

INFORMATION GUIDE

November 2023

Permissive Tax Exemptions

Overview

All property in the State of Nebraska is subject to property tax, unless an exemption is mandated or permitted by the Nebraska Constitution or statute. Permissive exemptions are allowed for the following categories:

- ❖ Property owned by and used exclusively for agricultural and horticultural societies.
- ❖ Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery purposes, and used exclusively for those purposes.

Permissive exemptions (exemption) require an application be filed by the party seeking an exemption that shows the property is eligible for the exemption. To apply for an exemption in 2024, the [Exemption Application, Form 451](#) (application) **must be filed on or before December 31st** for an exemption in the following year.ⁱ This guide will assist you in identifying the treatment of real property that may be exempt or potentially eligible to be exempt from property taxes.

Note: Property owned by political subdivisions **do not** file a Permissive Exemption Application. Ask your county assessor if you have questions.

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This guidance document may change with updated information or added examples. DOR recommends you do not print this document. Instead, sign up for the [subscription service](#) at revenue.nebraska.gov to get updates on your topics of interest.

Permissive Requirements: To qualify for an exemption, the property must be owned by and used exclusively for agricultural and horticultural societies, **OR** the property must:

1. Be **owned** by an educational, religious, charitable, or cemetery organization, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization;
2. Be **used exclusively** for educational, religious, charitable, or cemetery purposes;
3. **Not** be used for **financial gain** or profit to either the owner or user;
4. **Not** be used for the **sale of alcoholic beverages** for **more than 20 hours per week**; and
5. **Not be owned or used by an organization that discriminates** in membership or employment based on race, color, or national origin.

The above requirements are known as the **five-part test**. Each requirement is discussed in further detail below in addition to information regarding the filing and review processes, property status changes, and appeals.

1. Ownership

The following information defines each organizational type that is eligible to receive an exemption. To receive an exemption, one of the following situations must exist:

- 1) an applying organization must fit the description of one of the organization types below and must own the property for which the exemption is sought **OR**
- 2) an applying organization must fit the description of one of the organization types below, however, any type of organization may own the property, provided that it is owned for the benefit of the applying organization and used exclusively for educational, religious, charitable, or cemetery purposes.

Agricultural or Horticultural Society. An agricultural or horticultural society is a nonprofit organization promoting agricultural interests which includes, but is not limited to: the Nebraska State Fair Board established by [Chapter 2, article 1](#); county agricultural societies organized pursuant to [Chapter 2, article 2](#); agricultural associations organized pursuant to [Chapter 2, article 20](#); and, agricultural organizations organized pursuant to [Chapter 2, article 28](#). Note, if an agricultural or horticultural society is a political subdivision and has levying authority, the organization does **not** file a Form 451 for exemption.

An association or organization which devotes a substantial part of its activities to attempting to influence legislation, or which provides money, services, or endorsements to influence any political campaign for public office is **not** eligible for exemption. It is

strongly advised that an organization's or association's organizing documents be included with the Form 451 when it applies for a permissive exemption. For agricultural or horticultural societies, ownership and use are the only requirements that must be met for property to be exempt.

Cemetery Organization. An organization whose purpose is to maintain areas formally set apart for the interment of human dead.

Charitable Organization. For purposes of this subdivision, charitable organization includes an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and a fraternal benefit society organized and licensed under [Neb. Rev. Stat. §§ 44-1072 to 44-10,109.](#)

While the above definition would seem to cover many organizations, Nebraska courts have set a high bar for activities and organizations to be considered "charitable". For example, *United Community Services v. The Omaha Nat. Bank*, 162 Neb. 786, 791 (1956) defined charity as:

"a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering, or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."¹

Accordingly, simply providing a benefit to one's community is, in most cases, not sufficient for an organization to be deemed charitable. It should also be noted that tax exempt status under 501(c)(3) of the Internal Revenue Code does **not** itself determine whether an organization is exempt from property taxes.²

Educational Organization. An institution operated exclusively for the purpose of offering **regular courses** with **systematic instruction in academic, vocational, or technical subjects** or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education. This also includes a museum or historical society operated exclusively for the benefit and education of the public.

Religious Organization. An organization whose purpose is the dedication to, or profession of, a sectarian creed and belief in a divine or superhuman power, or powers to be obeyed or worshipped, or the furtherance and enrichment of spiritual faith involving a code of ethics and a spiritual philosophy.

