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TAX EXEMPT PROPERTY IN NEBRASKA: AN ANALYSIS OF METHODS TO CONTROL EXEMPTIONS

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I. INTRODUCTION

Taxation has become a subject of increasing concern in Nebraska and a substantial portion of the problem involves exempt property. Since any exemption can be looked upon as a subsidization, uniform procedures for determining what property is exempt should be enforced to prevent inequities.

The primary purpose of this study is to ascertain if there is a need for control of tax exemptions and, if so, to suggest a workable method for claiming and giving exemptions.

To accomplish this purpose the study reviews the current and past philosophy of exempting property from taxation under the Constitution and statutes of Nebraska. Since Nebraska now has no uniform method for determining or controlling what property is exempt, the study also contains a survey of other states which have workable systems. In addition, a survey was taken among county assessors in Nebraska to ascertain, in the light of their experience on a local level, what type of system the assessors believe would be both workable and desirable for the state.

II. HISTORY AND PHILOSOPHY OF PROPERTY TAX EXEMPTION

Over a half century ago, Henry C. Adams wrote:[1]

> No question respecting taxation has been the subject of fiercer controversy than this one of exemptions, a fact which in itself shows how clearly public opinion recognizes that the duty to support the State is universal, and that government is not at liberty to show favours in the levy of taxes.

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1 ADAMS, FINANCE 316 (1898).

Perhaps the situation is not as controversial today as it was then. Nevertheless, there is need for much reform in the area of exemptions from taxation.

The concept of exempting certain property is to some extent a tradition from English history brought to this country by the early settlers. The exemption of church property is clearly traceable back to the time when church and state were one; however, it remains with us even though church and state are now separate.[2] This traditionally exempted property set a precedent for exempting certain other classes of property in early state constitutions.

Apart from this underlying basis for exemption is the idea that certain institutions should be exempt from taxation because they perform functions which otherwise would be carried on by government. The Nebraska Supreme Court stated this philosophy in *Omaha Y. M. C. A. v. Douglas County:*[3]

> [E]xemptions are granted on the hypothesis that the association or organization is of benefit to society, that it promotes the social and moral welfare, and, to some extent, is bearing burdens that would otherwise be imposed upon the public to be met by general taxation. . . .

The reasoning of the court appears to encompass exemption of property owned and used exclusively for educational, charitable, and religious purposes, because in each case the general welfare of the people is promoted.

In some states, particularly the less industralized, certain commercial property is specifically exempt as a means of attracting industry.[4] Indirectly, this also may be explained on the theory that the social welfare of the people is promoted. The Nebraska Constitution provides that property owned and used exclusively for agriculture and horticulture societies is tax exempt;[5] the intent is to foster basic industry and to benefit the state as a whole.

[2] See, Stimson, *The Exemption of Property from Taxation in the United States,* 18 MINN. L. REV. 411 (1934). See also Stimson, *The Exemption of Churches from Taxation,* 18 TAXES 361 (1940). The latter article reviews the early history of exempting church property from taxation.

[3] 60 Neb. 642, 646, 83 N.W. 924, 926 (1900).

[4] See *e.g.,* The legislature may authorize any incorporated city or town to exempt manufacturing establishments from municipal taxation for not exceeding five years as an inducement to their location. KY. CONST. § 170.

[5] NEB. CONST. art. VIII, § 2.

III. AUTHORITY FOR EXEMPTIONS

Basically, property is exempt from taxation by constitutional provision or by statute. In Nebraska at the present time no property is exempt except as stated in the Constitution which provides: (1) property of the state and its governmental subdivisions is exempt; (2) the legislature may exclude from taxation property owned and used exclusively for agricultural and horticultural societies, (3) property owned and used exclusively for educational, religious, charitable, or cemetery purposes, may be exempted if such property is neither owned nor used for financial gain or profit to either owner or user, and (4) household goods of the value of two hundred dollars to each family shall be exempt. In addition, the legislature may provide that the increased value of land by reason of shade or ornamental trees planted along the highway shall not be taken into account in assessing the land.[6]

