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## APPORTIONMENT OF TAX EXEMPTIONS GRANTED CHARITABLE CORPORATIONS

Franklin M. Crouch\*

**I**NCREASES in the burdens of taxation, together with decreases in income from endowments and the like, have apparently driven charitable, educational, and other nonprofit corporations to seek every advantage from tax exemption laws while, at the same time, causing them to press for added sources of income. Without attempting to discuss the situation which has arisen in the field of federal income taxation growing out of the acquisition of business enterprises by organizations formed on a not for profit basis, there is evidence of a similar development in the field of state taxation, particularly as it concerns the imposition of property taxes on realty owned by such eleemosynary bodies when used in part for charitable or public purposes but devoted, at least in part, to the production of revenue. Noteworthy in that direction is a series of recent cases originating in Ohio together with one decision to be found in Minnesota, the import of which prompts an inquiry into the possibility of securing either a total exemption from taxation or, if that proves impossible, then the obtaining of at least an apportionment of the exemption pro-rata according to the extent to which some charitable use is made of the premises.

Three recent Ohio cases serve to highlight the problem, for the highest court of that state appears to be sharply divided over the right to an exemption unless the property is used totally and exclusively for charitable purposes. In the case of *City of Cleveland v. Board of Tax Appeals*,<sup>1</sup> for example, a municipal stadium, located on land owned by the city, together with four adjacent parking areas, was held to be subject to tax, for the reason that

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<sup>1</sup> — Ohio St. —, 91 N. E. (2d) 480 (1950). Zimmerman, J., wrote a dissenting opinion, as did also Taft, J. The dissenting opinion of the latter was concurred in by Stewart, J.

the same was not operated exclusively for public purposes, even though the properties had been acquired with the proceeds of bonds charged against the general tax revenues supplied by the inhabitants of the city. Although a majority of the judges concerned agreed that the derivation of an incidental revenue from the publicly owned property would not be sufficient to alter its public character, the record indicated that only one use had been made of the stadium in question during the taxable year without the making of an admission charge, in contrast to some one hundred other uses at a fee which had netted the municipality a substantial profit before allowances had been made for depreciation and debt retirement.

Of comparable character is the case of *Cleveland Osteopathic Hospital v. Zangerle*<sup>2</sup> in which tax exemption of the corporate realty was denied when it appeared that the hospital operated at a profit from fees and other charges for professional services rendered by staff osteopathic physicians and surgeons who were its regular employees, albeit all such profits were allocated to the purpose of retiring mortgage indebtedness and the enlargement of the hospital facilities. The majority of the court, again, were of the opinion that the exclusive operation of the property for charitable purposes necessary to secure tax exemption did not require that the hospital be entirely devoted to the admission of patients without charge, yet such care for the poor, needy and distressed had to be an important objective and could not be overshadowed by a design to make a substantial profit. That design, the majority said, would tend to negative the idea that the hospital was a benevolent institution. The minority judges, recognizing that not even a charity could operate indefinitely at a loss, were of the opinion that the hospital was a charitable corporation so long as it did not operate simply as a device to channel profits to its stockholders or promoters.<sup>3</sup>

<sup>2</sup> — Ohio St. —, 91 N. E. (2d) 261 (1950). Taft, J., wrote a dissenting opinion, concurred in by Hart and Stewart, JJ.

