

AS OF 7/31/2012

**SELECTED RECENT BIBLIOGRAPHY ON
PROPERTY-TAX EXEMPTION FOR CHARITIES AND
PAYMENTS IN LIEU OF TAXES (PILOTs)**

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STATE AND LOCAL REPORTS

Generally:

See webpage of National Council of Nonprofits, “Taxes, Fees, and Payments in Lieu of Taxes (PILOTs),” <http://www.councilofnonprofits.org/public-policy/state-policy-issues/nonprofits-taxes-pilots>, setting out developments in various states.

For Rick Cohen’s coverage of state and local tax issues for *The Nonprofit Quarterly*, go to: <http://www.nonprofitquarterly.org/all-site-terms/term/summary/147.html>.

California:

California State Board of Equalization, Letter to Assessors, No. 2011/044 (Dec. 7, 2011), <http://www.boe.ca.gov/proptaxes/pdf/ltal1044.pdf>, clarifying the “use of the term ‘primarily’ in the administration and application of the community benefit test to a charitable organization’s claimed charitable activities for purposes of the welfare exemption.” The guidance concludes: “Even in situations where quantification of charitable activities benefitting the California community is possible, all facts and circumstances are considered to determine whether the test is met even in situations where the California community receives only a small percentage of benefit from the charitable activities. As currently applied by staff, the community benefit test is met if all of the facts and circumstances demonstrate that the charitable activities performed by the nonprofit organization confer some ‘meaningful,’ ‘important,’ or ‘significant’ benefit to persons within the geographic boundaries of the State of California.” See also California State Board of Equalization, *Property Tax Welfare Exemption* (Publication 149 March 2008), available at <http://www.boe.ca.gov/proptaxes/pdf/pub149.pdf>; and Memorandum from the CSBOE, *Property and Special Taxes Department, to County Assessors, Community Benefit Test For The Welfare Exemption* (No. 2008/034, May 2, 2008), available at

<http://www.boe.ca.gov/proptaxes/pdf/1ta08034.pdf>. Background documents and timeline are maintained at http://www.boe.ca.gov/proptaxes/welfarebenefit_test.htm.

Connecticut:

Data for 2007 and 2008 are available at Conn. Office Of Policy & Mgmt., Intergovernmental Policy Div., *Colleges (Private) And General/Free Standing Chronic Disease Hospitals – Payment in Lieu of Taxes*, <http://www.ct.gov/opm/cwp/view.asp?a=2985&q=383134>. For more recent data, see *Estimates of State Formula Aid to Municipalities* (February 16, 2011), available at http://www.ct.gov/opm/cwp/view.asp?a=3019&q=383212&opmNav_GID=1807, and updates in Section E – Municipal Budget, Statutory Formula Grants, at E-6 (reporting a total of \$115.4 million as available for this PILOT program in FY2010-11), at http://www.ct.gov/opm/lib/opm/budget/2012_2013_biennial_budget/section_e_municipalaid.pdf

Illinois:

At the end of May 2012, the Illinois legislature passed Senate Bill 2194, which, as described by the Illinois Health Association, includes the “Association’s framework establishing clear and reasonable criteria for property and sales tax exemption for nonprofit hospitals, and an income tax credit for investor-owned hospitals. . . .” For the text of the bill (the income-tax and sales-tax provisions are on pages 47-91 and the property-tax exemption on pages 124-142), go to <http://www.ilga.gov/legislation/97/SB/PDF/09700SB2194ham003.pdf>. The new income-tax credit for for-profit hospitals equals the lesser of the cost of charity care provided or property-tax paid (with a 5-year carryforward of any unused amount).

Illinois Hospital Association, *IHA Advocacy Tool Kit: Preserving Tax Exemption for Nonprofit Hospitals*, at <http://www.ihatoday.org/Health-Care-Issues/Health-Care-Finance/Tax-Exemption/Tool-Kit.aspx>; *Protect Illinois Health Care*, at <http://www.protectillinoishealthcare.org/>; and *Three Hospital Property Tax-Exemption Rulings Issued by DOR* (Aug. 16, 2011), at <http://www.ihatoday.org/News-and-Reports/News-and-Memos/Content/Three-Hospital-Property-TaxExemption-Rulings-Issued-by-DOR/88.aspx>.

Letter from Governor Pat Quinn to Illinois Hospital Association president (Sept. 19, 2011) announcing moratorium on Department of Revenue hospital revocations until March 1, 2012, to allow the state and private stakeholders to develop recommendations for legislation “that is fair to both hospitals and taxpayers and meets the requirements of the Illinois Constitution,” at <http://www.ihatoday.org/uploadDocs/1/govltrtaxexemption.pdf>.

Cook County Assessor’s Office, *Exempt Hospitals: Valuation Estimates and Appraisal Methodology* (2007), www.cookcountyassessor.com/forms/ExemptHospitalValuationEstimates.pdf.