Other states have similar constitutional provisions. Generally, these provide that laws exempting property other than that specified in the constitution are void.[7] Some state constitutions give legislatures plenary discretion to determine what property should be exempt.[8] In other states, there are no constitutional provisions pertaining to exemptions, and all exemptions are therefore determined by the legislatures without any constitutional limitations or guidance. It has been suggested that exemptions be statutory and not constitutional so legislatures may provide for immediate reforms.[9]

Most states, like Nebraska, have provisions for exempting property used for religious, charitable and educational purposes, and many of these require that the property be used exclusively for these purposes in order to qualify for the exemption. Property which is used for cemetery purposes is also usually exempt from tax. Montana,[10] Illinois,[11] South Dakota,[12] and Missouri[13]

[6] NEB. CONST. art. VIII, § 2.

[7] ARK. CONST. art. XVI, § 6; GA. CONST. art. VII, § 2-5404; KY. CONST. § 170; MO. CONST. art. X, § 6; PA. CONST. art. IX, § 2; S.D. CONST. art. XI, § 7; TEX. CONST. art. VIII, § 1.

[8] IDAHO CONST. art. VII, § 5; WYO. CONST. art. XV, § 12; DEL. CONST. art. VIII, § 1.

[9] Todd, *Tax Exemptions and Tax Delinquency,* 12 TAXES 159, 161 (1934).

[10] MONT. CONST. art. XII, § 2.

[11] ILL. CONST. art. IX, § 3.

[12] S.D. CONST. art. XI, § 6.

[13] MO. CONST. art. X, § 6.

provide for exempting property used for agriculture and horticulture societies as does Nebraska. With the exception of Missouri, the property to be exempt must be used exclusively for these purposes. Many state constitutions provide for the exemption of personalty as does the Nebraska Constitution. Normally this exemption is limited from two to three hundred dollars.

IV. HISTORY OF EXEMPTIONS IN NEBRASKA

A perusal of leading Nebraska exemption cases, plus some opinions of the Attorney General, indicate that the policy in this state generally has gone from a strict construction of the exemption provisions in the early cases toward a more liberal exemption policy in effect today.[14]

A. From 1875 through 1900

Article IX, § 2 of the Constitution as adopted in 1875 provided as follows:[15]

> The property of the state, counties, and municipal corporations, both real and personal, shall be exempt from taxation, and such other property as may be *used exclusively* for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation, but such exemptions shall be only by general law. In the assessment of all real estate encumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property. The legislature may provide that the increased value of lands, by reason of live fences, fruit and forest trees grown and cultivated thereon shall not be taken into account in the assessment thereof.

The provisions of this section were enacted by the legislature as a part of the Revenue Act of 1879.

In an early case, *First Christian Church of Beatrice v. City of Beatrice*,[16] the Nebraska Supreme Court disallowed exemption of property owned by a religious society upon which it intended to build an edifice in the future. The decision was based on the ground that the property was not used exclusively for religious purposes. Later, in construing the term "used exclusively," the

[14] For a discussion of early Nebraska exemption cases see, Note, *Taxation - Tax Exemption in Nebraska,* 11 NEB. L. BULL. 430 (1933).

[15] [Emphasis added].

[16] 39 Neb. 432, 58 N.W. 166 (1898).

court in *Academy of Sacred Heart v. Irey*,[17] stated that the primary and dominant use, not the incidental use, of the property controls. Thus a garden cultivated by the school upon which it raised vegetables solely to supply the school tables was found to be exempt.

In *Young Men's Christian Association of Omaha v. Douglas County*,[18] the issue was whether renting the first floor of the Y.M.C.A. in Omaha for business purposes and using the income to further objects of the association was an exclusive use of the property for religious and charitable purposes. In denying the exemption the court stated, ". . . the exemption claimed being an exception to the general rule of taxation, and in derogation of the equal rights of all, the statute is to be strictly construed."[19] The court pointed out that when the framers of the constitution ignored "ownership" and made "use" the test, they recognized the essential distinction between the two and established the latter rather than the former as the basis for exemption. Similarly, in *Scott v. Society of Russian Israelites*,[20] a 1900 decision, the court said:[21]

> It makes no difference who owns the property, nor who uses it. Property used exclusively for educational purposes is exempt, whoever may own it or whoever may use it. Property not used exclusively for educational purposes (if otherwise taxable,) is not exempt, whoever may own it, or whoever may use it.

