

SUBMITTED TO: Senate Select Committee on Budget and Tax Reform; Senator Krueger

FROM: Gene DeSantis, Malkin and Ross, on behalf of the New York State Camp Directors Association (NYSCDA), the New York Section of the American Camping Association (ACA), the Long Island Association of Private School and Day Camps and the Rockland/Westchester Day Camp Association.

RE: Roundtable On Evaluating the Needs For And Costs Of New York State Property Tax Exemptions

DATE: October 13, 2009

Malkin & Ross represent hundreds of not-for-profit camps that have historically enjoyed real property tax exemptions. These camps provide a safe, nurturing and affordable summer experience to the state's children.

New York's camp community provides irreplaceable educational and recreational services to children and offers a unique experience to hundreds of thousands of underprivileged children every year. Camps offer children the opportunity to learn about the natural world that surrounds them and a chance to participate in recreational activities that often require a large tract of land. Camps allow children to participate in outdoor activities in a safe and secure environment; many of these children have no other access to this type of activity.

Additionally, Camps provide jobs and financial support to local communities. Our last economic impact study is rather dated, but in 1996, Camps contributed:

- \$197 million in salaries and benefits for NYS residents
- \$331 million to NY private businesses
- \$34 million in taxes to state and local governments

The government has recognized that non-profit camps enrich their community in ways other than by paying taxes. In addition to the hundreds of thousands of children they serve, camps provide summer employment for thousands of school age youths, who serve as counselors, lifeguards, kitchen staff, busboys, etc. And, summer camps preserve shrinking "green space", often providing an oasis of pristine land. In a long-standing covenant, government has given non-profit organizations a tax exemption, in effect enabling them to benefit the whole community.

Non-profit camps have limited funding; therefore, any additional expenses would significantly impact the number of children they can serve. Today, because of the economy, charitable giving is down sharply, return on endowments has virtually disappeared, support from federal, state and local government has declined, AND the demand for services has increased as more and more families need help. The non-profit camps in New York are struggling to make ends meet.

Camps are already faced with the difficult task of cutting costs or reducing services in order to balance their budgets. Many non profit camps may not be able to withstand any further financial burdens, and if any is imposed on them they may be forced to close, thereby ceasing to provide their many benefits.

Were a non-profit camp to close, and be replaced by a typical housing subdivision, the financial burden on municipalities and school districts would likely increase. Demands for infrastructure improvements (such as water and sewer lines) would grow. And families with school age children would impose educational costs that are sure to exceed school taxes collected.

We are tracking several bills that we believe would significantly impact non-profit camps. They include:

A.742 (Gunther) / S.4868 (Bonacic) – would move organizations devoted to “the moral or mental improvement of men, women or children,” such as non profit camps, from the mandatory tax exemption list to the larger list of organizations that may receive property tax exemptions, contingent upon the approval of local governments.

A.772 (Gunther) / S.257 (Little) - would allow fire districts to impose ad valorem levies on otherwise tax exempt properties owned by non-profit organizations.

A.738 (Gunther) / S.258 (Little) – would allow localities to impose a “service charge” on non-profit organizations to pay for services such as police, fire and road maintenance

A.908 (Gunther) - would require tax exempt entities to justify their tax exempt status on an annual basis, and raise their burden of proof to “clear and convincing evidence”. Under current law, non-profit organizations are responsible for seeking and justifying tax exempt status upon their initial incorporation. This bill requires these organizations to engage in a similar process every year, and raises the evidentiary bar from “a preponderance of the evidence” to “clear and convincing evidence” - a much harder standard for applicants to meet.

A.5186 (Titone) / S.519 (Lanza) – would require the repayment of certain funds, grants, and tax abatements where real property is sold to a for-profit corporation or other entity. The bill requires not-for-profit corporations to reimburse the state or municipality from the proceeds of the sale of the real property for those benefits bestowed upon the institution for the 10 years prior to the sale.

Roundtable Questions

- In what ways are property tax exemptions succeeding or failing to fulfill their original intentions?

