

NYCON

New York Council of Nonprofits, Inc.
Community Focus • Statewide Impact • National Network

formerly the Council of Community Services of New York State, Inc.

272 Broadway | Albany, NY 12204
800-515-5012 [p] | 518-434-0392 [f]

WWW.NYCON.ORG

October 19, 2009

Hon. Liz Krueger
Chair, Select Committee on Budget and Tax Reform
609 Legislative Office Building
Albany, New York 12477

*Re: Senate Select Committee on Budget and Tax Reform
October 13, 2009 Roundtable Discussion*

Dear Senator Krueger:

The New York Council of Nonprofits, formerly the Council of Community Services of New York State, welcomed the opportunity to share our views on the benefits and costs of property-tax-exemptions at the recent Senate Select Committee on Budget and Tax Reform roundtable discussion, which you led on October 13, 2009. We are writing to offer a more detailed assessment of our thoughts relative to the topic. Our organization strives to build the quality of life in local communities through a strong charitable and philanthropic sector and responsive community planning. Founded in 1927, NYCON is a charitable, tax-exempt, membership-based statewide association of over 1,600 community-based charities of mostly small to moderate size of all types.

We uniquely understand this issue, the complex funding and co-reliant partnership relationship between government and charitable service providers, and the financial pressures that today's economic challenges present for both charities and local municipalities. NYCON believes that changes can be rendered to the current system of property tax exemption that would help alleviate these pressures without undermining the ability of charities to continue to provide the services and activities that are so desperately needed by New Yorkers and the same municipalities that are seeking additional tax revenue. Nevertheless, any changes to the current system must be fair and applied in a manner that is proportional to the benefits that have traditionally been enjoyed by those who benefit from property taxation.

Equity is important. Amongst the non-governmental beneficiaries of property tax-exemption that should be considered in any real discussion of tax reform are business and property-developers that have succeeded in exempting themselves from taxation with claims—generally unfounded—that they create sustainable local jobs. The greatest consequences of this flawed practice is an increasing tendency to shift the burden for paying for vital governmental services enjoyed by these developers to the existing taxpayer base, generally residents and local business owners. After the for-profit sector, if change is to come, charitable institutions that have benefited the most from the current system—houses of worship, colleges and universities and health care institutions—must sacrifice the most. Conversely, those who have reaped the fewest rewards and tend to provide the most services to local communities, such as small, community-based charities, should surrender the least. If the State is willing to assure equity in any changes to the current system of tax-exemption, NYCON looks forward to serving as a resource in that effort.

REGIONAL OFFICES

BUFFALO 716-241-5010 [p] | 716-241-5015 [f]

ONEONTA 607-436-3124 [p] | 607-436-2760 [f]

POUGHKEEPSIE 845-454-5062 [p] | 845-454-6032 [f]

NEW YORK 917-522-8304 [p] | 212-924-9544 [f]

With regard to questions concerning property tax reform efforts posited by the Senate's Select Committee on Budget and Tax Reform, NYCON responds on behalf of our charitable members as follows:

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

In our view, current property tax-exemptions generally succeed in fulfilling their original intentions. In exempting property owned by charities from taxation, the State intended to better position such organizations—particularly public charities—to offer quality, affordable or free-of-charge assistance programs and services that would otherwise only be made available to individuals, families or communities at increased expense to the State and local municipalities, if at all. Even while owning property that is off the tax rolls, charities save the taxpayer far more money than they receive as they provide services to those in need comparable to, or better than, those offered by government at substantially reduced costs. Without the benefits of property tax-exemption, these organizations would not be able to so efficiently advance their charitable, educational and religious purposes.

In terms of across the board financial benefits, property tax-exemptions for charities have for the most part fulfilled their original intentions. Property taxes are intended to benefit the welfare of local communities, and the vast majority of charities provide considerable benefit without direct funding support from local taxpayers. In dollar-for-dollar terms, by offering essential programs services in their local communities without much direct local financial support, charities are a tremendous bargain for local municipalities. Still, it is important to understand that all property that is exempt from taxation is not owned by similarly situated organizations or utilized in any similar or consistent manner. Like the world itself, the charitable sector has its “deserving” and “undeserving” and its “haves” and “have-nots.”

