



SUTHERLAND

Introduction to Georgia Property Tax for Non-Profits

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Overview

- Overview of Georgia's Property Tax System
- The "Purely Public Charity" Exemption
- Property Tax Exemption Applications
- Questions and Answers

Georgia Property Tax for Non-Profits

OVERVIEW OF GEORGIA'S PROPERTY TAX SYSTEM

Georgia's Property Tax System

- Types of Property Taxes
- Administration
- Valuation
- Assessment
- Liability and Collection
- Taxpayer Remedies
- Exemptions

Types of Property Taxes

- Georgia's Ad Valorem Property Taxes:
 - ✓ Real Property Tax
 - Lands
 - Buildings
 - ✓ Business Personal Property Tax
 - Equipment
 - Machinery
 - ✓ "Ad valorem" = based on value of the property

Administration

➤ Who's Involved?

- ✓ State Government
 - General Assembly & Governor
 - Department of Revenue
- ✓ Local Government
 - County Commissioners
 - Ordinances
 - Board of Equalization
 - Hears appeals from Board of Tax Assessors
 - Board of Tax Assessors
 - Issues and reviews tax assessments (including adjusting valuation)
 - Tax Commissioner
 - Collects tax for counties, schools, and cities
 - Municipalities
 - School Boards

Valuation

- Real property must be returned at 100% of its fair market value as of January 1st of the tax year
- “Fair Market Value”
 - The amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property in an arm’s length, bona fide sale
 - Impacted by national and local economies, comparable sales, location/cost of living, etc.

Valuation (cont.)

➤ Reaching “Fair Market Value”

✓ Taxpayer Returns

▪ Filing Dates

- April 1st (most counties) or March 1st (some counties, e.g., Fulton, DeKalb, Clarke)

✓ Board of Tax Assessors reviews returns to ensure property taxed at fair market value

✓ County Appraisers assist Board of Tax Assessors by appraising property and submitting appraisals for approval

Valuation (cont.)

- Uniformity and Equalization Requirement
 - ✓ Similar property must be taxed alike
 - ✓ Applies to properties within a county and properties throughout Georgia
- Government's Roles to Ensure Uniform and Equalized Values
 - ✓ Board of Tax Assessors
 - ✓ Commissioner of Dep't of Revenue

Assessment

- “Assessed Value” = 40% x Fair Market Value
 - Board of Tax Assessors issues Notices of Assessment by July 1, or June 1 in certain counties
 - Appeals of Notices of Assessment discussed below
- Amount of Tax
 - ✓ Assessed Value x Rate = Amount of Tax
 - ✓ “Millage Rate”
 - Set by county commissioners and school board

Assessment (cont.)

➤ Final Tax Bills

✓ When Issued

- Varies from county to county
- Final tax bills are usually issued on or about October 1st

✓ Due Date

- Varies from county to county
- Penalties and interest for late payment

✓ Installment payments

- Counties may adopt ordinances allowing installment payments for the tax year

Liability

➤ Who Owes Tax?

- ✓ All property is subject to tax unless specifically exempt
- ✓ Owners
 - As of January 1st of the tax year
 - Tax on real property paid to the county where located
 - Includes corporations
- ✓ Lessees in Certain Long-Term Leases
 - *See Jekyll Dev. Assocs., L.P. v. Glynn County Bd. of Tax Assessors*, 523 S.E.2d 370 (Ga. App. 1999), writ denied 2000 Ga. LEXIS 113 (Ga. Feb. 11, 2000).

Collection

➤ Collection of Tax

✓ Tax liens

- Automatically attached to property on January 1 of tax year until tax is paid

✓ Property taxes become delinquent if not paid by December 20th of the tax year.

- County will issue a “tax execution” against delinquent taxpayers

Collection (cont'd)

- ✓ Methods of collecting tax
 - Garnishment
 - Levy and tax sale
 - Civil suit
 - Court-approved settlement

Taxpayer Remedies

➤ Administrative Remedies

- ✓ Initial appeal to Board of Tax Assessors
 - Must first receive notice of assessment or denial of exemption application
- ✓ Appeal to Board of Equalization from Board of Tax Assessors
 - Taxpayers may appeal issues related to taxability, uniformity, value, or (for residents) denial of homestead exemption
 - Denial of an application for exemption appealable on the grounds of taxability
 - Written appeal must set forth grounds for appeal, property at issue, etc.
 - Must file within **30 or 45 days** (depending on the county) from the date the county **mails** the taxpayer a notice of assessment, including a Notice of Assessment or a Notice of Denial of Application for Exemption
 - Hearing
- ✓ Arbitration
- ✓ Refund Claims
 - Counties or cities must refund all taxes erroneously or illegally assessed and collected
 - Taxpayer must file a written refund claim with the Board of Tax Assessors
 - Written claim must include a summary of the basis for the refund claim and a request for a hearing, if desired
 - Three-year statute of limitations

Taxpayer Remedies (cont.)