Non-profit camps are incredibly successful in fulfilling their core mission and “the moral and mental improvement of children.” They provide a unique recreational experience in a setting many urban youths would otherwise never encounter. They teach leadership skills, develop independence, improve self-esteem, foster team building, enhance self-esteem and build character. Many have added educational components that help prevent or mitigate summer learning loss.

This is perfectly in keeping with the intent of the law. “[The exemption’s] settled purpose, in this instance is that of encouraging, fostering and protecting religious and educational institutions. Such high and traditional purposes should not require for their attainment that religious schools plow their surplus crops back into the ground or move their farms alongside their halls of learning or their halls of learning into farming areas.” *People ex rel. Watchtower Bible & Tract Soc., Inc. v. Haring*, 8 N.Y.2d 350, 170 N.E.2d 677 (1960).

“Policy of law is to encourage, foster and protect corporate institutions of religious and literary character because the religious, moral and intellectual culture afforded by them are deemed beneficial to public, necessary to advancement of civilization and promotion of welfare of society.” *People ex rel. Watchtower Bible & Tract Soc., Inc. v. Haring*, 1960, 8 N.Y.2d 350, 207 N.Y.S.2d 673, 170 N.E.2d 677, reargument denied 9 N.Y.2d 688, 212 N.Y.S.2d 1025, 173 N.E.2d 246.”

“In view of 1972 amendment of this section granting tax exemption to nonprofit corporations whose purpose is moral and mental improvement of men, women and children regardless of local law, organization formed to investigate and research social problems particularly as they affected youth was entitled to tax exemption from and after the retroactive effective date of statute of January 1, 1972, although it was not entitled to tax exemption prior to that date.” *Lower East Side Action Project v. Town of Liberty*, 387 N.Y.S.2d 342, 87 Misc.2d 860 (Sup. Ct. Sullivan County 1972).

- How can the state better control and/or limit the amount of tax exempt property to prevent further erosion of local government tax bases?

The state should strictly limit property tax exemptions that are doled out to for-profit businesses under the guise of economic development. In addition, the Legislature should pass legislation instituting “claw-backs” when the recipient of a tax break fails to create the number of jobs promised, or otherwise reneges on an economic commitment that was integral to the granting of the tax break.

- Should state lawmakers reconsider the definitions for what qualifies as tax exempt property or institute a policy of partial exemptions?

Perhaps. But it would be unwise and counter-productive to move the entire category of “moral and mental improvement of men, women and children” from mandatory to permissive.

- How would the state constitution influence attempts to reform the property tax exemption system?

Cannot comment at this time.

- How has the distribution of tax exemptions impacted economic development activities and revenue streams in urban and suburban areas?

Cannot comment at this time.

• Should local governments be granted a role in determining what properties are exempt within their borders and be allowed to review whether they should repeal or reduce some exemptions?

There are two broad sections of law dealing with tax exempt property. The first class is mandatory (meaning any property falling under that class is absolutely entitled to exemption). The second class is optional - meaning they may be taxed if the local government decides to tax them. Services such as libraries fall into that second class under current law. Some bills would put other properties into that second class (exempt unless a local law is passed to the contrary). Other properties which are currently taxable at local option, under Section 420-B of the real property tax law are, for example: bible property, benevolent property, patriotic or historical purposes property.

We strongly oppose adding children's camps to the discretionary category. Campers and their families are often not constituents of the local government which has taxing jurisdiction over the camp. The State is best suited to make the decision. Otherwise, Camps which are located upstate but are a resource for inner-city youths might be forced to close down.

• Are there any property tax exemption systems in other states that could serve as models for New York?

Unsure.

BRAINSTORMING – OTHER IDEAS

- The state government make some payment in lieu of taxes to the local government, to mitigate for the loss of property taxes caused by tax exempt property.
- A portion of NYS income tax taken from employees at not-for-profits goes directly to local government with jurisdiction over the not-for-profit.
- An inheritance tax on estates of wealthy individuals earmarked for payments to local governments in lieu of non-profit real property taxes