N.H. Property Tax Primer for Non-Profit Charitable Organizations

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Today's Half Hour Tour

- Scope of the Issues—Time, Place and Manner
- Dynamics Driving the Debate
- NH Property Tax—Basic Structure
- NH Property Tax—The Exemptions
- Focus on Charitable Exemption and PILOT's
- Legislative Scrutiny
- Judicial Scrutiny
- Lessons to Consider

Scope of Issues--Time

- "Don't tax you, don't tax me, tax that fellow behind the tree."—Russell Long, U.S. Senator, Louisiana (1948-1987), Senate Finance Committee Chair (1966-1981)
- "Tax policy today too often seems to [focus on] two issues that have almost nothing to do with sound state tax policy, namely the level of local property taxes and public education finance."—Billy Hamilton, Former Texas Deputy State Comptroller, October 22, 2007.

Scope of Issues--Place

- National Debate as Well as NH Debate--Provena Covenant Medical Center (Illinois)
- Battle over Property Tax Exemption worth $1.1 million each year. Provena has now paid $6 million in property taxes since the initial denial.
- Assertion that Provena's billing and collection practices out of line with its charitable mission.
  - Illinois DOR found that in 2002, Provena had revenue in excess of $113 million, but its expenditures for charitable activities were less than $1 million.
  - Provena says its charitable activities were $21.8 million
- Provena lost at Champaign County Board of Review and Illinois Department of Revenue.
- Provena's CEO--"a crisis for Provena Covenant and a national crisis for non-profit hospitals"
- July 2007—Provena prevails in Illinois Circuit Court

Scope of Issues--Manner

- Federal Legislative Scrutiny and Oversight
  - Non-Profit Healthcare—". . .while everyone talks about the need for sunshine, there are a few tax-exempt hospitals in the shadows that are bent on pulling the blinds and closing the drapes. . If these hospitals continue to press for keeping the public in the dark about how they justify $50 billion in tax breaks a year that will greatly color my views about the need for legislation." Senator Charles Grassley (R-Iowa) (October 30, 2007)
- Federal Regulatory Scrutiny
  - Form 990 Revisions
  - IRS has doubled the number of tax-exempt organizations it contacted in 2005
  - IRS has hired 105 new agents to investigate the activities of tax-exempt organizations
- State Legislative Scrutiny--2006 Examples
- State Regulatory Scrutiny--Mike??
- Local Regulatory Scrutiny--Exemption Challenges Abounding

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Dynamics Driving the Debate

- Rise of Non-Profit Sector
- Accumulation of Wealth and Value in Non-Profit Sector
- Increasing Access to Information Driving Greater Scrutiny
  - Guidestar, Online Availability of 990's, Multi-State and Local Coordination by Taxing Officials
- New Hampshire's Tax Structure
- Revenue Needs of Local Communities
  - Increase Tax Base=Stable or Lower Tax Rates
  - Increase Tax Base through commercial development
  - Increase properties subject to property tax has similar effect