➤ Judicial Appeals

- ✓ Taxpayers may appeal a decision of the Board of Equalization or the arbitrator to the Superior Court of the county in which the property is located
 - Board of Tax Assessors may appeal to Superior Court under similar rules, but subject to additional restrictions
- ✓ Notice of appeal must be filed within 30 days
- ✓ Taxpayers must meet prepayment requirements

Georgia Property Tax

“PURELY PUBLIC CHARITY”?

Introduction

- Numerous exemptions from ad valorem property taxes
 - ✓ Provided in Georgia Constitution and Georgia Code
 - ✓ Bases for exemption:
 - Use of property
 - Owner of property

Introduction

- ✓ For example, property owned by the following persons may be exempt under Georgia law:
 - Government
 - Cemeteries
 - Religious organizations
 - Homes for the aged or mentally disabled
 - Historical fraternal benefit associations
 - Non-profit hospitals
 - Educational institutions
 - Libraries and literary societies
 - “Purely public charities”

Introduction

- Eligibility
 - ✓ All property is subject to tax unless specifically exempted by the Georgia Constitution or Georgia Code
- Taxpayer has burden of proving it qualifies for an exemption
 - ✓ Much more than saying “we qualify”

“Purely Public Charities”

➤ Qualification Requirements

- 1) Owner must qualify as a “purely public charity” under Georgia law; AND
- 2) Charity must not use the property to produce income, subject to an exception (discussed below)

“Purely Public Charities” (cont.)

- What is a “purely public charity”?
 - ✓ *Not* automatically tied to exemptions from income taxes under Internal Revenue Code § 501(c) or O.C.G.A § 48-7-25
 - ✓ *Not* automatically tied to “non-profit” status
 - ✓ *Not* defined in Georgia Code
 - ✓ Test for qualification set forth in *York Rite Bodies of Freemasonry of Savannah v. Bd. of Equal.*, 408 S.E.2d 699 (Ga. 1991)

“Purely Public Charities” (cont.)

- *York Rite* Test
 - (1) Owner of the property must be devoted to entirely charitable pursuits;
 - (2) The charitable pursuits must benefit the public; AND
 - (3) The use of the property must be exclusively devoted to those charitable pursuits.
- Must satisfy all requirements

“Purely Public Charities” (cont.)

- “Owner of the property must be devoted to entirely charitable pursuits”
 - “Charity” broadly defined by Georgia Supreme Court as “substantially any scheme or effort to better the condition of society or any considerable part of it.” *Tharpe v. Central Georgia Council of Boy Scouts*, 196 S.E. 762, 764 (Ga. 1938).

“Purely Public Charities” (cont.)

- “The charitable pursuits must benefit the public”
 - A charity may be “public” even though it is not open to the whole public so long as the institution is open to the whole of the classes for whose relief it is intended or adapted. *Tharpe v. Central Ga. Council of B.S.A.*, 196 S.E. 762 (Ga. 1938).
 - Imposing some requirements on applicants does not necessarily make a charity not “public.” *Central Bd. On Care of Jewish Aged, Inc*, 171 S.E.2d 747, 749-750 (Ga. App. 1969)

“Purely Public Charities” (cont.)

- “The use of the property must be exclusively devoted to those charitable pursuits”
 - Exemption depends on the owner’s charitable use of the property, not whether the owner is a charity. *Tharpe v. Central Ga. Council of B.S.A.*, 196 S.E. 762 (Ga. 1938).
 - Mere declaration of charitable use in a corporate charter does not create exempt use. *Mu Beta Chi Omega Corp. v. Davison*, 14 S.E.2d 744 (Ga. 1944).

“Purely Public Charities” (cont.)

- Actual charitable use is not always required, e.g., the headquarters of a charity may qualify for exemption. See *York Rite Bodies of Freemasonry of Savannah v. Bd. of Equal.*, 408 S.E.2d 699 (Ga. 1991).
- Tax-exempt land need not be contiguous to the owner’s primary location. *Marathon Investment Corp. v. Spinkson*, 644 S.E.2d 133 (Ga. 2007).

