

**Final Report
of the
Nonprofit Tax Review Task Force
(P.L. 2013, C. 368, p. AA)**

Executive Summary

Public Law 2013, Chapter 368, Part AA directed the Commissioner of the Department of Administrative and Financial Services (DAFS) to convene the Nonprofit Tax Review Task Force (**Attachment #1**). Pursuant to the statutory charge, nine members were appointed to the Task Force, representing a reasonably balanced mix of governmental and nonprofit interests (**Attachment #2**).

The Task Force was convened on October 30, 2013 and continued its work and deliberations over an additional four meetings that were held on November 15, November 20, November 25, and December 9. Minutes of the meetings were prepared by DAFS staff and detailed summaries of the meetings were also prepared by the staff of the Maine Municipal Association (MMA). All minutes and summaries were reviewed, amended as necessary, and approved by the Task Force (**Attachment #3**). As will be noted in the review of that material, the Task Force paid close attention to the duties assigned to it in Part AA-4 of the legislation during each of the five meetings and due consideration was given to each of the assigned duties. For example, one of the duties of the Task Force was to consider how other cities and states treat nonprofit organizations for purposes of service charges, payments in lieu of taxes and property taxes. A summary addressing that element of the Task Force Charge is found at **Attachment #4**. Additional material submitted to the Task Force and reviewed in the course of its discussions includes The Maine Nonprofit Sector Impact, a report detailing the economic impact of the Maine nonprofit sector, written by the Maine Association of Nonprofits (**Attachment #5**).

The deliberations of the Task Force can be broken down into two major components.

Consideration of the “Economic Crisis Assessment” model. During the beginning part of the process, the Task Force educated itself with respect to the origin of Part AA, with particular attention paid to the Part AA-4 directives. With the help of Senator Flood and Representative Carey from the Appropriations Committee, the Task Force was informed about the draft “Economic Crisis Assessment” legislation that was briefly advanced and then withdrawn during the late stages of the state budget negotiations last May (**Attachment #6**). It was explained that the proposal was advanced to help mitigate a significant reduction in municipal revenue sharing, but then withdrawn in recognition that it was too late in the process for the proposal to be properly vetted, given a public hearing, and further developed as may be appropriate. Instead of the Economic Crisis Assessment proposal, the revenue sharing issue was addressed in the negotiated budget through the temporary increase in sales tax rates. The Part AA Task Force, in turn, was established to allow continued deliberations over the general concept of nonprofit assessments without the immediate urgency of closing a budget.

This background information helped the Task Force better understand the context of its assignment and the various specifics of the Part AA charge. As will be noted below, the Task Force ultimately concluded by consensus that the design, scope and structure of the Economic Crisis Assessment was neither feasible nor desirable and should not be implemented.

Consideration of an alternative, "service charge" approach. The focus of the remaining meetings was the consideration of an alternative approach. Several members of the Task Force expressed an interest in exploring an expansion of an existing municipal authority established in 36 MRSA § 508. That law allows municipalities, by ordinance, to impose and collect a service charge from rental housing properties that are 100% exempt from taxation. An approach supported by some members of the Task Force would allow municipalities to impose a service charge on a broader array of nonprofit tax exempt institutions. Unlike property taxes, the service charges are calculated on the basis of the direct costs incurred by the municipality to provide essential public works and public safety services to those institutions.

The meeting minutes and summaries describe in detail the development of this proposal during the Task Force meetings. Although the final Task Force recommendations do not advance specific amendments to the service charge statute, a draft proposal was developed for the purpose of modeling impacts, and a half-dozen service center communities provided impact data and other input with respect to the draft proposal in response to a survey conducted by MMA at the Task Force's request. The summarized results of that survey are found at **Attachment #7**.

For the purposes of this executive summary, it is fair to say that there was respectful but clear disagreement among Task Force members as to the feasibility and desirability of this alternative approach.