¹ See also, *Young Men's Christian Ass'n v. Lancaster County*, 106 Neb. 105 (1921) and *Bethesda Foundation v. Saunders County*, 200 Neb. 574 (1978).

² See, Title 350, Neb. Admin Code, Ch. 40-005.03B(3). See also, *Nebraska State Bar Foundation v. Lancaster County Board of Equalization*, 237 Neb. 1 (1991).

2. Exclusive Use

Exclusive use means the **predominant or primary use** of the property. In other words, how is the property most often used. Occasional or incidental use of the property for other purposes may not disqualify the property from being exempt as long as the predominant or primary use of the property is for one or more exempt (educational, religious, charitable, or cemetery organization) uses.

The property may be used solely for educational, religious, charitable or cemetery uses to qualify for the exemption or a combination of educational, religious, charitable, or cemetery uses. Exemptions may be allowed for portions of a property that are used for exempt purposes if other areas of a property do not meet this requirement.

3. No Financial Gain or Profit

A property must not be used for financial gain or profit to either the owner or user. There is no financial gain or profit if no part of the income from the property is distributed to the owners, users, members, directors, officers, or private individuals. Reasonable salaries paid to employees do not constitute a distribution of financial gain or profit. Additionally, organizations can charge a fee for services to cover the organization's expenses.

4. Alcoholic Sales Limited

The property must not be used for the sale of alcoholic liquors for more than 20 hours per week. The sale of liquor is not considered to be an exempt use for educational, religious, charitable, or cemetery purposes. Property (or portions of the property) used for selling alcoholic liquors include all areas in which alcoholic liquors are normally sold, served, or consumed. For purposes of determining whether alcoholic liquor is sold in excess of 20 hours per week, a reasonable average for the tax year may be used.

5. Discrimination Prohibited

The property must not be owned or used by an organization that discriminates in membership or employment based on race, color, or national origin.

Exemption Application and Statement of Reaffirmation Filing Process

An educational, religious, charitable, cemetery organization, or agricultural and horticultural society must file an application, with the county assessor where the property is located, on or before December 31ⁱ of the year preceding the year for which the exemption is sought (. Application years are divisible by four (for example, 2024, 2028, 2032, etc.). All organizations and societies must file a Form 451 in each application year. The intervening years require completion of the Statement of Reaffirmation of Tax Exemption, Form 451A. For example, in December 2023, the Form 451 is filed to apply for an exemption in 2024. In each of the tax years 2025-2027, the Form 451A is filed to

continue the exemption.

Exemptions granted to cemetery organizations will remain in effect without reapplication, unless disqualified by change in ownership or use. When December 31 falls on a Saturday, Sunday, or legal holiday, the application will be considered timely if filed on the next business day. If an application is sent to the county assessor through the U.S. mail, the application is considered filed on the date of the postmark. If an application is sent through the U.S. mail using either registered or certified mail, the date of registration or certification will be considered the postmark date.

Organizations or societies that miss the December 31ⁱ filing deadline may file a Form 451 or Form 451A through June 30. The organization or society filing a late application must also file a written request with the county board for a waiver before the county assessor may consider the application. Organizations filing late reaffirmation statements on or before June 30 will maintain the tax-exempt status of the property and receive approval from the county board.

The county assessor must apply a penalty of 10% of the tax that would have been due had the property been fully taxed, or \$100, whichever is less, for each calendar month or fraction thereof for which the application missed the December 31ⁱ deadline. This penalty may not be waived or reduced by the county board. The table below gives examples of the penalty based on the month when the application is filed.

Month Application Filed	Penalty is the Lessor of	
January	10% of the tax; or	\$100
February	20% of the tax; or	\$200
March	30% of the tax; or	\$300
April	40% of the tax; or	\$400
May	50% of the tax; or	\$500
June	60% of the tax; or	\$600

Failure to file a completed Form 451 or Form 451A by June 30 is a waiver of the exemption for that assessment year.

Property Acquired or Converted to Exempt Use

If an exempt organization or society acquires or converts any taxable property to an exempt use after January 1 and before July 1 of any year, the organization or society may file a Form 451 or Form 451A by July 1 with the county assessor to qualify for an exemption for that assessment year. The application will be reviewed as any other application, except the review by the county board must be completed by August 15th. Failure to file the Form 451 or Form 451A on or before July 1 disqualifies the property from receiving the exemption for that assessment year.

