

## NEW JERSEY REAL PROPERTY TAX EXEMPTION OVERVIEW

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New Jersey offers real property tax exemptions for certain religious organizations, schools and other charitable entities (each an “Eligible Entity”). To apply for exemption, an Eligible Entity must submit an Initial Statement Claiming Property Tax Exemption (the “Application”) to the tax assessor of the local taxing district. The Application must be filed by November 1st of the pre-tax year. If approved, the Eligible Entity must resubmit its application every third year by November 1. If a tax assessor denies an Eligible Entity’s Application, the entity may appeal the tax assessor’s decision on or before April 1 of the taxable year. Appeals are initially filed with the County Board of Taxation, which may either uphold the tax assessor’s decision or reverse it. The Board’s decision may further be appealed by the town or the taxpayer to the New Jersey Tax Court.

To receive the exemption, an Eligible Entity must be (1) organized under the laws of New Jersey, (2) the owner of the property sought to be exempt and (3) authorized to carry out the purposes on which the exemption is claimed. To “own” the property means to have legal title to the property. A tax exemption cannot be granted to an Eligible Entity that has ‘equitable’ ownership interest in property, thereby preventing entities who enter into 99-year leases with private organizations from qualifying. The easiest way to satisfy the legal ownership requirement is to have the Eligible Entity’s name on the deed to the property. The entity should be the sole owner. If the entity owns the property jointly with another entity, which is not a nonprofit entity, the tax assessor may scrutinize the entity’s Application. This may lead to a denial of the application and force the entity to prove its exempt status before the Board or a Tax Court Judge.

The terms “organized under the laws of New Jersey” and “authorized to carry out the purpose on which the exemption is claimed,” are not related. Organizing an entity as a foreign or domestic New Jersey entity only authorizes the entity to conduct business in the State of New Jersey. This is not synonymous with being authorized to operate a school or hospital or to hold religious services. Authorization to do the latter must be provided in the entity’s certificate of incorporation (or similar formation document) or the company by-laws (or similar governance document), preferably both.

There are a number of different exemptions that can be claimed. This piece briefly discusses exemptions related to (1) religious organizations, (2) schools and (3) charitable entities.

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## Religious Organizations

Property owned by religious organizations can secure a tax exemption if the buildings are used in the work of associations or corporations that are organized exclusively for religious purposes. However, if any portion of a building is leased to a profit-making organization or is otherwise used for purposes which are not eligible for exemption, then such portion shall be subject to tax. Thus, a religious organization qualifies for an exemption if it uses its property for the congregation of its members, worship, or other related charitable purposes. However, if the incorporating documents of the religious organization authorize it to sell merchandise or operate a separate business, it may not qualify for the exemption. Alternatively, if the religious organization leases a portion of its premises to a for-profit daycare, then it would lose its exemption for the area so occupied. On a final note, if the religious organization is undergoing renovations or reconstruction, its exemption status could be at risk. If the renovation or reconstruction is significantly delayed and results in little to no religious activity at the property, a tax assessor may declare that the property is not being used in accordance with the statute.

## Schools

All buildings actually used for colleges, schools, academies or seminaries are also exempt from taxation. This "school exemption" is also subject to risk if the owner leases a portion of its property to a for-profit company, which would render such area taxable. It should be noted that the exemption does not extend to any for-profit private school. A private school seeking this exemption will need to be organized as a "private non-profit school."

An issue that may arise in the school exemption is whether residential property that the school owns and leases to faculty members is eligible for exemption. This determination will rely on (i) whether the school is profiting from the rental contract, (ii) the desirability of providing available housing at or near the school, and (iii) whether providing housing for its faculty is reasonably designed to further the educational purpose of the school. If the school assumes the ordinary role as a landlord and profits off the rent paid by faculty, then it is unlikely that the residence will be tax exempt. However, if the landlord-tenant relationship is secondary to the primary purpose of providing the housing and no profit is possible, an exemption can be justified. In addition, if providing housing to faculty members assists in "obtaining and retaining competent" teachers, an exemption will likely be awarded.

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## Charities

Finally, all buildings actually used in the work of associations and corporations organized exclusively for charitable purposes are entitled to a tax exemption. Common entities that receive the “charitable purpose” exemption are homes for the elderly, entities providing assistance to those with disabilities and entities providing care to those less fortunate. However, there is no precise definition of what constitutes a “charitable activity.” Multiple factors must be taken into consideration, including, but not limited to, the organization’s social services activities and source of funding. In addition, the charitable services should be offered to the general public and provide relief to the public’s expense. For example, a non-profit providing housing for individuals with psychiatric issues would meet the charitable exemption if the housing was offered to the general public at minimal expense. Without this non-profit’s help, these individuals may need to be placed in a state facility at the public’s expense. As a result, the non-profit would also be relieving a potential public burden. Charging rent will not automatically disqualify this entity from the exemption, however, the amount and nature of the fees and rentals can.

Another issue non-profits may face is the governing body in the town where its property is located. Municipalities are not excited about granting exemptions to property which would otherwise provide a significant revenue for the town. This typically arises where a non-profit is occupying a large area of town that was previously taxable. In this scenario, it is possible for the non-profit and town to enter into a payment in lieu of taxes agreement (“PILOT Agreement”). The PILOT Agreement can provide the municipality with yearly payments over a period of time. These payments could still be less than what the entity would have paid had its property been determined taxable.

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