

PILOTs and SILOTs Redux: When Tax-Exempt Status and Municipal Finances Collide

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Overview

At various points over the last several years, NAIS has examined the issue of states and municipalities seeking payment from tax-exempt nonprofits. While the practice came under the microscope during and in the aftermath of the 2008 recession, the issue of payments in lieu of taxes (PILOTs) or services in lieu of taxes (SILOTs) continues to make news. Municipalities still argue that tax-exempt entities occupy city space, but do not pay property taxes while utilizing city services such as police and fire departments. Nonprofits — including schools — counter that they provide significant value to the community, including jobs, volunteering, cultural programming, partnerships with other organizations, and education that tax dollars would otherwise fund. This advisory highlights recent litigation surrounding PILOTs, the potential for more formal PILOT approaches on a municipal level in the absence of legislation, state level legislative initiatives, and the need for strong and continuous community engagement regardless of PILOT or SILOT requests.

Princeton Litigation

After years of litigation, Princeton University recently announced that it will pay \$18.2 million over six years to settle a lawsuit challenging its property tax-exempt status. While New Jersey law exempts nonprofit buildings used for academic purposes from property taxes, the plaintiffs in this case argued that the university engages in commercial activities — such as theater performances and retail food outlets — and profit sharing with faculty through its research,

patent, copyright, and trademark licensing efforts. Princeton responded that its tax-exempt property supports its educational mission and highlighted the many contributions the institution makes to the municipality. These contributions include paying property taxes on nonexempt property (such as a movie theater), paying taxes voluntarily on property that could be exempt (such as graduate student housing), and making voluntary PILOT payments.

This case was unique in the sense that local homeowners, rather than the municipality or tax authorities, were the ones challenging Princeton's tax exemption. In fact, in 2014 Princeton University and the municipality of Princeton announced a new seven-year PILOT agreement. Under this arrangement, the university agreed to continue to make a yearly unrestricted contribution. The amount of this contribution started at \$2.75 million in 2014, and is scheduled to increase 4 percent in each subsequent year. Additionally, the school agreed to make one-time payments to assist with first aid and fire safety projects. Lastly, the university agreed to continue to pay taxes on certain properties that could otherwise qualify for exemption, with these funds going to both the municipality and Princeton Public Schools.

Unfortunately, in this case these longstanding community relations efforts did not prevent nor end this litigation at an earlier point. Ultimately, Princeton University decided to settle this long-running case without conceding that any of its tax-exempt property should be subject to taxation. Under the settlement, the school will do the following: pay \$2 million in 2017 and \$1.6 million per year from 2018-22 to a fund to provide property-tax relief to local homeowners; pay \$416,700 from 2017-19 to help meet the housing needs of low-income residents; and contribute \$3.48 million to the municipality in 2021 and 2022, which extends the school's PILOT contributions beyond the seven-year agreement discussed above. The plaintiffs also agreed not to challenge the university's property-tax exemption for the next six years. Ultimately, while this case had unique features — a university with significant financial ventures, a strong PILOT agreement, and a lawsuit brought by taxpayers rather than a government authority — it is an important reminder that the relationship between a nonprofit and its local community continues to be critical and fraught with potential pitfalls.

Formal Approaches to PILOTs: Boston Case Study

After years of a piecemeal strategy, Boston decided to take a more formal approach to PILOTs a few years ago. While Boston may offer a distinctive case with its plethora of medical and educational institutions, other municipalities large and small can look at its program to understand the position and arguments of both the city and nonprofits alike. After a task force

and consultation process, Boston launched its voluntary PILOT program in fiscal year 2012 with the following guidelines in place:

- Institutions with tax-exempt property valued over \$15 million should be asked to participate (exempting small nonprofits).
- PILOT contributions should be 25 percent of what the entity would pay in property taxes if it were taxable (basing contributions off the value of real estate and the costs associated with providing city services as a percentage of the city budget).
- Institutions should receive a deduction of up to 50 percent from their PILOT contribution for “qualifying community programs that uniquely benefit Boston residents” (recognizing the benefits that nonprofits provide to the community).
- The institution should receive a credit for any property taxes it does pay on property used for a charitable purpose.

While it has not reached its targeted contribution levels, the city has received a growing level of funds from this project each year, reaching \$32.1 million in payments in fiscal year 2016. Contributors to this program include nonprofits from the educational, medical, and cultural institution sectors. While the education institutions that meet the \$15 million tax-exempt property value threshold for the PILOT program are largely universities, there are a few independent schools on the list, including one school that has participated in the program in the past.