All property acquired or converted to exempt use after July 1 will not be eligible for an exemption for that year. The organization may file a Form 451 by December 31 for exemption in the next assessment year.

Property Transferred from an Exempt Entity to another Exempt Entity

If an exempt organization or society purchases property from another exempt entity, and the purchase is for:

- ❖ Property that was exempt from property taxes (between July 1 and the levy date); and
- ❖ Property that continues to qualify for exemption,

Then, the exempt organization or society purchasing the real property must file a Form 451 with the county assessor on or before November 15.

Levy dates are determined by each county board but must be on or before October 20. The county board must review the application by December 15.

Property Transferred from an Exempt Entity to a Taxable Entity

When exempt property is transferred before the levy date to a taxable entity, it will become taxable for that year because there is taxable property upon which to levy tax. The county assessor or the county board of equalization will bring the exempt property up for review because the property no longer meets the ownership requirement.

When exempt property is transferred after the levy date to a taxable entity, it will remain tax exempt for that year because no levy had been made on the property.

Levy dates are determined by each county board but must be on or before October 20.

Form 451 Permissive Exemption Application and Statement of Reaffirmation Review Process

The county assessor examines all timely filed applications on or before March 1. Applications are reviewed and a determination is made based on the information provided with the exemption application. The burden of proof is on the organization to provide all necessary information to show the property meets all the requirements for exemption.

The county assessor makes a recommendation to the county board as to the taxable status of the property. Between February 1 and June 1, the county board is required to hold a hearing on all applications filed to determine whether to allow or deny the exemption. Notice of the hearing must be given to the applicant ten days prior to the hearing. **Applications not completed in full, including the estimated valuation, shall result in the denial of the requested application.**

A notice must be published in a newspaper of general circulation 10 days in advance of the county board considering the exemption stating that a list of the applications from organizations seeking tax exemptions, descriptions of the property, and the county assessor's recommendations are available in the county assessor's office. Within seven days after the county board's decision, the county clerk must send a notice to the applicant of the county board's decision.

Also, within seven days of the county board's final decision on all real property exemptions, an electronic copy of the decisions must be forwarded to the Nebraska Department of Revenue (Department) for review. In the case of a late-filed application, if a waiver has been granted, the county board must hear and decide the application by August 15. The county board is not required to review Form 451As unless there is evidence to support the review.

Anytime during the year, the county assessor or the county board may review any exemption to determine if it should be continued. This review may be initiated even if the ownership or use of the property has not changed. After a hearing, if the property no longer qualifies for an exemption, the property will be placed on the tax list retroactive to January 1 of that year.

Appeal Process

Organizations or societies denied exempt status by the county board may appeal to the Tax Equalization and Review Commission (Commission, also known as TERC). The appeal must be made within 30 days after the county board's decision. The Tax Commissioner may, at their discretion, intervene in any such appeal.

A county assessor may appeal the actions of the county board granting an exemption to the Commission. A county assessor appealing the action of a county board may request that the district court appoint an attorney to represent the county assessor in the appeal. The Tax Commissioner and the Property Tax Administrator may, at their discretion, intervene in any such appeal. The Commission has the power to review and reverse any tax exemption decision of a county board.

Publication of a List of Exempt Real Property

During the month of September of each year, the county board must publish a list of all real property exempt from property tax for the current tax year in a newspaper of general circulation in the county. The list must contain the exemptions of property in the following categories:

- ❖ Agricultural and horticultural societies;
- ❖ Educational organizations;
- ❖ Religious organizations;
- ❖ Charitable organizations;
- ❖ Cemetery organizations; and
- ❖ Any organization for the exclusive benefit of an educational, religious, charitable, or cemetery organization.

An electronic copy of the list of real property exemptions, along with a copy of the proof of publication, must be forwarded to the Property Tax administrator on or before November 1 each year.

Resource List:

- ❖ [Form 451, Exemption Application](#)
- ❖ [Nebraska Administrative Code 350, Chapter 40 — Property Tax Exemptions Regulations, Nebraska Department of Revenue](#)
- ❖ [Nebraska Revised Statutes, Chapter 77 Revenue and Taxation](#)

Nebraska Department of Revenue, Property Assessment Division

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ⁱ Because December 31st falls on a Sunday in 2023 and January 1st is a holiday, applications must be submitted to the County Assessor on or before January 2nd. If submitting an application by mail, applications must be postmarked on or before January 2nd.