No consensus of the application of the State's statutes and regulations exempting property from taxation can occur without first clarifying who actually owns the vast majority of property that is off our tax rolls. In this regard, we must first remember that, by far, the largest percentage of real property that is exempt from taxation is owned by the government itself. While the public undeniably benefits from the essential services and operations derived from publically owned properties, education received at schools and public colleges and universities and the protection of open space and the preservation of historically-significant lands, such benefits come at the direct expense of local property tax revenue.

Local property tax-exemptions for veterans and the elderly, as well as exemptions for, and rebates on, school taxes for owner-occupied, primary residences—such as those permitted via the popular School Tax Relief (“STAR”) program—have had the effect of further minimizing available property tax revenue in New York. Similarly, as we will discuss, business and for-profit developers have succeeded in exempting countless parcels of prime real estate from property taxation in the questionable name of job creation. Many of the largest and most-profitable commercial properties in the State have succeeded minimizing their property tax obligations by negotiating, at favorable terms, payments-in-lieu-of-taxes (“PILOTs”) or services-in-lieu-of-taxes (“SILOTs”) or have successfully avoided property taxation altogether.

Once tax-exempt, governmental, residential and commercial property is considered, a relatively small portion of real property remains off the tax roles of local municipalities. Such property is owned by not-for-profit or religious corporations with charitable, educational or religious purposes. Amongst such corporations, the largest holders of tax-exempt properties are religious institutions. Statewide, many thousands of acres of property are exempt from taxation by virtue of their use as houses of worship, boarding facilities for religious practitioners, adherents and students, places of religious training and education, and lands for spiritual healing and well-being. Following the faith-based

community, large educational and health care institutions are the next largest holders of non-governmental, residential or commercial tax-exempt property. Institutions like colleges, universities, large museums, hospitals and health care campuses are invaluable resources for our State and provide essential services to our citizens. But, they also take some of the State's most valuable privately owned properties off the tax rolls.

Once properties owned by the government, residential home-owners, private developers, big business, faith-based organizations, large educational and health care institutions are accounted for in New York State, only a tiny fraction of valuable real property remains off the tax rolls. Such property is generally owned by small and medium-sized, community-based charitable organizations. Such charities comprise the vast majority of NYCON's statewide membership. These members include: volunteer fire departments, rescue squads and ambulance corps; community, senior and child care centers; Boys & Girls Clubs; YMCA's; YWCA's; settlement houses, special needs and homeless housing providers; child welfare agencies; agencies offering services for the disabled; clinics; substance abuse treatment facilities and providers; animal shelters; libraries; small museums; preservers of local history; and the list goes on. Every state legislator is well aware of the tremendous value of, and need for, these organizations as they regularly support their work through program initiatives and member items.

If the state intends to reform its system of property tax-exemption, it must consider its priorities and those of its citizens in justifying awards of exemption. Is self-protection a top priority? Or, should the State consider awarding some sort of across-the-board credit to local municipalities to compensate them for state-owned land in their jurisdictions that is off the tax rolls? Can local municipalities afford to continue to offer politically-popular tax-exemptions to residential property owned by veterans and the elderly? Should we continue to exempt large development projects from property taxation, despite their poor track record for actual job-creation? Should faith-based institutions be subject to full or partial taxation for their large holdings, even if it means taxing the Roman Catholic Church, so-called "mainline" and evangelical Protestant denominations and various Jewish sects? What about large health and educational institutions, together representing the largest job growth industry in the state? Is the State prepared to tax some of its most prestigious institutions of medicine and higher learning—like Mount Sinai Hospital or Cornell University? Or, is the goal simply to tax the weak and strip exemptions from small and medium-sized, community-based charities? These are the questions that must be answered prior to real reform.

Although we are of the opinion that property tax-exemptions have largely succeeded in fulfilling their original intentions, we certainly acknowledge instances where they have failed. Property tax-exemptions for charities have failed when they have taken property—particularly large, infrequently or under-utilized, limited-access parcels—off the tax rolls that was not directly related to, or regularly used to advance, the charitable, educational or religious purposes of the charity and/or when such property was not utilized to benefit the general public, as opposed to a limited number of individuals or an insular population or community. There is little question that tax-exempt property, or a portion thereof, utilized for profit-making activities qualifying for unrelated business income taxes should be taxed. The law already permits this practice. Property not regularly used by a charity in advancing its charitable purposes should also be considered for taxation. Likewise, the general public often receives no tangible benefit from tax-exempt property where access is limited only to small, insular groups of individuals; or, where the property is of excessive acreage, unrelated to protection or preservation of the land.