<sup>3</sup> An exemption from personal property taxation was sought in the case of *American Jersey Cattle Club v. Glander*, 152 Ohio St. 506, 90 N. E. (2d) 433 (1950), wherein an association formed as a nonprofit corporation for the purpose of "im-

In the third case, that of *Western Reserve Academy v. Board of Tax Appeals*,<sup>4</sup> a nonprofit corporation operating a college preparatory school had erected homes on land owned by the corporation, adjacent to the campus, to be occupied by certain of its faculty members rent free. In return for such use and occupation, the faculty members were expected to render supervisory, tutoring and coaching services, of benefit to the academy students, within the premises so furnished. A denial of tax exemption was upheld on the theory that the buildings were not used exclusively for charitable purposes, since the thought of private residence was incompatible with the idea of public benefit.<sup>5</sup> The chance of presently sustaining a tax exemption in Ohio, then, unless the charitable use is not only clear but is also virtually exclusive, is extremely slender.<sup>6</sup>

Contrast to these Ohio cases is provided by the decision of the Minnesota Supreme Court in the case of *Christian Business Men's Committee of Minneapolis, Inc. v. State*.<sup>7</sup> The charity

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proving the breeding of Jersey cattle in the United States," had a net income after operational expenses had been paid, which net had been taxed on the basis that the club was "engaged in business" as that term was defined in Ohio Gen. Code 1946, § 5325-1. The tax commissioner had proceeded on the theory that as certain of the club's activities brought it into competition with recognized commercial enterprises it was not operated or organized exclusively for charitable, scientific, educational or public purposes within the meaning of Ohio Gen. Code 1946, § 5328-1a. The Ohio Supreme Court so held and denied the claimed tax exemption.

<sup>4</sup> — Ohio St. —, 91 N. E. (2d) 497 (1950). Justices Stewart and Taft each wrote dissenting opinions.

<sup>5</sup> The fact that faculty salaries would have been increased had not such residential quarters been provided may have had some bearing on the decision of the majority.

<sup>6</sup> The split in the Ohio Supreme Court is further illustrated by the decision in *Applications of University of Cincinnati*, — Ohio St. —, 91 N. E. (2d) 502 (1950), wherein a tax exemption was granted as to certain improved parcels of realty, held in trust for the benefit of the university, the rental income from which was applied exclusively to its use, endowment and support, whereas certain vacant lots, not then used by the university, were held taxable for the reason that they were not then contributing in any way to the support of the institution. Considerable doubt was there expressed as to the validity of Ohio Gen. Code 1946, § 4003-15, creating a special exemption in favor of educational institutions, but inasmuch as the concurrence of a sufficient number of the judges to a declaration of invalidity, made necessary by Ohio Const., Art. IV, § 2, could not be obtained, the statute was held valid.

<sup>7</sup> 228 Minn. 549, 38 N. W. (2d) 803 (1949). The court was obliged to interpret a statute which declared: "All property described in this section to the extent herein limited shall be exempt from taxation: (1) All public burying grounds; (2) All public school houses; (3) All public hospitals; (4) All academies, colleges and universities, and all seminaries of learning; (5) All churches, church property and houses of worship; (6) Institutions of purely public charity; (7) All public property exclusively used for any public purpose. . . ." See Minn. Stats. Ann. 1947, § 272.02, which codifies the language found in Minn. Const. 1857, Art. IX, § 1.

there concerned, after acquisition of ownership of certain real property, sought to have the property declared exempt from real estate taxation. The property in question consisted of a three-story building, a connected two-story garage, and an adjoining one-story structure located in a downtown business district. The street floors and the basement area of one of the buildings were leased to commercial tenants but the remaining portions were used for such activities as a service men's hospitality center, for youth activities, for religious broadcasts conducted under the auspices of the petitioner, and to provide meeting places for other organizations interested in promoting the Christian way of life. The portions under lease to commercial tenants were eventually to be converted to the corporate charitable and religious uses when the existing leases expired. A denial of an exemption, based on the theory that the property in question had not been used exclusively for purely public charitable purposes, was reversed on the ground that it was not necessary to treat the buildings as a single unit but that the same could be assessed and taxed on that portion of the total assessed valuation allocated to the taxable use, after deduction of the value of the portion thereof properly allocated to the tax exempt use. The divergent views so noted add point to an investigation into the possibilities for the apportionment of the tax exemption which may be granted to a charitable corporation.

