



DATE: March 6, 2019
TO: Planning & Development Committee
FROM: Gian-Carl Casa, President & CEO, The Alliance
RE: S.B. 928 AN ACT CONCERNING THE RECOVERY OF ATTORNEY'S FEES IN ACTIONS FOR WRONGFUL PROPERTY TAX ASSESSMENT

Good afternoon Senator Cassano, Representative McCarthy Vahey, Senator Champagne, Representative Zawistowski and members of the Planning & Development Committee:

I am Gian-Carl Casa, President & CEO of the Connecticut Community Nonprofit Alliance (The Alliance). The Alliance is the statewide advocacy organization representing nonprofits, with a membership of more than 300 community organizations and associations. Community nonprofits provide essential services to over half a million individuals and families in Connecticut every year, and employ 14% of Connecticut's workforce, improving the quality of life in communities across the State.

I would like to first thank the Planning & Development Committee for raising S.B. 928 An Act Concerning the Recovery of Attorney's Fees in Actions for Wrongful Property Tax Assessment, and the legislators who introduced proposed bills to solve this problem.

The Alliance supports S.B. 928 and we respectfully urge the Committee to amend the bill to:

1. Clarify that group homes and other residential services run by nonprofits are exempt from property taxes by removing the word "temporary" from § 12-81(7)(B), changing the word "and" in between subdivisions (iv) and (v) to "or," and adding definition to the term "subsidized housing."
2. Require municipalities post the M-3 form on their website.
3. Better define the apportionment of property used in part for charitable purposes and in part for non-charitable purposes
4. Require assessors provide a detailed reason for their denial of a charitable property tax exemption in writing at the time the denial is issued.
5. Require assessors consider an organization's federal 501(c)(3) status when determining whether or a not a property is exempt.
6. Allow nonprofits to be awarded attorneys' fees by a judge in cases where property taxes assessed were manifestly excessive and could not have been arrived at except by disregarding the law, as the drafted bill does.

We believe these changes, the rational for which I outline below, will comprehensively address challenges community nonprofits face regarding wrongful property tax assessments.

Nonprofits are explicitly exempt from federal, state and local taxes for good reason: they provide essential services to residents, so government doesn't have to. Nonprofits feed the hungry, house the homeless, support people with intellectual/developmental disabilities, treat people with mental health and substance abuse needs, provide arts and culture that make our communities vibrant, and much more.

Nonprofits exist for public benefit and must operate for specific charitable, educational, or religious purposes. The mission of nonprofits is to improve the health and well-being of our local communities, enhance the quality of life and serve the public good. In exchange, nonprofits are exempt from property, income and sales tax, and have access to tax-deductible contributions from individuals and corporations. This social compact dates back more than 100 years.

Charitable Nonprofits are Being Wrongfully Assessed, Impacting Programs

Charitable nonprofits are exempted from local property tax by *Section 12-81 of the Connecticut General Statutes. Subsection (7)(a)*, which exempts the property owned by “a corporation organized exclusively for... charitable purposes.” But **despite this statute, some tax assessors have started to tax nonprofits for property that is exempt.**

In a survey from May 2018, The Alliance found that at least 40 assessors had recently issued tax bills for property used for charitable purposes. Two-thirds of nonprofits who responded said their **property is being assessed for taxes after a history of being exempt, without undergoing a change of use.**

Critical funding is diverted away from direct service provision to people in need when nonprofits, burdened by years of state budget cuts, are forced to choose between costly litigation and paying taxes on property that is exempt by state law.

One nonprofit stated, *“Funding for the program is already below program expenses and is subsidized by fundraising. A tax payment will further decrease our funding and make sustaining the current program model difficult going forward.”*

People who depend on community services would have nowhere to turn if funding is redirected away from direct care to taxes. These cuts would come at a time when the demand for community services is increasing. Nonprofits told us:

- *“Having to pay taxes could literally force the close-down of our residential programs. There is no other source of revenue for taxes.”*
- *“We cannot afford to pay property tax and continue individualized services to the DDS population.”*
- *“We had paid almost \$50,000 in taxes. \$50,000 is the equivalent of 25,000 meals or one case manager.”*
- *“Of course it will hurt. We have no dollars for anything but direct service. This will lead to more homeless men not getting housed - which will be a domino effect.”*

What Is Exempt from Property Taxes?

