

## Property Tax Year in Review 2016

by Catherine Collins and Percy Ross

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In this viewpoint, the authors review property tax developments from 2016, including battles over tax exemptions for large nonprofits such as hospitals and universities, economic development tax incentives, and valuation disputes for vacant big-box stores.

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### Introduction

Economic recovery from the Great Recession has been uneven among the states. As a result, local governments and property taxes have also been affected. According to the Rockefeller Institute of Government, the U.S. Census numbers show that tax revenues are still below their pre-recession peaks for about half of the states and local governments. Even for those states where revenues have recovered, budgets remain challenged.<sup>1</sup> As local governments continue to experience limited revenue growth, property

taxes also remain a target of litigation and statutory change. Over the last several years, state and local governments have taken actions to address those issues. Some of those actions are highlighted here — particularly those concerning the tax-exempt status of nonprofit institutions and economic development exemptions.

### Challenges to Tax-Exempt Nonprofit Status

As state and local governments continue to look for ways to shore up revenue following the Great Recession, the property tax exemptions of nonprofit organizations have come under increased scrutiny. Historically, nonprofit organizations that serve a social or community benefit have been exempt from property taxes. If a significant portion of a municipality's tax base is exempt, however, this can impose a heavy burden on the remaining taxpayers and local government. To compensate for some of that forgone revenue, states have pursued legislative remedies. Cities have also imposed municipal fee programs across the board in recognition that even tax-exempt properties use public services. Another avenue to limit tax exemptions is to litigate the status of nonprofits by the municipalities themselves or aggrieved third-party taxpayers.

Thus, the question of what constitutes a nonprofit has grown contentious, particularly when nonprofit organizations generate significant income. At what point is the nonprofit status and its related tax exemption jeopardized? Municipalities argue that charitable nonprofits benefit from the provision of local services and should pay accordingly. Nonprofits argue that they continue to serve the public interest and property taxation would limit their usefulness. Third-party taxpayers argue that the exemptions result in unequal treatment.

Hospitals and universities are common targets, as a single institution may engage in both profit-making and charitable activities, yet because of its nonprofit status, be exempt from

<sup>1</sup>Donald J. Boyd and Lucy Dadayan, "The Blinken Report: The Economy Recovers While State Finances Lag," SUNY: Nelson A. Rockefeller Institute (June 2015).

property taxes. While legal challenges have focused on large, prestigious universities and hospitals, the implications of taxing those properties extend to any organization with tax-exempt status. Additional battles have arisen over the tax exemption of subsidiaries in the complex organizational structures of some charter schools.<sup>2</sup>

### Tax Exemption and Nonprofit Hospitals

The tax-exempt status of nonprofit hospitals has been scrutinized for some time. At the national level, the issue arises in conjunction with federal income tax, but the same issues apply to state and local tax exemptions. In 2006 the Congressional Budget Office measured the charitable contributions of nonprofit versus for-profit hospitals. It found nationally that nonprofit hospitals provide more charitable care.<sup>3</sup> The level of charitable care, however, varies on a hospital-by-hospital basis. It is this variation that has given rise to a remarkable amount of litigation.

Two recent cases, one in New Jersey and one in Illinois, exemplify that issue. In the New Jersey case, *Morristown Memorial Hospital v. Town of Morristown*, Tax Court Judge Vito L. Bianco held that the hospital failed to qualify for property tax exemption because the “subject Property [was] being used substantially for profit.”<sup>4</sup> He found that “today’s nonprofit hospitals have evolved into labyrinthine corporate structures intertwined with both nonprofit and for-profit subsidiaries and unaffiliated corporate entities.”<sup>5</sup> Perhaps anticipating similar lawsuits against other nonprofit hospital centers, Bianco went so far as to declare that “modern nonprofit hospitals” are essentially “legal fictions” if they operate in the same manner as *Morristown Memorial*.<sup>6</sup>

Illinois has addressed the complex issue of determining nonprofit status in both its courts and legislature. In *Provena Covenant Medical Center v. Department of Revenue*, the Illinois Supreme Court in 2011 denied Provena’s property tax exemption, finding that the percentage of charity care provided by Provena was inadequate and inconsistent with its claimed charitable purpose.<sup>7</sup> In response, the legislature created a new category for charitable property tax exemptions. Under 35 Ill. Comp. Stat. section 15-86, in order for a nonprofit hospital to maintain a property tax exemption, it must provide unreimbursed services to the poor or to government entities in an amount equal to or greater than the property taxes it would have been assessed.<sup>8</sup>

