of the corporation may not receive, presently or in the future, any “pecuniary profit from the operations” of the exempted organization except those that are “reasonable compensation for services in effecting one or more” of the purposes described above.

Further, subsection (B) of Conn. Gen. Stat. § 12-81(7) states that any housing subsidized by the federal, state or local government and housing for low or moderate income people will not qualify as a charitable purpose under the statute. However, “housing” as used in subsection (B) does not include the following: temporary housing belonging to any corporation which is organized exclusively for a charitable purpose and which is used primarily for: 1) An orphanage; 2) a drug and alcohol treatment or rehabilitation facility; 3) housing for those who are homeless, mentally ill, victims of domestic violence or who have a physical/intellectual disability; 4) housing for ex-offenders or other people participating in a program sponsored by the Department of Correction or Judicial Branch; and 5) short-term housing operated by a charitable organization where the average length of stay is less than six months. The operation of the above enumerated types of housing, where exclusive, are not excluded from qualifying as a charitable purpose even if rental payments are received.

C. Claiming Apportionment

If only a part of a property is used exclusively for charitable purposes, the tax payer can still claim exemption by apportionment.

Conn. Gen. Stat. § 12-88 provides a mechanism for apportioning the charitable use exemption between a part of a property used for charitable purposes and a part used for other non-charitable purposes. It specifically provides “if a portion only of any lot or building belonging to, or held in trust for, any such organization is used exclusively for carrying out one or more of such purposes, such lot or building shall be so exempt only to the extent of the portion so used.

1 The meaning of “property of” as used in the statute is not entirely clear but it is notable that the legislature intentionally did not use the term “property owned by.” Two cases are instructive regarding the meaning of “property of”: Bradford Found. v. Town of Avon, 2001 WL 1265308 (Conn. Super. Oct. 3, 2001) held that “an owner of property who leases it to an unrelated charitable organization is not entitled to exemption under § 12-81(7).” However, there may be cases where an exemption is granted because the owning/leasing entities are closely related. See C.C.C. Real Estate, Inc. v. City of Waterbury, 2007 WL 4305583, *5 (Conn. Super. Nov. 15, 2007) (granting exemption where the entities were distinct but “as a practical matter [were] very closely related subsidiaries of the same holding company and operate jointly towards a common purpose: that of operating a nonprofit counseling center.” These two cases emphasize the intensely fact-bound nature of determining whether an exemption will be granted.
and the remaining portion shall be subject to taxation.” Thus, a single parcel of property can be deemed only partially exempt from taxation, based on the actual use of the claimed property.

D. Procedural Requirements For Claiming A Charitable Use Exemption

Procedurally, the party claiming exemption must file a statement, once every four years, on or before the first day of November with the assessor or board of assessors for the town where the property claimed to be exempt is located. The claimant should contact the assessor for the appropriate form. See Conn. Gen. Stat. § 12-81(7)(A)(ii).

If an organization claiming exemption fails to file the requisite form within the required time, the assessor may grant an extension of time not exceeding sixty days upon receipt of proof of substantial compliance with the requirements of Conn. Gen. Stat. § 12-81, and where the organization pays a $35 late-filing fee. See Conn. Gen. Stat. § 12-87(a).

E. Judicial Interpretation Of Statutory Requirements

By way of introduction, a parcel of real property shall be exempt from taxation based on its use for charitable purposes if it meets four criteria, which are explained in greater detail below. This simple bullet list should be used as the framework for thinking about whether a specific corporation and its property may qualify for exemption.

The property must:

✓ be property of, or held in trust for, a corporation organized exclusively for a charitable purpose;

✓ be used exclusively for carrying out such charitable purposes;

○ the restriction against tax exemption for real property from which rents, profits, or income are derived is only relevant if the property is not being used for an exempt purpose because of the absence of suitable buildings and improvements, and construction of such buildings or improvements is in progress.

✓ not be housing subsidized by the government; and

✓ not constitute low or moderate income housing.

1. What Qualifies As A Corporation Organized Exclusively For A Charitable Purpose?

The first statutory requirement for tax-exempt status under §§ 12-81(7)(A) and 12-88 is that the property “must belong to or be held in trust for a corporation organized exclusively for charitable purposes....” St. Joseph’s Living Center, Inc., 290 Conn. at 712-13. In making this determination, the Court will consider three factors: the first, and most important, factor requires an examination of the corporate entity itself to determine if it is organized to carry out an
exclusively charitable purpose; second, and considered to a lesser extent, is whether an entity claiming charitable status for tax exemption purposes is self-supporting; and third, whether an organization’s activities serve to relieve a burden on the state.