Legislative Action and Executive Proposals

State legislatures and governors are also addressing the issue of PILOTs in a variety of ways, some of which are positive for the nonprofit community and others that are troubling. For example:

- Rhode Island: In 2013, the state of Rhode Island passed [legislation](#) that stated unless a specific university (Bryant University) reached an agreement with its municipality, then the town would be able to bill the school for the costs of the police, fire, and rescue services it uses. Essentially, the legislation required the nonprofit school and town to reach an agreement, or the town could bill the university on its own accord. While the two parties eventually reached an agreement, this example troubled the nonprofit sector for many reasons, including the way it singled out a specific institution via legislation.
- Massachusetts: In January 2015, the Massachusetts state legislature introduced a bill ([H. 2584](#), [S. 1451](#)) that would essentially codify the Boston PILOT approach. This legislation

would allow a municipality to require tax-exempt nonprofits to make payments in lieu of taxation equal to 25 percent of what they would pay if they were not exempt from property tax. Under this bill, municipalities would have to adopt bylaws or ordinances to allow for exemptions, consider community contributions as an offset for payments, and determine how payments would be administered. Massachusetts has two-year legislative sessions and after that time proposed legislation expires if it is not passed. As of October 2016, this legislation had not moved. To remain a viable bill, it would need to be reintroduced in January 2017. The Massachusetts Municipal Association favors of this type of legislation, while the Massachusetts Nonprofit Network believes that such legislation could harm the ability of nonprofits to fulfill their missions.

- **Maine:** In January 2015, Maine Governor Paul LePage introduced his 2016-17 proposed [budget](#). This budget included a dramatic proposal that would have removed the full property tax exemption for nonprofits on property valued at more than \$500,000. Instead nonprofit-owned property with value greater than \$500,000 would be taxable at 50 percent of the property-tax rate. This would have greatly impacted nonprofits in Maine from every sector, including independent schools. One school indicated that it would have to cut staff, increase tuition, or reduce financial aid in order to respond to such a tax burden. However, this proposal was met with swift opposition from the nonprofit sector and was not seriously considered in the legislature. The final 2016-17 budget— which passed despite the governor’s veto — did not include the proposal.
- **New Jersey:** In September 2016, prior to the settlement of the Princeton case described above, the New Jersey legislature introduced a bill ([A-3888/S-2212](#)) that would protect nonprofits from third-party challenges to their property-tax exemptions (i.e., challenges from other taxpayers). This legislation gained the support of the Center for Non-Profits and would change the current law, which allows taxpayers to challenge the exempt status of their property as well as the property of others. The New Jersey House of Representatives has passed this bill out of its first committee. As of October 2016, the bill awaits consideration by a second committee.

Cultivating and Maintaining Community Relations

Though many independent schools have never faced a request for payments or services in lieu of taxes, it is always a good idea to take action today to cultivate a positive relationship with the community and establish a strong foundation in case the situation changes.

- **Get to know your neighbors.** Establish and maintain open communications with local government officials. If trustees or others within the school community have existing relationships with community leaders, you can call on them to facilitate these conversations. Regardless of existing relationships, hosting or arranging a get-acquainted meeting with local government representatives is an important first step for all schools. Then you can follow up with periodic calls or invitations to visit your campus. Cultivating and maintaining relationships with policymakers and citizen influencers is essential. While this constituency will look at how you work with the community, it's wise to gently remind the community of your public purpose, outreach, contributions, etc.
- **Develop a community relations plan.** It is imperative that schools acknowledge their public context, their place and role within their external community, and then be able to proactively articulate their public purpose. Developing a community relations plan aids a school in addressing the question of the school's role in the community. What does the school already do that provides benefits to residents and taxpayers? How does the community perceive the school and what can you do to improve that perception? Do the school's relations with the community embody and reflect the basic values you seek to inculcate in your students?
- **Be attentive to local needs and look for ways to meet them.** Especially in tight economic times, independent schools should stay attuned to financial challenges faced within their communities. Actively pursuing ways to reduce those strains helps the community and builds goodwill. The public school system is generally one of the largest budget items for a locality, and in many areas public school systems are feeling the pinch financially. Independent day schools can make a persuasive case that their existence reduces the strain on the local public school system. Demonstrating a strong financial assistance program that makes the school accessible to children from less affluent families can aid this argument. This argument is not quite as strong for boarding schools, as generally their enrollment of local residents is relatively low. These schools, therefore, need to make an extra effort to find other ways to meet community needs.