Louisiana:

Louisiana Legislature, House Resolution 86 (2011), To urge and request the House Committee on Municipal, Parochial and Cultural Affairs to study the impact of the homestead exemption, nonprofit exemption, and other property tax exemptions on local government revenue and to report its findings to the House of representatives by February 1, 2012 (enrolled, signed by the Speaker of the House and delivered to the Secretary of State, June 22, 2011), available at <http://www.legis.state.la.us/billdata/streamdocument.asp?did=758779>.

Massachusetts:

City of Boston, *Mayor's PILOT Task Force: Final Report and Recommendations* (Dec. 2010) and related material available at <http://www.cityofboston.gov/assessing/PILOT.asp>. Information on the \$9.9 million in first half FY2012 PILOT payments (92% of the \$10.8 million requested) is available at <http://www.cityofboston.gov/assessing/pilotprogram.asp>.

Springfield Financial Control Board, *Project Plan: Establishment of a Payment in Lieu of Tax (Pilot) Program, City of Springfield, Massachusetts* (September 16, 2005), available at <http://www.mass.gov/Asfcb/docs/PILOTProjectPlan.pdf>.

Minnesota:

Minn. Department of Revenue, *Assessment And Classification Report: Institutions Of Purely Public Charity* (2009), as well as an executive summary and survey results by county, are available at http://www.taxes.state.mn.us/property_tax_administrators/other_supporting_content/summary.pdf. See also the Property Tax Division's memorandum to assessors (March 2010), reflecting the subsequently enacted statute, available at <http://www.minnesotanonprofits.org/mcn-at-the-capitol/Property-Tax-Final-Revenue-Bulletin.pdf>.

Minnesota Council of Nonprofits, *Nonprofit Property Tax Exemption Toolkit* (September 2010), at <http://www.minnesotanonprofits.org/nonprofit-resources/financial-management/nonprofit-guide-to-property-tax-exemption/nonprofit-property-tax-exemption-toolkit>.

City of Minneapolis, *Street Lighting and Street Maintenance Assessment on Nongovernmental Tax Exempt Parcels*, <http://www.minneapolismn.gov/special-assessments/fact-sheet.asp>.

Montana:

Senate and House of Representatives of the State of Montana, *Joint Resolution for an Interim Study on the Exemption of Nonprofit Corporations or Organizations from Property Taxes and Other Taxes*, Joint Resolution No. 23 (62nd Legislature, May 4, 2011), available at <http://data.opi.mt.gov/bills/2011/billpdf/SJ0023.pdf>. See also *Proposed Study Plan for an Interim Study of the Exemption of Nonprofit Organizations from Property Taxes*, Prepared for the Revenue and Transportation Interim Committee by Megan Moore, Legislative Research

Analyst Montana Legislative Services (June 2011), at <http://leg.mt.gov/content/Committees/Interim/2011-2012/Revenue-and-Transportation/Meeting-Documents/June%202011/SJ23%20STUDY%20PLAN.pdf>.

New York:

Staff Report to the New York State Senate Select Committee on Budget and Tax Reform on Evaluating the Needs for and Costs of New York State Property Tax Exemptions (Dec. 2009), at <http://www.nysenate.gov/files/pdfs/ExemptionReport.pdf>.

New York State Department of Taxation and Finance, Office of Real Property Tax Services, *Exemptions from Real Property Taxation in New York State: 2010 County, City & Town Assessment Rolls* (Aug. 2011), at <http://www.orps.state.ny.us/ref/pubs/exempt/ex09/exemptrpt2010.pdf>.

Pennsylvania:

Legislative Budget And Finance Committee A Joint Committee of the Pennsylvania General Assembly, *Tax-Exempt Property And Municipal Fiscal Status* (2009), available at <http://lbfc.legis.state.pa.us/reports/2009/26.PDF>. See also Pennsylvania Association of Nonprofit Organizations, Pano.org, *State Releases Report on Impact of Property Tax Exemptions on Municipalities LB&FC Report* (Apr. 1, 2009), http://www.pano.org/publicpolicy/publicpolicy-state_taxation.php.

On the separation of powers issue, see a case involving a 61-acre summer camp run by an orthodox-Jewish nonprofit. *Mesivtah Eitz Chaim of Bobov Inc. v. Pike County Board of Assessment Appeals*, 2012 Pa. LEXIS 964 (Pa. April 26, 2012) [opinion for the majority available at <http://www.pacourts.us/OpPosting/Supreme/out/J-73-2011mo.pdf>, and for the dissent at <http://www.pacourts.us/OpPosting/Supreme/out/J-73-2011do.pdf>]. The court limited the appeal to the following issue: “Whether the Pennsylvania Legislature’s enactment of criteria in Act 55 for determining if an organization qualifies as a ‘purely public charity’ under Pennsylvania’s Constitution is deserving of deference in deciding whether an organization qualifies as a ‘purely public charity’ under Pennsylvania’s Constitution, or has the test provided in *Hospital Utilization Project [HUP] v. Commonwealth*, 487 A.2d 1306 (Pa. 1985), occupied the constitutional field, leaving no room for legislative influence and input?” The Commonwealth Court had ruled that the camp failed to meet the *HUP* factor of reducing the burdens of government – a factor that the camp argued it satisfied under the legislative definition.