As previously mentioned, charitable nonprofits are exempted from local property tax by *Section 12-81 of the Connecticut General Statutes. Subsection (7)(a)*, which exempts the property owned by “a corporation organized exclusively for... charitable purposes.” The Connecticut Supreme Court has laid out a simple test for assessors to determine what does and does not constitute “charitable:”

1. **The corporation must be organized exclusively for charitable purposes.** To make this determination, assessors must examine the organization’s foundational documents and then consider whether the purpose described in those documents is truly charitable. The Court has held that, “Charity embraces anything that tends to promote the well-doing and the well-being of social man.” (*St. Joseph’s Living Center, Inc.*, 290 Conn. at 715-16)
2. **The organization must not be self-supporting.** This means the organization must rely on or expect private philanthropic support and cannot rely exclusively on fees for its services.
3. **The organization must relieve a state burden.** This means the organization must give “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)

Attached is a legal memo that goes into more detail about the relevant case law. This test is important because it means that in Connecticut, not all nonprofit corporations are exempt from property taxes. In order **for the exemption to be granted, nonprofits must prove they meet the requirements of this test, which are more restrictive** than IRS and DCP requirements for receiving “nonprofit” status.

Our members have reported receiving tax bills for day and employment programs for people with intellectual/developmental disabilities, outpatient behavioral health treatment facilities, arts and culture organizations, and more, all of which would clearly meet the requirements of this test.

While this is not the case everywhere, we believe **some municipalities are aggressively pursuing these tax-exempt properties**, making it difficult, costly and confusing for nonprofits to be granted the exemption to which the law entitles them. That’s why we are proposing a number of process-related changes to the law, and adding a financial disincentive for municipalities to engage nonprofits in frivolous litigation.

We respectfully urge the Committee to:

- **Amend § 12-81(7)(A) to require towns post the M-3 form on their website.** Nonprofits are required to fill out an M-3 form in each town every four years to be granted their exemption. Often, community nonprofits own and operate exempt property across many municipalities. Requiring the form be posted is a no-cost measure to make sure nonprofits have access to all forms in all towns without having to visit Town Halls in communities the forms are not posted.
- **Amend § 12-88 to better define the apportionment of property used in part for charitable purposes and in part for non-charitable purposes.** Change the apportionment to a measure of physical space (current law), *or* a measurement of time the property is used for non-charitable purposes, provided that the property is used “primarily for exempt purposes.”
- **Amend § 12-89 to require assessors provide a detailed reason for their denial** of a charitable property tax exemption in writing at the time the denial is issued. Require assessors consider an organization’s federal 501(c)(3) status when determining whether or a not a property is exempt.
- **Amend § 12-119 as drafted in the current bill, to allow nonprofits to be awarded attorneys fees** by a judge in cases where property taxes assessed were **manifestly excessive and could not have been arrived at except by disregarding the law.** Right now, municipalities have all the leverage without any negative consequences if they lose in court. Nonprofits must make a choice to pay the taxes, settle, or find tens of thousands of dollars in legal fees to try to win in

court. There should be a disincentive in statute to prevent this pattern continuing even if the legislature clarifies exemptions.

Residential Services Are Being Targeted

In addition to challenges over whether or not an organization is “charitable,” many nonprofits that provide residential supports and services to Connecticut’s most vulnerable residents are being targeted to receive tax bills.