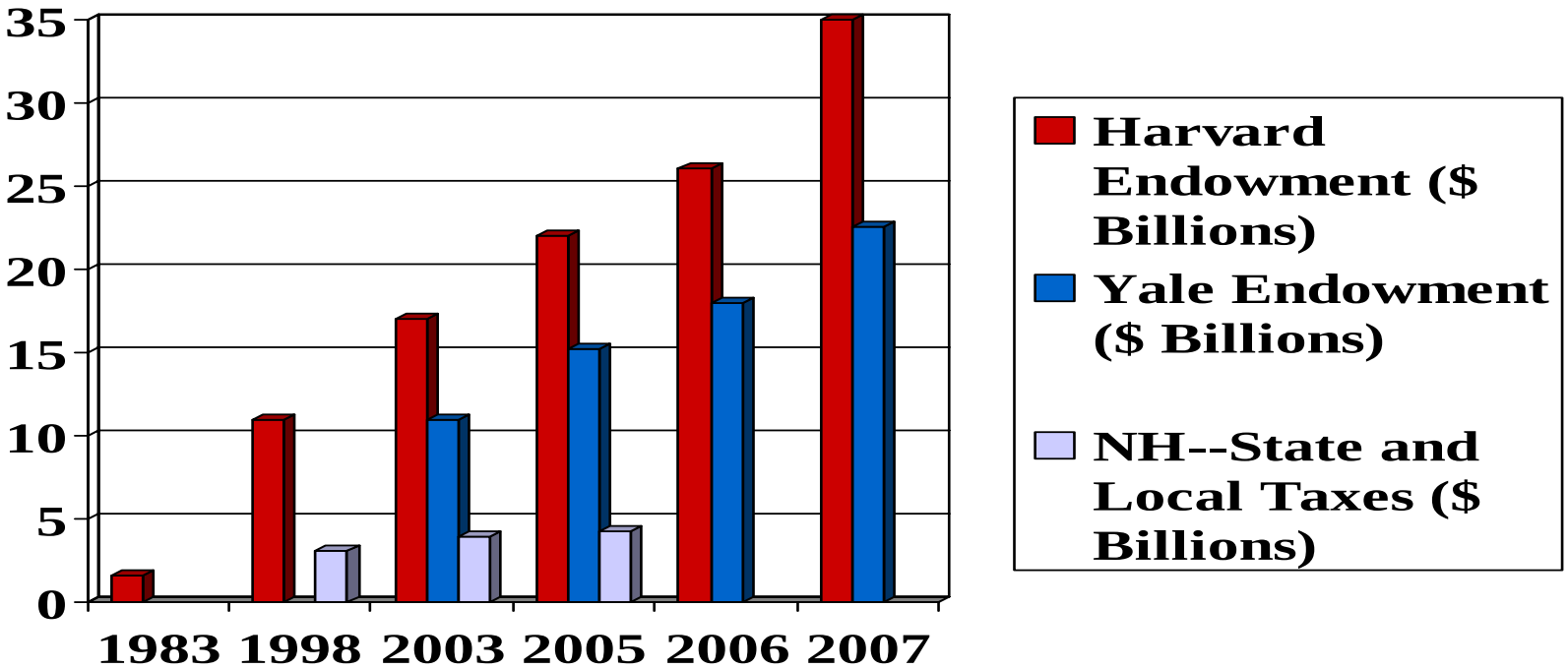
Dynamics Driving the Debate

- Rise of Non-Profit Sector
- Between 2004 and 2014, industries involving businesses that could organize as charities and pass the charitable purpose test are predicted to grow by almost 3.5% a year, compared with about 1% for all other industries.
- Occupations with a nonprofit bent will collectively grow by a whopping 23 percent over that decade, compared with about 13 percent for other types of employment.
  - Study by Professor Joseph Cordes of George Washington University.
- National Trend true in NH as well—6500 organizations and 13% of state's workforce.

Dynamics
Driving the Debate

- Accumulation of Wealth and Value in Non-Profit Sector
- The Jesse James Test
  - Q. Why do you rob banks?
  - A. Because that's where the money is.

Dynamics
Driving the Debate



Dynamics
Driving the Debate

- New Hampshire's Tax Structure

General Revenue from Own Sources (2005)	US	ME	MA	NH
Taxes ($ thousands)	1,096,384,739	5,219,708	28,756,962	4,319,777
Taxes	100.0%	100.0%	100.0%	100.0%
Property	30.6%	41.2%	36.0%	61.4%
Sales and gross receipts	35.0%	26.1%	20.6%	16.3%
General sales	24.0%	17.9%	13.5%	0.0%
Selective sales	11.0%	8.2%	7.1%	16.3%
Motor fuel	3.3%	4.4%	2.4%	3.1%
Alcoholic beverage	0.5%	0.2%	0.2%	0.3%
Tobacco products	1.2%	1.8%	1.5%	2.4%
Public utilities	2.1%	0.2%	0.0%	1.6%
Other selective sales	4.0%	1.6%	3.0%	9.0%
Individual income	22.0%	24.9%	33.7%	1.6%
Corporate income	3.9%	2.6%	4.6%	**11.0%**
Motor vehicle license	1.8%	1.9%	1.1%	2.0%
Other taxes	6.7%	3.3%	4.0%	7.7%

Tax Foundation Ranking (2005)		3	27	49

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Property Tax Basic Structure
Corporate Status v. Tax Status

- Non-Profit does not equal Non-Taxable.
- Many New Hampshire organizations are non-profit corporations under RSA 292.
- Corporate status (corporation, partnership, limited liability company, etc.) originates under state law.
- Tax status generally originates under federal law. Many New Hampshire non-profits are 501(c)(3) organizations under federal internal revenue code.
- Federal tax status and state tax status are not always same, particularly in property tax arena.