Each factor is explained below.

(a) The Corporation Must Be Organized Exclusively for Charitable Purposes

To determine whether a corporation is organized exclusively for a charitable purpose is a twofold examination which considers the entity’s foundational documents and then considers whether the purpose described in those documents is truly charitable. Id. at 714-15. Whether a taxpayer is a charitable organization “depends upon the language of its charter or articles of association, constitution and by-laws, and upon the objects which it serves and the method of its administration… or, as otherwise expressed, upon the declared purposes and the actual work performed.” St. Joseph’s Living Center, Inc., 290 Conn. at 714-15 (internal citations omitted.) Once the corporation’s purpose has been determined from the face of the documents, the Court must then determine whether the stated purpose is charitable. Id. at 715.

Previously, the definition of a charitable purpose was limited to activities that served the destitute and poor. However, the definition is no longer as narrow as it once was. Today, charitable purposes include “activities… which are intended to improve the physical, mental and moral condition of the recipients and make it less likely that they will become burdens on society and more likely that they will become useful citizens.” Id. at 715-16. “Charity embraces anything that tends to promote the well-doing and the well-being of social man.” Id. A corporation is charitable when “its property and funds are devoted to such purposes as would support the creation of a valid charitable trust.” Id. at 716.

Cases deciding whether a corporation has a charitable purpose are instructive. In Waterbury First Church Housing Inc. v. Brown, 170 Conn. 556 (1976), the corporation’s purpose was to “provide rental housing and related facilities and services specifically designed to meet the physical, social, and psychological needs of the aged, and contribute to their health, security, happiness and usefulness.” Id. at 561. The Court held that the purpose was charitable because the private low-rental housing for elderly persons was an “effort to make it less likely that they would become burdens on society….” Id.

Likewise, in St. Joseph’s, the Court held that although it was unclear whether the organization’s original purpose was charitable based upon the corporate documents (the original certificate of incorporation was not part of the record), it was clear that the organization’s mission during the claimed years was “most certainly charitable.” St. Joseph’s Living Center, Inc., 290 Conn. at 718. The certificate of incorporation for those years stated the Center’s purpose was to “operate exclusively for charitable, educational and scientific purposes, all for the public welfare… [and] to develop, operate and maintain a chronic and convalescent care nursing home… and operate adult day care and other related programs….” Id. at 715. The Court held, “the provision of long-term health care and spiritual support to the elderly in a nonprofit, nondiscriminatory manner and without regard to individual financial circumstances is a charitable purpose.” Id.
Those cases are contrasted against United Church of Christ v. West Hartford, 206 Conn. 711 (1988), in which the Court found that the organization did not meet the charitable purpose requirement because it “provide[d] comfortable housing [only] to those seniors who could afford the substantial fees and who were healthy enough to live without assistance.” Id. at 720. In this case, the property was not exempt from taxes because each resident was required to pay an up-front fee of $73,000 in order to move into their unit and further paid a monthly maintenance fee of $350. Id. The resident was only able to stay in the unit as long they paid the fee and could live without assistance. Id.

As can be gleaned from the cases above, both the charitable purpose of the organization and the organization’s activities are examined to determine whether this factor is met. It is a fact intense question and the group home organization should be prepared to show both a charitable purpose in its foundational documents, if possible, but also evidence of the group home’s day to day activities of providing housing and related educational, psychological, social, crime diversion and/or work training services, if possible.

(b) The Organization Must Not Be Self-Supporting

Simply stated, in order to serve a charitable purpose, the organization must not be completely self-supporting. St. Joseph’s Living Center, Inc., 290 Conn. at 721. While case law leaves this requirement a bit ambiguous, generally Courts have concluded that “entirely self-supporting organizations are not charitable in nature.” Id. at 721. This factor is considered to a lesser extent than the primary statutory requirement that the corporation serve a charitable purpose.

Three cases are instructive. In Common Fund v. Fairfield, 228 Conn. 375, 383 (1994) the Court held that a nonprofit corporation that managed investment funds, for a fee, solely for tax exempt schools, colleges and universities, was not exempt from property taxes under § 12-81(7). The chief executive officer of Common Fund received an annual salary of $500,000.00, there was no evidence that the plaintiff received any charitable contributions, and the corporation appeared to support itself entirely on the investment fees that it charged to its institutional clients. Id. at 383.