B. FROM 1901 THROUGH 1919

During 1901 and 1902 the Attorney General decided: (1) property of fraternal societies was not exempt as property used exclusively for charitable purposes,[22] (2) leases of state school lands are assessable as personal property even though state property is specifically exempt[23] and (3) church parsonages are not exempt even though a portion of the parsonage is used for religious purposes.[24] In *Watson v. Cowles*[25] the Supreme Court held property leased to a school exempt. The court followed the reasoning that ownership is unimportant because use is the sole controlling test.

[17] 51 Neb. 755, 71 N.W. 752 (1897).

[18] 60 Neb. 642, 83 N.W. 924 (1900).

[19] *Id.* at 646, 83 N.W. at 926.

[20] 59 Neb. 571, 81 N.W. 624 (1900).

[21] *Id.* at 574, 81 N.W. at 625.

[22] NEB. OPS. ATT'Y GEN. 89 (1901).

[23] NEB. OPS. ATT'Y GEN. 125 (1901).

[24] NEB. OPS. ATT'Y GEN. 281, 326 (1902.

[25] 61 Neb. 216, 85 N.W. 35 (1901).

The question whether property of fraternal societies is exempt first came before the Supreme Court in *Plattsmouth Lodge v. Cass County*.[26] The court, after noting that at no time since the adoption of the Constitution had taxing authorities claimed property of the Masonic Order to be taxable, held the property exempt. The case was weakened as authority, however, because it was decided on stipulated facts which, in effect, were that the lodge was used exclusively for charitable purposes.

It was held in 1914 that under the Constitution all classes of municipal owned property are exempt even though the city may make money on the property and regardless of whether the property is within or without the city limits.[27]

C. FROM 1920 THROUGH 1929

The provision of the Nebraska Constitution relating to exemptions was last amended in 1920 to read as follows:[28]

> The property of the state and its governmental subdivisions shall be exempt from taxation. The Legislature by general law may exempt property *owned by and used exclusively* for agricultural and horticultural societies, and property *owned and used exclusively* for educatonal, religious, charitable or cemetery purposes, when such property *is not owned or used for financial gain or profit to either the owner or user.* Household goods of the value of two hundred ($200.00) dollars to each family shall be exempt from taxation. The Legislature by general law may provide that the increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the assessment of such land. No property shall be exempt from taxation except as provided in this section.

In 1921, the Nebraska Supreme Court in determining the status of a 1917 assessment under the 1875 constitution held that property of the Scottish Rite in the City of Lincoln was taxable.[29] The court stated that a fraternal order was not entitled to claim exemption of its property from taxation when its principal activities were gratifying the tastes of its own membership, although the organization did encourage charity among its members and did make substantial donations to charity itself.

In the same year, 1921, the court decided *Y. M. C. A. v. Lan-*

[26] 79 Neb. 463, 113 N.W. 167 (1907).

[27] City of Omaha v. Douglas County, 96 Neb. 865, 148 N.W. 938 (1914).

[28] NEB. CONST. art. VIII, § 2 [Emphasis added].

[29] Scottish Rite Bldg. Co. v. Lancaster County, 106 Neb. 95, 182 N.W. 574 (1921).

caster County,[30] and deviated from the often announced rule of strict construction. The opinion states:[31]

> The theory that the rule requiring strict construction of a tax exemption statute demands that the narrowest possible meaning should be given to words descriptive of the objects of it would establish too severe a standard. Rather, ought it to be the rule that such words as 'charitable' should be given a fair and reasonable interpretation, neither too broad nor too narrow, in ascertaining the true intent as to the objects of exemption, and then that the statute should be strictly applied and enforced in order not unduly to extend its scope. The rule does not call for a strained construction, adverse to the real intention, but the judicial interpretation of such a statute should always be reasonable.

