



Payments In Lieu of Taxes (PILOT)

Frequently Asked Questions (FAQ's)

June 2011

What are PILOTs?

Payments in lieu of taxes, or PILOTs, are payments requested by a city or municipality from a nonprofit organization that owns tax-exempt property within city or municipal limits.

Why are nonprofits or charitable organizations granted tax exemptions?

Nonprofits are tax exempt for a number of taxes under both federal and state law. The requirements for exemption from federal taxation are found under §501(c) (3) of the IRS Code. Once an organization has been deemed “nonprofit” or “charitable” within the guidelines of the Code, it becomes exempt from certain federal taxes.

Nationally, tax exemption for nonprofits is a long-standing federal and state tradition. Our Massachusetts laws, specifically MGLA Chapter 59, section 5 and the constitutional underpinnings provided by MGL Chapter 5, section 2 provide these exemptions because such institutions enhance the general welfare and may relieve the burdens of government. The intent is to ensure that resources are not diverted away from the charitable missions of nonprofits.

What are the public benefits that nonprofits provide and how do they lessen the burdens of government?

There are many different types of nonprofits that provide public benefits to lessen the burden of government.

- **Arts and culture organizations** protect our cultural heritage, improve our quality of life, attract tourists, and provide free or reduced admission for local residents and students. Visitors to these attractions generate critical tax revenue and profits for local businesses.
- **Education and youth programs** help young citizens, reduce costs of drug or alcohol treatment programs and incarceration, and increase economic productivity.
- **Human services providers** care for one in ten of our Commonwealth’s most vulnerable residents on behalf of the state.
- **Public colleges and universities** provide a variety of services to the community around them. Students and staff support local businesses.
- **Local charitable nonprofits**, offer after-school programs, as well as recreation and leadership opportunities for youth. Others provide critical support and care for many residents and

generate volunteers to help victims of natural disasters, no matter where they happen. They help to ensure the hungry are fed and clothing is provided to those who need it.

- **Environmental organizations** protect wildlife, wetlands, and drinking water resources, and provide educational and recreational opportunities. Conservation land can reduce local government expenditures and enhance the tax base by increasing the property value of adjacent parcels.
- **Hospitals** provide cutting-edge care for patients and attract residents and businesses.
- **Housing and community-development programs** address the basic needs of housing and employment.
- **Religious institutions** also create safety nets for their congregants and local community, ensuring that they are clothed, housed and nurtured.

What is the reason behind PILOT programs?

Property taxes support essential city services such as police, fire, roads, etc. PILOTS are often requested by municipalities to help defray these costs. Rapidly growing health care costs to the Commonwealth and significant reductions in overall state tax revenue as a percent of personal income in Massachusetts have resulted in less local aid to municipalities. Many of the same pressures that face state government also affect municipal revenues. PILOT payments may be seen by municipal leaders as a way to make up for that. Many nonprofits agree that more revenue is needed to help support municipal budgets. However, PILOTS are viewed by many as the wrong place to get that revenue, since such payments reduce the ability of nonprofits to provide services that local governments may otherwise have to pick up, at even higher costs.

Can a charitable organization that owns exempt property be legally forced to pay a PILOT to a municipality?

No, making them involuntary would deem them property taxes. Intimating that a PILOT might be a way of facilitating access to certain permits, or sending out “bills” for PILOTS may make these payment requests appear more obligatory. Under law, they are not.

What kind of nonprofit organizations are targeted for PILOT payments?

A variety of landholding organizations across the state have been targeted for PILOT payments. More than 85 Massachusetts communities have some form of PILOT arrangements with at least some of their nonprofits. About one quarter of Massachusetts' municipalities have PILOT programs according to the Lincoln Institute for Land Use Planning, but that represents about 75% of the total of 118 communities in the United States that have implemented PILOT programs. This makes Massachusetts the “national capital” of sorts for PILOT programs. Some communities are working to implement an across the board percentage for PILOTS as a fixed percent of what they might pay if they were commercial properties. Some communities have focused on larger nonprofits, at least for now, but *any nonprofit can be targeted or approached*. For example, a land trust might have significant assets in the form of land that is being protected as open space. Since that land had most likely been acquired through an estate or donation, the land trust may have relatively little in the way of liquid assets to pay PILOTS. Also, even though it is often envisioned that only large, well-off nonprofits will be approached, inflation may add

some unintended entities in many communities to the fold as property values increase. That could include nursing homes, YMCA's, and even some of the larger housing projects and homeless shelters. In some communities there is no size criteria set for approaching nonprofits within their boundaries.

How are PILOT payments/contributions calculated?

In some Massachusetts municipalities, PILOT payments are individually “negotiated” and thereby differ from organization to organization and are not directly tied to similarities or differences in property value. However, there is movement in some communities toward a standard level of “contribution” that would be met by all tax-exempt properties above a certain threshold with some community services to the municipality being considered as a partial offset from their “expected (financial) contribution.”

What steps can an organization take when approached by a municipality to make a PILOT payment?

The first step would be to talk to your board of directors to determine whether the board considers it an appropriate use of funds consistent with the charity's mission to make a PILOT payment.

It is good practice for all charitable organizations to compile data describing all the various public benefits they provide. This should include, but be not limited to, ways they lessen the burdens of local government. This could include direct services, employment, economic multiplier effects, reduced special education costs from early intervention, costs of sheltering the homeless, the ability of private sector employees to go to work because their children or parents are cared for by a nonprofit. Each organization is the expert on what it brings to the community. Include too the many non-economic effects such as happier children, a sense of community, the enrichment of local culture, the alleviation of loneliness and mental and physical suffering, the personal benefits of learning, the salutary effects of contact with nature and so much more. This data can be used in response to a municipality if a PILOT payment is requested.

What are the consequences of making PILOT payments?

Complying with the PILOT payments can have negative implications on the level and caliber of services provided and on the financial stability of the nonprofit. Having to divert funds away from the mission and towards paying the city will have an obvious effect on the services provided and may impact future fundraising. Many nonprofits rarely have a mechanism for generating new revenue to make PILOT payments, thus funding may become difficult and other areas may need to be cut or downsized. It is also unclear how much of a nonprofit's budget can be allocated to a voluntary gift to the local government without raising concern about donor intent or raising questions about its tax exempt status. It should also be noted that the decision by one nonprofit to make a PILOT payment might put pressure on other nonprofits to do so. Finally, once a PILOT payment is made, it will be more difficult to resist subsequent or increased payments. Remember, a municipality has no legal right to *require* a PILOT. In fact, fairness, ethics, transparency, and arguably, even the law, would suggest that the municipality should make that clear when approaching nonprofits for PILOT contributions.

However, nonprofits may feel that PILOT payments help them maintain a positive relationship with the municipality within which they are located and could prevent any potential challenges to expansion and building permits, or to their tax-exempt status as a whole.

How do PILOT payments relate to donor intent and the mission of the nonprofit organization?

Nonprofit law requires a nonprofit to spend its funds on that which its donor or granting agency intended. As with all other expenditures, to make PILOT payments, nonprofits must be certain that their PILOT payments are consistent with fulfilling their mission. This may be difficult when funds for fulfilling the direct mission are already constrained or when purposes more directly aligned with mission would receive fewer resources.

These FAQ's were compiled by the Staff and Policy Committee of the Massachusetts Nonprofit Network, 89 South Street, Boston 02111 - June, 2011