Litigation ensued. In *Carle Foundation v. Cunningham Township*, a hospital filed a lawsuit after the township denied the restoration of its exemption under section 15-86. The circuit court ruled in the hospital’s favor, only to be overturned by the appellate court, which held that the law was unconstitutional as it created tax-exempt status for properties only partially used for charitable purposes.<sup>9</sup> The state appealed to the state supreme court, which refused to rule on the issue of constitutionality and remanded to the district court to determine whether the hospital qualified for a charitable exemption under the new definition.<sup>10</sup>

As with *Morristown*, the central question in the Illinois litigation is the hospital’s ratio of charitable to profitable activity. Is a partial nonprofit actually a nonprofit? The purpose of the Illinois statute was to require hospitals to pay for their “property tax exemption with certain services of equivalent value.”<sup>11</sup> From the municipality’s perspective, that exemption results in a significant amount of lost revenue for “a legal fiction” whose charitable services cannot easily be valued given the hybrid nature of the hospital structure. For municipalities addressing questions of equity as well as searching for

<sup>2</sup> Another contentious area of nonprofit property tax exemption is affordable housing. For an instructive look at how states are treating this issue, see Letter from the California State Board of Equalization to county assessors, “Welfare Exemption: Low-income Rental Housing Exemption Limitation” (Mar. 10, 2017).

<sup>3</sup> Congressional Budget Office, “Nonprofit Hospitals and the Provision of Community Benefits,” Publication 2707 (Dec. 2006).

<sup>4</sup> 28 N.J. Tax 456, 536 (2015).

<sup>5</sup> *Id.* at 465.

<sup>6</sup> *Id.* at 536.

<sup>7</sup> 925 N.E.2d 1131, 1131 (Ill. 2011).

<sup>8</sup> 35 Ill. Comp. Stat. section 200/15-86.

<sup>9</sup> 45 N.E.3d 1173 (Ill. 2016).

<sup>10</sup> 2017 IL 120427 (Ill. 2017).

<sup>11</sup> 35 Ill. Comp. Stat. section 200/15-86.

revenue, that issue is of critical importance. The confusion results in costly litigation for the government as well as for the hospitals whose status is undetermined.

Just as Illinois passed legislation in 2012 in response to *Provena*, the New Jersey State Legislature passed S. 3299 in 2016 in response to *Morristown*. The bill sought to protect the property tax exemption for nonprofit hospitals that generate revenue but also provide substantial community services. S. 3299 clarifies that:

Complex, modern nonprofit hospitals, which provide nonprofit medical services while also hosting for-profit medical activities, remain exempt from property taxation, but are responsible for providing some financial support to their host communities to offset the costs of public safety services, such as police and fire safety services, that benefit those hospitals.<sup>12</sup>

While the property tax exemption would continue under S. 3299, nonprofit hospitals would be responsible for some fees, including a daily \$2.50-per-bed fee. Gov. Chris Christie (R) vetoed the legislation, but attempted to partially alleviate the uncertainty created by *Morristown* with the introduction of a bill that would maintain property tax exemptions for nonprofit hospitals through 2018, bar any litigation regarding those properties in those two tax years, and establish a commission to study the issue. That bill is pending.<sup>13</sup>

Similarly, Michigan considered a bill (S.B. 960) that would amend the state's General Property Tax Act in light of *Wexford Medical Group v. City of Cadillac*. The court found that the tax tribunal, when considering the tax-exempt status of a nonprofit hospital, erroneously narrowed its inquiry to the value of the free medical care the hospital provided. The court stated that the "determination will rarely, if ever, rest on one specific fact, such as the percentage of monetary services given out for free."<sup>14</sup> The court held that

Wexford was "a charitable institution because it exists for, and carries out, the purpose of giving a gift for the benefit of an indefinite number of persons by providing free and below-cost medical care to anyone who needs it without qualification, and it realizes no pecuniary gain from its activities."<sup>15</sup>

The statutory change in Michigan would have required that all tax-exempt entities, including hospitals, conform to the federal 501(c)(3) definition of a charitable nonprofit as well as meet two of the following four criteria, derived from *Wexford*:

- offer charitable services to a particular class of individuals, and not condition the receipt of those services within that class on an individual's health, ability to pay, or other characteristics;
- serve a charitable purpose or a qualified conservation organization purpose;
- charge no more for charitable services than is reasonably necessary to maintain the operation of the organization, and have a policy established to ensure that services are available to those in need of charity who cannot pay or have a limited ability to pay; and
- have an overall nature that promotes charity, regardless of the amount of money the organization devotes to charitable activities on an annual basis.<sup>16</sup>

These requirements are more holistic than those espoused in Illinois's section 15-86, which only provided a tax exemption for the value of unreimbursed medical services. In fact, *Wexford* concerned a hospital that was operating at a loss in a federally designated health professional shortage area and "realize[d] no pecuniary gain from its activities."<sup>17</sup> The bill's reference to "an overall nature that promotes charity" significantly expanded the construction of the original holding in *Wexford* to include hospitals operating in a much more profitable

<sup>12</sup> S. 3299, 216th Leg., Second Sess. (N.J. 2015) (vetoed).

