

# Property Tax Exemption of Nonprofit Organizations in West Virginia: Survey Results

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## Introduction

Recent discussions have focused on property tax exemptions for nonprofit organizations in West Virginia and surrounding states. Discussions have included, among many other topics, debates on the “use” versus “ownership” of property in question. The State of West Virginia does not specifically require nonprofit organizations to own the property in order for the property to be tax exempt, but it does require that the property be used for charitable purposes (WV Code 11-3-9(a)(12)).

Similar to West Virginia, nonprofit organizations in Maryland are not required to own the property for it to be tax exempt (MD Assessment Procedures Manual 009:010:010). However, nonprofit organizations in Kentucky, Pennsylvania, and Virginia are required to own the property in order for the property to be tax exempt (KY Constitution Sec. 170, PA General County Assessment Law Sec. 204(a)(9), VA Code 58.1-3606). Ohio requires property ownership for religious groups (OH Revised Code 5709.07(A)(3)). None of the states studied allowed tax exempt property to be used for profit.

Recent controversies have surfaced with respect to the property tax exemption topic in West Virginia. One such controversy has arisen in Parkersburg, WV, where a nonprofit hospital, Camden-Clark Memorial Hospital, is planning a merger with for-profit St. Joseph’s Hospital. Parkersburg is currently facing a large deficit, upwards of \$3 million, for which the merger is largely responsible (Parkersburg User Fee Up for Final Vote 2011). After the merger, the city will lose property and business and occupation (B&O) tax revenue it normally collects from St. Joseph’s Hospital, an amount in excess of \$1 million (Parkersburg User Fee Up for Final Vote 2011).

Another recent issue surrounds the Bechtel Family National Scout Reserve (The Summit) currently under construction in Fayette County, WV. Construction began on the site on October 22, 2010 and is expected to be completed in 2013 (Boy Scouts Build Camp in W. Va. 2011). Yet within just a few months of breaking ground, The Summit has already created a stir in State government. A recent article in the West Virginia Gazette stated that

“...the State Supreme Court has ruled that nonprofit organizations can forfeit their tax-exempt status for property taxes if they lease out their facilities to non-charitable organizations for even a single day” (Kabler 2010).

The nonprofit organization had planned to begin renting out facilities within a few years of completion of the site, but for now may do so at risk of losing their property tax exemption. The article states that lawyer Steven McGowan of Steptoe & Johnson is currently drafting legislation to submit to the West Virginia legislature which would allow nonprofit organizations to lease out facilities and keep their tax exemptions (Kabler 2010). According to the article, McGowan suggests that the opening of The Summit “will be a boon to the state and local economy,” as if to discourage pushing the nonprofit out of state to find another location for its \$400 million investment (Kabler 2010).

## **Details of the Survey**

Having been assigned to the Sub-Committee on Local Finance and Property Taxation of the Governor's Tax Modernization Project, the topic of property tax exemption for nonprofit organizations has been discussed in many recent meetings. At the request of the Sub-Committee, a survey was distributed during November and December 2010 to county assessors in all 55 West Virginia counties by the West Virginia Association of Counties.

This survey addressed property tax exemptions on nonprofit organizations in the State. In the survey, county assessors were asked to answer a set of questions and respond to scenarios based on how their individual counties handle the property tax exemption of nonprofit organizations. Of the 55 counties contacted, 35 counties submitted responses. However, it is important to note that not all 35 counties responded to each survey question. Results of the survey are discussed in the following section.

## **Results of the Survey**

The survey is divided into two sections. The first section supplies a list of nine nonprofit organization types and asks county assessors to indicate which, if any, are considered potentially eligible for property tax exemption in their counties. The second section describes nine scenarios, many with multiple parts, and asks the assessors to indicate in each scenario whether the property involved would be tax exempt.

## **Potentially Eligible Nonprofit Organizations**

The first section of the survey provides a list of nine nonprofit organization types. Each county assessor was asked to indicate which, if any, would be potentially eligible for property tax exemption. Table 1 provides responses to which organizations are potentially eligible for property tax exemptions.

**Table 1: Potentially Eligible Nonprofit Organizations**

<b>Organization</b>	<b>Yes</b>	<b>No</b>
Churches	25	1
Government facilities	25	1
Educational institutions	25	1
Hospitals, clinics, and rehabilitation centers	18	2
Nursing homes	7	10
Retirement homes	1	15
Charitable foundations and organizations	20	5
Lodges and meeting places for fraternal groups	24	1
Veterans organizations buildings	24	1

As the results show, most organizations, such as churches, government facilities, and educational institutions, are potentially eligible for property tax exemption in West Virginia. Retirement homes appear to be mostly ineligible to receive property tax exemptions. Nursing homes in West Virginia counties are less likely to be potentially eligible as not.