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

Again, exempting property owned by for-profit entities greatly contributes to this erosion. Speaking for charities, the issue is control, not limitation. As charities form the backbone of the state's social safety net and cultural fabric, at great savings to the taxpayer, no attempt should be made to "limit" their ability to provide essential services and programs to New Yorkers. To do so would create a backlash of unintended consequences. The State could exercise a measure of "control" relative to issues of property tax-exemption by considering measures that would have the effect of assessing whether: i) the property in question is directly related to the charitable, educational or religious purposes of the owner; ii) the property is regularly and continuously used to advance these purposes; iii) access to the property is open to all individuals based upon legitimate desire and/or need, not limited to an insular group of individuals, directly affiliated with the owner; and, iv) the property is not of such an acreage—unless related to protection or preservation of the land, itself—that its value as a parcel related to the purposes of the organization is negatively disproportionate to its value as an aesthetic, cultural, financial, historic and/or recreational resource to the State and its citizens. If the answers to these questions are in the affirmative, the property should be worthy of full property tax-exemption. If not, the full exemption of the parcel could be legitimately questioned.

With regard to the appropriate measure of "control" to exercise relative to tax-exempt property, the State is reminded of the following circumstances that merit careful consideration and earned respect:

- First, the benefit of the property tax exemption varies considerably amongst charities. No benefit whatsoever accrues to the vast majority of charities that are renters. As discussed the reality is that the vast benefit of the property tax-exemption disproportionately accrues to established faith-based organizations and large educational and health care institutions, utilizing considerable acreage in their operations. Only by seeking tax revenue from property held by such institutions would local municipalities see significant gains in their tax coffers. The small fraction of tax-exempt property owned by small-to-mid-sized, community based charities is of such relatively nominal value that it would be unlikely to have any tangible impact on the tax levies of localities, but may very well have a tangible adverse impact on such communities. In this regard, we recently polled our members to get their assessment of the impact that the assessment of property taxes might on their operations. A summary of responses by a representative sample is included as an attachment to this correspondence.
- Second, if you look at impoverished neighborhoods in the City of New York and the inner-suburbs in Nassau and Westchester Counties and in cities across the upstate region, such as Albany, Binghamton, Buffalo, Poughkeepsie, Rochester, Syracuse and Utica, you will see that it is the community-based charities who are raising dollars and re-committing to local revitalization efforts. They—unlike the business sector, particularly large employers—have not fled poor neighborhoods and blighted cities, and are rehabilitating abandoned commercial properties; rehabilitating housing in blighted neighborhoods; converting abandoned churches to art galleries; creating jobs; and, stimulating economic vitality. They are doing so while also serving the most vulnerable in those communities, whose numbers are swelling in these hard times. And, unlike the business sector, by virtue of their benevolent purposes, charities tend to stay true to their respective communities, garner community support through donations, and have regularly rejected opportunities to relocate to more upscale neighborhoods and bucolic locales.

- Third, as a practical consideration, most state and federal funding contracts—upon which many charities are so (sometimes entirely) dependent in order to offer the services they provide—do not consider the tax payments (income, property, etc.) to be valid expenditures for reimbursement. By way of example, in preparing this report, we reviewed our own governmental contracts—including a recently awarded \$1,000,000 federal stimulus funding contract to provide economic recovery services in impoverished neighborhoods in the Bronx, Brooklyn and Manhattan—and found that not one of the line item reimbursable agreements would allow taxes as a reimbursable expense. The assessment of, contractually un-reimbursable, property taxes could effectively render many charities unable to carry out social policy on behalf of local, state and federal governments. And, ironically, in many cases, any such taxes would be levied against properties that were first acquired only with the assistance of governmental funding or financing. With regard to the above, one might be tempted to ask about the possibility of increasing fund-raising efforts to cover the costs of property taxes. Unfortunately, we are unaware of any donors willing to give money to charities for the purpose of paying taxes. New York is home to some of the most generous individuals and philanthropic institutions in the world. But, these folks want their precious dollars used for the charitable purpose of their choice, not to fill government coffers.
 - Fourth, like many property-owners—including residential and commercial owners—many charities are already unable to afford to hold title to the properties they own. The assessment of property taxes on currently exempt property would almost certainly result in some charities discontinuing certain unprofitable, yet essential, programs and operations, selling facilities or simply dissolving. Charities often own facilities with upkeep, maintenance and utility costs that are substantially higher than those of residential or other commercial properties. It is expensive to clean treatment centers, put period shingles on the roofs of historically significant buildings, heat swimming pools and cool community centers. Yet, New Yorkers depend upon charities to assume such costs. Similarly, a recently depressed real estate market has left many charities underwater with mortgage financing and high-rate lines of credit. Assessing new taxes on their facilities would only increase the State’s alarming rates of default, decrease available services at a time of high need, and contribute to neighborhood blight, further eroding property values.
3. *Should state lawmakers reconsider the definitions for what qualifies as tax-exempt property or institute a policy of partial exemptions?*