From the perspective of the members supporting the alternative approach, there are several attributes to the proposal that make it worthy of consideration. It does not apply a tax against the assessed value of the institutional property. Instead, it calculates the direct costs of essential services provided to the institutions according to the same principle that requires tax exempt institutions to pay their utility costs. It places the decision to apply or not apply the service charges at the level of the local legislative body, where the communities' costs and benefits associated with hosting the exempt institutions are well known. Finally, although much of the decision-making with respect to the imposition of service charges would be local, certain parameters or safeguards would be embedded in statute to ensure that the service charges, if imposed at the local level, would fairly recognize the value of the benefits provided by the tax exempt institutions to the host municipality and its residents, and would only be applied to institutions with a demonstrable capacity to pay. At least some Task Force members in support of this approach believe that the increasing financial pressures facing state and local governments will inevitably result in structural changes to tax exempt policies and it would be prudent to advance a relatively modest and well-guided proposal proactively rather than make no change to the status quo and be forced to react to more significant initiatives that may be advanced.

From the perspective of other members, there are numerous serious flaws to the service charge proposal. The tax exempt institutions recognize and sympathize with the financial constraints that are bearing down on municipal government, and are particularly concerned with the impacts of the service center communities that tend to host concentrated levels of exempt property. In fact, they are facing very similar constraints themselves. As a matter of principle, however, the imposition of service charges against the institutions only results in a further deterioration of the nonprofits' capacity to deliver the charitable and educational services which constitute their mission and which provide necessary and complementary benefits to the community and wider society, just as the local governments do.

In addition to the concerns of principle, the representatives of the nonprofit organizations identified a number of methodological concerns with implementation, including how the service charges could be fairly and accurately calculated, how the value of the nonprofit's contributions could be fairly calculated, and how the various threshold and capping systems could be established without unfairly discriminating against certain types of nonprofits that are structured differently than others.

Task Force recommendations. As a result of the deliberations over the course of the five meetings, two key recommendations were made, the first of which is agreed to unanimously. The second recommendation is supported by a majority of the Task Force members, with the representatives of the nonprofit organizations dissenting.

First, the Task Force took the following position with respect to the first sentence in Part AA-4, which provided the central charge to the group:

"The Task Force unanimously supported the position that any proposal to apply a tax to a broad array of tax exempt nonprofit organizations for the purpose of generating as much as \$100 million which would be collected by the state, either on a temporary basis or as a matter of ongoing policy, is neither a feasible nor desirable recommendation."

Second, by a vote of 6 - 3, (Peluso, Blank and Libby dissenting) a majority of the Task Force endorsed the following recommendation to the Joint Standing Committees on Appropriations and Financial Affairs and Taxation:

"The Task Force further suggests guidance to the Appropriations Committee and Taxation Committee going forward on this matter to utilize the following discussion parameters:

In further discussion of any impositions of taxation or service costs applicable to nonprofit entities, we suggest that those deliberations be limited under Title 36 solely to consideration of locally applied (actual cost) service charges on nonprofits; giving necessary consideration of supportable thresholds such as size (as determined by annual local revenue or annual local income), caps on assessments, appropriate offsets, and/or consideration of other impacts to communities and the nonprofit entities. Such determinations would require more time than the Task Force currently has, but it is our hope that this guidance provides helpful direction to the Appropriations and Taxation Committees in the Second Session of the 126th Legislature."

Addendum to the Final Report of the Nonprofit Tax Review Task Force submitted by:

Brenda Peluso, Director of Public Policy and Operations, Maine Association of Nonprofits
Arthur Blank, President and CEO, Mt. Desert Island Hospital
Dr. James Libby, Academic Dean, Thomas College

We are sympathetic to municipal fiscal pressures caused by high-reliance on property-tax revenue, the unequal distribution of tax-exempt properties, and a host of other issues; however, we are opposed to efforts that impose taxes or service charges on nonprofit organizations in order to relieve some of these pressures. Nonprofits earn their tax exemptions every day by contributing to the common good in partnership with their host communities, county, state and federal governments.