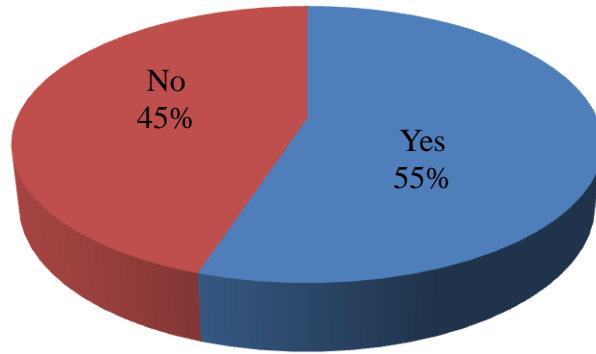
### **Scenarios for Tax Exemption Clarification**

The second section provides scenarios for assessors to answer. This section supplies some additional clarification of what property is or is not tax exempt in the State. Each of the nine scenarios is described below.

Scenario 1: A church owns a parking lot which is used by members and visitors for church functions. During the work week, spaces are rented to workers with jobs in the area. All the income received from the parking space rentals goes to the church’s general budget.

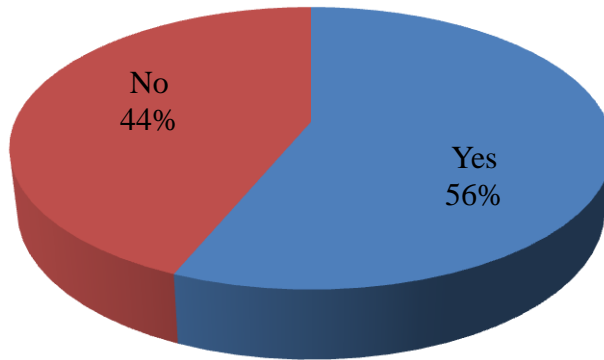
Assessors were first asked whether, under this scenario, the parking lot would be exempt in their county. Respondents replied that 11 counties would exempt the parking lot and nine would not. A graphical representation of this question is presented in Figure 1.

**Figure 1: Scenario 1, Question A**



Assessors were also asked if their answers would be different if the parking spaces were not rented. Nine counties responded that there would be a different answer while seven said there would not. A graphical representation of this question is presented in Figure 2.

**Figure 2: Scenario 1, Question B**



The comments provided in response to Scenario 1 varied. As reasoning for why the parking lot would not be tax exempted in Question A, one county assessor cited a WV Code section stating that the property in the example is not being "...used exclusively for divine worship" (WV Code 11-3-9(a)(5)). Another county assessor's comment viewed the question from a different angle, comparing income from renting parking spaces to other fundraising endeavors churches may explore:

"...Many churches are facing financial hardships and are looking for income from any means to continue to exist. What would our state look like if we have no churches? Any money they receive is used for charitable religious or educational purposes. It may also be used to keep the building repaired. If a church has a bake sale or rummage sale would that make the building taxable? No."

Scenario 2: A nonprofit hospital has started construction of a new wing on a tax exempt building. The construction will take more than a year to complete.

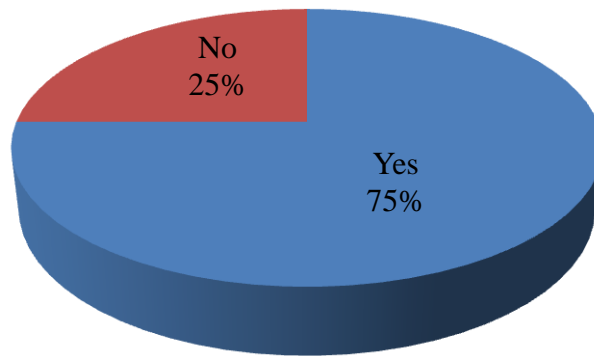
Assessors were asked if the construction would be taxed until the new wing is completed and occupied. All 17 respondents to this question answered that no, the construction would not be taxed.