It can be said, at the outset, that every jurisdiction in the United States has, to some degree, made provision by law for the granting of a tax exemption to benevolent, charitable or religious organizations. The fundamental ground of all such tax exemptions, where allowed, is said to be the reciprocal of the benefit conferred upon the community by such charitable and benevolent institutions in relieving the state, at least to some extent, of the burden which rests upon it to care for, and to advance the interests of, its citizenry.<sup>8</sup> On this foundation are

<sup>8</sup> See 61 C. J., Taxation, § 499.

predicated both constitutional<sup>9</sup> and statutory<sup>10</sup> authority for tax exemption in the various jurisdictions. In the absence thereof, the property of a charitable institution, like any other property, would be subject to taxation. But these provisions vary widely, not only in the matter of their language but also in the construction placed thereon as the result of judicial interpretation.

In the main, like the basis to be found in Minnesota,<sup>11</sup> these exemption provisions require that there be a concurrence of (1) ownership of the property by the charitable institution or benevolent organization and (2) the use thereof for the proper purposes of the organization. There are thirty-six states<sup>12</sup> together with the District of Columbia in this category. The remaining twelve states<sup>13</sup> make charitable use the only test, disregarding

<sup>9</sup> Ala. Const. 1901, Art. IV, § 91; Ark. Const. 1874, Art. XVI, § 5; Cal. Const. 1879, Art. XIII, §§ 1½ and 1c; Col. Const. 1876, Art. X, § 5; Fla. Const. 1887, Art. XVI, § 16; Ga. Const. 1877, Art. II, § 5002; Ill. Const. 1870, Art. IX, § 3; Ky. Const. 1891, § 170; La. Const. 1921, Art. X, § 4; Minn. Const. 1857, Art. IX, § 1; Mo. Const. 1875, Art. X, § 6; Mont. Const. 1889, Art. XII, § 2; Neb. Const. 1875, Art. XIII, § 2; Nev. Const. 1864, § 145(1); N. Mex. Const. 1911, Art. VIII, § 3, N. C. Const. 1876, Art. V, § 5; Okla. Const. 1907, Art. X, § 6; Pa. Const. 1874, Art. IX, § 1; S. C. Const. 1895, Art. X, § 4; Tex. Const. 1876, Art. VIII, § 2; Utah Const. 1895, Art. XIII, § 3; Va. Const. 1902, § 183; Wash. Const. 1889, Art. VII, § 3.

<sup>10</sup> Ala. Code 1940, Tit. 51, § 2; Ariz. Code 1939, § 73—201; Ark. Stats. 1947, § 84—206; Cal. Rev. and Tax Code, Div. 1, Part 1, Ch. 1, Art. 1, § 206; Conn. Gen. Stats. 1949, Tit. 15, Ch. 100, § 2027; D. C. Code, Tit. 47, Ch. 8, § 47—801; Del. Rev. Code 1935, Ch. 44, § 1285; Ga. Code 1933, §§ 2—5002 and 92—201; Ida. Code 1949, § 63—105; Ill. Rev. Stat. 1949, Vol. 2, Ch. 120, § 500; Burns' Ind. Stats. 1944, Ch. 81, § 6; Flack Md. Code Ann. 1939, Art. 81; Mass. Laws Ann., Ch. 59, § 5; Mich. Stats. Ann. 1945, Ch. 59, § 7.7(4); Minn. Stats. Ann. 1947, § 272.02; Miss. Code Ann. 1942, Tit. 39, § 9697; Mo. Rev. Stats. Ann. 1943, Ch. 74, § 10937; Mont. Polit. Code Ann. 1935, Ch. 183, § 1998; Neb. Rev. Stats. 1943, Ch. 77, § 202; Nev. Comp. Laws Ann. 1929, §§ 6418(5) and 6630; N. H. Rev. Laws 1942, Ch. 73, §§ 24-6; N. J. Stats. Ann. 1949, Ch. 54.4-3.6; McKinney's N. Y. Consol. Laws Ann. 1943, Tax Law, Art. 1, § 4; N. C. Gen. Stats. 1943, Ch. 105, § 296(6); N. D. Rev. Code 1943, § 57-0208(8); Page's Ohio Gen. Code Ann. 1946, § 5353; Okla. Stats. Ann., Tit. 68, § 15.2; Ore. Comp. Laws 1947, Ch. 110, § 201(3); R. I. Gen. Laws 1938, Ch. 29, § 2; S. C. Code 1942, Ch. 108, Art. 3(3), § 2578; S. D. Code 1939, § 57.0311(3b); Williams Tenn. Code Ann. 1934, Tit. V, Art. IV, § 1085; Vernon's Tex. Civ. Stats. Ann., § 7150(7); Utah Code Ann. 1943, Tit. 80, Ch. 2, § 1; Vt. Stats. 1947, Tit. 8, Ch. 37, § 662; Remington Wash. Rev. Stats. Ann. 1932, Tit. 78, Ch. 3, § 11111; W. Va. Code 1943, Tit. 11, Ch. 3, § 9; Wis. Stats. 1947, Ch. 70, § 70.11; Wyo. Comp. Stats. Ann. 1945, Ch. 32, § 104.