The court held the cafeteria of the Y. M. C. A., which was leased to a third party, taxable. The rest of the building, including the barber shop and tailor shop, were exempted on the theory they were accessories required in the building and the amount of space they occupied was insignificant.

In 1922 the tide turned more sharply toward a liberal exemption policy. In *St. Elizabeth Hospital v. Lancaster County*,[32] the property of St. Elizabeth Hospital in the City of Lincoln was held exempt from taxation on the ground that it was used exclusively for religious and charitable purposes. The reasoning of the court was that no one profited from the operation even though some patients were charged as in other hospitals. Also all surpluses were used to enlarge the buildings and improve the facilities. In *Central Union Conference Association v. Lancaster County*,[33] farm and dairy property used by Union College for school purposes was held not subject to taxation. The rationale was that any profit was a mere incident of the general purpose for which the school property was used. This seems inconsistent with *Y. M. C. A. v. Lancaster County*.[34] The reasoning of the Y. M. C. A. case would seem to require a holding that the farm and dairy property was taxable as was the cafeteria in that case. However, the distinction apparently is that property is subject to tax if it is leased for rental even though the income is used for the purposes of the organization. A case somewhat similar to the *Union College* case is *House of Good Shepherd v. Board of Equalization*,[35] where the taxpayer,

[30] 106 Neb. 105, 182 N.W. 593 (1921).

[31] *Id.* at 110, 182 N.W. at 595.

[32] 109 Neb. 104, 189 N.W. 981 (1922).

[33] 109 Neb. 106, 189 N.W. 982 (1922).

[34] *Supra* note 30.

[35] 113 Neb. 489, 203 N.W. 632 (1925).

a corporation organized "to reform fallen women, to afford protection to other females whose circumstances in life might endanger their virtue, to surround such females with virtuous influences, and accustom them to habits of industry and self-respect," operated a laundry in competition with commercial laundrys. The court, holding the property exempt, stated that the fact that income is derived from the laundry work does not militate against the fact that the property is used for the purposes indicated.

D. FROM 1930 TO PRESENT

In an opinion by the Attorney General in 1930 considerable doubt was expressed as to the exemption status of social and philanthropic organizations.[36] Then in *Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Commissioners*[37] the court specifically overruled the prior *Scottish Rite*[38] case. The later case held the society's temple building exempt from taxation on the grounds that both ownership and dominant use were exclusively for educational, religious, and charitable purposes and that the temple was not owned or used for financial gain or profit to the owner or user. This holding is more questionable than the *Union College* and *House of Good Shepherd* decisions because in those cases the income from the property was actually employed to promote the dominant purposes for which the property was used. Normally, however, in the case of lodges, as well as other clubs and social organizations, the dominant purpose seems to be to provide social facilities to the members. The benefit to charity and education is an incidental purpose to the extent that the work is not actually being carried out on the premises; any benefit given is financial aid to other organizations which may actually use their property for charitable, religious or educational purposes.

The property of Ak-Sar-Ben was considered to be exempt by the Attorney General in 1936.[39] His opinion was that the general purpose of the Ak-Sar-Ben corporation was the same as the purpose of the state and county fairs, that these purposes promoted agriculture either directly or indirectly, and that the property was not owned or used for financial gain or profit to either the owner or user. The Attorney General also considered the racing meets held at Ak-Sar-Ben and concluded that these are, if not a necessity,

[36] NEB. OPS. ATT'Y GEN. 101 (1930).

[37] 122 Neb. 586, 241 N.W. 93 (1932).

[38] *Supra* note 29.

[39] NEB. OPS. ATT'Y GEN. 224 (1936).

at least a proper incident to agricultural fairs and expositions. Ak-Sar-Ben is still tax exempt under this ruling which has never been successfully challenged. Assuming that the general purpose for which Ak-Sar-Ben's property is being used is the promotion of agriculture, certainly this is accomplished only indirectly and therefore its activities do not appear to come within the constitutional mandate "used exclusively."

