STATE OF NEW YORK

2609

2019-2020 Regular Sessions

IN SENATE

January 28, 2019

Introduced by Sen. AKSHAR -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the real property tax law, in relation to the exemption from taxation for non-profit organizations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 420-a of the real property tax law is amended by adding a new paragraph (c) to read as follows:

(c) When used in this section:

(i) "organized or conducted exclusively" shall require that a corporation's or association's organizational documents limit the purposes of such corporation or association to one or more exempt purposes, as set out in paragraph (a) of this subdivision;

(ii) "used exclusively" shall require that a corporation or association use its property only for exempt purposes. Uses which may be helpful to the exempt organization but would not, if done on land owned by an otherwise taxable entity, qualify for tax exemption shall subject the portion of the property so used to real property taxation. Such phrase shall be strictly construed and shall be intended to limit exemptions to property and improvements utilized solely for exempt purposes. Where an exempt organization utilizes its land for other purposes, including but not limited to, the sale of products made on the land commercially or the sale of timber, or otherwise leases the land for commercial purposes, or allows the placement or construction of improvements on the land for commercial purposes, that portion of such property and any improvements thereon if such improvements are not utilized for wholly exempt purposes shall be subject to real property taxation;

(iii) "religious purposes" shall mean an activity that is fundamental, necessary and intrinsic to the practice of a religion. Meditation or the maintenance of open space or property utilized primarily for hiking shall not be considered a fundamental or intrinsic religious purpose. A

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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corporation or association organized or conducted exclusively for a religious purpose shall have its own beliefs, form of worship and form of organization. No exemption may be claimed for religious purposes for buildings which are on a parcel where persons live if such persons work in income producing ventures where the income either goes to the individual or to another claiming the exemption or to an organization which is legally associated or affiliated with the income producing venture, unless such goods or services are exclusively and without exception sold to or provided to individuals of the same religion. For the purposes of this paragraph, the term "income" need not include payment of money but may include the receipt by an individual who has provided work or his or her family of food, or clothing or shelter. The fact that individuals live in a classless society shall not be a factor in granting or denying an exemption based on religious purposes. The provisions of this subparagraph shall not affect the provisions of section four hundred thirty-six, four hundred sixty or four hundred sixty-two of this title;

(iv) "educational purpose" shall mean either:

(A) an activity which shall be undertaken in a manner which satisfies the compulsory education requirements of the education law or an activity which is done under the supervision of an entity which is tax exempt pursuant to the not-for-profit corporation law or the internal revenue code and the entity which conducts such activities can issue a diploma and also holds a certificate of registration issued by the board of regents. Such term shall also mean purposes which are exclusively used to increase the knowledge of individuals and which are owned by an institution of higher learning or a school of medicine, dentistry or osteopathy created by law or otherwise authorized by the board of regents of the state university of New York to confer degrees and which meet standards of educational quality comparable to those as may be established from time to time by the board of regents of the state university of New York; such term shall also include property owned by one claiming an exemption from taxation for educational purposes which is used to house individuals who are actively engaged at least one hundred twenty days per year in seeking to satisfy the compulsory education requirements of the education law or who are seeking a degree, certificate, or diploma, through a property owner or lessee which holds a certificate of registration issued by the board of regents or who holds a charter granted by the New York state education department. An entity claiming exemption for educational purposes shall utilize each acre at least one hundred twenty days a year exclusively for educational purposes in order to maintain an exemption from property taxation pursuant to this subparagraph; or

(B) property owned by an organization which is a not-for-profit corporation or is otherwise tax exempt pursuant to the internal revenue code, each exempt acre of which is actively and exclusively used at least sixty days per year by persons under the age of twenty-one who are learning skills related to nature, the outdoors and/or personal and civic responsibilities. The provisions of this subparagraph shall be strictly interpreted. Notwithstanding any other portion of this subparagraph, the property may also be utilized by organizations or individuals for community meetings or community classes or events when no more than the actual expenses of utilizing the facility are charged to the organization or individual; provided no activity described in this subparagraph shall count as part of the day requirements otherwise provided for in this subparagraph. Property necessary for the carrying out of educational purposes, including property necessary for transpor-

tation facilities, athletic facilities, parking facilities, or administrative offices shall be considered an educational purpose if owned by an organization which otherwise qualifies as exempt for educational purposes;

(v) "charitable purposes" shall mean an activity done without profit which actually and exclusively either:

(A) undertakes significant blood donation initiatives, as well as other health related initiatives, including, but not limited to the teaching of classes, and also responds to disasters; or

(B) which actively and exclusively alleviates the condition of poor or physically or mentally disabled humans. The intended beneficiaries shall not be specified individuals and the services provided by an organization claiming charitable exemption shall be open to the public based on economic or physical criteria. An entity claiming exemption for charitable purposes shall utilize each acre at least one hundred twenty days a year exclusively for charitable purposes in order to maintain an exemption from property taxation pursuant to this subparagraph. For the purposes of this section and section four hundred twenty-b of this title, no person who receives food, clothing, or housing from an educational, charitable, religious, moral or mental improvement of men, women, and children entity shall be determined to be poor because such person or his or her family gives as much or more of their income to the charitable entity or another entity which is tax exempt pursuant to the Internal Revenue Code or exempt from real property taxation under this section, or both, as would be required to make a determination that that person or his or her spouse or child is poor;