<sup>11</sup> Minn. Const. 1857, Art. IX, § 1; Minn. Stats. Ann. 1947, § 272.02.

<sup>12</sup> Ariz., Ark., Cal., Del., Fla., Ga., Ida., Ill., Ind., La., Me., Mass., Mich., Minn., Miss., Mo., Neb., Nev., N. H., N. J., N. Y., N. C., N. D., Ohio, Okla., Ore., Pa., S. C., S. D., Tenn., Tex., Utah, Vt., Va., Wash., W. Va. The constitutional and statutory citations have been set forth in notes 9 and 10, ante. Reference hereafter to a particular state by name is intended to incorporate the pertinent constitutional and statutory provisions already cited.

<sup>13</sup> Ala., Colo., Conn., Iowa, Kan., Ky., Md., Mont., N. Mex., R. I., W. Va., Wyo.

questions of ownership, for not a single state regards ownership alone as sufficient ground on which to base the privilege of tax exemption.

Clearly, therefore, little attention need be given to questions of ownership, for these questions may be easily resolved, in any specific instance, by an inspection of title records, for instruments such as deeds, trust agreements, and the like, vesting title in the charitable corporation, are usually recorded. The real issue in any particular case will usually turn on whether or not the use or uses to which the property in question is put can be said to serve a charitable or benevolent purpose. Where the property is used wholly for charitable purposes there will, usually, be no difficulty in fitting it into the tax exemption frame. With equal facility, it can be determined that property used entirely for other than a charitable purpose is not entitled to exemption from taxation. Difficulty is manifested, however, when a particular parcel of real estate is put, in part, to a charitable use while other parts thereof are used for non-charitable purposes.

Three possibilities of solution may be offered to the last-mentioned problem. The first of them is to grant, on the basis of the partial charitable use, a total exemption from taxation. At the other extreme lies the second possible solution, that is to tax the whole of the property as if it were entirely commercially owned and used. The third possibility, occupying a middle ground between these two extremes, would apportion the property, for tax purposes, according to the degree of the charitable and non-charitable uses to which it is put and make an allocation of the exemption accordingly. Legislative recognition of the problem seems to exist in only twenty-four of the states<sup>14</sup> and the District of Columbia. In thirteen of these jurisdictions,<sup>15</sup> there is no provision for apportionment. In the remaining twelve,<sup>16</sup> the

<sup>14</sup> Ark., Cal., Fla., Ida., Ind., La., Md., Mass., Mich., Minn., Miss., Neb., N. Y., Ohio, Pa., S. D., Tenn, Utah, Vt., Va., Wash., Wis., Wyo. References concerning these states may be found in notes 17, 19 and 20, post.