Property Tax Basic Structure

- NH Property Taxes are Carve-Out Rather than Carve-In
  - All real estate is taxed unless otherwise provided. RSA 72:6
- Tax Incidence on Property Owner
  - Real estate is taxed on property owner. . . RSA 73:10
- Taxing Power Delegated to Localities
  - Real estate is taxed on property owner in <u>the town in which it is situate</u>. RSA 73:10

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Property Tax Basic Structure

- Making a List
  - The selectmen of each town shall annually make a list of all the polls and shall take an inventory of all the estate liable to be taxed in such town as of April 1. RSA 74:1
- Checking it Twice
  - **Exempt Realty. –** At the time of making the list of polls and the inventory of estate liable to be taxed <u>the selectmen shall also make an inventory of all lands, buildings and structures which, but for the tax exemption laws of the state, would be taxable as real estate</u>, including all land, but excluding the buildings of the United States, state, county, town, school district or any political subdivision thereof used for public or educational purposes. RSA 74:2.

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Property Tax Basic Structure

- Welcome to Our Town, You Owe . . .
  - Upon the return of such inventory, the selectmen shall assess a tax against the person or corporation in accordance with their appraisal of the property therein mentioned. . . RSA 74:11.
- Deal or No Deal?
  - The selectmen shall appraise . . . all other taxable property at its market value. Market value means the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor. RSA 75:1.
- Tax Rates Set to Raise Specific Amount of Revenue
  - Tax Rate set for developed budget. Rates vary each year with budget and with valuation.
  - Compare with Personal Income Tax, Sales Tax or Corporate Income Tax

Property Tax Basic Structure

- My Brother's Keeper
  - Annually, and in accordance with state assessing guidelines, the assessors and selectmen shall adjust assessments to reflect changes so that all assessments are reasonably proportional within that municipality. RSA 75:8, I.
- Five-Year Valuation to 100%
  - The assessors and/or selectmen shall reappraise all real estate within the municipality so that the assessments are at full and true value at least as often as every fifth year. . .RSA 75:8-a.
- Annual Valuation to 100% for the Biggest Cities and Towns.
  - Except when assessing real estate under RSA 75:8-a, any municipality with a population over 10,000 . . . intending to appraise real estate annually at market value, as defined in RSA 75:1, shall authorize such annual appraisal by a majority vote of the governing body. RSA 75:8-b.

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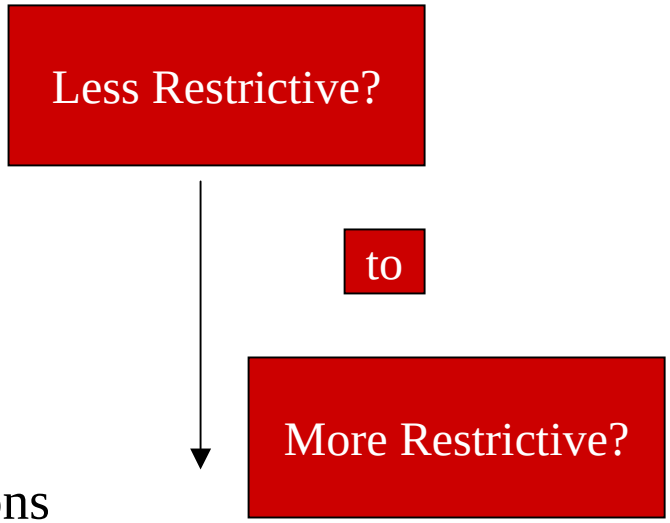
Property Tax Exemptions

- Broad and Specific
- Broad—RSA 72:23
  - RSA 72:23, I. State Property
  - RSA 72:23, II. County Property
  - RSA 72:23, III. Churches
  - RSA 72:23, IV. Schools, Colleges, etc.
  - RSA 72:23, V. Charitable Organizations



- Specific—How Good is Your Lobbyist?
  - Veterans of Foreign Wars RSA 72:23-a
  - Red Cross RSA 72:23-b
  - Nutfield Heights RSA 72:23-e
  - Salemhaven RSA 72:23-f
  - Letita Pratt Foundation RSA 72:23-g.

Broad Property Tax Exemptions

- RSA 72:23 Real Estate and Personal Property Tax Exemption. – The following real estate and personal property shall, unless otherwise provided by statute, be exempt from taxation:

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State Property Exemption

- RSA 72:23, I (a)
- Lands and the buildings and structures thereon and therein and the personal property owned by the state of New Hampshire or by a New Hampshire city, town, school district, or village district <u>unless said real or personal property is used or occupied by other than the state or a city, town, school district, or village district under a lease or other agreement the terms of which provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property.</u>
- NOTE: Owned unless leased. . .

County Property Exemption

- RSA 72:23, II
- Lands and buildings and personal property owned and used by any county for governmental purposes, including hospitals, court houses, registry buildings, and county correctional facilities except that county farms and their lands, buildings and taxable personal property shall be taxed.
- NOTE: Arguably more restrictive than I
  - Owned <u>and</u> used, except. . .

