

**November 15, 2013 Meeting of the Nonprofit Tax Review Task Force
Summary**

(Prepared by the Maine Municipal Association)

Sawin Millett opened the meeting with introductions, including Task Force members and staff.

Members present:

Sawin Millett (Chair, Commissioner of the Department of Administrative and Financial Services)

Arthur Blank (CEO, Mt. Desert Island Hospital)

Rep. Mike Carey (Lewiston)

Sen. Patrick Flood (Kennebec Cty.)

Joe Grube (Assessor, City of Lewiston)

Rep. Gary Knight (Livermore Falls)

Jim Libby (Academic Dean, Thomas College)

Sen. Rebecca Millett (Cumberland Cty.)

Brenda Palusa (Director of Policy, Maine Association of Nonprofits)

Staff:

Mike Allen (Associate Commissioner of Maine Tax Policy for the Department of Administration and Financial Services, Maine Revenue Services)

Kathleen Hamel (Administrative Secretary, Maine Revenue Services)

The Task Force agreed to accept the summary of its October 30th meeting (attached) with one amendment. On page 2, the bulleted line reading “*Typically, the larger the nonprofit organizations, the larger share of government subsidy.*” is amended to “*Typically, the larger the nonprofit organizations, the larger share of government payments.*”

Constitution and property taxation. In accordance with the meeting’s agenda (attached), Dr. Allen provided an overview of the state constitutional provisions related to property taxation. The handout of that presentation is attached.

Sen. Millett asked if the state is meeting its obligation to reimburse municipalities for 50% of the tax revenue lost associated with the tax exemptions created after April 1, 1978. The answer was ‘yes’, noting that large categories of exempt property (e.g., the “benevolent and charitable” corporations) were established before the reimbursement obligation, so no reimbursement is available even for newly established charitable organizations.

PILOTs and Service Charges. For the next item on the agenda, Geoff Herman, Maine Municipal Association, distributed a handout (attached) describing actual “payments in lieu of taxes” (PILOTs) that are being made in Maine. The information included responses to a 2008 survey conducted by MMA and a recent informal survey of four service center communities with high concentrations of exempt property. In summary:

- Most PILOT payments are made by low income housing facilities, in some cases as a result of the municipal imposition of “service charges” pursuant to 30-A MRSA, section 508, in some cases pursuant to agreements established when the facilities were established, and in some cases voluntarily.
- Formal PILOT programs conducted by the recently surveyed service center municipalities have been largely or completely unsuccessful.
- There are no major categories of contributing tax exempt facilities after low income housing facilities. The federal government provides some PILOTs for its parks and reserves, Bowdoin College provides an unrestricted gift of \$100,000 to Brunswick, the private schools that provide educational services for disabled children provide PILOTs to their host municipalities, etc.

Joe Grube provided information about Lewiston. Bates College makes no financial contribution but does provide some services to local schools. The Lewiston Housing Authority and three other low income housing facilities provide approximately \$132,000 in total PILOT contributions. One low income housing corporation is making higher-rate PILOT payments because the City is dedicating the revenue to affordable housing programs.

Sen. Flood asked why more municipalities have not adopted “service charge” ordinances and it was pointed out that service charges can only be applied against low income rental housing units which are 100% exempt from taxation. The service charge statute is not helpful to those communities without a concentration of low income housing. In addition, many low income housing systems are no longer completely exempt from taxation because they utilize the federal low income housing tax credits in their capitalization and so are not purely charitable in their organization.

Sawin Millett asked about the history of the service charge statute. Geoff Herman surmised that its origin was a legislative recognition that low income housing units are clearly associated with increased local services, including educational services. Geoff also pointed out that in the early 1990s, the law was amended to allow a reduced, 50% exemption for low income housing that converted from for-profit to non-profit status (see 36 MRSA, section 1(C)(6)). That is the only partial exemption in statute.

The Task Force engaged in a discussion recognizing the fact that municipalities both benefit from and need to provide services to large tax exempt institutions located within their borders. There are the local economic benefits (jobs, spin-off economic activity) and in some cases the contribution of locally beneficial services.

It was pointed out that Lewiston, for example, would not be Lewiston without the college and its hospitals.