According to §12-81(7)(b), subsidized low-income housing is not exempt from property taxes. In 2003, because some assessors were using this statute to tax residential services provided by nonprofits, the legislature passed a law to specifically exempt a number of nonprofit housing uses from property taxes. The statute currently reads:

“(B) On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under [subsection A]. **As used in this subdivision, “housing” shall not include** real property used for temporary housing belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, **the primary use of which property is one or more of the following: (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; and (v) short-term housing operated by a charitable organization where the average length of stay is less than six months.** The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose;”

The point of contention regards the words “temporary housing” (which are undefined in statute) and the word “and” between subdivisions (iv) and (v) in the list of types of nonprofit-operated residential services exempt from taxation (in **red** above) means that as soon as the average length of stay in one of these settings is more than six months, the property is no longer tax-exempt. In other words, that the word “and” before item (v) governs items (i)-(iv), and means the list mandates that exempt property must encompass all of the various and often-conflicting uses in it, despite the fact that the list begins, “the primary use of which is **one or more** of the following.”

By this logic, in order for a residential facility to be exempt, it must be a drug treatment orphanage that houses people who are homeless ex-offenders and who live there for less than six months. This is counter to the clear intent of the legislature and to the reality of service provision.

It is clear, based on a review of the committee and floor debate from 2003, that when the legislature added this language, they intended to exempt each of the types of services listed in subdivisions (i) through (v) independent of the others.

We believe the intention behind the law was to separately and independently exempt from property taxes: orphanages, drug or alcohol treatment or rehabilitation facilities, housing for people who are homeless, have a mental health disorder, an intellectual or physical disability, victims of domestic

violence, ex-offenders in programs sponsored by DOC or the Judicial Branch, and short-term housing operated by a charitable organization where the average length of stay is less than six months.

But nonprofits across Connecticut are being forced to spend tens of thousands of dollars to hire lawyers to fight this semantics dispute in court.

That's why we're proposing to:

- 1. Amend § 12-81(7)(B) to remove the word "temporary,"**
- 2. Change the word "and" in between subdivisions (iv) and (v) to "or,"**
- 3. Add definition to the term "subsidized housing."**

These changes, which are technical in nature, will clarify that group homes and other kinds of residential services provided by nonprofits are tax exempt and will make a substantial difference to nonprofits who are providing residential services to the State's most vulnerable.

We have submitted these suggestions in draft form as an attachment to this testimony.

It is important to note that **we are not proposing any additional exemptions or the expansion of existing exemptions.** We understand that many municipalities, particularly urban centers, have large proportions of tax-exempt property. Ours is a reasonable proposal that only clarifies current law, addresses process, and adds a disincentive for assessors who disregard the law. **For municipalities already following the law, it would have no fiscal impact.**

Nonprofits are always willing to work with municipalities to ensure their properties and the people served in them are welcomed into their communities—to be "good neighbors." They often go to great lengths, well beyond their statutory and contractual obligations, to work closely with emergency services and others.

We are willing to work with this Committee and other stakeholders to design a bill that can solve this problem without opening the door to abuse by anyone—municipalities or property-owners.

We thank the Committee raising this important bill and respectfully request you pass the substitute language laid out in this testimony to more comprehensively address the problem.

Gian-Carl Casa, President & CEO
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Appendices:

- Appendix A: The Alliance's proposed Substitute Language
- Appendix B: Legal Memo re: Charitable Property Tax Exemptions

Incl.



1 ***AN ACT CONCERNING THE PROPERTY TAX EXEMPTION FOR PROPERTY USED FOR CHARITABLE***
2 ***PURPOSES AND ATTORNEY'S FEES IN WRONGFUL PROPERTY TAX ASSESSMENT ACTIONS.***

3
4 Be it enacted by the Senate and House of Representatives in General Assembly convened:

5
6 **Section 1: Section 12-81 subsection (7) of the general statutes is amended as follows (Effective July 1,**
7 **2019)**