It would be better to reconsider the definitions for what qualifies as tax-exempt property than to institute a policy of partial-exemption, as it would force the State and local municipalities to squarely address their priorities in terms of awarding tax-exemption. Any determination relative to the exemption of a parcel from real property taxes must be based on objective criteria. It is already extraordinarily challenging to simply assess the actual value of many properties owned by charities, let alone to apportion an appropriate tax rate. It is not as easy to determine the worth of properties that are not regularly bought and sold, like fire houses, community centers, property designated as forever wild open space and historic structures. The last thing charities need is to add more subjectivity to the State’s system of property tax-exemption.

In practice, existing criteria already allows for awards of partial property tax exemption. Adopting a new, formal scale of partial exemptions—particularly if determined by local government—would only add an additional subjective layer to a process already deemed prejudicial and fundamentally unfair by both proponents and opponents of the current system alike. More practically, providing for statutory partial exemption would likely lead to a system where partial awards become the norm, not the exception. This would have the undesirable effect of both denying full exemption to organizations with bone fide fully tax-exempt purposes and offering partial exemption to organizations without legitimate purposes justifying exemption. Either way, New Yorkers would lose.

4. *How would the state constitution influence attempts to reform the property tax exemption system?*

An amendment to the State Constitution would be required in order to permit municipalities to levy property taxes on parcels owned by not-for-profit or religious corporations with charitable, educational and/or religious purposes that are utilized primarily for the advancement of those purposes. If such an amendment were to be authorized, a subsequent modification to the Real Property Tax Law would subsequently need to be rendered as well. Section 1 of Article XVI of the State Constitution, provides, in relevant part:

“Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit.”

With regard to property tax-exemptions, Section 1 of Article XVI of the State Constitution, is codified in Section 420-a(1)(a) of the Real Property Tax Law, which states:

“Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, or moral or mental improvement of men, women or children purposes, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section.”

The Court of Appeals has consistently interpreted Article XVI of the Constitution and Section 420-a of the Real Property Tax Law in a manner that strictly limits the ability of local municipalities to tax property owned by not-for-profit or religious corporations and used to advance charitable, educational and/or religious purposes. As far back as 1956, the Court concluded that constitutional and statutory requirements exempting property used exclusively for charitable, educational or religious purposes from taxation declared a societal policy that institutions like churches and schools are more important than local taxes and that it is in furtherance of the general welfare to exclude such institutions from taxation. *See Diocese of Rochester v. Planning Bd. of Town of Brighton*, 1 N.Y.2d 508, 524-25, 154 N.Y.S.2d 849, 136 N.E.2d 827 (1956).

More recently, the Court confirmed that the reference to the term “exclusively” found in each the Constitution and the Real Property Tax Law—as in “used exclusively for religious, educational or charitable purposes—should not be interpreted in a literal sense, rather it connotes “‘principal’ or ‘primary’” usage. *Matter of Symphony Space v. Tishelman*, 60 N.Y.2d 33, 38, 466 N.Y.S.2d 681, 453 N.E.2d 1097 (1983). Just last year, the Court re-affirmed that charitable owned property used primarily for charitable, educational and/or religious purposes was rightfully exempt from taxation, even if it was utilized to generate significant revenue, noting “[t]he question is how the property is used, not whether it is profitable.” *Matter of Adult Home at Erie Station v. Assessor and Bd. of Assessment Review of City of Middletown et al.*, *Matter of Regional Economic Community Action Program v. Bernaski*, 10 N.Y.3d 205, 216, 856 N.Y.S.2d 515, 886 N.E.2d 137 (2008).