<sup>15</sup> Ala., Cal., Del., Ill., Iowa, Ky., Mo., N. J., N. M., N. C., N. D., Okla., and Tex. See notes 9, 10, 17, 25, 29, and 30 through 38, inclusive.

<sup>16</sup> Ariz., Conn., Ga., Kan., Me., Mont., Nev., N. H., Ore., R. I., S. C., W. Va.

question apparently has not arisen directly, for no cases bearing directly on the point may be noted.

A study of the law of these jurisdictions wherein a pro-rata apportionment is made according to use reveals that this result obtains from either of two sources. The first of these sources lies in the statutory exemption provision itself. Twelve jurisdictions, including the District of Columbia,<sup>17</sup> may be grouped under this heading. Typically, these statutes first declare that property belonging to charities and used for the purposes for which such charities were organized is to be exempt from taxation, except that, if the property belonging to the charitable institution is used for business purposes from which a revenue is derived, it shall then be taxed as is true of any other property. Succeeding the last-mentioned proviso is a clause which grants the right of apportionment.<sup>18</sup> It logically follows, therefore, that such statutory provisions leave almost nothing for the courts to do so far as the law is concerned.<sup>19</sup> What little work there is would seem to consist solely of the determination as to whether or not the particular use is or is not a charitable or a benevolent one.<sup>20</sup>

The second source is to be found in judicial interpretations given to statutory exemption provisions which are, of themselves,

<sup>17</sup> Cal. Const. 1879, Art. XIII, §§ 1½ and 1c; D. C. Code, Tit. 47, Ch. 8, § 47-801; Ida. Code 1949, § 63-105; Burns' Ind. Stats. Ann. 1933, § 63-201; Mass. Laws Ann., Ch. 59, § 5; McKinney's N. Y. Consol. Laws 1943, Tax Law, Art. 1, § 4; S. D. Code 1939, § 57.0311(3); Williams Tenn. Code Ann. 1934, Tit. V, Art. IV, § 1085; Vt. Stats. 1947, Tit. 8, Ch. 37, § 662; Va. Const. 1902, § 183; Remington Wash. Rev. Stats. Ann. 1932, Tit. 78, Ch. 3, § 11111; Wis. Stats. 1947, Ch. 70, § 70.11.

<sup>18</sup> By way of example, Williams Tenn. Code Ann. 1934, Tit. V, Art. IV, § 1085, declares that the exemption shall extend to: "The real estate owned by any religious, charitable . . . institution and occupied by such institution . . . exclusively for carrying out thereupon one or more of the purposes for which the institution was created or exists . . . The real property of any such institution not so used . . . shall not be exempt; but if a portion only of any lot or building of any such institution is used exclusively for . . . such purposes, then such lot or building shall be so exempt only to the extent of the value of the portion so used."

<sup>19</sup> Of the states possessing such provisions, New York spells the text out in the greatest detail. See McKinney's N. Y. Consol. Laws Ann. 1943, Tax Law, Art. 1, § 4. The language there used would appear to be a codification of the early decisions of that state. No cases in point involving the present provision have been noted.

<sup>20</sup> The exemption provisions in California and Virginia declare that the legislatures thereof may, by special act, provide for total or partial tax exemption. The Vermont statute is unique in that the town in which the property is situated may vote for an exemption thereof, either in whole or in part.



silent as to apportionment. Under this heading may be found some twelve states,<sup>21</sup> including Minnesota, and the case noted above from that jurisdiction may be said to be representative of the decisions to be found in the other jurisdictions falling in this category. These courts have concerned themselves primarily with the question as to whether or not the property has been devoted to a proper use and have reached the obvious conclusion that, at least in part, it was so exclusively used for purposes within the statutory provision, albeit in part it was not. In each instance, both parts have comprised substantial portions of the real estate although none have involved the peculiar part-time commercial use, developed for the municipal stadium, that is observable in the Ohio case of *City of Cleveland v. Board of Tax Appeals*,<sup>22</sup> for the business use has been based on a reasonably permanent basis. Where that exclusive use of a substantial portion of the real estate for benevolent or charitable purposes has been found to exist, such portion of the real estate has been held to be pro-rata exempt from taxation while the remainder of the property, being that portion used primarily for revenue purposes, has been declared pro-rata taxable.

