PUSHING BACK ON TAXATION OF NONPROFITS: Some lessons from the field
Report from a Listening Post Project Webinar

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INTRODUCTION
In the fall of 2010, the Johns Hopkins Listening Post Project conducted a Sounding, or survey, focused on government taxation of nonprofits and nonprofit payments in lieu of taxation (PILOTS). This Sounding found that nearly two-thirds of all respondents (63 percent) were paying some type of taxes or fees, or making alternate voluntary payments such as PILOTS, to local governments. However, only 3 percent (i.e., 11 survey respondents) noted that they were part of an effort “that successfully overturned/defeated such proposals over the prior calendar year.”

To gain a better understanding of how this small set of nonprofits managed to defeat such proposals, in April 2012 the Listening Post Project held a webinar which brought together practitioners from a diverse set of nonprofit organizations and intermediary organizations. This report summarizes the major findings that emerged from the session and proposes strategies that could help nonprofits cope with tax and other financial pressures from state and local governments.

LESSONS FROM THE FIELD
To kick off the session, two Listening Post members spoke about the taxes and fees charged to their organizations and the ways in which they successfully overturned new proposals.

**Monterey Bay Aquarium.** Jim Hekkers, Managing Director of the Monterey Bay Aquarium in California, reported that his organization willingly pays a variety of water and sewer fees, building permit fees, and sales taxes on food and merchandise, but decided to fight back when the cities the Aquarium straddles tried to impose admissions taxes along with a “tidelands lease fee” on the portion of its building that extended over the land exposed between low tide and high tide of the Aquarium’s waterfront location. The organization successfully prevented both initiatives by launching a five-pronged response:

- It mobilized the relationships it had built over the years with appointed and elected officials. The Aquarium devotes a full-time staff person to nurturing these relationships and does so on a continuous basis.
- It produced data on the economic impact and tax revenues that the Aquarium’s visitors generated in the two cities between which the facility is located and showed that these already far outdistanced the costs of the services the cities provide to the Aquarium.
- It retained expert legal counsel and threatened legal action against the proposal.
- It called attention to the many other ways in which the Aquarium helps the region. For instance, the Aquarium helped the city avoid closing a small, city-funded natural history museum, and paid for a planning consultant to help one of the cities formulate development guidelines for a history conservation district.
- It rallied its substantial corps of volunteers and members who live in the two cities to speak out on their behalf.
**Homme, Inc.** Steve Seybold, Executive Director of Homme, Inc., an elder services and housing organization in Wisconsin, then described how his organization is forced to pay user fees as well as PILOTs in return for building permits needed to expand their facilities. Homme serves seniors on two continuum-of-care campuses, one in Wittenberg and one in Wausau, WI. The City of Wausau questioned whether the campus should be taxable. Mr. Seybold noted that the organization’s goal was to educate the city council and point out that based on state law, there was no basis for placing their property on the tax rolls. He then explained that the city had a second approach to getting money from Homme, Inc.: it asked for a voluntary PILOT to cover municipal costs for fire protection, gutters, etc. In 1991, the organization offered a payment which has continued annually. Requests for permits for building and remodeling, however, are accompanied with a “request” for a PILOT payment in order to grant the permit request. But due to Homme’s advocacy and education efforts, including developing position papers, talking points and providing testimony to state legislators, for over two years the city has not brought up the issue of PILOTs again. Mr. Seybold also credited the mobilization of Homme’s staff and residents to advocate on their behalf for this success.

**GENERAL STRATEGIES**

The two cases and subsequent conversation highlighted four general strategies that all nonprofits, regardless of their size or financial circumstances, can use when faced with a taxation or fee proposal.