“Purely Public Charities” (cont.)

- *Nuci Phillips Mem’l Found., Inc. v. Athens-Clarke Cty. Bd. of Tax Assessors*, 703 S.E.2d 648 (Ga. 2010).
 - Leading case on whether otherwise exempt property can be used to generate income.
 - Building held to be exempt where it was owned by a tax-exempt foundation and used for local community musicians and others who come to seek help for anxiety, depression, or other emotional disorders.
 - Occasionally rented to private parties for events (e.g., weddings).

“Purely Public Charities” (cont.)

- The *Nuci Phillips* court explained that, under OCGA § 48-5-41(d)(1) and -(d)(2), otherwise qualifying charities are allowed to use their property to raise income from activities that are not necessarily charitable in nature so long as the primary purpose of the property is charitable and any income is used exclusively for the operation of that charitable institution.
- Primary purpose of the building in *Nuci Phillips* was not to realize income but to provide services for those seeking mental health assistance.

“Purely Public Charities” (cont.)

- ✓ Based on *Nuci Phillips*, a charity that meets the *York Rite* test may:
 - Use property for non-charitable purposes (e.g. rentals for private events) so long as the “primary purpose” of the property remains the furtherance of the charitable pursuits; and
 - Use the property for charitable pursuits, without restriction, even if such pursuits generate income.

“Purely Public Charities” (cont.)

➤ Compare:

- ✓ Religious nonprofit’s property was exempt, even though leased to another party, because the lessee was a religious nonprofit and used the property for religious purposes.
 - *DeKalb County Bd. of Tax Assessors v. Presbytery of Greater Atlanta, Inc.*, 739 S.E.2d 764 (Ga. App. 2013)
- ✓ Church was denied an exemption for a parking lot it owned and leased to a commercial enterprise because the primary use of the lot was no longer as religious or charitable property.
 - *First Congregational Church v. Fulton County Bd. of Tax Assessors*, 740 S.E.2d 798 (Ga. App. 2013)

“Purely Public Charities” (cont.)

➤ Land Held for Future Charitable Use

✓ Property acquired by a tax-exempt entity and held for future needs may qualify for exemption if:

- (1) The property is committed to and held in good faith for an exempt use;
- (2) Acquisition of the property is reasonable and proportionate to the future needs of the tax-exempt entity.

City of Atlanta v. Crest Lawn Memorial Park Corp., 128 S.E.2d 722 (Ga. 1962); *City of Atlanta v. Clayton County Bd. of Tax Assessors*, 2007 Ga. App. LEXIS 344 (Ga. March 22, 2007).

✓ However, property to be used for charitable low-income housing was held not to be exempt during construction phase.

- *H.O.P.E. ex rel. Divine Interventions, Inc. v. Fulton Cnty. Bd. of Tax Assessors*, 734 S.E.2d 288 (Ga. App. 2012).

Georgia Property Tax for Non-Profits

APPLICATIONS FOR EXEMPTION

Applications for Exemption

- Application for Exemption
 - ✓ Form or Letter
 - ✓ Detailed description of the organization and the property
 - Include pamphlets, brochures, web addresses, etc.
 - Describe entity's qualification under *York Rite* Test on January 1st of tax year

Documentation

➤ Examples of Documents to Include in Application:

- Organization's Charter
- Articles of Incorporation from Secretary of State showing non-profit status
- 501(c) Letter from IRS
 - Note: These documents will not show qualification for property tax exemption by themselves, although they are evidence of charitable purpose and non-profit status.

Application Denied?

➤ Denial of Application for Exemption

✓ Follow administrative appeals process discussed above:

- Ask Board of Tax Assessors specifically why it declined the Application, as it may not understand the organization's operations or did not have adequate information to make a proper decision
- If the Board of Tax Assessors still declines the Application, appeal to the Board of Equalization

Denied? (cont'd)

- ✓ Appeals process is time consuming, so provide detailed and adequate information to the Board of Tax Assessors with your Application

Georgia Property Tax for Non-Profits

QUESTIONS?

Additional Information

- Georgia Dep't of Revenue Local Government Services Division
 - www.etax.dor.ga.gov/ptd/index.aspx
- State Bar of Georgia
 - www.gabar.org
- Pro Bono Partnership of Atlanta
 - www.pbpatl.org
- Georgia Legal Services Program, Inc.,
 - www.glsp.org

For More Information:

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