The comments provided in response to Scenario 2 mostly conformed to the general idea that the construction would not be taxed. One assessor commented, “The real estate improvements would not be taxed. Personal property of [the] construction firm would be taxed.” Another assessor commented, “[T]his county has never taxed new construction until the building become useable, unless a business self reports on their Commercial Business Assessment form.” In one comment, which stood apart from the rest, the assessor simply stated that the construction “should be” taxed.

Scenario 3: A fraternal organization has in its building a restaurant/bar, a dance floor, a bingo parlor, and a gaming parlor.

Assessors were first asked if the entire building would be exempt from taxation in their respective counties. Of the respondents, 15 said yes, the entire building would be exempt, while five assessors said that it would not. Figure 3 provides a graphical representation of this response.

**Figure 3: Scenario 3, Question A**



Assessors were also asked what portion(s) of the building would be subject to the property tax if the entire building would not be exempt from taxation. Among the responses, one county assessor said the gaming parlor would be taxed definitely and that the restaurant/bar and dance floor portion of the building would be taxed if they were rented to outside operators, instead of being operated by the fraternal organization itself. Another assessor stated that the portion of the building “[the] lodge use[d would be] exempt [while the] remainder [would be] taxable.” A third assessor simply stated that all of the building would be taxable.

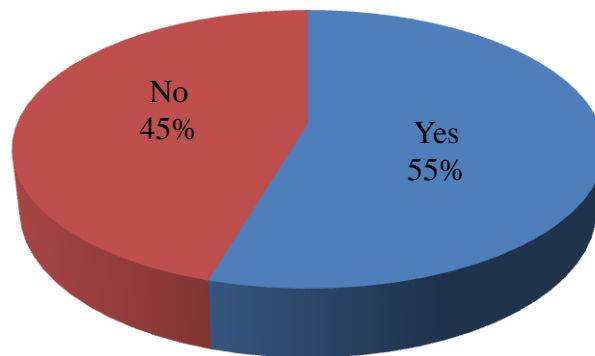
Scenario 4: A nonprofit retirement village as an entrance requirement requires the prospective resident to “buy” their quarters although title remains with the retirement village. The residents



have the right to live in the quarters until they die or leave the village. The proceeds from the sale of the quarters are used exclusively for the maintenance of the common area and the provision of a health care unit for those who become ill and can no longer live in their quarters.

Assessors were asked if the entire village would be exempt. Only six county assessors replied that yes, the entire village would be exempt, while five replied that it would not. A graphical representation of this question is provided in Figure 4.

**Figure 4: Scenario 4**

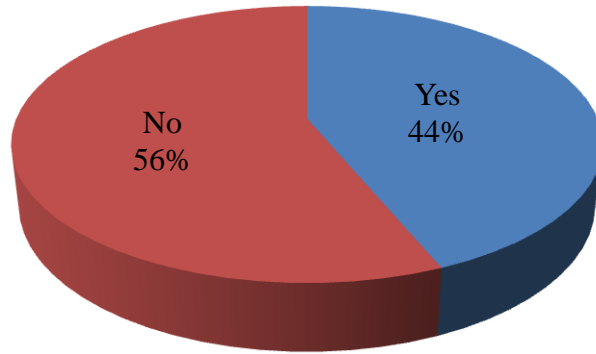


Of the comments provided on Scenario 4, most county assessors stated that the entire village would either be taxable or exempt from taxation. One county assessor stated that, if the living quarters were separated from the common areas or the health care unit, then the village would not be exempt.

Scenario 5: A nonprofit charitable foundation dedicated to raising funds to support research and to provide educational activities owns a building. The building is partially rented to for-profit businesses. The rental income is used for the expenses and work of the foundation.

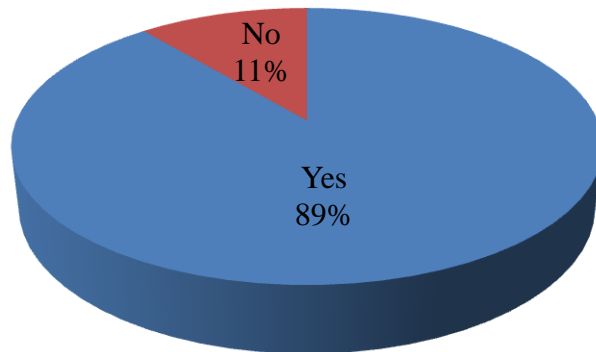
Assessors were asked if the entire building would be exempted from taxation in their respective counties. Of the respondents, 7 counties would exempt the entire building and 9 counties would not. A graphical representation of this response is provided in Figure 5.