In sum, the decisions of the Court of Appeals with respect to the taxation of properties owned and used by charitable, educational and/or religious organizations do not bode well for those who might seek to limit property tax-exemption for not-for-profit or religious corporations. If constitutional issues are to be avoided in reforming the State’s system of exempting property, it may be better to look to properties owned by business, homeowners or the government, itself.

5. *How has the distribution of tax exemption impacted economic development activities and revenue streams in urban and suburban areas?*

The distribution of property tax-exemption has had mixed results relative to the economic development and revenue streams in urban and suburban areas. As discussed, even while owning property that is off the tax rolls, charities—including large religious, educational and health care institutions—save the taxpayer far more money than they receive as they provide programs and services comparable to, or better than, those offered by government at substantially reduced costs. This cost savings is of an immeasurable benefit to local municipalities, enabling them to dedicate other resources to economic development and developing new revenue streams. Based upon results in alleviating societal problems, saving taxpayers money and creating local jobs, property tax-exemptions for charitable organizations should be continued.

Unlike property tax-exemptions awarded to worthy charities, exemptions awarded to businesses and development projects promising the creation of new jobs have been nothing short of an abject failure. By and large, such broad-based exemptions have offered New Yorkers little in terms of tangible economic development, and their inability to produce promised jobs is well documented. Just this past Sunday, October 11, 2009, the *New York Times* reminded New Yorkers that each the new Yankee Stadium and Citi Field, home of the Mets, are off the tax rolls—their owners opting instead to make less burdensome PILOTS. Likewise, the owners of Madison Square Garden have apparently evaded the payment of property taxes since 1982. Such awards of property tax exemption do little to promote economic development or create new municipal funding streams. In fact, they appear to do little more than retard the ability of municipalities to develop viable development programs or new sources of revenue as they unnecessarily deny funding that might otherwise enable such worthwhile projects. As such, the State should strongly consider for-profit property tax-exemption as a viable candidate for meaningful tax reform.

6. *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?*

Local government is already afforded a substantial role in determining what properties are exempt within their borders and negotiating PILOTS and SILOTS where appropriate. Applications for property tax-exemption are reviewed and authorized at the local level. Only in rare instances where the determination of local government is arbitrary or capricious can it be appealed to the State's courts for review. Extending local government any more authority to repeal or reduce property tax exemptions would almost certainly flood the State's courts with regular appealable determinations on exemption focused disproportionately on local interests at the expense of a statewide need for a healthy and vibrant nonprofit sector.

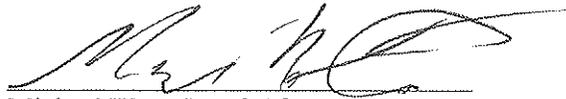
7. *Are there any property tax exemption systems in other states that could serve as models for New York?*

If our research has revealed anything, it is that systems for property tax exemption are as heavily debated in many states as in New York. However, it does appear that any effort to strip current property tax-exemptions from not-for-profit or religious corporations would be far more complicated in New York than in other jurisdiction by virtue of the State's substantial infrastructure of, and reliance upon, charitable, educational and religious organizations; the overwhelming financial benefit enjoyed by New York taxpayers relative to programs, services and operations provided by these organizations; and, the constitutional protections that they are afforded with respect to property tax-exemption. Still, we would be happy to work with the State and our national umbrella organization, the National Council of Nonprofits, where our Chief Operations Officer serves as Chair of the Board of Directors, in exploring alternative models.

In sum, the New York Council of Nonprofits welcomed the opportunity to share our views on the benefits and costs of property-tax-exemptions at the recent Senate Select Committee on Budget and Tax Reform roundtable discussion. We look forward to serving as a resource to the Select Committee, the State and its citizens in addressing this important issue in the months and years to come. In this regard, please advise as to how we can be of assistance in the future.

Thank you for the time and opportunity taken to hear our thoughts and concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Michael West', written over a horizontal line.

Michael West, *Legal Advisor*