It was also pointed out that the tax exempt institutions are not only exempt in their current footprint, but are also often in the process of expanding, which can involve taking property that is generating tax revenue off the tax rolls. Joe Grube said that of the 38 tax exempt group homes in Lewiston, some were newly constructed while others are older-stock residential housing that was formerly taxable.

The observation was made that different types of tax exempt institutions impact their host municipalities in different ways. Arthur Blank said that the hospitals exist to provide benefits to the local and larger-than-local communities with their free-care services, bad-debt write-offs, and lower-than-cost reimbursement rates under Medicaid. His hospital, as an example, is directly engaged with all of the towns in that region in collaborative emergency response planning efforts.

The Task Force also engaged in a discussion regarding the legal differences between a tax and a service charge. In summary, it was determined that:

- The service charge statute, which focuses only on low income housing facilities, cannot be cited by municipalities as an authority to apply service charges to other categories of exempt property,
- Only the Legislature is empowered to establish tax policy; there is no “home rule” authority in this area of law,
- The Legislature is empowered to impose a property tax against the value of exempt property. To meet the constitutional standard of equal assessment, the “just value” of the exempt institutions would need to be accurately determined, and
- Service charges, which are not taxes, need to be calculated in some relation to the value of the services provided. Service charges calculated on the basis of the institutions’ assessed value could be easily challenged as an unauthorized “tax”.

Aggregate assets and revenue of charitable institutions. For the next item on the agenda, Dr. Allen distributed a two-page analysis of the aggregate IRS and NCCS data (National Center for Charitable Statistics) regarding the number of charitable entities in Maine organized into 20-plus categories, and the aggregate value of the organizations’ assets and revenues in each category. The handout is attached.

After these general discussions, Sawin Millett observed that the working group’s membership, by design, was certain to have various points of view about the charge given to the Task Force, but there was a task to be accomplished and the agenda was structured to begin addressing the several decision-making assignments.

In different ways, Brenda Palusa and Jim Libby asked whether it would be appropriate to first address a threshold question of whether the Task Force should go forward at all. Jim’s interpretation of the charge given to the Task Force is that the threshold question is whether it would be desirable and feasible to apply some form of taxation against tax exempt institutions. Therefore, if applying such a

tax was determined from the onset to be either infeasible or undesirable, there would be no need to continue with the discussion.

Arthur Blank reiterated the range of contributions hospitals make to medical care, emergency services and the state budget, and said that notwithstanding his sympathies to the challenges facing local government, he did not see how it made sense to consider tax exempt institutions like hospitals as part of the solution. With respect to the issue of taxable property being taken off the tax rolls, Arthur suggested that a longer-term analysis might reveal that a greater economic benefit accrued to the municipality because of a nonprofit's expansion even though some taxable property is made exempt in the process.

The legislators on the Task Force from the Appropriations Committee reviewed the origin of the Task Force in the budget discussions this spring when legislators were grappling with a proposed \$180 million elimination of municipal revenue sharing for the biennium. Legislation to solve some of that problem by imposing a temporary tax on nonprofit institutions was offered and then withdrawn, and the temporary sales tax rate increases were chosen instead, temporarily fixing some but not all of the revenue sharing shortfall. Although the urgency of the problem has temporarily subsided, the thinking of the Appropriations Committee was that the issue of tax exempt institutional contributions to the public charge deserved further review.

Rep. Carey said that the Task Force charge, because of its origin in solving a state budget problem, carries within it a disconnect. The services the institutions receive are being provided by the host municipality, not the state, but the Task Force charge appears focused on generating state revenue and then engaging in some form of redistribution. Rep. Carey thought that instead of creating increased state revenues, the Task Force should focus on the financial relationship between the tax exempt entities and their host municipalities.

To accomplish the given assignment, Sawin Millett suggested proceeding through the decision tree assigned to the Task Force under the protective umbrella of a big "IF". In summary, the big IF puts the threshold questions at the end of the process by allowing any and all Task Force members to vote to oppose any recommendation that may be developed on the grounds that the proposal fails the "feasible or desirable" threshold questions.