8 (7) **Property used for scientific, educational, literary, historical, charitable or open space land**
9 **preservation purposes. Exception.** (A) Subject to the provisions of sections 12-87 and 12-88, the real
10 property of, or held in trust for, a corporation organized exclusively for scientific, educational, literary,
11 historical or charitable purposes or for two or more such purposes and used exclusively for carrying out
12 one or more of such purposes or for the purpose of preserving open space land, as defined in section 12-
13 107b, for any of the uses specified in said section, that is owned by any such corporation, and the personal
14 property of, or held in trust for, any such corporation, provided (i) any officer, member or employee
15 thereof does not receive or at any future time shall not receive any pecuniary profit from the operations
16 thereof, except reasonable compensation for services in effecting one or more of such purposes or as
17 proper beneficiary of its strictly charitable purposes, and (ii) in 1965, and quadrennially thereafter, a
18 statement shall be filed on or before the first day of November with the assessor or board of assessors of
19 any town, consolidated town and city or consolidated town and borough, in which any of its property
20 claimed to be exempt is situated. Such statement shall be filed on a form provided by such assessor or
21 board of assessors such form which shall be posted on the website of the assessor or board of assessors
22 in each town, consolidated town and city or consolidated town and borough. The real property shall be
23 eligible for the exemption regardless of whether it is used by another corporation organized exclusively
24 for scientific, educational, literary, historical or charitable purposes or for two or more such purposes;

25 (B) On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local
26 government and housing for persons or families of low and moderate income shall not constitute a
27 charitable purpose under this section. As used in this subdivision, "housing subsidized, in whole or in
28 part, by federal, state or local government" shall not mean i. permanent supportive housing or
29 residential treatment facilities as defined in Chapter 319i of the General statutes, ii. alcohol and drug
30 abuse treatment facilities as defined by Chapter 319j of the General statutes, iii. community residences
31 as defined in Chapter 174 of the General statutes, iv. child care facilities as defined by chapter 319a of
32 the General statutes, v. community-based service programs as defined by Chapter 325 of the General
33 statutes, vi. residential facilities as defined by Chapter 815t of the General statutes, vii. Housing
34 programs for homeless persons as defined by Chapter 138b of the General statutes, or housing whose
35 use is otherwise exempt from property taxes under this subdivision. As used in this subdivision,
36 "housing" shall not include real property used for [temporary] housing belonging to, or held in trust for,
37 any corporation organized exclusively for charitable purposes and exempt from taxation for federal
38 income tax purposes, the primary use of which property is one or more of the following: (i) An orphanage;
39 (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for homeless individuals, mentally or
40 physically handicapped individuals or persons with intellectual disability, or for victims of domestic
41 violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state

42 Department of Correction or Judicial Branch; **[and] or** (v) short-term housing operated by a charitable
43 organization where the average length of stay is less than six months. The operation of such housing,
44 including the receipt of any rental payments, by such charitable organization shall be deemed to be an
45 exclusively charitable purpose.

46 **Section 2: Section 12-88 of the general statutes is amended as follows (Effective July 1, 2019):**

47 **When property otherwise taxable may be completely or partially exempted.** Real property belonging to,
48 or held in trust for, any organization mentioned in subdivision (7), (10), (11), (13), (14), (15), (16) or (18)
49 of section 12-81, which real property is so held for one or more of the purposes stated in the applicable
50 subdivision, and from which real property no rents, profits or income are derived, shall be exempt from
51 taxation though not in actual use therefor by reason of the absence of suitable buildings and
52 improvements thereon, if the construction of such buildings or improvements is in progress. The real
53 property belonging to, or held in trust for, any such organization, not used exclusively for carrying out one
54 or more of such purposes but leased, rented or otherwise used for other purposes, shall not be exempt.
55 If a portion only of any lot or building belonging to, or held in trust for, any such organization is used
56 exclusively for carrying out one or more of such purposes, such lot or building shall be so exempt only to
57 the extent of the portion so used and the remaining portion shall be subject to taxation. The portion of
58 any lot or building that is used exclusively for exempt purposes as provided for in subdivision (7), (10),
59 (11), (13), (14), (15), (16) or (18) of section 12-81 may be measured as the physical portion of the lot or
60 building that is devoted to exempt purposes or measured as the portion of the time that the lot or
61 building is used for exempt purposes, provided that, if the portion of the lot or building that is used
62 exclusively for exempt purposes is measured by time of use, then to remain exempt from property
63 taxation the lot or building must be “primarily” used for exempt purposes, as that term is used in the
64 relevant Internal Revenue Service regulations and guidance on 501(c)(3) exemption.

