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Non-Profit Property Tax Exemptions

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Outline

- 1. Why Non-Profit Exemptions
- 2. Types of Non-Profit Exemptions permitted under Alaska Law
- 3. What is the status of current case law



Alaska Constitution

Alaska Constitution, Article IX (Finance and Taxation), Section 4 (Exemptions)

- All, or any portion of, property used exclusively for non-profit religious, charitable, cemetery, or educational purposes, as defined by law, shall be exempt from taxation.
- Other exemptions of like or different kind may be granted by general law. All valid existing exemptions shall be retained until otherwise provided by law.



Property Tax Exemptions

- Title 29 governs property taxes
- Alaska Statute 29.45.050 permits exemptions for taxation by municipal ordinance for many reasons:
 - Historic sites
 - Agricultural land
 - Veteran or senior citizen status
 - Nonprofits



Charitable Tax Exemption Statute

AS 29.45.030(a)(3)

AS 29.45.030(a)(3) exempts from taxation

“property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes”



Income Exclusion

AS 29.45.030(c)

- Property described in (a)(3) or (4) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups.
- If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.



Comparison to 501(c)(3) purposes

- AS 29.45.030(a)(3) Purposes religious, charitable, cemetery, hospital, or educational purposes.
- 501(c)(3) purposes: *religious, charitable, educational, **scientific, literary, testing for public safety, amateur sports competition** (national or international), **prevention of cruelty to children or animals**.*
 - Note—Charitable under 501(c)(3) includes relief of the poor, medical relief, and some cemeteries and burial.
 - Scientific and Literacy organizations always also qualify under educational.
 - Only real question is amateur sports competition (different federal tax holdings).



What is the purpose of property tax exemptions?

- Public Benefit & Quid-Pro-Quo:
 - Charitable exemptions compensate nonprofits for delivering services that benefit society at large.
 - Alaska Supreme Court: “the quid pro quo for nonprofit contributions of services and aid to society in general” Sisters of Providence v. MOA (1983).
- Narrow construction and fairness to tax base:
 - exemptions are strictly construed;
 - taxpayers bear the burden to show entitlement to exemption,
 - all property benefits from public services and should share cost



Other Policy Rational

- Relief of Public Burden--nonprofits often perform functions that the government might otherwise provide (or complement).
- Public Good. Recognition that nonprofit property is used for public good rather than private benefit.
- Efficiency. Encourages efficient use of real estate for public benefit.
- Fairness with profit-seeking enterprise. Unfair to tax property used by charities that reinvest profit into charitable mission.



Charitable Purpose Exemption Requirements

Two Part Test:

- Charitable Purpose. First, is there a “nonprofit, charitable purpose”?
- Exclusive Use. Second, is the property “exclusively used for an exempt purposes”?



First Prong – Charitable Purpose

- The Alaska Supreme Court has adopted a broad definition of charitable:
 - if “done out of good will and a desire to add to the improvement of the moral, mental, and physical welfare of the public generally.”
 - *City of Nome v. Cath. Bishop of N. Alaska*, 707 P.2d 870 (Alaska 1985).



Second Prong: Exclusive Use

- General Rule: The property must be exclusively used for an exempt purpose.
 - All uses must be for the direct and primary exempt purpose (religious, charitable, cemetery, hospital, educational); strict construction applies.
 - Mixed exempt purposes are fine; non-exempt purposes are not.
 - Catholic Bishop, 707 P.2d at 879–81.
- Two Narrow Exceptions:
 - De minimis non-exempt use does not defeat an exemption
 - Uses directly incidental to and necessary for an exempt use may qualify (strictly applied)
 - Catholic Bishop, 707 P.2d at 879–81.



Mixed Use and Apportionment

If property is used partially for charitable purposes and partially for non-charitable purposes:

- Spatial apportionment (by rooms/floors) is allowed to separate exempt from non-exempt spaces. *Catholic Bishop*, 707 P.2d at 881–82.
- Temporal apportionment (by days/months) is NOT allowed—the space is not used exclusively. *Catholic Bishop*, 707 P.2d at 881–82.
- Hospital-owned professional building floors leased to private doctors were taxable; not exclusive hospital use. *Sisters of Charity*, 553 P.2d at 468–69



Fees, Funding, and Gifts

- Charging fees does not automatically defeat a charitable purpose if
 - (i) the use remains exclusively exempt;
 - (ii) there is no dominant profit motive; and
 - (iii) charges are incidental/necessary and do not exceed operating needs
 - Fairbanks N. Star Borough v. Dená Nená Henash (TCC), 88 P.3d 124, 130–33 (Alaska 2004).
 - Matanuska-Susitna Borough v. King's Lake Camp, 439 P.2d 441, 444–45 (Alaska 1968).
- Government funding and contracting does not, by itself, negate charitable use



Owner Derived Income from Property

- If owner derives income, exemption persists only if the users are qualifying nonprofits using the property exclusively for exempt purposes; the rental amount is not the test.
 - Dená Nená Henash 2011, 356 P.3d at 592–95.