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Churches Exemption

- RSA 72:23, III
- Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them <u>owned, used and occupied directly for religious training or for other religious purposes</u> by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.
- NOTE: Arguably more restrictive than I or II
  - Owned, used, <u>and</u> occupied directly. . .

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Schools and Colleges Exemption—Part 1

- RSA 72:23, IV
- The buildings and structures of schools, seminaries of learning, colleges, academies and universities organized, incorporated or legally doing business in this state
- and owned, used and occupied by them directly for the purposes for which they are established, including but not limited to the dormitories, dining rooms, kitchens, auditoriums, classrooms, infirmaries, administrative and utility rooms and buildings connected therewith, athletic fields and facilities and gymnasiums, boat houses and wharves belonging to them and used in connection therewith, and the land thereto appertaining…

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Schools and Colleges Exemption—Part 2

- but not including lands and buildings not used and occupied directly for the purposes for which they are organized or incorporated, and the personal property used by them directly for the purposes for which they are established, provided none of the income or profits are divided among the members or stockholders or used or appropriated for any other purpose than the purpose for which they are organized or established;
- provided further that if the value of the dormitories, dining rooms and kitchens shall exceed $150,000, the value thereof in excess of said sum shall be taxable. A town at an annual town meeting or the governing body of a city may vote to increase the amount of the exemption upon dormitories, dining rooms and kitchens.

Note: Arguably more restrictive then I, II, or III

- Owned, used and occupied plus two "provisos", including $150,000 cap

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Charitable Exemption

- RSA 72:23, V
- The buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state,
- owned, used and occupied by them directly for the purposes for which they are established,
- provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established.

Setting Up the Scrutiny

- RSA 72:23, VI
- Every charitable organization or society . . . shall annually . . . file with the municipality in which the property . . . a statement of its financial condition for the preceding fiscal year and such other information as may be necessary to establish its status and eligibility for tax exemption.
- Why financial condition?

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Setting Up the Scrutiny

- RSA 72:23-c
  - Every religious, educational and charitable organization…shall file a list…of all real estate and personal property owned by them on which exemption from taxation is claimed…
  - If such organization shall willfully neglect or refuse to file…the selectmen may deny the exemption.
  - RSA 72:23, VII
  - For the purposes of this section, the term "charitable" shall have the meaning set forth in RSA 72:23-*l*.

Who is Charitable?—Part 1

- RSA 72:23-l
  - The term "charitable" as used to describe a corporation, society or other organization within the scope of this chapter, including RSA 72:23 and 72:23-k, shall mean a corporation, society or organization
  - established and administered for the purpose of performing, and obligated, by its charter or otherwise,
  - to perform some service of public good or welfare advancing the spiritual, physical, intellectual, social or economic well-being
  - of the general public or a substantial and indefinite segment of the general public that includes residents of the state of New Hampshire,
  - with no pecuniary profit or benefit to its officers or members,
  - or any restrictions which confine its benefits or services to such officers or members, or those of any related organization.

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Who is Charitable? – Part 2

- RSA 72:23-l

- The fact that an organization's activities are not conducted for profit shall not in itself be sufficient to render the organization "charitable" for purposes of this chapter, nor shall the organization's treatment under the United States Internal Revenue Code of 1986, as amended. This section is not intended to abrogate the meaning of “charitable” under the common law of New Hampshire.
- What about 501(c)(3) v. 501(c)(6)?
- 501(c)(3)-Corporations operated <u>exclusively</u> for charitable purpose

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Proving the Exemption

- It's my burden. . .
- RSA 72:23-m Applicability of Exemptions. – The exemptions afforded by RSA 72:23 or 72:23-a through 72:23-k, as well as exemptions granted by other provisions of law, shall be construed to confer exemption only upon property which meets requirements of the statute under which the exemption is claimed. <u>The burden of demonstrating the applicability of any exemption shall be upon the claimant.</u>

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PILOTS

- It’s my burden. . .and I’ll pay if I want to.
- RSA 72:23-n Voluntary Payments in Lieu of Taxes. – The governing body of any municipality may enter into negotiations for a voluntary payment in lieu of taxes from otherwise fully or partially tax exempt properties, and may accept from such properties a voluntary payment in lieu of taxes.