Seven other task forces and study commissions have met over the last 35 years to study nonprofit property tax exemption and the imposition of service charges¹. In summary, the committee reports consistently reflect a central tension in the property tax debate: the desire to value and support the vital public role served by the various non-governmental service organizations versus the strain on municipalities and other taxpayers that have high levels of tax exempt property. Each failed to solve the issue, in spite of spending much more time on the issues than did this 2013 Task Force. Some proposed solutions that would not reduce nonprofits' ability to serve Maine. Solutions from the February 1996 Commission to Study the Growth of Tax-exempt Property in Maine's Towns, Cities, Counties and Regions include:

- Restoration of municipal revenue sharing to 1991 levels
- Increased state funding to 55% of local education costs
- State reimbursement of 100% of local property tax revenues lost to the tree growth classification
- The establishment of a mechanism of relief for those municipalities whose level of property tax exemption exceeds 20% of all property
- Local option taxes to fund municipal services, including local option sales, income, excise, and meals and lodging
- Reduce the level of reliance on the property tax to approach the national average over a several year period. In Maine in 1996, the property tax accounted for 48% of the total state and local tax revenues, this compares with a national average closer to 30%.
- In order to facilitate the availability of more accurate data, the legislature should require that local assessors revalue all tax exempt property no less frequently than at five year intervals

Many Maine Legislatures and many of these task forces and study commissions have recommended the imposition or expansion of service charges, but never unanimously or successfully. We offer the following observations:

- The Nonprofit Tax Review Task Force reviewed how other states handle this issue and based upon research offered by the Maine Municipal Association, there is no evidence that any other state is authorizing the imposition of service fees on nonprofits in a broad manner. Maine would be the first.

- For a service charge to be a true service charge and not a tax, the actual cost of providing a service to the particular property would need to be calculable. If indeed it is calculable, it should then be pulled out of the tax base and assessed on all properties, taxable and tax-exempt. The Lewiston “Rain tax” is a good example, as are metered water and sewer fees, and pay-per bag trash services.
- Services that are not easily appropriated to individual property owners are legitimately a shared responsibility and rightfully belong in the tax base. There is considerable legal and historical precedent for nonprofit tax-exemption. In 1924 the United States Supreme Court ruled that “the exemption is made in recognition of the benefit which the public derives from the corporate activities of the class of charitable organizations.” This was further strengthened by the House of Representatives in 1938 when they noted, “The exemption from taxation of money and property is based on the theory that the government is compensated for the loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from other public funds, and by benefits resulting from the promotion of general welfare.” Nonprofits are performing services that would have to be performed by the government were it not for their efforts and the public good is served by their activities. Taxing these entities would be counter-productive, robbing Peter to pay Paul.
- Often there is a great lack in understanding of what it means to be a nonprofit. In order to be a nonprofit organization, the entity must meet the requirements set forth in law (statutes and case law). Meeting those requirements indicates that the entity’s purpose is to benefit the public. Then to be eligible for a property tax exemption, the entity must use its property SOLELY for its public benefit purpose. The Maine Law Court has said “solely means solely”; therefore if there are more than de minimis off-purpose uses, the property will not qualify for tax-exemption. The bar is high to become tax exempt.

In conclusion, nonprofits earn their tax exemptions every day and our society has a long history of supporting this social contract. The imposition of taxes or service charges on one public serving entity to fund another is not good economic or public policy.

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- 1- Report of the Committee on Taxation on Statutory Review of Property Tax Exemptions in Title 36, sections 652 and 656 (February 28, 1979)
 - 2- Joint Standing Committee on Taxation: Statutory Review of Property Tax Exemptions Contained in 36 MRSA Part 2 (March 1984)
 - 3- Relieving the Burden of the Property Tax in Maine: Report of the Speaker’s Select Committee on Property Tax Reform (November 1986)
 - 4- Report of the Standing Committee on Taxation Regarding Tax Expenditure Review and Property Tax Exemptions (December 1987)
 - 5- The Commission to Study the Growth of Tax-Exempt Property in Maine’s Towns, Cities, Counties and Regions, 117th Legislature (February 1996)
 - 6- Report of the Joint Standing Committee on Taxation: Property Tax Exemption Review (January, 2000)
 - 7- Review of the Law Governing Municipal Service Charges for Tax-Exempt Property (December 17, 2008)