The four-justice majority held: “our prior jurisprudence sets the constitutional minimum for exemption from taxes; the legislation may codify what is intended to be exempted, but it cannot lessen the constitutional minimums by broadening the definition of ‘purely public charity’ in the statute.” While the majority declared that “our courts will apply the *HUP* test in light of evolving circumstances,” it ruled: “The Commonwealth Court held appellant did not satisfy the *HUP* test,

and our grant of allocatur was limited to its continued viability in light of Act 55. As such, we will not review the Commonwealth Court's application thereof, nor the relevance or constitutionality of Act 55." The three-justice dissent criticized the majority for not explaining how changes to the *HUP* test may occur, and proposed that, "so long as the statute otherwise comports with the Constitution," "the catalyst for such alterations in the constitutional standards can only be found in a function served by the Legislature – monitoring policies as they shift with societal changes." A news report observed that the decision largely followed party lines, "with three Republicans opposing the ruling, while three Democrats joined Republican Justice J. Michael Eakin, who wrote the majority opinion." Sean D. Hamill and Jonathan D. Silver, *Ruling "Game-Changer" For Nonprofit Tax Status*, Pittsburgh Post-Gazette, May 2, 2012. The story added: "Drew Crompton, spokesman for state Senate President Pro Tem Joe Scarnati, said Senate leaders, who filed a bipartisan amicus brief in support of the Jewish camp last year, are so concerned that 'at this point we're pondering whether we need to make clarification to the constitutional section on purely public charities.' . . . It would take approval of a bill by the state House and Senate two years in a row, plus a statewide vote of the electorate, to change the state constitution." On June 20, by a vote of 46-1, the Senate passed Senate Bill No. 161, which, as amended, would amend the constitution to authorize the general assembly to "establish uniform standards and qualifications which shall be the criteria to determine qualification as institutions of purely public charity under clause (v) of subsection (a) of this section."

<http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=S&billTyp=B&billNbr=0161&pn=2297>. On June 27, the House State Government Committee overwhelmingly approved the proposal; on June 30, the bill passed the House Appropriations Committee, largely on party lines (all the Republicans, but only one Democrat, voting in favor). See

http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2011&sind=0&body=S&type=B&bn=161. But see the Allegheny County Controller's view, at http://www.alleghenycounty.us/news/2012/20120625a_taxExempt.pdf.

S1281 (Oct. 3, 2011, and referred to Senate Finance Committee), available at <http://www.legis.state.pa.us/cfdocs/billinfo/BillInfo.cfm?year=2011&sind=0&body=S&type=B&bn=1281>, would allow a local government to impose a tax on 100% of the assessed value of the land owned by the institution of purely public charity (but not on the value of any structure) over the first \$200,000 of aggregate assessed value of real property owned by the charity.

See also June 2012 press reports of the latest agreement between Pittsburgh and the Pittsburgh Public Service Fund for voluntary contributions.

Rhode Island:

State of Rhode Island. 2011. *Executive Summary of Fiscal Year 2012 Budget, Appendix C (State Aid To Cities And Towns)*, available at

http://www.budget.ri.gov/Documents/CurrentFY/ExecutiveSummary/12_Appendix%20C%20Aid%20to%20Cities%20and%20Towns.pdf (reporting, at 4: "The program was fully funded in FY 2007. Since FY 2008, state appropriations for the PILOT program have equaled less than 27

percent of all tax that would have been collected had the property been taxable. The Governor's recommendation is to level fund the program at the FY 2011 enacted level of \$27.6 million for the FY 2011 revised and FY 2012 budgets.”).

For a 2012 bill enabling a 25-percent essential-services PILOT, go to

<http://www.rilin.state.ri.us/news/pr1.asp?prid=8059>.

For a compilation of news coverage, go to <http://news.providencejournal.com/breaking-news/budget.html?p=1>.

For the May 1, 2012 agreement between Providence and Brown University, go to

<http://news.providencejournal.com/breaking-news/2012/05/01/brown-providence-agreement.pdf>;

the City's items on the 2012 PILOT agreements with Johnson & Wales College, Lifespan Hospital, and Brown are at <http://www.providenceri.com/saving-providence/>; and Brown's press release is at <http://news.brown.edu/pressreleases/2012/05/agreement> (for an undated fact sheet on Brown's exemption and its 2003 PILOT agreement, go to

<http://brown.edu/web/providence/factsheets/Brown-Supports-Providence-FAQ.pdf>).