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PILOTS

- **It's my burden. . .and I'll pay if I want to.**
- Legislative History of PILOT's—1996
  - –On/Off Switch of total exemption or taxation clumsy
  - –Acknowledgement that some services are used (911, etc.)
  - –Municipal Non-Schools Portion to Recognize Draw on Services
  - –True Legislative Intent…broader, or simply more vague??
- 72:23-k Charitable, Nonprofit Housing Projects – 1987

On or before November 1 of each year the owner of the housing project shall enter into an agreement with the municipality in which the property is situated to pay the municipality, on December 1 of each year, <u>a sum in lieu of taxes to defray the costs of municipal, non-utility, services</u>. Failing mutual agreement, the sum paid on December 1 of each year shall be an amount not to exceed the lower of 10 percent of the shelter rent received by the owner from all sources during the preceding calendar year, not including security deposits received from residents of the housing project, for shelter and care of residents within the project, or a sum equivalent to that derived from application of the current municipal, non-school, portion of the local tax rate against the net local assessed value of the project.

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NH Legislative Scrutiny-2006

- Example #1—Inexpedient to Legislate BUT . . . .
  - HB 1631—Relative to Property Taxation of Certain Property of the Appalachian Mountain Club
    - Essentially would have legislatively revoked AMC's property tax exemption
    - Would have reversed usual flow of decision-making process
    - Compromise!!!????? PILOT for full amount of property taxation
    - Availability of Information has increased—Federal 990's used at hearing
    - At one point, amendment would also have eliminated meals and rooms tax exemption for all non-profit charitable organizations serving meals for 5 days or more per year.

NH Legislative Scrutiny-2006

- Example #2—Enacted into Law (2006 N.H. Laws ch. 205)
  - HB 1679—Relative to the Property Tax Exemption for University System Property.
  - Concern of leasing of property to for-profit entities yet no property taxation collected.
    - The general court also finds that the collection of these rents/leases may be construed to create competition with local businesses.
    - The general court further believes that any facilities for which rent is collected should not be exempt from taxation.
    - Therefore, the public policy. . .is to prohibit a private business from escaping taxation simply by locating itself on tax-exempt property or from receiving an unfair tax advantage over another private business by doing so.

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NH Judicial Scrutiny—Clarifying the Law?

- **Eldertrust of Florida, Inc. v. Town of Epsom (154 N.H. 693)**
  - NH Supreme Court develops 4 factor test for charitable exemption
- **Town of Peterborough v. MacDowell Colony, Inc.**
  - NH Superior Court rules artist colony exempt, despite its admission and acceptance of residents mostly from outside NH
- **Roman Catholic Bishop of Manchester v. City of Nashua (Also called In Re City of Nashua) (924 A. 2d 418)**
  - NH Supreme Court rules Church property not entitled to religious exemption due to the deconsecration of buildings

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Eldertrust of Florida, Inc. v. Town of Epsom—2007

- $100,000 in taxes assessed against both a nursing home and an assisted living facility owned by nonprofit organization
- Supreme Court ruled properties exempt, developed a 4 factor rule:
  - 1. Organization established for charitable purpose
    - Can be "charities" as defined by Sec 501(c)(3) of the IRS Code
  - 2. Enforceable obligation exists to general public
    - Cannot simply benefit officers or members of organization
  - 3. Land is owned, occupied, and used for the purpose
    - Occupancy must be "reasonably necessary" to carry out mission
  - 4. Profits used for the charitable purpose, and members of the organization do not derive pecuniary benefit
    - Members did receive $750 and potentially other indirect benefits

Town of Peterborough v. MacDowell Colony, Inc.—2007

- $50,000 tax assessed against art colony, despite 100 years of exempt status!
- NH Superior Court first application of Eldertrust test and ruled colony exempt
- Promotion of art is a charitable purpose
- McDowell Colony served the residents of NH by making artistic contributions, even when only 1 out of 246 artists was a NH resident

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In Re City of Nashua—2007

- Churches deconsecrated due to lack of funds
- Nashua assesses property tax
- Supreme Court rules against Church: "mere storage of religious objects in a deconsecrated church, on a temporary basis, does not rise to…occupying the space for 'religious purposes'"
- Supreme Court notes its holding was consistent with precedent and other jurisdictions

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Lessons to Consider

- Must understand entire NH tax picture to understand how proposals may develop
- Increased scrutiny of non-profits at all levels—question of when, how, and what, not if
- State dynamics and local dynamics
  - Town-Gown or places with lots of Exempt Property
  - Competition Arguments Raised by Local Businesses
  - Increased Availability of Information (Form 990)
  - Federal Scrutiny "Devolving"
  - State Legislature More Active

Lessons to Consider

- The Eldertrust, McDowell, and In Re City of Nashua cases show that towns are increasingly rethinking exempt status
  - Interpreting exemption laws strictly, and Courts sometimes allow it
- Smaller disputes may not be contested, but town revenues could increase dramatically in aggregate
  - How many cases go uncontested or appealed?
- Be careful: don't give up your exempt status, because exemptions and PILOT's are likely one-way streets!