1) **Mobilize your strengths.** Every organization has strengths it can bring to the battle, though the strengths may differ from organization to organization and situation to situation. For some organizations, mobilizing volunteers may be the key while for others it is the board, patrons, clients, or members. The first step in devising a successful strategy is therefore to take stock of the organization’s strengths for the particular situation at hand. In the case of the Monterey Aquarium, for example, a very effective strategy was to mobilize the organization’s volunteers because of their numbers and residence in the communities from which the taxation threats were originating. On the other hand, engaging the Aquarium’s board made less sense because the board is more regionally-based (only one or two members actually live in the immediate area).

In the case of the Homme elder services agency, by contrast, the opposite was true: here the board could take the lead since the community is small and board members regularly encounter city officials and legislators during everyday activities. Equipping board members with talking points and drafting letters to legislators thus paid handsome dividends in terms of getting the organization’s message across.

2) **Emphasize your organization’s economic impact.** The Monterey Bay Aquarium conducted a study that estimated that visitors pay 4 times as much in bed and sales taxes to the cities as it costs the cities to provide the services, and disseminated these results to the legislators who were leading the efforts to tax the organization. Homme, Inc. ensured its city council was aware of the many jobs that the organization provides and the percentage of the organization’s elderly residents who are below the poverty level as a justification for its tax-exempt status.

3) **Collaborate with state nonprofit associations, regional or national field coalitions, and/or the National Council of Nonprofits.** Mr. Seybold explained that his organization worked closely with the Wisconsin state association of LeadingAge, the umbrella association of elderly service organizations, to thwart attempts from the local government to levy fees on his organization. Having had a fifteen-year relationship with Homme, Inc., the association went so far as to file Friends of the Court briefs and raised the issue of the constitutionality of imposing taxation on only one type of provider. Their efforts unearthed a uniformity clause in the state of Wisconsin constitution and brought it to the forefront. He emphasized that membership in these larger coalitions is extremely valuable when faced with state tax and fee proposals. David Thompson of the National Council of Nonprofits (NCN) described the ways in which the Council is available to aid organizations when a new tax or fee proposal arises, citing the example of a joint effort by the President and CEO of NCN, Tim Delaney, and the President of the American Association of Museums, Ford Bell, joining forces to fight a recent PILOTs effort in Boston in which the city tried to make nonprofits pay taxes based on the value of their property. NCN publishes a newsletter on taxes/fees/PILOTs updates, tracking the latest developments relating to taxation or fees affecting nonprofits across the country. This newsletter can be accessed on NCN’s website.

4) **Threaten legal action.** Both Homme, Inc. and the Monterey Bay Aquarium investigated the legality of the proposed taxes they were facing—in the case of the Aquarium, they could afford to pay for legal counsel, while the Wisconsin state branch of LeadingAge came to the aid of Homme. Additionally, David Thompson discussed how
the Chicago-based Donors Forum (the state nonprofit association in Illinois) successfully defeated a proposed water usage fee by performing detailed research, finding that it was actually a tax and not a standard fee since more money was being charged to nonprofits for the water than initially claimed by the mayor. Donors Forum challenged this measure on “equal protection” grounds. Thus, it is critical that nonprofits “dig in” to tax or fee proposals, i.e., look more closely and determine whether the fee is reasonable from a legal standpoint. As noted earlier, nonprofits can either perform the investigation themselves or enlist the help of their state nonprofit association.

**CONCLUSION**

While local governments have concocted some very creative ways to attempt to procure money from nonprofits, the sector has shown that it has significant clout and is capable of reversing government efforts to take its resources. Webinar participants identified effective ways in which organizations can push back against taxation and fee proposals—nonprofits can legally challenge these measures, use the board or volunteer base to advocate on their behalf to legislators, provide evidence of the economic impact of their organization on the community, and collaborate with their state nonprofit association or the National Council of Nonprofits to make a stronger case against proposed taxes and fees.

The Listening Post Project invites its readers to share other stories that can offer useful advice to nonprofits facing pressures from state or local governments to increase the taxes and fees that nonprofits are being asked to pay. Submit your stories to listeningpostproject@jhu.edu or on the CCSS Facebook page, and we will post them at the Listening Post website.