(vi) "hospital purposes" shall mean a hospice facility as defined in article forty of the public health law as well as a hospital facility or institution engaged principally in providing services by or under the supervision of a physician for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition and which is certified or licensed pursuant to article twenty-eight of the public health law, and which on an ongoing and constant basis provides overnight accommodations to those in need of medical services. It shall also include facilities owned by a hospital facility or corporation related thereto which provides medical care, even if not on a constant basis. It shall also include related parking facilities which exclusively serve the hospital as well as related grounds which are used by hospital patients; and shall also include an emergency room, which is defined to mean a center open on a continuous basis which provides emergency care for those in need of medical services and which is in the same building as a hospital. It shall not include living accommodations for hospital personnel or their families;

(vii) "moral or mental improvement of men, women, or children" shall include each of the following categories of real property described in this subparagraph. In order to be exempt from taxation, each acre shall have to be actively and actually utilized for an exempt purpose at least one hundred twenty days in any year an exemption is claimed for or sought. In addition, the property, in addition to any other requirement, shall be classified as not-for-profit or tax exempt under the Internal Revenue Code.

(A) Real property primarily used to facilitate or enhance the arts;

(B) Real property primarily used in the study of sciences, biology, and horticulture;

(C) Real property primarily used for the benefit of non-human animals;

(D) Real property which is open to the public and is primarily unimproved and is kept open for hiking, walking, or forms of exercise which do not commonly use mechanized devices except by those persons who are disabled or otherwise unable to walk without mechanized assistance. Such open space may be open to the public upon the payment of a fee which is directly related to the costs of maintaining the property, including the improvements thereon. Open space shall not include any property or portion therefor from which the public is excluded except for exclusions based exclusively on public health purposes, as determined by a governmental agency, or for public safety reasoning, as determined by the property owner, such determination to be reviewable in any court having equity jurisdiction and a presumption shall be attached thereto that the property owner's determination is reasonable. Attorneys fees may be awarded, at the discretion of the court, for any primarily prevailing party who commences or defends a civil action based on the public safety aspects of this subparagraph;

(E) "Land trust" shall mean real property which is primarily unimproved. No owner shall be entitled to a property tax exemption as a land trust unless that property owner meets all of the following criteria: (1) enters into a contract with the assessing unit which provides that the land in the land trust may not be sold or encumbered, except by mortgage or conservation easement, without the property owner, within thirty days of such sale or encumbrance, entering into a valid contract to purchase land of at least an equal value in the state of New York to be placed in a land trust and actually so purchasing within one year of entering into such contract; (2) is included as part of a lawfully enacted comprehensive plan by the county, city, town, or village which such property is in or is identified in an official open space or natural resources protection plan duly adopted by a federal, state or local government or agency thereof; (3) exists as a land trust to protect ecological resources which are considered valuable in a lawfully enacted comprehensive plan provided that public access shall not be a criteria in deterring an exemption from taxation for land trust purposes; and (4) unless the governing board of the town, city, or village where the property is situated passes a resolution to the contrary, if the purchase, referred to in item (A) of this clause does not occur within the time limitations provided in such item, the land trust shall be liable for all tax payments which such land trust would have paid on the property such land trust sold for the period of time which such land trust would have owed to all lawful taxing jurisdictions unless the title to the land such land trust entered into a contract to purchase was unmarketable or the seller of such property withdrew the offer to sell in which case such land trust shall have an additional three hundred sixty-five day period to purchase and close title on property in the state of New York, the value of which is at least equal to the value of the property such land trust sold which required the purchase of the property whose title was unmarketable or whose offer to sell was withdrawn;

(F) "Personal improvement" shall mean real property other than that provided for in clause (B) of subparagraph (iv) of this paragraph, which is used primarily by persons under the age of twenty-one who are learning skills related to nature, the outdoors and/or personal and civic responsibilities. Such property shall be owned by organizations or associations which are tax exempt under the Internal Revenue Code. Notwithstanding any part of this subdivision to the contrary, each acre of

property exempted as personal improvement property need only be utilized ninety days per year in order to maintain such property's exemption;

(G) "Non-scholastic educational" shall mean real property owned by an organization which is tax exempt under the Internal Revenue Code and which is primarily used to improve the intellectual capabilities of human beings which do not otherwise qualify for tax exemption pursuant to this section;

(H) "Recreational" shall mean real property owned by an organization which is tax exempt under the Internal Revenue Code and which provides recreational opportunity for individuals regardless of ability to pay. Recreational opportunities can be either indoors or outdoors and may include overnight opportunities primarily for persons under the age of twenty-one years;