The reason underlying decisions of that character is best expressed in the words used by the Minnesota court in the case mentioned. It said that although

it is a general rule that constitutional provisions exempting property from taxation are to be strictly construed, such provisions, though not subject to extension by construction or implication, are to be given a reasonable, natural and practical interpretation in the light of modern conditions to effectuate the purpose for which the exemption is granted.<sup>23</sup>

<sup>21</sup> See *Burbridge v. Smyrna Baptist Church*, 212 Ark. 924, 209 S. W. (2d) 685 (1948); *Simpson v. Bohon*, 159 Fla. 280, 31 So. (2d) 406 (1947); *Cunningham v. Board of Assessors*, 52 La. Ann. 223, 26 So. 872 (1898); *Baltimore v. Grand Lodge*, 60 Md. 280 (1883); *Detroit Young Men's Society v. Detroit*, 3 Mich. 172 (1854); *Business Men's Christian Ass'n v. State*, 228 Minn. 549, 38 N. W. (2d) 803 (1949); *Y. M. C. A. v. Lancaster County*, 106 Neb. 105, 182 N. W. 395 (1921); *Masonic Temple Craft v. Bd. of Equalization*, 129 Neb. 293, 261 N. W. 569 (1935); *Philadelphia v. Barber*, 160 Pa. 123, 28 A. 644 (1894); *Odd Fellows Bldg. Ass'n v. Naylor*, 53 Utah 111, 177 P. 214 (1918); *I. O. O. F. of Casper v. Scott*, 24 Wyo. 544, 163 P. 306 (1917). Ohio belonged herein prior to the decisions noted above.

<sup>22</sup> See note 1, ante.

<sup>23</sup> 228 Minn. 549 at 559, 38 N. W. (2d) 803 at 811.

To the extent that the community receives a direct benefit flowing from that part of the property which is used exclusively by the charitable organization, relieving the state of its burden to that extent, such part should be exempt from the burden of taxation. Where part of the property is devoted to the derivation of revenue, however, any benefit which flows to the community is, at best, indirect and remote and the purposes underlying the exemption are served, if at all, in a second-hand fashion. Denial of an exemption in such cases, at least to the extent the property is held for revenue production, is warranted.

Other jurisdictions have refused to recognize apportionment as a solution to the problem of whether or not to tax the properties of charitable or benevolent institutions. They have, therefore, adopted one or the other of the remaining possible solutions, that is total exemption or total non-exemption. Thirteen states<sup>24</sup> fall in this category and the decisions therein range from the most strict to the most liberal of statutory interpretations.

Of all the cases noted, those from New Jersey appear to demonstrate the least liberal attitude. The statute of that state requires that, in order to qualify for tax exemption, the property must be both owned and used exclusively for charitable purposes.<sup>25</sup> The language thereof is not much different from that of the Minnesota statute, but the New Jersey courts have repeatedly emphasized that the use must be exclusive and nothing else will suffice. Illustrative thereof is the holding in the case of *Trustees of the Young Men's and Young Women's Hebrew Association of Newark v. State Board of Tax Appeals*.<sup>26</sup> The building there concerned was used almost entirely for charitable or religious purposes by the Hebrew Association, but another organization was permitted to maintain its offices therein. The court held that there was no entitlement to tax exemption since the building was not used exclusively for purposes calculated to im-

<sup>24</sup> Ala., Colo., Del., Iowa, Ky., Mo., N. J., N. Mex., N. C., N. D., Okla., and Tex. Cases from these jurisdictions are cited in the succeeding footnotes.