**Figure 5: Scenario 5, Question A**



Assessors were also asked whether the portion of the building used by the foundation would be exempted. Respondents replied that 8 counties would exempt the foundation portion of the building while 1 county would not. A graphical representation of this response is provided in Figure 6.

**Figure 6: Scenario 5, Question B**



Most comments provided in response to Scenario 5 agreed that only the portion of the building used for nonprofit functions would be exempt, but that the portion used for profit would be taxable.

Scenario 6: A for-profit company owns a building which they lease entirely to a nonprofit organization, which uses the building for its headquarters.

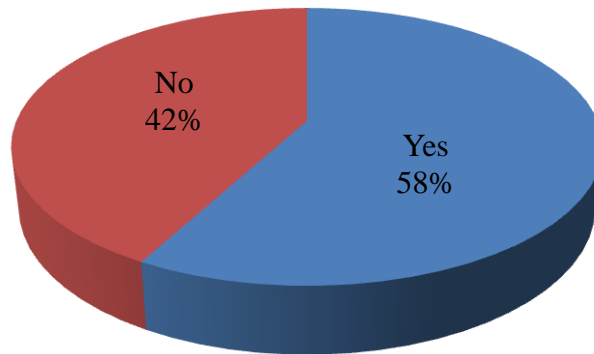
Assessors were asked whether the building would be tax exempt in their respective counties. All 17 of the respondents replied that no, the building would not be tax exempt. The majority of the comments left in response to Scenario 6 agreed that the building would be taxable.

Scenario 7: A fraternal order owns a campsite which it uses for camps that it sponsors. Fees are required on a sliding scale which range from zero to full cost of the visit to attend the camps. Other organizations are allowed to rent the campsite for their activities. These organizations may

or may not be nonprofit entities. The rental income is used entirely to pay the expenses associated with the upkeep of the site and retirement of the debt on the campsite.

Assessors were asked if the campsite would be exempted from taxation in their respective counties. Of the respondents, 11 county assessors said yes, the campsite would be exempted, while eight county assessors said that it would not. A graphical representation of this question is provided in Figure 7.

**Figure 7: Scenario 7**

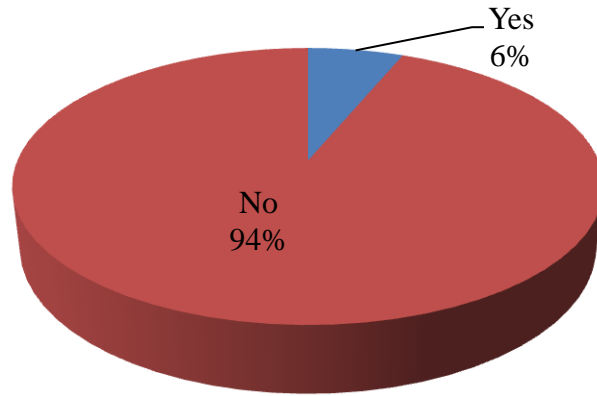


Comments on Scenario 7 varied. One comment stated simply that the camp would be taxable while another wrote that the camp would be exempt so long as the money goes back to the nonprofit organization. A separate assessor stated that a similar incident had recently occurred in their county. Individuals had built camps on church property for which they received a tax bill. The matter went to the circuit court which ruled against assessing the camps and the tax money was refunded.

Scenario 8: A small group meets on Sunday and Wednesday in the home of the preacher. The room they occupy is used for no other purpose than the conduct of worship and Bible study.

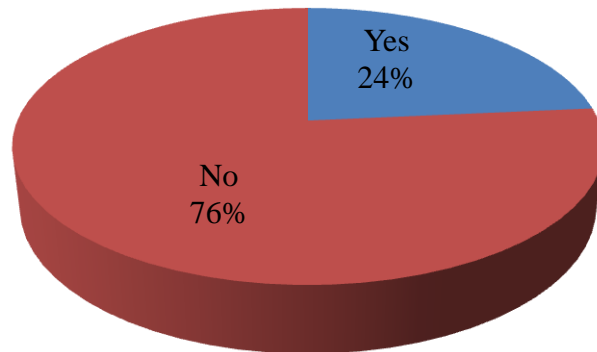
Assessors were asked if the house or the room would be exempted from taxation. One county assessor responded “yes” while 15 county assessors replied “no.” A graphical representation of this question is provided in Figure 8.