Sen. Flood expressed an interest in giving municipalities some home rule authority to help themselves, along the lines of expanding the existing service charge statute.

Brenda Palusa said that the nonprofits are sympathetic to the municipal problems, but the nonprofits have similarly been hurt by elements of the state budget and the economic downturn.

Jim Libby said that he was also sympathetic and familiar with the municipal concerns as the son of a municipal assessor, but he's not sure this Task Force is the appropriate venue to deal with those concerns because of the way the charge to the Task Force is structured.

Arthur Blank also expressed sympathy with the concerns of the municipalities but agreed that the solution embedded within the Task Force charge did not allow the appropriate conversation. The work done by the nonprofits and the municipal tax base don't fit together as cause and solution.

Under the umbrella of the big IF, Sawin Millett asked whether a system to levy a fee or tax against nonprofit institutions – if such a system were to be developed – should be temporary in nature or a permanent system. The group voted against a temporary approach for some differently articulated reasons. One opinion was that the municipal issues the Task Force charge is trying to address are not temporary in nature and would be better addressed through comprehensive tax reform. Another observation was that legislative enactments that are instituted as “temporary” often turn out otherwise or have their own set of problems.

Sawin Millett put forward the next question, which was whether the revenue that might be collected from tax exempt entities should be collected by the state, retained at the local level, or put through some sort of municipal distribution system.

Rep. Carey said that imposing a tax on Lewiston's exempt institutions and then redistributing the revenue to municipalities throughout the state would feel like a tax being imposed on service center communities. Sen. Flood agreed that the tax and redistribution system should not occur at the state level.

Rep. Knight inquired if this system was intended to replace the municipal revenue sharing system.

Geoff Herman was asked for the MMA perspective and indicated (1) that a service charge or nonprofit tax system should allow the revenue to remain with the host municipality, noting the strong correlation of higher-than-average property tax rates with the high concentration of exempt property, and (2) levying a fee on nonprofit organizations should not be designed as a substitute for municipal revenue sharing. Many municipalities have a high property tax burden for reasons not associated with tax exempt institutions.

With respect to potentially allowing the nonprofit contribution to be spread beyond the host municipality's border, Rep. Carey described the tax base sharing arrangement Lewiston has with Auburn.

Sawin Millett asked the Task Force if there was any interest in exploring a system whereby municipalities could impose some sort of charge against exempt tax institutions, with the possibility of sharing that revenue with neighbors in the region through something akin to the tax base sharing system.

Sen. Millett suggested that any authority that allows the imposition of a tax or fee on nonprofit entities should be restricted or disallowed in those municipalities that are authorizing Tax Increment Financing (TIF) agreements. Geoff Herman pointed out that a TIF agreement is not the equivalent of a tax exemption because the property tax obligation is still maintained in a TIF agreement. TIF agreements merely dedicate the use of the tax revenue generated within the TIF district. Admittedly, a “credit enhancement” TIF agreement, where the tax revenue is returned to the taxpayer, can easily be regarded as the equivalent of a tax exemption.

Arthur Blank said that hospitals have a significant amount of personal property in their facilities, which in any commercial parallel would be exempt from taxation under the Business Equipment Tax Exemption program.

Sawin Millett suggested that at the next meeting the Task Force have an opportunity to review the current law regarding tax base sharing arrangements, the general municipal capacity to enter into interlocal agreements, and the current law governing service charge assessments.

Sen. Millett said she was interested in discussing thresholds with respect to the development of a new municipal authority.

Brenda Palusa said that there were annual or biennial attempts to expand the service charge statute and it may not be necessary to review that statute yet again.

Sen. Flood said he was interested in reviewing LD 936 (*An Act To Authorize Municipalities To Impose Service Charges on Tax-exempt Property Owned by Certain Nonprofit Organizations*), a bill sponsored by Rep. Chase. LD 936 has been carried over into the 2014 legislative session.

With respect to its charge to consider how other tax jurisdictions deal with exempt nonprofit institutions, the Task Force accepted the material submitted at its October 30th meeting describing the tax exempt policies of 20 states as described by those states’ municipal leagues in response to a survey.

The next meeting of the Task Force is Wednesday, November 20, 2013, beginning at 1:00 p.m.