

Public Policy Challenge: Nonprofits Under Attack

In these tough economic times budget shortfalls are rampant among state and local governments, causing bureaucrats to look under every rock, couch cushion and budget line item for more funds. Unfortunately, nonprofit organizations' property and sales tax exemptions and fee payments may be this year's couch cushion. For example, the State of Kansas and the City of Pittsburgh are looking at revoking nonprofits' property tax exemptions. Kansas is also considering eliminating its sales tax exemption. Hawaii may suspend nonprofit exemptions from general excise tax and raise the cap on real property tax.

Hawaii's state legislature also just passed a bill lowering the cap for itemized deductions, including charitable contributions. The legislation caps itemized deductions at \$25,000 for individuals with an income over \$150,000 and at \$50,000 for taxpayers filing jointly with income over \$300,000. Nonprofits are concerned that these limits may reduce charitable contributions.

Nonprofits may also be imperiled by Payments In Lieu Of Taxes (PILOTS), which are increasingly being pursued by local governments. While Pittsburgh recently shelved a proposed one percent tax on college tuition, it was only after two universities and a health care provider agreed to increase their voluntary payments to the city. Harvard University reportedly paid the city of Cambridge \$2.2 million for city services in addition to the \$5.2 million it incurred for water and sewer services.

Other risks for nonprofits include imposition of new fees and delay of payments under government contracts. For instance, the Minneapolis city council voted last year to subject nonprofits to streetlight fees charged to businesses and residences. Illinois is reportedly five months behind in contract payments to some nonprofits.

Nonprofits' Counter Attack

Nonprofit organizations and advocacy groups are decrying the shortsightedness of state and local governments. These groups argue that property and sales tax exemptions now under attack were originally granted in recognition that nonprofits provide services that would otherwise fall on governments, services enumerated in the exemption statutes as "relief of the poor, the distressed, or the underprivileged," "prevention of cruelty to children and animals," "advancement of education or science," and "combating community deterioration and juvenile delinquency." As government agencies cut back their own programs, nonprofits will likely find communities turning to them for even more assistance – the worst time to be facing additional government-imposed financial strain.

Concerned nonprofits are not without alternatives. Organizations may consider initiating communication with legislators (city council, state representatives), actively presenting how nonprofits benefit communities, joining other nonprofits in advocacy, and taking a more prominent role in policy-making. Such strategies can provide counter-tactics for nonprofits threatened with increased fees or loss of tax exemptions.

©2010 Gammon & Grange, P.C. For more information, contact Gammon & Grange, P.C. (GGAlert@gg-law.com; 703-761-5000), a law firm serving nonprofit organizations and businesses throughout the United States and abroad. Readers may freely copy and distribute this Alert **in full without modification**.

Disclaimer: This memo is provided for general information purposes only and is not a substitute for legal advice. The transmission of this memo does not create an attorney/client relationship. No recipients of this memo should act or refrain from acting on the basis of this memo without seeking professional legal counsel. Gammon & Grange, P.C. expressly disclaims all liability relating to actions taken or not taken based on the content of this memo.