In the 1940's the Attorney General opinions reflected a liberal policy of exemption. Houses owned by Dana College in Blair, Nebraska, in which the instructors lived rent-free[40] and church parsonages used by pastors were considered exempt.[41] However, where a church farmed 30 acres with hired labor, the Attorney General thought the land was not exempt.[42] Property upon which a church building stood owned by one religious body, but leased to another religious body for a rental was not considered exempt, because it was not owned and used exclusively for religious purposes without profit to the owner.[43] Again, the distinction seems to be that property is taxable when leased out for a profit but not when the owner of the property operates it in a manner to make a profit to be used in furthering the objectives of the organization itself. This was indicated by a 1953 Attorney General opinion that 40 acres of land farmed by church members was exempt.[44]

In *Iota Benefits Association v. County of Douglas*,[45] a 1957 case, the Nebraska court held that a college fraternity house was not exempt because the principal purpose was social and any educational benefit was merely incidental. A year later the court in *Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall*[46] cited cases decided under the 1875 constitution when exclusive ownership was not a test for exemption and concluded that the use of the property and not the status or character of the owner of the property controls.

[40] NEB. OPS. ATT'Y GEN. 425 (1946).

[41] NEB. OPS. ATT'Y GEN. 482 (1948).

[42] NEB. OPS. ATT'Y GEN. 200 (1949).

[43] NEB. OPS. ATT'Y GEN. 507 (1949).

[44] NEB. OPS. ATT'Y GEN. 22 (1953).

[45] 165 Neb. 330, 85 N.W.2d 726 (1957); See Annot., 66 A.L.R.2d 904 (1959), on the exemption from taxation of college fraternity and sorority houses. For an excellent discussion of the exemption of Educational institutions from taxation, see Note, 6 GEO. WASH. L. REV. 342 (1938).

[46] 166 Neb. 588, 90 N.W.2d 50 (1958).

The history of cases and Attorney General opinions in Nebraska reveal that the general trend has gone from one of strict construction of the exemption provisions towards a more liberal policy.

Because exemption tends toward an inequitable distribution of taxation, exemption provisions should be strictly construed. Especially in Nebraska where the property tax represents the largest part of the state's revenue, it is important that exemptions only be given in cases where the property clearly comes within the constitutional provisions. For example, when the primary purpose is to provide club house facilities, the property should not be exempt even if a certain amount of money each year is given to charity. The property is not being used exclusively for the purposes enumerated.

Such is the position taken by the Internal Revenue Service concerning the exemption of similar organizations from the Federal Income Tax. Under § 501 of the Internal Revenue Code, certain non-profit organizations are exempt from the tax. However, § 511(a) of the Code imposes a tax on the income of such otherwise exempt organizations which is derived from an unrelated trade or business regularly carried on by such organizations. In a recent ruling the Revenue Service took the position that the operation of extensive club facilities, consisting of a restaurant, bar and cocktail lounge for members and guests by an agricultural organization, exempt from the tax under § 501, was not primarily concerned with the purposes of the organization. Therefore, these activities constituted the carrying on of an unrelated trade or business within the meaning of § 513 of the Code, and were subject to a tax on the income resulting from such operation.[47]

Gifts to education, religion, or charity by an organization seeking exempt status are immaterial and to summarize an organization's expenditures as the Nebraska Supreme Court did in the later *Scottish Rite*[48] case is irrelevant. Only use and ownership are factors properly before the court for consideration, and each of these must be exclusive under the provisions of the Nebraska Constitution.

V. EMPIRICAL STUDY

The empirical side of this study has two parts; the first focusing on Nebraska county assessors and the second on the exemption

[47] Rev. Rul. 60-86 § 501, 1960 INT. REV. BULL. No. 10 at 15.

[48] *Supra* note 37.

policies in some other states. Information from the county assessors was obtained through written questionnaires; information from the other states was gathered through correspondence with the heads of the tax departments.

A. NEBRASKA COUNTY ASSESSORS

Questionnaires were returned by 46 assessors. Some of these were incomplete, however, most of the assessors attempted to answer every question, and 16 made additional helpful comments.