65 **Section 3: Section 12-89 of the general statutes is amended as follows (Effective July 1, 2019):**

66 **Assessors to determine exemptions.** The board of assessors of each town, consolidated town and city or
67 consolidated town and borough shall inspect the statements filed with it and required by sections 12-81
68 and 12-87 from scientific, educational, literary, historical, charitable, agricultural and cemetery
69 organizations, shall determine what part, if any, of the property claimed to be exempt by the organization
70 shall be in fact exempt and shall place a valuation upon all such property, if any, as is found to be taxable,
71 provided any property acquired by any tax-exempt organization after the first day of October shall first
72 become exempt on the assessment date next succeeding the date of acquisition. Whenever the board of
73 assessors determines that all or any part of the property is taxable under section 12-81 subdivision (7)
74 or 12-81(7), it shall state upon its records the reason for its decision and describe specifically the basis
75 on which its determination was made. The board of assessors of each town, consolidated town and city
76 or consolidated town and borough shall consider whether an the property claimed to be exempt
77 belongs to, or is held in trust for, any corporation organized exclusively for charitable purposes and
78 exempt from taxation for federal income tax purposes when determining what part, if any, of the
79 property claimed to be exempt by the organization shall be In fact exempt. Any organization filing a tax-
80 exempt statement, aggrieved at the action of the assessor or board of assessors, may appeal, within the
81 time prescribed by law for such appeals, to the board of assessment appeals. Any such organization
82 claiming to be aggrieved by the action of the board of assessment appeals may, within two months from
83 the time of such action, make application in the nature of an appeal therefrom to the superior court for
84 the judicial district in which such property is situated.

85 **Section 4: Section 12-119 of the general statutes is amended as follows (Effective July 1, 2019):**

86 **Remedy when property wrongfully assessed.** When it is claimed that a tax has been laid on property not
87 taxable in the town or city in whose tax list such property was set, or that a tax laid on property was
88 computed on an assessment which, under all the circumstances, was manifestly excessive and could not
89 have been arrived at except by disregarding the provisions of the statutes for determining the valuation
90 of such property, the owner thereof or any lessee thereof whose lease has been recorded as provided in
91 section 47-19 and who is bound under the terms of his lease to pay real property taxes, prior to the
92 payment of such tax, may, in addition to the other remedies provided by law, make application for relief
93 to the superior court for the judicial district in which such town or city is situated. Such application may
94 be made within one year from the date as of which the property was last evaluated for purposes of
95 taxation and shall be served and returned in the same manner as is required in the case of a summons in
96 a civil action, and the pendency of such application shall not suspend action upon the tax against the
97 applicant. In all such actions, the Superior Court shall have power to grant such relief upon such terms
98 and in such manner and form as to justice and equity appertains, and **[costs]** and shall allow reasonable
99 attorney's fees. Costs may be taxed at the discretion of the court. If such assessment is reduced by said
100 court, the applicant shall be reimbursed by the town or city for any overpayment of taxes in accordance
101 with the judgment of said court.

M E M O R A N D U M

To: Connecticut Community Non-Profit Alliance

From: Charles D. Ray
Brittany A. Killian

Date: March 29, 2018

Re: Group Home Property Tax Exemption Research

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,¹ 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

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

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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).

3. A Final Requirement Under Conn. Gen. Stat. § 12-81(7)(A) Requires That The Organization Which Owns/Holds Property Not Provide Pecuniary Profit to Its Officers, Members, or Employees.

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).

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.

4. Conn. Gen. Stat. § 12-81(7)(B) Has Two Additional Requirements: The Property Must Not Be Government Subsidized Housing And Must Not Constitute Low Or Moderate Income Housing.

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.