A second case, Waterbury First Church Housing, Inc. v. Brown, 170 Conn. 556 (1976), evaluated the claim of a nonprofit corporation that provided housing to elders and argued that it should be exempt from taxation because it was a charitable organization. The Court held that because the corporation did not receive any gifts from private sources, and the only funds it had were from rental income from its tenants and state subsidies, the corporation did not qualify for exemption. The Court stated it was “specifically concerned” that it could not find “sufficient private intervention and private effort to earn charitable status…. The plaintiff’s enterprise to provide needed low-cost housing to a certain segment of the population with the assistance of the federal government was intended to be self-supporting, without any indication that gifts or charity was involved.” Id. at 564-65.

Similarly, in United Church of Christ v. West Hartford, 206 Conn. 711 (1988), the cost of constructing and maintaining the housing project was to be borne almost exclusively by the
prospective residents and the plaintiff failed to prove that the “project was not then self-supporting. The plaintiff corporation was under no legal obligation to provide any services that would impose any significant financial burden on it.” Id. at 721.

The common thread in the cases described above is that from the outset they were intended to be self-supporting. In every case in Connecticut where the corporation was determined to not meet the requirement, it was noted that there was no reliance on, or expectation of, private charitable support. Thus, to constitute a charitable organization, “the entity must be structured in such a way that it is intended to function with the aid of at least some private charitable support and must, in fact, seek out and receive such support.” St. Joseph’s Living Center, Inc., 290 Conn. at 723-24. However, “it is not indispensable that the institution be maintained by charity…” Id. at 724.

In St. Joseph’s Living Center, Inc., the Court found that the Center was not self-supporting because it received substantial individual contributions (ranging from $18,584 to $56,563), significant financial assistance from the diocese in the form of a reduction in the cost of health insurance for its employees, and significant in-kind contributions from volunteers to the Center. Id. at 725.

The Court in St. Joseph’s Living Center, Inc., also specifically held that an organization does not need to operate at a loss in order to qualify as a charitable organization. Rather, the Court will examine the excess revenue, if any, to see if its use comports with the charitable purpose. The Court held, “when the statute is read in its entirety it makes clear that the restriction relating to rents, profits or income, is only relevant if the property is not being used for a charitable or other exempt purpose by reason of the absence of suitable buildings and improvements thereon, if the construction of such buildings or improvements is in progress.” Id. at 729.

For group homes to receive tax exemption, the ability to demonstrate that funding is received from sources other than the state and the residents, if applicable, would be helpful in showing the group home is not self-supporting.

(c) The Organization Must Relieve a State Burden

To satisfy this requirement, the corporation must demonstrate that it gives “something to the state in return for the privilege, either by relieving it of a financial burden or by pursuing a publicly mandated moral obligation.” Id. at 730. However, the “mere fact that the state is not completely relieved of any obligation, and may even partially subsidize the activity, does not necessarily defeat a claim for tax exemption.” Id. at 731. In St. Joseph’s the Court stated, “exemptions are made, and can be made lawfully, only in recognition of a public service performed by the beneficiary of the exemption. They are not bestowed… as a matter of grace… they are granted in aid of the accomplishment of a public benefit and for the advancement of the public interest.”

The St. Joseph’s Court found that the Center relieved a state burden because the reimbursement it received under Medicaid did not “fully compensate the Center for actual patient care cost… [and thus], relieves the state of having to shoulder the entire financial burden
Memorandum
Re: Group Home Property Tax Exemption Research

of caring for the indigent elderly.” Id. at 732. Additionally, the Court favorably considered that the Center was prohibited from discriminating on the basis of a patient’s ability to pay. Id. This was important to the Court because it meant that the Center could not “predict with any certainty how large a gap in funding may exist for any given period.” Id. at 732-33. The Court additionally stated that “as long as the corporation is organized and operated for the public welfare without profit to itself or any individual…the mere fact that some patients pay for part or all of their care does not destroy its charitable character.” Id. at 732. Thus, the Court concluded that the “receipt of taxpayer funded government assistance alone” was irrelevant to the question of whether the Center relieved a burden that would otherwise be borne by the state. Id. at 735-36.

In fact, Connecticut courts have never held that “accepting payment or charging a fee, without more, alters the character of a charitable or otherwise tax-exempt organization.” Id. at 736.

With regard to charitably operated group homes, this factor would seem easily met by demonstrating that the people living in the group homes reside there rather than residing in hospitals, state run facilities, jails/prisons, homeless shelters, etc. thereby relieving a state burden.