The questions were phrased to determine: (a) who makes the initial determination of exemption status, (b) who decides doubtful cases, (c) whether a list of all exempt property is kept, and if so, the valuation of such property, (d) whether owners of purported tax exempt property should make formal application providing information as to the use for which the property is held and the estmated value, (e) if a statutory application were required, to whom should it be directed, and (f) at what intervals of time should it be made.

1. *Results of the Survey*

a. *Who makes the initial determination of exemption status?*

	Number of Counties
County Assessor	11
County Board of Equalization	14
County Assessor and the County Board of Equalization acting together	7
County Attorney and the County Board of Equalization acting together	4

b. *Who decides doubtful cases?*

	Number of Counties
County Attorney	19
State Tax Commissioner	9
State Attorney General	3
County Board of Equalization	4
County Attorney acting with the State Tax Commissioner	3
County Attorney acting with the State Attorney General	1
County Attorney acting with the County Board of Equalization	1
State Attorney General acting with the State Tax Commissioner	1

c. *Is a list of all exempt property kept and if so, what is the valuation of such property?*

Counties keeping a list of exempt property	11
Counties not keeping a list of exempt property	35
Counties evaluating exempt property	1
Counties estimating the value of exempt property	3

The above results indicate a need to provide public records of property which is exempt from taxation. When property is exempt under a state statute in one county, similar property in anothter county should also be exempt. Therefore, the necessity for legislation which will provide the necessary data for decision making and uniformity is clear.

d. *Should a law be passed requiring owners of purported tax exempt property to make formal application providing information as to the estimated value and use for which the property is held?*

In answering this question, the county assessors of thirty-four counties said that they would favor such a law. Nine assessors said they would not. This indicates that the people who are actually dealing with the problem of determining which property should be exempt from taxation are dissatisfied with present methods and believe changes should be made.

e. *If a statutory application were required to whom should it be directed?*

	Number of Counties
State Tax Commissioner	19
County Board of Equalization	4
County Assessor	1
County Attorney	1
County Attorney and County Board of Equalization	3
County Assessor, County Attorney and County Board of Equalization	1
County Assessor then the County Board of Equalization	3
County Assessor and County Board of Equalization	2
State Tax Commissioner and the County Board of Equalization	1

This indicates the majority of assessors favor administration at the state level. This, of course, would tend to provide uniformity.

f. *How often should such application be made?*

	Number of Counties
County Assessors favoring annual certification	24
County Assessors favoring a five-year interval	5
County Assessors favoring a four-year interval	1
County Assessors favoring no periodical certification	1

The other assessors did not specify any interval which they would prefer if certification were mandatory.

2. *General Comments*

Comments made by the assessors varied. Some indicated no local problems exist either because of the size of their counties or because of their first-hand knowledge of the situation, but the tenor of opinion favored a standard procedure providing for the State Tax Commissioner to handle all exemptions. In the absence of such state control, it was suggested that a uniform procedure in each county provide: (a) application for exemption specifying the applicable statute under which exemption is claimed and the location, ownership, use, and estimated value of the property, (b) exemption by written resolution of the County Board after consideration of written opinions submitted by both the County Assessor and County Attorney, and (c) recordation of the resolution in the office of the County Clerk in a special property exemption book.

In summary it may be concluded as significant that: (a) no consistent practice is followed to determine exempt status of property in Nebraska, (b) no determination of what property is exempt in the state, or its appropriate valuation, can be made, and (c) the majority of those charged with operation of the present system believe a uniform method of acting upon formal applications for exemptions should be enacted.

B. Survey of Other States

Statutory provisions of some of the states surveyed and solicited comments of their taxing authorities are described below to illustrate possible alternatives Nebraska might consider if changes are made in its tax exemption procedures.

The following conclusions and summarizations are based principally on the comments from these taxing authorities, eighteen in number.

First, most of the states surveyed require that no exemption proceedings can commence until an application is filed.

Second, in addition a large number of these states require that a prescribed form be filed annually claiming continued tax exempt status.

Third, other states require such prescribed form be filed periodically but at intervals longer than one year.

