

PROPERTY RIGHTS FOUNDATION OF AMERICA, INC.

P.O. Box 75, Stony Creek, New York 12878 - 518/696-5748

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The right to own private property is a fundamental American freedom that guarantees personal liberty and promotes economic prosperity.

Website: www.prfamerica.org

E-mail: prfa@prfamerica.org

October 9, 2009

The Honorable Liz Krueger
Chairperson
New York State Senate Select Committee on Budget and Tax Reform
Room 609
Albany, NY 12247

Re: Senate Roundtable Meeting on
Needs and Costs of NYS Property Tax Exemptions – October 13, 2009

Attention: James Schlett, Administrator

Dear Senator Krueger:

Thank you for the honor of your invitation to participate on the Roundtable meeting on needs and costs of New York State Property Tax Exemptions which the Senate Select Committee on Budget and Tax Reform will convene on Tuesday, October 13 in Albany. It is indeed a pleasure to look forward to this meeting.

I'd like to address in general the issue that you mention that property tax exemptions are climbing to unsustainable levels and imposing greater burdens on local and county governments, but also address the fact that the **tax shift** to non-exempt real property owners is where the effect of these tax exemptions is often felt.

So there are two effects on those who must meet the costs of tax exemptions: Government bodies must find resources for the loss of revenue or must eliminate jobs and services and local non-exempt tax payers, if they become the resource that government turns to to meet the need generated by the loss of revenue, must pay increased property taxes. This is called the tax shift, of course.

To address your questions, in numerical order:

1. In what ways are property tax exemptions succeeding or failing to fulfill their original intentions?

Succeeding in meeting intentions:

Religious bodies. Religious institutions with genuine ministries, worship services, and the like are constitutionally protected from infringement by government, which would be the case if government imposed real estate taxes on their properties that are used for genuine religious purposes.

Schools, other non-profits. Similarly, schools, museums, libraries, and non-profit hospitals are protected from having to bear the burden of property taxes, but their relief from property taxes is not constitutionally mandated.

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Veterans. Veterans are given a just exemption in respect for their sacrifice by serving in the military, with the exemption allowed in proportion to the danger of the type of service where they served and personal injuries that may have been suffered.

The elderly and disabled. The elderly and disabled are relieved from a significant part of their tax burden, with the exemption tied to the level of their income.

Failing to meet intentions:

Land trusts. Non-profit organizations known as land trusts or conservancies that serve no community need receive tax exemptions on vast tracts of real property. These tracts may be essentially closed to access by the public.

Tax exemption for land bought to flip to state. Tracts that land trusts may hold for flipping by pre-arrangement to the State of New York are tax exempt. This is in effect an investment and sale function, rather than a service to the community. In fact, the holding of the tracts by the land trusts may bring economic harm to the community, by taking land out of economic production, eliminating access, and preventing much needed development for desperately needed housing.

A study in Stony Creek. An analysis (attached) of a small, but significant amount of lost, much needed development potential along a developable town highway joining the towns of Stony Creek and Thurman that my husband, Peter J. LaGrasse, Chairman of the Stony Creek Board of Assessors, did last year for the hearing by the Colorado Educational and Cultural Facilities Authority about its proposed of tax-exempt bonds for The Nature Conservancy to refinance its purchase of the lands formerly owned by Finch, Pruyn and Co., the Glens Falls paper manufacturer, gives in a microcosm the impact of the sale of conservation easements after the conservancy, a tax exempt entity acquires land.

Current policies should prevent predictable negative future outcomes. Some would say that there is no property tax loss to the town because the conservancy is logging the land for now and has to pay taxes and the state is, by statute, paying taxes on its share of the ownership. But these people would be wrong because the state tax-exempt status of the conservancy and the state's private arrangement with the conservancy for it to acquire the land ultimately cause the loss of property tax revenues because houses are not built on the land. When this effect is repeated over the 161,000 acres that the conservancy acquired in its arrangement with DEC for the Finch Pruyn Lands, the loss of economic activity and real estate development will have a profound effect. So the interlocking policies of the state, including the policy of tax exemption for land trusts, work to depopulate rural upstate New York. The current tax exemption policy is a feature of these multiple policies that are directly against the interest of the local community, or, as Peter LaGrasse stated at the hearing, "contrary to the public interest."