- **Reflect on five key public sector constituencies that provide opportunities for your school to create programs or partnerships within the local community.**
 - Teachers: Consider professional development or training opportunities that include public school educators.
 - Parents: Do you offer special presentations, speaker series, or other opportunities that may be open to community members whose children are not enrolled in your independent school? If not, consider how you can incorporate such programming.
 - Students: As public school systems are strained for resources, independent schools may explore developing partnerships with local public schools or creating summer or afterschool enrichment programs for gifted and disadvantaged youth. Consider inviting local soccer or Little League teams to use your fields, allowing the local public high school to use your track or cross-country course, permitting a local arts group to use your theater, or making your classrooms available after hours to local groups in search of meeting space. The goodwill far outweighs the small risk and expense you incur. (Make sure, however, to consult with legal counsel and your insurance broker before initiating any of these suggestions.)
 - Neighbors: Supporting community events and programs is one option to directly involve the school in neighborhood activities. Invest in the local community by buying locally when possible and keep track of your expenditures. Additionally, your school may have specialized equipment that it could use to benefit the local area (e.g., using school mowers to care for a nearby park or playground).
 - Service/Community Organizations: Connecting with and contributing to local service organizations provides a very visible way to demonstrate your school's commitment to the broader community. Keep track of the volunteer services of students, faculty, and staff and make sure local officials are aware of them. You could offer awards and invite local dignitaries to the ceremony. Also, consider joining the local chamber of commerce, rotary club, or similar organization, and meet regularly with community leaders. Remember to invite policymakers and community influencers to campus — ask them to present to students and participate in school special occasions.
- **Analyze and communicate.** Conduct an economic impact analysis and update it periodically. Your school already makes positive contributions to its community — it is a

large employer and purchaser of goods from local businesses; it makes its facilities available to the locality, etc. It is critical to quantify and communicate these contributions.

- **Stay in touch with local media.** Reporters always seek positive stories, especially those involving students. Share news from your campus with local media outlets. Moreover, review your school website and other publications and use these vehicles to publicize your community relationships.

What to Do When You're Asked for a PILOT or SILOT

In an ideal situation, a school's preemptive actions and positive community relations will help to avoid PILOT or SILOT requests. But even if you have done everything "right," circumstances could change to make your local government consider a request for payments from nonprofits, including schools. Then what? Even if your school has not gotten a request for payments, and never expects to receive such a request, it is recommended that your school consider how it would respond in such a case. The principle of tax exemption is an important board-level discussion, regardless of whether your school ever ends up in a situation where the discussion stops being hypothetical. Legitimate arguments exist both for and against paying a request from local government. There is no formula to decide whether to make the requested payment; therefore, each school must weigh these arguments as they apply to their own situation.

There are many potential areas of consideration, including:

- The current political and economic climate in the area. Are these changing and are you sharing the information and possible implications with your board and senior staff?
- What have your past and current contributions looked like and what additional contributions — if any — could you contemplate for the future?
- What are the direct and indirect implications of making or withholding payments or providing services?
- How have other schools responded?
 - Agreeing: In limited instances, schools have chosen to comply with local government requests for PILOTs or SILOTs. For some, it may simply be an issue of good citizenship or result from a longstanding relationship or ongoing request, thus requiring little debate or consideration. For others, it may be easier than facing negative media coverage or publicity. Some schools face concerns that nonpayment will lead to other repercussions, including delays to building

projects or reassessments of property or nonprofit status review. In a few instances, the requests have been mandated rather than optional and while the schools have attempted to fight the payment, they have been unsuccessful in doing so.

- **Compromising:** Instead of simply agreeing to the initial request, some schools offer alternative contributions — either a reduced payment or perhaps some combination of services, such as use of facilities, instead of a direct payment.
- **Refusing:** Some independent schools have made the decision to simply refuse to make the requested payment. NAIS conducted a survey on this topic in 2011 and schools cited three primary reasons for refusing a request:
 - A conviction that the school’s current contributions are fair and sufficient;
 - An unwillingness to set a precedent that could lead to further requests; and
 - A strict adherence to the principle that their school is tax-exempt.

In these instances, it helps to consider the various community and economic impacts made by the school, its students, its faculty, and its parent community. Then your school can articulate these contributions to the local government as well as to the media and the school community. Several schools responding to the survey pointed out that while they declined payment for a specific PILOT request, they did provide several unrequested SILOTs, such as use of sports fields and unsolicited financial contributions to specific projects, including buying a new ladder truck for the fire department.

Additional Resources

- [Community Relations Part I: Making the Case for a Community Impact Report at Your Independent School](#)
- [Community Relations Part II: Creating a Community Impact Statement at Your Independent School](#)
- [Boston Payment in Lieu of Tax Program](#)