Fourth, in the majority of states surveyed it was thought that tax exempt status should be determined at the state level.

1. *States Requiring Annual Application for Exemption*

Hawaii, a state requiring annual written application for exemption, implements its control system with a simple form which asks only for the owner's name, description of the property and whether or not the property is used exclusively for the purpose claimed.[49]

The Iowa Statute[50] is similar to that of Hawaii, however, the system is implemented with a slightly longer form which asks questions to gain information to fulfill objects other than the mere control of tax exempt property. It requires a mandatory denial of tax exemption for property which holds a federal retail liquor sales permit or in which federally licensed devices, not lawfully permitted to operate under the laws of Iowa, are located.[51]

Idaho also requires annual application for exemption.[52] After the initial application, if there are no changes in applicant's status, only a sworn statement is required.[53] The local assessments are under the complete jurisdiction of the county assessors.[54]

The Indiana Statute[55] requires any person, firm, corporation or association, which claims property to be exempt from taxation, to file a certified statement in duplicate with the county auditor on forms prescribed by the State Board of Tax Commissioners. The statement must contain a description of the property, use of the property, reason for the tax exemption, and the full name and complete address of the applicant. The applications are then re-

[49] HAWAII REV. LAWS § 128-12 (1955).

[50] IOWA CODE ANN. § 427.23 (1950).

[51] Iowa State Tax Commission Form PE-1-Rev., November 4, 1949.

[52] IDAHO CODE ANN. § 63.107(4) (1948).

[53] *Ibid.*

[54] Communication from Harold Johnson, Executive Secretary of the State Tax Commission of Idaho to Richard E. Petrie, February 29, 1960.

[55] IND. REV. STAT. §§ 64-234-238 (Supp. 1959).

viewed by the County Board of Review and forwarded to the State Board of Tax Commissioners for final determination. The statute provides any person who willfully makes a false statement of the facts concerning exempt property is guilty of a felony and, upon conviction, shall be fined and imprisoned.[56]

2. *State Requiring Certification at Intervals of Longer than One Year*

Connecticut and Minnesota are two states which require the filing of exemption applications at intervals of longer than one year. Minnesota has a long history of periodic review and valuation of exempt property. Beginning in 1878, Minnesota assessors were required in each biennial assessment of real property to value exempt property in the same manner as taxable property and to state for what purpose the exempt property was used. These provisions were developed over a period of years until 1925[57] when the law was amended to require that exempt property be valued by the assessor every six years instead of every two years.[58] The statute was passed after it had become apparent that most of the real property entitled to exemption did not change materially from one assessment to the next. For instance, ownership, use, or both, of church, school, cemetery, or hospital real estate was found to prevail for a long period.[59]

Owners of exempt property in Minnesota are not required to file any particular forms for the continuance of exemption on property already so classified. However, where exemption is sought for the first time, application is made to the county authorities, who, if they approve, recommend it to the Commissioner of Taxation. The application shows:

1. The facts of acquisition
2. When the specific use began, and
3. A copy of the articles of incorporation, if any.[60]

In Connecticut, owners of tax exempt real estate are required to re-apply for exemption every four years.[61] The Connecticut

[56] *Ibid.*

[57] Communication from Arthur C. Roemer, Assistant Commissioner of Taxation for the State of Minnesota to Richard E. Petrie, March 18, 1960.

[58] MINN. STAT. § 273.18 (1947).

[59] *Supra* note 57.

[60] *Supra* note 58.

[61] CONN. GEN. STAT. § 1764 (1949).

forms are, perhaps, the most comprehensive of any. They require detailed information concerning the financial structure of the organization, expenditures, purpose of expenditures, number of employees, officers, and members. Information, also, must be supplied in connection with any officers, employees or members receiving pecuniary profit from the organizations' operations other than reasonable compensation for services rendered in effecting one or more of its purposes. Further, the form seeks information as to both the value of intangible and tangible property held by organizations claiming exemption.[62]

C. Who Should Determine Exempt Status?

The tax research department of North Carolina believes that a state agency should be designated to certify the exempt status of property, and the burden of proof in obtaining an exemption certificate should be upon the owner.[63]