(I) "Medical purposes" shall mean real property otherwise owned by an organization which is tax exempt under the Internal Revenue Code and which is not a hospital as defined by this section but which qualifies as a hospital as defined in article twenty-eight of the public health law. Notwithstanding any provision of this subdivision to the contrary, property exempted for medical purposes need not meet any minimum usage requirement in terms of the number of days each acre is actively and actually used;

(J) "Home care services" shall mean real property otherwise owned by an organization which is tax exempt under the Internal Revenue Code and is a home care services agency as defined in article thirty-six of the public health law, notwithstanding any provision of this subdivision to the contrary, property exempted for home care services purposes need not meet any minimum usage requirement in terms of the number of days each acre is actively and actually used;

(K) "Residential health care facility" shall mean real property otherwise owned by an organization which is tax exempt as a residential health care facility as defined in article twenty-eight of the public health law. Notwithstanding any provision of this subdivision to the contrary, property exempted for residential health care facility purposes need not meet any minimum usage requirement in terms of the number of days each acre is actively and actually used;

(L) "Other medical purposes" shall mean real property which otherwise is owned by an organization which is tax exempt under the Internal Revenue Code and is used to provide medical services to those in need. Notwithstanding any provision of this subdivision to the contrary, property exempted for other medical purposes need not meet any minimum usage requirement in terms of the number of days each acre is actively and actually used;

(M) "Primarily charitable purposes" shall mean an activity done on real property owned by an organization which is tax exempt under the Internal Revenue Code and which actually and primarily alleviates the condition of poor or physically or mentally disabled humans. The intended beneficiaries shall not be specified individuals and the services provided by an organization claiming charitable exemption shall be open to the public based on economic or physical criteria; and

(N) "Other moral or mental improvement" shall mean real property owned by an organization which is tax exempt under the Internal Revenue Code and which is dedicated in a manner other than as provided in this paragraph to the moral or mental improvement of men, women, or children.

§ 2. Subdivision 1 of section 420-b of the real property tax law is amended by adding a new paragraph (d) to read as follows:

(d) When used in this section:

(i) "organized exclusively" shall require that a corporation's or association's organizational documents limit the purpose of such corporation or association to one or more exempt purposes, as set out in paragraph (a) of this subdivision. Furthermore, the corporation or association shall not be empowered to engage in activities which in themselves are not in furtherance of one or more such purposes; and

(ii) "used exclusively" shall require that a corporation or association use its property only for exempt purposes. Uses which may be helpful to the exempt organization but would not, if done on land owned by an otherwise taxable entity, qualify for tax exemption shall subject the portion of the property so used to real property taxation. Such phrase shall be strictly construed and shall be intended to limit exemptions to property and improvements utilized solely for exempt purposes. Where an exempt organization utilizes its land for other purposes, including but not limited to, the sale of products made on the land commercially or the sale of timber, or otherwise leases the land for commercial purposes, or allows the placement or construction of improvements on the land for commercial purposes, that portion of such property and any improvements thereon if such improvements are not utilized for wholly exempt purposes shall be subject to real property taxation.

§ 3. The real property tax law is amended by adding a new section 420-d to read as follows:

§ 420-d. State aid payments for properties exempted from taxation. 1. Definitions. (a) For the purpose of this section, the phrase "taxing district" shall include schools, counties, cities, towns, villages, as well as lawfully formed districts which provide services, including, but not limited to fire protection districts, ambulance districts, as well as other lawfully formed districts which do not receive payments from an affected property owner.

(b) For the purposes of this section, the phrase "affected property owner" shall mean an organization which is exempt from taxation pursuant to the internal revenue code and which owns property described in clause (B) of subparagraph (iv) of paragraph (c) of subdivision one of section four hundred twenty-a of this title.

2. State aid payments. A taxing district in which property is situated which property is owned by an affected property owner shall, subject to the provisions of this section, be entitled to receive up to one hundred percent of the taxes which would have been paid on such property had such property not been owned by an affected property owner.

3. Application. (a) The chief executive officer of a taxing district in which there is property owned by an affected property owner may make application for state assistance pursuant to this section. Such application shall be on a form developed by the commissioner. Upon receipt of the application for state assistance, such property shall be valued by the commissioner and the cumulative value of all such lands shall be equalized by applying thereto the appropriate state equalization rate or special equalization rate established in accordance with the rules of the commissioner.

(b) Subject to an acceptable application, the commissioner shall compute the amount of state assistance payable to or for the benefit of each taxing district by multiplying the value of the assessed property by the tax rate per thousand for each taxing district who makes application pursuant to the provisions herein. Such amount shall then be paid to the taxing district upon the audit and warrant of the state comptroller out of moneys appropriated by the legislature. In the event that the total moneys payable pursuant to this section shall exceed the

amount appropriated by the legislature in any state fiscal year, the payments to taxing district shall be reduced proportionately for each taxing district which has timely made application pursuant to this section.

4. Rules. The commissioner is authorized to develop rules and regulations or guidelines for the implementation of this section.

§ 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to assessment rolls prepared on the basis of taxable status dates occurring on or after such date.