<sup>25</sup> N. J. Stats. Ann. 1949, Ch. 54.4-3.6.

<sup>26</sup> 119 N. J. L. 504, 197 A. 372 (1938), affirmed in 121 N. J. L. 65, 1 A. (2d) 367 (1938).

prove the moral or mental outlook of the members of the association which owned the premises or of those who attended its functions.<sup>27</sup> While not quite so intolerant of non-exclusive uses for charitable purposes as is New Jersey, some seven other states must be listed along with it, in addition to the view now being followed in Ohio as illustrated by the cases mentioned above.<sup>28</sup>

Slightly more liberal is the view to be found in Illinois, which state uses what some courts have termed the primary use test. That test was defined, in the Minnesota case above referred to, as being one in which the primary use to which property is put determines the question as to whether it is or is not exempt from taxation. As the court there noted, if the property is devoted primarily to a religious or charitable purpose, an incidental use for another purpose would not destroy the exemption, but an incidental use for religious or charitable purposes, of property primarily used for other purposes would not warrant exemption.<sup>29</sup> Application of such a test necessarily depends on the facts presented in any particular situation which may be under consideration. Obviously, both the result of total exemption or that of total taxation can be reached by its application, and this is demonstrated by Illinois decisions on the subject.<sup>30</sup> Other states have reached the same end without spe-

<sup>27</sup> See also *Haven of Grace v. Lakewood*, 19 N. J. Misc. 414, 20 A. (2d) 518 (1941).

<sup>28</sup> *State v. Bridges*, 246 Ala. 486, 21 So. (2d) 316 (1945); *Creel v. Pueblo Masonic Bldg. Ass'n*, 104 Colo. 281, 68 P. (2d) 23 (1937); *Readlyn Hospital v. Hoth*, 223 Iowa 341, 272 N. W. 90 (1937); *Fitterer v. Crawford*, 157 Mo. 41, 57 S. W. 1134 (1900); *Sir Walter Lodge v. Swain*, 217 N. C. 632, 9 S. E. (2d) 365 (1940); *Markham Hospital v. City of Longview*, 191 S. W. (2d) 695 (Tex. Civ. App., 1945). Citation to the Illinois cases is given in note 30, post.

<sup>29</sup> See *Business Men's Christian Ass'n v. State*, 228 Minn. 549 at 559, 38 N. W. (2d) 803 at 812 (1949). That test had been used in the earlier Minnesota cases of *State v. Second Church*, 185 Minn. 242, 240 N. W. 532 (1932); *State v. Union Congregational Church*, 173 Minn. 40, 216 N. W. 326 (1927); *County of Ramsey v. Church of the Good Shepard*, 45 Minn. 229, 47 N. W. 783, 11 L. R. A. 175 (1891).

<sup>30</sup> Illustrations of the application of the primary use test in Illinois may be found in *People v. Y. M. C. A. of Peoria*, 157 Ill. 403, 41 N. E. 557 (1895), and in *Congregational Sunday School and Publishing Soc. v. Board of Review*, 290 Ill. 108, 125 N. E. 7 (1919). In the first, a factual situation similar to that under consideration in the principal Minnesota case led the court to hold the property was not exempt from taxation even though the rents received were used for religious purposes. In the second, the court held the properties of the Publishing Society were exempt from taxation where the profits, if any, derived from its activities went to aid indigent Sunday schools, since its properties were put to a charitable use. See also *Krause v. Peoria Housing Authority*, 370 Ill. 356, 19 N. E. (2d) 193 (1939);

cifically naming the means leading thereto as being the primary use test.<sup>31</sup>

