

## Massachusetts Cities and Towns May Look to Non-Profits to Address Revenue Shortfall

Given the strain on state and local budgets due to the current economic environment, including the much-publicized announcements warning of significant cuts in local aid to cities and towns, we anticipate that cities and towns throughout the Commonwealth are likely to seek to increase existing or initiate new payments-in-lieu-of-tax (PILOT) agreements with non-profit institutions, to seek other non-monetary means of support, as well as to aggressively pursue real estate taxation of for-profit uses of otherwise tax-exempt real estate to the extent permitted by law.

On December 9, 2008, Boston Mayor Thomas M. Menino announced the formation of a task force to evaluate how to increase the revenues the city currently receives from non-profit institutions as PILOT payments. Other cities and towns are likely to follow Boston's lead. PILOT agreements are voluntary and, in the city of Boston, have historically been entered into in connection with development projects or expansions of existing real estate holdings. The city's Assessing Department typically contacts an institution to determine the extent of city services that will be required in connection with such development or expansion and encourages the institution to enter into a PILOT agreement. The revenues from the PILOT are designated to be used to offset the cost of city services. The city uses its published "Guidelines" and corresponding policy guidance as a starting point in most PILOT negotiations. PILOT negotiations may include consideration of the following factors: the cost of city services provided to a project; the loss of tax revenues to the extent a property is taken off of the tax rolls; the cost of construction of a project; and the use of a project—e.g., whether it is likely to generate income for the institution.

Mayor Menino's proposed task force has not yet been formed, but its membership will likely include representatives from non-profit institutions. The task force will evaluate the amount of current PILOT payments and the value of other "in-kind" contributions or support that non-profit institutions provide the city, such as scholarships, job training or creation, community outreach programs and other benefits. It is expected that institutions that do not have a PILOT agreement will be requested to consider making such a contribution.

In addition, the city of Boston's Assessing Department has re-invigorated its efforts to evaluate existing facilities of non-profit institutions in order to determine areas that are dedicated to for-profit uses, and thus potentially taxable. The Assessing Department's efforts have included requesting detailed information with respect to square footage and uses on a campus-wide basis. Mayor Menino's task force is also likely to evaluate the extent to which the city is not currently taxing non-profit institutions' real estate holdings that are dedicated to arguably taxable, for-profit uses. We will continue to follow developments in this regard, both within Boston as well as in other cities and towns, and will monitor the progress of the task force once it is constituted.

Any charitable organization, whether or not it will enter into a PILOT agreement, wishing to protect the exemption of Massachusetts real estate or tangible personal property owned by it on January 1, 2009 from local real estate or personal property tax must file Form 3ABC with the Office of the Assessors of the city or town in which the property is located on or before March 1, 2009.

## Contact Ropes & Gray

Ropes & Gray regularly advises its non-profit clients on tax matters, including real estate tax issues and the negotiation of PILOT agreements. We are experienced in structuring real property ownership and use arrangements to preserve the charitable exemption from real estate taxes and would be pleased to advise on any existing or proposed arrangements. We are also available to answer any questions relating to the Massachusetts municipalities' practice and policy to date regarding PILOT agreements. If you have any questions concerning PILOT or real estate tax issues and their potential effect on your institution, or if you have other related questions, please do not hesitate to contact your regular Ropes & Gray advisor.

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