Connecticut authorities recommended that applications filed with the town assessors be checked by someone from the state level of government.[64] While New York requires local assessors to report annually concerning exempt property, the state does not review or follow up on the reports. The information received by the state is tabulated annually to show the amount of the assessed valuation of property according to use and ownership.[65]

However, in Idaho it was felt that in order to perfect discovery of the immediate local property, a review as to the exempt status should be made annually by the county assessor rather than a state official.[66]

It would seem that a system requiring application for exemption be made to local assessors, but forwarded to a state agency for final decision would meet two desirable ends. The local assessors would be in a position where they could best discover

[62] Connecticut Form M-3, May 24, 1957.

[63] Communication from H. C. Stansbury, Director of the Department of Tax Research for the State or North Carolina to Richard E. Petrie, February 29, 1960.

[64] Communication from John F. Tarrant, Tax Research Director for the State of Connecticut Tax Department to Richard E. Petrie, February 26, 1960.

[65] Communication from Rosalind G. Baldwin, Executive Director, State Board of Equalization and Assessment for the State of New York to Richard E. Petrie, March 28, 1960.

[66] *Supra* note 54.

exempt property and check its status, while they would still not be making the final decision. This would remove the decision from local political pressure and promote uniformity.

VI. PROPOSED LEGISLATION

Based upon experience in other states and opinions of the Nebraska assessors who responded to the survey, legislation to establish a system for controlling tax exempt property would seem desirable. In addition to providing information and statistics concerning the current tax exempt property situation, a controlled system facilitates uniform enforcement of tax exemption laws. The information and data gathered would also facilitate periodic legislative revision of exemption laws to meet changing circumstances.

Placing upon the State Tax Commissioner the responsibility for determining whether property falls within the exemption provisions of the Nebraska laws would promote uniformity. This is generally favored by the county assessors who approved of controlling tax exempt property. However, as was noted by Idaho officials,[67] placing the burden of determining exempt status upon local assessors rather than upon a state official might perfect discovery of non-exempt property. To gain the advantages of decisions at both levels a system whereby the claimants make application to the local assessors to be forwarded to a state official would meet both desirable ends. The local assessors would be in a position where they could best discover locally exempt property and screen the applications but they would avoid the political pressure inherent in making ultimate decisions.

It is difficult to place a value on exempt property, nevertheless, attempting to do so would serve a purpose. Therefore, the assessor should attempt to value the property in the same manner as taxable property is valued and the claimant should be required, under oath, to estimate the marketable value of the property as accurately as possible.

Claimants should be required to give detailed information on an application form at intervals of at least four years. In the interim years it would only be necessary that claimants file affidavits certifying that the status of the property has not changed within the past year. Such a system would be relatively unburdensome on both owners of tax exempt property and taxing officials.

[67] *Ibid.*

Legislative Bill 58, introduced in the 1959 Nebraska Legislature, but not passed, contained most of the desirable features found in other states. It required that a claimant provide the following information:

1. Name of the owner or owners of the property, and if a corporation, the names of the officers and directors, where it was incorporated, and a copy of its charter and by-laws;
2. Description of the property;
3. Value of the property;
4. The precise statutory provision under which exemption is claimed;
5. A financial statement for the last completed fiscal or calendar year showing the source of income for the year and the precise purpose for which it was expended, except where the exemption is claimed on religious grounds or as a cemetery;
6. A statement that all taxes on such property have been paid up to the year for which exemption has been claimed; and
7. Such other information as the Tax Commissioner may deem necessary to call for on such application.

In addition, following the practice in Connecticut,[68] a form also might include a question which would require reporting both the book and market value of all intangible property held by the organization. A question should also be on the form concerning properties which are partially leased out.

If a four-year application system, with annual certification, were adopted, the form for the certification could be relatively simple, requiring only the owner's name, address, legal description of the property, and statute under which exemption is claimed. This form, filed under oath, would certify that the status of the property has not in any way changed since the original exemption application was made.

The proposed system would be a material improvement over Nebraska's present procedures.

[68] *Supra* note 62.