**Figure 8: Scenario 8, Question A**



Assessors were also asked if there would be a difference if the group were incorporated as a nonprofit organization. Of the respondents, four counties replied that there would be a difference while 13 counties replied there would not. A graphical representation of this question is provided in Figure 9.

**Figure 9: Scenario 8, Question B**

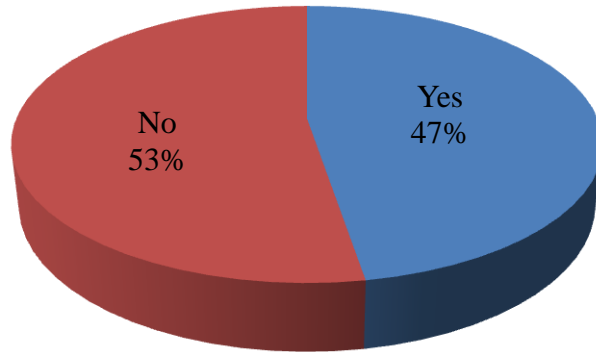


Comments for Scenario 8 seemed to hinge on the ownership of the house. A few comments stated that the house would be exempt if it were considered a parsonage owned by the church. Two counties essentially stated that only the room would be exempt if owned by the preacher and not by the church.

Scenario 9: A nonprofit hospital rents out a portion of its building to a for-profit organization which operates a daycare center in the space. The rental income is returned to the hospital's general fund.

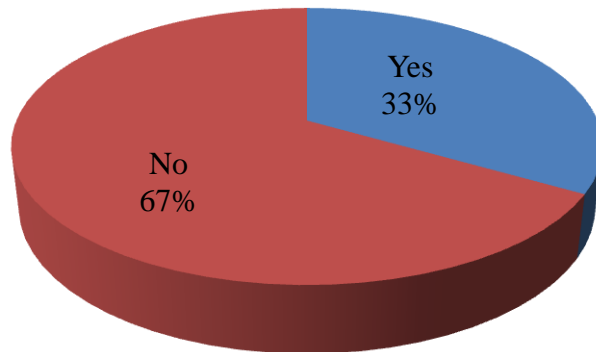
Assessors were asked if the portion of the hospital used as a daycare would be exempted. Of the respondents, nine counties replied that the daycare portion would be exempted while 10 replied that it would not. A graphical representation of this question is provided in Figure 10.

**Figure 10: Scenario 9, Question A**



Assessors were also asked if there would be a difference if the daycare center was operated by a nonprofit organization. Five counties which responded said there would be a difference while 10 counties said there would not. A graphical representation of this question is provided in Figure 11.

**Figure 11: Scenario 9, Question B**



Among the few comments left for Scenario 9, one assessor said that the daycare would be exempt if it were part of the hospital used for hospital employees. Another assessor stated that if rent is charged then the daycare should not be exempted. This same assessor also made note that “the assessor may not know if rent is collected for some of these cases.”

## **Conclusions**

From the analysis of the responses collected in this survey, it is apparent that a lack of uniformity exists among West Virginia counties with respect to property tax exemption of nonprofit organizations. As the results of this survey suggest, disparity begins with the very identification of what organizations are considered potentially eligible for property tax exemptions. Churches, government facilities, and educational institutions, for example, were noted to not be potentially

eligible for exemption in at least one West Virginia county, although all are mentioned as property exempt from taxation in Code (WV Code 11-3-9(a)).

The nine scenarios also provide a more in depth look at the property tax exemption inconsistencies which exist in West Virginia today. It is evident that county assessors are not in agreement with regard to money generated through the lease of property belonging nonprofit organizations. Many assessors stated that, if the property is being leased and the nonprofit is receiving income, the property should be taxed. Other assessors upheld the opposing argument: is leasing property for income any different than conducting a fundraising activity if any and all funds generated are given straight to the organization for the organization's nonprofit purposes and endeavors?

The results of this analysis make it clear that further study needs to be conducted on the laws dictating the taxation or exemption of property owned by nonprofit organizations.

## References

"Boy Scouts Build Camp in W. Va." *West Virginia Conference United Methodist Church*. January 6, 2011. <http://www.wvumc.org/news/boy-scouts-build-camp-w-va> (accessed January 13, 2011).

Kabler, Phil. "Scouts Want Tax Exemption for Leasing out Fayette Site." *West Virginia Gazette*. December 14, 2010. <http://www.wvgazette.com/News/201012141134> (accessed January 13, 2011).

*The State Journal*. "Parkersburg User Fee Up for Final Vote." January 7-13, 2011: 7.