Summary: There are three elements relevant to the analysis of whether an organization has a charitable purpose. The first, and most important, is whether the organization is organized exclusively for a charitable purpose. This determination will be based primarily upon the corporation’s formal organizational documents including its charter and bylaws. A broad interpretation of the meaning of the term “charitable” will apply. The other two factors, will further guide the Court, but play a less significant role. They include whether the organization is entirely self-supporting and whether the organization relieves a burden on society. The Court will consider outside cash received as well as in-kind donations such as volunteer services when determining how an organization is supported. To determine whether a state burden is relieved, the Court will focus on whether a valuable benefit is provided to the taxpayers of the state. The receipt of state funding will not defeat this requirement.

2. The Property Must Be Exclusively Used for Carrying Out A Charitable Purpose

The second step in an analysis under § 12-81(7), is whether the real property at issue is “used exclusively for carrying out [the corporate entity’s] charitable purposes….” First, the party seeking exemption must understand the meaning of the term “used exclusively.” Then, the property’s use must be considered to determine whether the property is used exclusively for a charitable purpose and if not, whether apportionment might apply to still exempt part of the property from taxation. This determination is an intensely fact-bound inquiry.

In order to satisfy the exclusivity requirement, “an institution must be exclusively charitable, not only for the purposes for which it is formed and to which its property is dedicated, but also in the manner and means it adopts for the accomplishment of those purposes.” St. Joseph’s Living Center, Inc., 290 Conn. at 742. The exclusive use requirement must be strictly construed as to “require a charitable organization seeking the benefit of a property tax
exemption to use its property in such a manner that its activities are entirely dedicated to serving its stated charitable purpose.”  *Id.* at 745.  This does not mean that a non-charitable use will defeat the tax exemption.  *Id.* However, the proponent must show that all such uses are “necessary for” the accomplishment of the charitable purpose or are *merely incidental* to such a purpose.  *Id.* In deciding whether a property use is exclusively charitable, the Court will consider the “overall nature of the institution, as opposed to its specific activities…”  *Id.* at 746. The analysis must consider the “manner and means employed in pursuit of the charitable goal within the specific facts and circumstances of each case.”  *Id.*

An examination of Connecticut case law on this issue is helpful in understanding whether a property’s use meets this requirement.

In *Hartford Hospital v. Hartford*, 160 Conn. 370, 371-72 (1971), the Court reviewed a nonprofit hospital’s claim that an apartment house it owned, which was located on its property adjacent to patient care buildings, was tax-exempt under § 12-81(16) and 12-88. The city claimed it was subject to taxation because it housed the hospital’s staff who paid rent to the hospital and thus was not used exclusively for hospital purposes.  *Id.* at 377.  Rather than consider who lived in the apartment and whether rent was paid, the Court’s determination focused on “whether the use of the apartment house was exclusively for hospital purposes or some other purpose.”  *Id.* Having framed the analysis in this manner, the Court determined the apartment house was entitled to exemption because “it was necessary for the hospital to provide housing for a large number of its house staff in close proximity to the hospital… in order to perform its services as a hospital.”  *Id.*

*Hartford Hospital* thus stands for the proposition that the “exclusively used” test encompasses those activities that are “necessary for” the primary, tax-exempt purpose.  *Id.* The *St. Joseph’s* court went on to state that it interpreted *Hartford Hospital* to mean that § 12-81(7) anticipates that peripheral activities are “indispensable to the accomplishment of the permissible tax-exempt purpose but nevertheless are outside the strict scope of that purpose.”

The Court’s decision in *H.O.R.S.E. of Connecticut, Inc. v. Washington*, 258 Conn. 553, 553 (2001), is also instructive – although the ultimate outcome is unknown. In *H.O.R.S.E.*, the organization seeking tax exemption was dedicated to the “care of all abused, neglected, unwanted and lost domestic hoofed animals” and to provide related education and training to employees, members, officers and the community as a whole.  *Id.* at 556. The plaintiff used part of the property to house and rehabilitate abused, neglected or abandoned animals.  *Id.* The tax assessor denied the exemption and the primary issue on appeal was whether the property was used exclusively for charitable purposes within the meaning of the statute because many “healthy, commercially-boarded houses” were maintained on the plaintiff’s property alongside those that needed special care or rehabilitation.  *Id.* at 555.