Left for consideration are those jurisdictions which manifest a most liberal attitude when it comes to granting tax exemptions for the properties of charities. Five states appear in this group<sup>32</sup> and they hold that, provided there is the requisite ownership, a partial use for proper purposes is sufficient to exempt the entire parcel of real estate from taxation. Only Delaware and North Dakota have expressed that view in the form of exemption statutes,<sup>33</sup> but the attitude has been fostered in New Mexico both by an opinion of its Attorney General<sup>34</sup> and by judicial decision.<sup>35</sup> Similar decisions are to be found in Kentucky<sup>36</sup> and Oklahoma.<sup>37</sup>

It is in the latter jurisdiction that the case of *State v. Bartlesville Lodge No. 284, A. F. & A. M.*,<sup>38</sup> one which appears to be best representative of the lenient view, was decided. The property there concerned consisted of a building owned and occupied by a fraternal order as its home office, but the greater part of the building was rented to others. The rental income was used to further the purposes of the fraternal order except that a part thereof went to maintain the building and to dis-

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People v. Y. M. C. A. of Chicago, 365 Ill. 118, 6 N. E. (2d) 166 (1937); People v. Passavant Mem. Hospital, 342 Ill. 193, 173 N. E. 770 (1930); People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 143 N. E. 414 (1924); People ex rel. Thompson v. First Congregational Church, 232 Ill. 158, 83 N. E. 536 (1908). But see also Smith v. Board of Review, 305 Ill. 38, 136 N. E. 787 (1922), and First M. E. Church v. Chicago, 26 Ill. 482 (1861), wherein the courts concerned apparently approved a partial assessment of the properties in question.

<sup>31</sup> See, for example, *Sir Walter Lodge v. Swain*, 217 N. C. 632, 9 S. E. (2d) 365 (1940).

<sup>32</sup> Del., Ky., N. D., N. Mex., Okla. See notes 33 to 38, post.

<sup>33</sup> Del. Rev. Code 1935, Ch. 44, § 1285; N. D. Rev. Code 1943, § 57-0208.

<sup>34</sup> 1914 Atty. Gen. Op. (N. Mex.) 225.

<sup>35</sup> *Albuquerque Lodge No. 461, B. P. O. E. v. Tierney*, 39 N. Mex. 135, 42 P. (2d) 206 (1935).

<sup>36</sup> *Church of the Good Shepard v. Comm.*, 180 Ky. 465, 202 S. W. 894 (1918); *Comm. v. Bd. of Ed. of M. E. Church*, 166 Ky. 610, 179 S. W. 596 (1915).

<sup>37</sup> *Bd. of Equalization v. Tulsa Pythian Ben. Ass'n*, 195 Okla. 458, 158 P. (2d) 904 (1945); *Okla. County v. Queen City Lodge*, 195 Okla. 131, 156 P. (2d) 340 (1945).

<sup>38</sup> 168 Okla. 416, 33 P. (2d) 507 (1934).

charge obligations which had been incurred in the construction thereof. The Oklahoma Supreme Court, unlike the one in Ohio which decided the case of *Cleveland Osteopathic Hospital v. Zangerle*,<sup>39</sup> held the property to be entirely exempt from taxation.

If there can be said to be any majority view on the subject of tax exemption for the properties of charitable or religious organizations, when any parts thereof are used for revenue production, that view is the one adopted in the Minnesota case above referred to, one which grants a pro-rata apportionment of the assessment between the charitable and the non-charitable uses. While it may be granted that tax exemption is not a matter to be dealt with lightly, nor to be expanded beyond reasonable and proper limits, the result there attained is not only a practical one but one which leads to an equitable conclusion. It is much to be preferred over the view now adopted in Ohio, for it at least offers the non-profit organization a chance to survive, and thereby to perpetuate its good offices, in a period of declining revenues and in the face of a drying up of the sources of great wealth which formerly served to replenish its funds in times of need.

<sup>39</sup> See note 2, ante. A prior Ohio case, granting exemption even though the premises were only partly used for charitable purposes, may be observed in the decision in *Cleveland Library Ass'n v. Pelton*, 36 Ohio St. 253 (1880).