

How does a town decide, under 32 V.S.A. § 3802, which properties are exempt from property taxes?

This question is two-fold. First, before any property may be determined to be exempt, the property must be *owned* by one of the organizations selected by the statute for exemption. 32 V.S.A. § 3802. Second, the property must be used according to the statutory provisions for that organization under § 3802.

There are several types of organizations selected for exemption under § 3802. Besides land owned by the federal government and the state, the organizations that most commonly claim exemption are churches, non-profit organizations, and schools. 32 V.S.A. § 3802 (4). However, there are a number of other organizations that may fall under the “public, pious or charitable uses” exemption. *Id.* For example, a fly-fishing school and museum was found to be a “public” organization under this statute based upon the purpose of the organization. See *American Museum of Fly Fishing v. Town of Manchester*, 151 Vt. 103 (1989). The key inquiry here is who owns the property. If a private individual owns property and leases this property to a nonprofit organization, this does not meet the requirements under § 3802 (4). See *Lincoln Street, Inc. v. Town of Springfield* 159 Vt. 181 (1992).

Once a town has determined that a property is owned by one of the organizations listed in the statute, the next question is whether the lands are being used “in pursuit of one of its (the organization’s) exempt purposes.” *Burr & Burton Seminary v. Town of Manchester* 172 Vt. 433 (2001). The Vermont Supreme Court has ruled on this issue a number of times, setting up different tests for different organizational types. In the *Burr & Burton Seminary* case the Court created a test to determine if property owned by a private school was exempt from property taxes. The Court stated the property must be:

- (1) owned by an educational institution; and
- (2) used for that institution’s educational purpose or have an educational use. *Id.*

Therefore, if a school has several pieces of property - some of which are classrooms, others are meeting places, and still others are faculty housing - all these parcels have been held to be exempt because they advance the institution’s educational purpose or have an educational use. *Id.* However, if a school rents a building for private use (to individuals for private housing), that property does not meet the requirements for property tax exemption. *Id.* In a related case, the Court found that a school which owned a parcel of undeveloped land did not fall under § 3802 (4) because there was no current educational use of this land, even though there were future plans to use it. *Berkshire School v. Town of Reading*, 172 Vt. 440 (2001).

Towns that have property owned by other types of non-profits (such as museums, wildlife conservation foundations, or recreational organizations) must use a different test to determine if the property is exempt. The Vermont Supreme Court has created a “public use” test for these organizations. A piece of property is tax exempt as a “public use” under § 3802 (4) if:

- (1) it is dedicated unconditionally to public use;

- (2) the primary use must benefit an indefinite class of persons who are part of the public and therefore confers a benefit upon society as a result of the benefit received by this class of persons; and
- (3) the property is owned and operated on a not-for-profit basis. *American Museum of FlyFishing v. Town of Manchester*, 151 Vt. 103 (1989).

Obviously, this is a murky area and the Court has created different tests for different types of organizations. This area of the law is very fact-specific, and your town may have a situation that is not addressed by current case law. If your town is questioning the tax exempt status of property, the best advice would be to contact the League or your town attorney.

- *Elizabeth Willhite, Intern, VLCT Municipal Assistance Center*

VLCT News, April 2004