Case Law Highlights no. 1

- Evangelical Covenant Church v. City of Nome, 394 P.2d 882 (Alaska 1964)
 - Church-owned radio station selling commercial time was not exclusively religious/charitable; proceeds used for ministry did not change the property's primary use.
- Matanuska-Susitna Borough v. King's Lake Camp, 439 P.2d 441 (Alaska 1968)
 - Youth camp charging modest user fees remained charitable.
 - fees were incidental and necessary and not profit-motivated; established broad definition of "charity" emphasizing public welfare.
- Greater Anchorage Area Borough v. Sisters of Charity, 553 P.2d 467 (Alaska 1976)
 - Hospital-owned professional building space leased to private doctors not "exclusively" hospital use
 - confirms strict construction and burden on taxpayer



Case Law Highlights no. 2

- Sisters of Providence v. Municipality of Anchorage, 672 P.2d 446 (Alaska 1983)
 - Personal property tax case involving leased hospital equipment
 - court discussed the quid-pro-quo policy rationale for exemptions
- City of Nome v. Catholic Bishop of N. Alaska, 707 P.2d 870 (Alaska 1985)
 - Landmark case
 - exclusive-use rule
 - spatial apportionment permitted (no temporal apportionment)
 - two narrow exceptions (de minimis and “directly incidental & vitally necessary”)
 - potential for exempt status when leasing to other nonprofits
 - support property can be exempt if necessary to convenient use of exempt property



Case Law Highlights no. 3

- Fairbanks N. Star Borough v. Dená Nená Henash (Tanana Chiefs Conference), 88 P.3d 124 (Alaska 2004)
 - Two-part inquiry (nonprofit + charitable purpose)
 - rejects the rigid “gift” or “lessening government burden” tests
 - Fees and government funding do not automatically defeat exemptions
 - restates exclusive-use and no dominant profit motive tests
- Dená Nená Henash v. FNSB, 356 P.3d 586 (Alaska 2011)
 - for income-deriving property → who uses the property and how it is used not the amount of income or market rent
 - reaffirms exclusive-use analysis



Case Law Highlights no. 4

- Fairbanks N. Star Borough v. Victory Ministries of Alaska, Inc., 7613 (Aug. 12, 2022)
 - Illustrates partial revocation where a ministry rented lodging to the general public
 - Procedural: after remand to assessor and new findings, the superior court lacked jurisdiction to decide the earlier closed appeal
 - Reminder that the taxpayer must appeal correctly (board of Equalization vs. direct to court) consistent with AS 29.45.200(c) and local code



Current Litigation

- Norton Sound Health Corporation v. City of Nome
 - Pending before the Supreme Court
- Kodiak Island Borough v. Kodiak Area Native Association
 - Pending before the Supreme Court



NSHC v. City of Nome

- NSHC is a tribal nonprofit organization providing health services
- NSHC operates a hospital in Nome
- the only hospital in the Bering Strait region
- For 2022 through 2025 NSHC sought property tax exemptions



NSHC v. City of Nome

- NSHC submitted exemptions applications to the City Assessor
- Appealed denied exemptions to the Board of Equalization
- Appealed denials by the Board of Equalization to the Superior Court



NSHC Application for Exemption

- NSHC submitted applications for seven properties:
 - NSHC Hospital Building: the main hospital
 - The 7-Plex: Housing for hospital nurses, doctors, other employees
 - The Kusqii House: housing village-based staff (nurses, doctors, health aids)
 - The West Campus: storage for essential equipment, supplies, records, etc.
 - The Patient Hostel: houses patients in treatment (often from the villages)
 - Vacant BIA Building
 - Vacant BHS Building



2022 Tax Exemption Application

- GRANTED → The main hospital
- DENIED →
 - The 7-Plex
 - The Kusqii House
 - The West Campus
 - The Patient Hostel
 - Vacant BIA Building
 - Vacant BHS Building



City Board of Equalization

- Considered AS 29.45.030(a)(3): “property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes”
- Analyzed whether the 7 properties were exempt due to exclusive use as a “hospital”
- Did not consider whether the 7 properties are exempt under Charitable



City Board of Equalization

- Concluded that none of the six properties were exclusively used as a hospital
- Found that “hospital” must be narrowly construed
- None of the six properties were used “exclusively” to provide “medical treatment” and, thus, were not “hospitals”
 - Also found that tribal sovereign immunity did not apply
 - Also found that there was no implied federal preemption



NSHC Appealed to the Superior Court

- Judge Roetman framed the issues:
 - How is “hospital purposes” defined
 - Are any of the six properties used exclusively for hospital purposes
 - Are any of the six properties used exclusively for “charitable purposes”
- He also discussed issues of federal preemption and tribal sovereign immunity (which we will ignore).



Superior Court Decision – “Hospital Purposes”

- Matter of First Impression (encourage you all to read the opinion)
- Ruled that the BOE erred in only defining the term “hospital” and not “hospital purposes”
 - Remember → Under AS 29.45.030(a)(3) property is exempt if used exclusively for charitable . . . [or] hospital . . . purposes.
- Held the meaning of the term “used exclusively for . . . [a] hospital” is different from “used exclusively for . . . hospital . . . purposes.”
- The court ruled that the definition of the term “Hospital Purposes” should derive from its ordinary meaning



Superior Court Ruling – Hospital Purposes

- Four properties were used exclusively for hospital purposes because they were used to give NSHC the ability to deliver medical care:
 - The 7-Plex
 - The Kusqii House
 - The West Campus
 - The Patient Hostel
- There was no other purpose for their use.



Superior Court Ruling -- Charitable Purposes

- Properties 1 through 4 are exclusively fused for “charitable purposes” because they provide a public benefit
 - they are “done out of good will and a desire to add to the improvement of the moral, mental and physical welfare of the public.” *King’s Lake Camp*.



Supreme Court Appeal

- Nome appealed the Superior court decision regarding the 7-plex

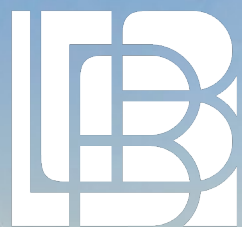




Thank You!

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Questions?