

# Local Governments Eager to Snag Revenue from Nonprofits

04.12.16 | Linda J. Rosenthal, JD



The nation's charitable organizations have long enjoyed broad support from the general public and federal legislators.

From time to time – of course – there are headlines about tawdry scandals or reports of fraud and abuse. There are occasional Congressional inquiries into troubling practices or disturbing trends. But there's little danger of any broadside, direct attack on the availability of the coveted federal tax exemption.

It's a different story, though, at the state, county, and municipal levels. In recent years, there have been numerous assaults – many under the radar – on the non-federal privileges granted to charities.

As the late Rick Cohen observed back [in 2010](#):

*If Congress tried to take away the tax exemption from nonprofit 501(c)(3) organizations, our sector would be united and up in arms. But instead we are besieged with hundreds of local attacks on the tax exemption from cities, counties, and states.*

Some are aimed at curbing abuses, but many more of these attacks are “being [mounted by financially starved](#) local and state governments.

*How many ways can you balance a governmental budget on the backs – or finances – of nonprofits? Nearly every week, all across the country, different levels of government devise strategies – sometimes ingenious, occasionally pernicious – to get tax revenue from already-strapped nonprofits....*

Ironically, the amounts raised are often too small to make a dent in the government shortfalls. It's been clear for several years that this is a trend that the philanthropy community should ignore at its peril. Local officials around the nation have been in an apparent race to devise ever more creative ways to squeeze nickels and dimes from their communities' charitable institutions.

### *Examples*

The examples are wide-ranging and clever.

For instance, a backdoor way to collect money from tax-exempt organizations for needed government services is to change the terminology: what might be called a "tax" is renamed a "fee." Functionally, this is a way of nullifying the property tax exemptions for some or all community charities, but without all the fuss and bother of directly eliminating this preferred status. Municipalities are charging nonprofits "for ... anything ... they can think of." In Minneapolis, Minnesota, for instance, 501(c)(3)'s are now obligated to pay extra for streetlight use. In Pewaukee, Wisconsin, officials "turned the local hydrant tax into a fee which then allowed them to impose the levy against otherwise tax exempt organizations.

Alternatively, and more directly, governments are asking for "payments in lieu of taxes" (PILOTs) to fund important public services like police, fire, and public works. Sometimes, there is a specific formula; in other cases, municipalities negotiate PILOTs on a case-by-case basis. While these charges can be significant when imposed on major institutions (universities, for instance) whose extensive real estate holdings generally go untaxed, they also, often, apply to small, struggling organizations like the tiny, volunteer-run Orphan Animal Rescue & Sanctuary in Neenah, Wisconsin, which has to scrounge dollars to pay the special use permit for its adoption center.

Another popular method is to directly challenge the property tax exemption. For instance, a few years ago, the Illinois Supreme Court approved the action of state officials in revoking the property tax exemption of Downstate Provena Covenant Medical Center. The grounds for this ruling: the hospital failed "to generate most of its money from private and public charity, did not clearly demonstrate that it 'dispensed charity to all who needed it and applied for it' and 'failed to meet its burden' of showing that the hospital complex is used exclusively for charitable purposes."

Periodically, there are efforts as well, to repeal the property tax exemptions of entire classes of nonprofits.

### *Not All Proposals Succeed*

The nonprofit sector has been successful, though, in pushing back on many proposals by legislators and governmental units.

For example, in 2015, Governor Paul LePage of Maine asked the legislature to approve a proposed budget that would permit municipalities the ability to tax nonprofit organizations with real estate valued at over \$500,000. Opposition was fierce; lawmakers ended the legislative session without enacting this or any other measure involving taxes or fees on nonprofits.

### *Conclusion*

Against the backdrop of this headlong rush by cash-strapped governments to

capture extra money, the nonprofit sector's most important defense is that, without the benefits and social services that community nonprofits provide, that burden would revert back to government which would incur significant dollars in carrying out these indispensable services. In addition, large institutions provide many jobs and related revenues which go into municipal coffers. Philanthropy leaders warn against precipitous actions by officials that may have the unintended consequence of depleting the total funds available for public services.

In future posts, we'll highlight some current examples of this must-watch trend.

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