Accumulated tax exemptions for many large landowners cause a local fiscal impact. The tax exemptions for land trusts and other exempt organizations that hold large tracts of land apply irrespective of the proportion of land held in the community or the extent of dominance of land ownership of key economically significant lands, such as the shores of the Hudson River, by the Department of Environmental Conservation, the state-chartered Greenway Conservancy, church dioceses, religious orders and other ministries, and land trusts.

Burden currently on assessor. Organizations that are tax exempt, such as churches, even with their constitutional exemption, hold valuable land for which the assessor has to investigate the practical compliance with the purposes of the tax exempt organization, rather than the organization having to meet the criteria each year without being "chased after" by the assessor.

2. How can the state better control and/or limit the amount of tax exempt property to prevent further erosion of local government tax base?

Prohibit use of land trusts for state land acquisition:

The state should cease from making arrangements with land trusts to acquire land for future acquisition by the DEC. (It is easily established that the state owns enough Adirondack Forest Preserve land, for instance, without continuing its so-called advantage of using the purchasing flexibility of the giant land trusts to acquire land from productive owners, considering that the state owns three million acres of land within in the Adirondack Blue Line plus 700,000 acres of conservation easements.)

Limitation on tax-exempt land ownership for conservation purposes:

Legislation should also limit the amount of land owned in any municipality and county, with a limit on each of these, for conservation purposes, including state-owned and conservancy land. Considering the dire situation in the Adirondack Blue Line, a limit of 50 percent state and land trust ownership would be a great improvement. This limit should also include land held in partial title, such as land split by conservation easements, considering that if the land trust holding the residual title decides to cease logging the part of the land in residual title will become tax exempt.

Impose burden of proof:

The burden of proof should be on the entity seeking the tax exemption, with a new filing required automatically each year to prove the compliance of the use of the property with the tax exempt purpose.

Special scrutiny for undeveloped tracts:

For significant tracts owned by non-profit and religious entities, documentation of the actual use of the undeveloped part of the land for the tax-exempt purpose should be automatically required each year. A similar requirement should apply to rural houses and the like that are claimed to be religious retreats or the like.

3. Should state lawmakers reconsider the definitions for what qualifies as tax exempt property or institute a policy of partial exemption?

A higher standard should be applied for non-constitutionally tax exempt properties, such as hospitals, than the constitutionally tax exempt properties, such as churches.

Constitutionally protected exemptions:

Perhaps the idea of instituting a policy of partial exemptions was raised because the tax exempt entity allows the use of the property part-time for non-tax exempt purposes that generate income for the tax-exempt entity. Here, a common example is a church, which is constitutionally protected from taxation. Where the actual activity engaged in for the purpose of income production, such as a concert in a church, is not related to the tax exempt purpose, the current situation is that the tax exemption is retained until the balance of hours of use of the building tips in favor of the non-exempt activity. This is fair. But other buildings owned by the entity should be similarly evaluated for compliance with the tax exempt purpose, and their proportion of use for non-exempt purposes similarly be required to be below the tipping point.

Non-constitutionally protected exemptions:

It could be justified to change the standard for non-constitutionally exempt properties. For example, a problem arises with non-profit hospitals, which occupy millions of dollars in tax exempt property in small cities like Glens Falls, and where physicians conduct much or all of their private practice at the tax

exempt hospital. Their private practice is not tax exempt, yet I understand that this aspect is not considered in evaluating the tax exempt status of the hospital. In this situation, I think that a proportionality factor should be applied, where the income generated within the hospital doors by the actual hospital staff and hospital assets would comprise one side of a ratio against the income generated within the walls by the for-profit professional physician's fees. This ratio would then form the basis for the actual tax paid, rather than work as the ratio does to trigger a tipping point for a religious institution. For instance if the assessed value justified a tax of, say, \$500,000 per year and one quarter of the activities, etc., in the hospital were for private practice, etc, the hospital would pay taxes of \$125,000 per year.