Texas:

Richard W. Meyer, 82nd Texas Legislature, 2011 Regular Session, *Summary of Issues Affecting Nonprofit Organizations* (as of 7/7/11), at

http://www.tano.org/attachments/contentmanagers/2205/TANO_PP_update_7-7-2011.pdf

(reporting that proposed legislation to roll back municipal PILOTs on property owned by nonprofit, charitable and religious organizations (SB 714, HB 1022) was not passed). See also (id.): “On 4/6/2011, the Houston City Council passed an ordinance exempting churches and schools from the previously-enacted drainage fees, in response to the local public outcry and the state legislation referenced above.”

Utah:

Property Tax Division, Utah State Tax Commission, *Property Tax Exemptions: Standards Of Practice* (June 2007), available at <http://propertytax.utah.gov/standards/standard02.pdf>. Specific criteria for hospitals, nursing homes, and other health-care related organizations appear in Appendix 2D (at 2-33 to -36).

Wisconsin:

Publications by Institute for Wisconsin's Future:

Too Many Loopholes: How to Turn Property Tax Exemptions into Revenue for Local Governments (January 2011), by Dennis Collier and Jack Norman, available at

http://www.wisconsinfuture.org/publications_pdfs/tax/PropertyTaxExemptions12_2010.pdf,

citing Institute for Wisconsin's Future, “The profitable nonprofit health care systems,” presentation at the IWF conference, Rethinking Ways to Fund Local Government: Exploring Property Tax Exemptions, February 19, 2010, accessed at:

http://www.wisconsinsfuture.org/organizing_pages/events/conference%20materials/NormanPowerPoint_Healthcare_Facilities.pdf. The presentation cited data from the Wisconsin Hospital Association's Guide to Wisconsin Hospitals.

Hospitable Taxes: How Non-Profit Hospitals Profit From Wisconsin's Outdated Tax System (May 2008), available at

http://www.wisconsinsfuture.org/publications_pdfs/tax/hospital_taxes_5_08.pdf.

For contra view, see Wisconsin Association of Nonprofits (2010) at

<http://wisconsinnonprofits.org/content/nonprofit-property-tax-exemption-position-statement-may-2010> ("At the same time, we support opportunities to bring greater understanding of this issue and welcomes [*sic*] opportunities to engage with state government and taxing jurisdictions to identify new solutions to the significant fiscal challenges facing the municipalities they serve.").

ACADEMIC STUDIES

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<http://www.pubpol.duke.edu/research/students/spring2003-01.pdf>

Bowman, Woods. 2002. The Institutional Property Tax Exemption. Paper prepared for the Lincoln Institute of Land Policy and presented at the 2002 Conference of the Association for Research on Nonprofit Organizations and Voluntary Action, Montreal, Quebec.

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Janne Gallagher, The Legal Structure of Property-Tax Exemption, at 3-22.

Joan M. Youngman, The Politics of the Property-Tax Debate: Political Issues, at 23-46.

Dick Netzer, Local Government Finance and the Economics of Property-Tax Exemption, at 47-79.

Joseph J. Cordes, Marie Gantz, and Thomas Pollak, What Is the Property-Tax Exemption Worth?, at 81-112.

Stephen Diamond, Efficiency and Benevolence: Philanthropic Tax Exemptions in 19th-Century America, at 115-144.

Evelyn Brody. Legal Theories of Tax Exemption: A Sovereignty Perspective, at 145-172.

Pamela Leland, PILOTs: The Large-City Experience, at 193-210.

Peter Dobkin Hall, Is Tax Exemption Intrinsic or Contingent? Tax Treatment of Voluntary Associations, Nonprofit Organizations, and Religious Bodies in New Haven, Connecticut, 1750-2000, at 253-298.

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<http://www.nesl.edu/userfiles/file/lawreview/Vol44/3/Lustig-2.pdf>.

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Harvy Lipman, "Cities Take Many Approaches to Valuing Tax-Exempt Property," *Chronicle of Philanthropy*, Nov. 23, 2006, at 14; "The Value of a Tax Break," at 13. The online article, available at <http://philanthropy.com/article/The-Value-of-a-Tax-Break/54882/>, includes a chart captioned "How Much the Nation's Biggest Cities Lose Because Charities Are Exempt from Property Taxes," along with tables of the ten most valuable properties owned by nonprofits in each of those twenty-three cities: Baltimore, Boston, Charlotte, Columbus, Dallas, Denver, El Paso, Fort Worth, Houston, Jacksonville, Los Angeles, Memphis, Nashville, New York, Philadelphia, Phoenix, Portland, San Diego, San Francisco, San Jose, Seattle, Tucson, and Washington, D.C.