Finally, in *St. Joseph’s* the Court held that the Center’s use of the property was not exclusive because it provided short-term rehabilitative care to the general public alongside the care it provided to elderly people in its long-term housing.  *Id.* at 747.  These short-term services were neither indispensable nor incidental to the Center’s stated charitable purpose.  *Id.* The Court did note however that by amending its charter to broaden the availability of rehabilitative
services to elderly people who were not part of the long-term care patient population, the short-term rehab would not defeat the exclusive use requirement. *Id.*

The Court further went on to hold that there was no evidence upon which the Court could conclude, pursuant to § 12-88, that a portion of the Center’s property was used exclusively for charitable purposes because the Center was not divided in any way based upon long-term or short-term patient classification. This case emphasizes the importance of physically separating and delineating space in a meaningful and clear manner if part of a property is used for an otherwise qualifying purpose and part is not. Without such separation, an organization risks losing its tax exemption entirely.

Related to this requirement, even where a property is leased or rented in a manner consistent with the charitable purpose, that will not necessarily prevent the property from qualifying for tax exemption, but only “as long as the property is used exclusively for carrying out the charitable purposes of the organization to which the property belongs.” *Isaiah 61:1, Inc. v. City of Bridgeport,* 270 Conn. 69, 85 (2004). In *Fanny J. Crosby Memorial, Inc. v. Bridgeport,* 262 Conn. 213 (2002), the Court stated that the collection of rent from ex-offenders seeking re-entry into society was solely in furtherance of, and in direct relation to, its charitable function of facilitating the inmates’ transition back into society.” *Id.* at 217.

Besides *Fanny J. Crosby Memorial,* one other case addresses the rent issue. *Isaiah 61:1, Inc.* held that the funds the plaintiff received from the department of corrections did not constitute rent, but instead qualified as a contractual payment for the various rehabilitative services it provided. The Court further held, “even if [it had assumed] that the department’s payments constitute rent, [the court] already… determined that rental income that is used exclusively in furtherance of an organization’s charitable purpose does not remove the organization’s property from the category of properties that are exempt from taxation under § 12-81(7).


A final requirement of Conn. Gen. Stat. § 12-81 is that “no officer, member or employee [of the corporation seeking exemption] may receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes…” *St. Joseph’s Living Center, Inc. v. Town of Windham,* 290 Conn. 695, 708 (2009).

*See H.O.R.S.E. of Connecticut, Inc. v. Town of Washington,* 57 Conn. App. 41 (2000) (Corporation’s president was entitled to receive reasonable compensation for giving riding lessons where she received no profit from the operation of the corporation); *but see Charter Oak Council, Boy Scouts of America v. Town of New Hartford,* 121 Conn. 466 (1936)(corporation was not exempt from taxation, in view of failure to exclude officers, members, and employees of council from pecuniary profit other than reasonable compensation by paying bonuses in addition to salaries).
Memorandum
Re: Group Home Property Tax Exemption Research

In deciding whether this factor is met, Courts will look to the compensation, bonuses, and other benefits received by officers, members, and employees of the corporation. If anyone receives compensation in any form that the Court deems excessive based upon the services provided – this factor will not be met. All compensation that is effected by the financial performance of the corporation is especially problematic and likely to exclude the property from tax exempt status.


Two additional requirements under the statute are provided in subsection (B) which states, “housing subsidized, in whole or in part, by federal, state or local government… shall not constitute a charitable purpose…” Additionally, housing for persons or families of low or moderate income shall not constitute a charitable purpose.

However, “housing”, as used in this section does not include the following categories: an orphanage; a drug or alcohol treatment or rehabilitation facility; housing for homeless people, people with mental health disorders, people with an intellectual or physical disability, or victims of domestic violence; housing for ex-offenders or for individuals participating in a program sponsored by the department of corrections or judicial branch; and short-term housing operated by a charity with an average stay of less than six months.

In short, the above requirement simply means that a corporation which provides subsidized housing or low/moderate income housing, without more, will not constitute a charitable purpose. Connecticut has little case law explaining these requirements, but it should be understood that the specifically enumerated categories listed above (orphanage, drug and alcohol treatment facility, etc.) may provide housing to individuals who are otherwise low/moderate income, and the corporation may receive subsidies from the state for that housing, and still qualify to apply for an exemption.

F. Ultimate Authority to Determine Applicability of Exemption

Pursuant to Conn. Gen. Stat. § 12-89, the board of assessors of each town shall determine if the property should be exempt and place a valuation on the property if it is found to be taxable. If a party disagrees with the finding of the assessor or board of assessors, it may appeal to the board of assessment appeals. If the party disagrees with the board of assessment appeals, it may appeal to the Superior Court for judicial resolution in the district where the property is located. A trial court will not defer to an assessor’s determination of whether an exemption applies. Instead, the court will consider the issue anew. Thus, the Connecticut Courts render the final decision regarding entitlement to a tax exemption.