Another approach to tightening up qualifications for property tax exemptions for non-constitutionally exempt properties would be to impose limitations in salary for administrators for not-for-profit hospitals and other entities, for instance. For hospitals, constraints on patient fees, openly published information on reduced price standards related to government aid, and compliance with the idea of right-to-know charges by posting them in advance would improve responsibility to the community and transparency. Such features could be required in exchange for a property tax exemption.

4. How would the state constitution influence attempts to reform the property tax exemption system?

Perhaps it would be argued that since religious institutions are tax exempt because of their constitutionally protected religious freedom they should not be required to prove each year that their properties are adequately used for their tax exempt purpose. I think that the legislature should require yearly proof that the properties are actually and adequately used for the tax exempt purpose. "Adequately" should not be defined, for instance, so that a currently oversized old gothic church is filled with parishioners each Sunday; rather it should mean that the hours of use of the church for worship exceed the hours of use for concerts and the like where admission is charged.

5. How has the distribution of tax exemptions impacted economic development activities and revenue streams in urban and suburban areas?

It is widely said that tax exemptions for new development favor businesses that move into town, giving them an unfair competitive advantage over existing entities.

Landlords who own older rental properties have a double competitive disadvantage: They have a challenge meeting building code requirements when they improve their units and they face rivals who can charge lower rents for units of similar quality. Some existing landlords are thereby driven out of business by governmental tax favoritism for newly entering businesses. The disincentive for existing landlords to improve their rentals is significant; thus tax incentives for outside businesses to move into town can actually be against economic development.

6. Should local governments be granted a role in determining what properties are exempt within their borders and be allowed to review whether they should repeal or reduce some exemptions?

A successful example:

This power has already been granted to local government for the property tax exemption for the elderly, where the level of the exemption can be determined within the state framework. This program works well, according to my personal knowledge.

Also successful, I understand, is an income-based disability exemption, which works similarly to the elderly exemption.

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A new program created by the legislature that was well received was an “opt in” property tax exemption for volunteer fire fighters, to encourage membership in volunteer fire companies. I have heard only anecdotal, ambivalent reports on the success of this idea.

Change recommended for treatment of land trusts

When Bernard Miller, Director Essex County Real Property Tax Services at the time, testified in Lake Placid at the hearing on property tax exemptions held by Senator Betty Little on March 13, 2003, he recommended a much needed, significant extension of local discretion in granting a non-profit tax exemption:

He said that land trust non-profit tax exemptions should be added to the “permissive” class in the real property tax law. The community should be able to vote to opt in, not opt out. (This favors the community that chooses to protect its real property tax resources.)

He pointed out that, historically, non-profit tax exemptions were to benefit the community. The broader benefit to the “environment,” he said, in the case of large land trusts may be true {and it may be dubious, but does not necessarily benefit the local community. (My words in brackets)}

Some sales to land trusts are for tax purposes and to achieve near-private reserves around the retained property, he said. In the case of small local land trusts created by property owners, the entire unstated, but real, purpose may be to provide privacy and a private reserve.

Since the New York State Senate hearing in 2003, the *Washington Post's* major exposé of the self-serving real estate transactions by The Nature Conservancy and the subsequent U.S. Senate hearings brought corruption like this to national attention.

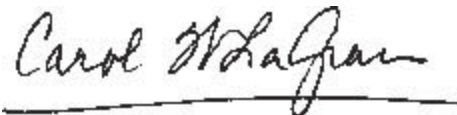
Where the intentions that Mr. Miller spoke of exist, it would be a great improvement for the local municipality to have already used its discretion granted by the legislature and decided to not allow property tax exemptions for non-profit land trusts.

7. Are there any property tax exemption systems in other states that could serve as models for New York?

Additional information to be provided.

Thank you again for the honor of being invited to participate in the roundtable on needs and costs of New York State Property tax exemptions.

Respectfully,



Carol W. LaGrasse
President

Attached: “Comments at Public Hearing, Dec. 2, 2008 in City of Glens Falls, N.Y., on granting The Nature Conservancy (TNC) tax-exempt loan to pay for the purchase by TNC of Finch Pruyn land in the Adirondacks, New York State,” by Peter J. LaGrasse.