

A Tax by Any Other Name

Nonprofits Facing PILOTs See Unfriendly Skies

By Abby R. Levine

Does your nonprofit pay property taxes? Why should it? you may be asking. After all, don't state laws exempt charitable property from taxes? Have you been asked to make a payment in lieu of taxes (PILOT)? Of course not, you may be saying. After all, my nonprofit is small and doesn't own lots of property, generate substantial annual income or have a large endowment.

But nonprofits of every variety are being hit up for PILOTs. In recent years the mayors of cities such as Montpelier, Vt., and York, Pa., have asked nonprofits in their cities to make voluntary PILOTs, or "fair share" property-tax payments. They asked not only large organizations with huge endowments, such as hospitals or universities, but also churches and housing organizations.

What should you do if you receive such a request? Although there is no easy—or right—answer, this article will help you decide. (Note that the focus here is on PILOTs, not other challenges to property-tax exemptions.)

First, no matter how secure you feel, don't wait to consider this issue until the tax collector comes calling. Take steps to position your organization strategically in advance.

Amid shrinking revenues and growing deficits, city, state and local governments are desperate for new income sources, and many are targeting nonprofit property. This is especially appealing because nonprofits rely on the same public services that taxpayers support. And it's easy to rile taxpayers by arguing that they pay higher property taxes because of exemptions for nonprofits.

In asking for what they euphemistically call "fair share" payments, governments are shamelessly calling on nonprofits to defend their exemptions. Such efforts disregard the covenant whereby nonprofits serve the common good in return for tax exemptions. They also ignore the millions, if not billions, of dollars that nonprofits save taxpayers in reduced costs for service delivery and lower end costs (e.g., maximum prison sentences, costly prenatal care) through preventive work.

Many community-based nonprofits oppose PILOTs because they simply don't have the

money. Every dollar spent on property fees means a dollar less to spend on feeding the hungry, planting trees or restoring works of art. In addition, nonprofits' funding streams are limited, often with little allocated to general operating or overhead. Using donated money to pay taxes will likely run counter to donors' intentions, something nonprofits are loath to do and for which they can be attacked by regulatory officials.

Nonprofits receive much of their funding from government sources—33 percent, according to Lester Salamon.¹ By making PILOTs, nonprofits would be paying the government with its own money—a poor use of public dollars. Conversely, some local governments claim that without PILOTs, localities could not afford to pay grants to nonprofits. Under this argument, nonprofits would be paying for their own grants, which simply makes no sense.

More important, nonprofits are exempt from property taxes for a reason. Nonprofits contribute to their communities by, for example, providing jobs (and paying employment taxes), education, medical care and culture, or by seeking justice or a clean environment. They increase the prestige of cities and draw people to them. Even amid property-tax battles, localities often brag about nonprofit museums, universities and other institutions that attract tourist dollars and enhance their civic images. The presence of nonprofits is one barometer of a community's civic vitality.

In different circumstances, nonprofits faced PILOTs in Pennsylvania and Minnesota. In Pennsylvania, when local governments challenged the property-tax exemptions for many charities, costly legal battles ensued, and many nonprofits made PILOTs to avoid litigation. The Pennsylvania Legislature responded by specifying which organizations qualify for tax exemption. The action has mitigated local governments' attempts to collect the fee. In Minnesota, the then governor proposed a "fee toward the cost of local services" for nonprofits, but he eventually dropped the proposal in

1. Lester M. Salamon, *The Resilient Sector: The State of Nonprofit America in The State of Nonprofit America* 31 (Table 1-6) (Lester M. Salamon ed., 2002).

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response to public outcry.

The battles were different, but the Pennsylvania and Minnesota nonprofits used the same tactics to prevail: Each sector worked as a unified force and made powerful arguments. They relied on patience, persistence and cooperation. PILOTs are one issue that can unite the varied organizations of the nonprofit sector. Larger nonprofits that accept PILOTs may stave off attempts to tax all nonprofits in the short term, but they may not save less affluent nonprofits from the payments in the future. Nonprofits must work toward a common goal if *any* are to be protected.

But without a strong message, even a robust coalition may fail. The Minnesota Council of Nonprofits, the Pennsylvania Association of Nonprofit Organizations and others have offered these arguments against PILOTs:

- Mandatory PILOTs *are* taxes;
- Property taxes, including PILOTs, drain resources from charities and transfer them to government at a time when charities are being asked to do more;
- Charity donors expect their money to be used to further the organization's mission rather than to pay taxes, and taxing charities diminishes the value of charitable contributions;
- Every dollar a charity must pay in taxes reduces the resources available to fulfill its mission;
- The public benefit that charitable organizations provide far exceeds the cost of the property-related services they consume;
- Costly court battles drain resources from charities even when they win, and they deplete local government revenue;
- Charities provide jobs and purchase goods, and their employees pay income tax;
- Charities provide services that government would otherwise have to provide;
- Charities build values and accountability; and
- Tax exemptions are provided to entities other than charities, such as government and business, as incentives to move into a locality.

Nonprofits need to reinforce these points. We cannot assume that they are obvious, or that the public realizes the extent to which nonprofits benefit their communities. Nonprofits need to brag about their contributions to local society. How do you help the local economy? What aid do you provide to schools or community organizations? What coalitions are you a part of? What are your accomplishments? How are you meeting an increased demand for your work in a climate of

government cutbacks? Now is not the time to be shy. Tell community members, tell business leaders, tell government officials, tell the media.

Not every request for a PILOT has been challenged. Some nonprofits decided that the proposed fee was small enough that it was not worth the fight. Some wanted to avoid highlighting the tax benefits they enjoy, and possibly risk losing others. Others wanted to promote good will and avoid the perception of attempting to shirk community responsibilities. And some have agreed to PILOTs as a compromise—to end litigation or preserve tax exemptions—either for themselves or for fellow organizations. In Baltimore, for example, several larger nonprofits agreed to a PILOT in exchange for having the city drop a proposed energy tax on all nonprofits.

Some wealthier organizations have made a PILOT to alleviate pressure on government and other taxpayers. Some novel examples include buying equipment the government uses to serve the organization exclusively (such as a ladder for a fire truck if you own the only multistory building in town).

What does this mean for your nonprofit? No matter what, do not wait until you get a request for a PILOT to start thinking about it. Act now:

1. Join your state association of nonprofits. Visit www.ncna.org for details. If you are already a member, encourage your state association to discuss these issues.
2. Within your organization, discuss the pros and cons of PILOTs for the nonprofit sector.
3. Develop or expand a list of ways your organization reduces government burdens, gives back to the community and helps the needy. Gather statistics, case studies and other proof of your good works.
4. Toot your own horn! In all of your communications tout the benefits your nonprofit provides to the community. Explain what would happen if your organization did not exist—who would take over?
5. Develop good relationships with state and local governments and your communities.

Remember, whether PILOTs fly for your nonprofit is partially up to you. ☺

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