<sup>13</sup> A. 3635, 217th Leg., First Sess. (N.J. 2017) (referred to committee Apr. 14, 2016).

<sup>14</sup> *Wexford Medical Group v. City of Cadillac*, 713 N.W.2d. 734, 750 (Mich. 2006).

<sup>15</sup> *Id.*

<sup>16</sup> S.B. 960, 98th Leg., Reg. Sess. (Mich. 2016). See also Michigan Senate Fiscal Agency, "S.B. 960 (S-1): Summary of Bill" (2016).

<sup>17</sup> *Wexford*, 713 N.W.2d at 750.

capacity. The bill's fiscal impact summary predicted that it would reduce local property tax revenue by \$27.6 million.<sup>18</sup>

Whereas New Jersey, Illinois, and Michigan have confronted the exempt status of nonprofit hospitals, Indiana has recently tackled the equally thorny problem from the other side: how to provide relief for the charitable work done by for-profit hospitals. As incorporated in the state's budget, Indiana provides a tax credit of 10 percent of its total property tax bill against a hospital's gross income tax liability.<sup>19</sup> Here, Indiana uses legislation to encourage the charitable operations of for-profit entities to ensure they continue to provide local community-based services, although the credit is not tied to any specific service provided by an acute care facility and — unlike the previous cases — the cost of providing the tax benefit is borne by the state, rather than the local taxpayers.

### Nonprofit Educational Institutions

Another New Jersey case, which also went before Bianco, concerns the tax-exempt status of Princeton University. In litigation that has evolved over several years, the residents of Princeton, New Jersey, contend that:

The University is not a qualified tax-exempt entity as it shares profit with faculty, engages in profit-seeking conduct through its patent, copyright and trademark licensing businesses, sells the use of its scientific and engineering facilities to outside commercial entities . . . operates a profit-seeking hedge fund operation and other profit-based investment operations . . . among other activities.<sup>20</sup>

Ruling on a motion in that matter, Bianco affirmed that Princeton carried the burden of proof, requiring it to justify its tax-exempt status as a nonprofit.<sup>21</sup> It is believed that this ruling prompted Princeton to settle the potentially costly

litigation by agreeing to pay \$18 million over six years.<sup>22</sup> However, because Princeton chose to settle, the underlying issue of the nonprofit status of large research universities with extensive revenue generation capabilities remains unresolved in New Jersey. Perhaps to stave off future lawsuits, the Legislature is considering a bill that would limit the ability of third parties to file lawsuits challenging the property tax status of nonprofits.<sup>23</sup>

While some states legislate to ensure nonprofit educational institutions retain their tax-exempt status, Connecticut wanted to tax specific real properties owned by nonprofit universities.<sup>24</sup> In 2016 Connecticut considered S.B. 414, which would have scaled back the property exemption of Yale University.<sup>25</sup> Although it did not pass the Senate, the intent of the legislation was to “tax the property of some colleges where annual income from rent, admission to athletic events or facilities, or royalties for any goods designed, produced, manufactured or generated” on university-owned property that generates at least \$6,000 in revenue in a tax year.<sup>26</sup> Yale officials disapproved, claiming that the university already makes a voluntary annual payment of more than \$8.2 million to the city of New Haven and has paid \$96 million to the city since 1991.<sup>27</sup>

Yale's argument illustrates the conflict that Connecticut and other jurisdictions face. The payments are *voluntary*; therefore, state and local governments cannot rely on them when forecasting their budgets. In its explanatory section, the bill estimated that in 2013 Yale would have paid \$65.2 million if the entire value of its

<sup>22</sup> Princeton University release, “Princeton to Assist Lower-Income Homeowners Under Tax Litigation Settlement” (Oct. 14, 2016).

<sup>23</sup> S.B. 2212, 217th Leg., Second Sess. (N.J. 2016) (reported from committee on Feb. 27, 2017).

<sup>24</sup> This legislation is separate from a larger issue of taxing university endowments that is also under consideration at the federal level. For more information, see Henry Hansmann, “Why Are Colleges and Universities Exempt From Taxes?” National Center of Philanthropy and the Law's 25th Annual Conference: “Colleges and Universities: Legal Issues in the Halls of Ivy” (Oct. 24-25, 2014).

<sup>25</sup> Martha Kessler, “Yale Property Tax Bill Dies in Connecticut,” *bnac.com* (May 5, 2016).

<sup>26</sup> S.B. 414, 2016 Gen. Assem., Reg. Sess. (Conn. 2016).

<sup>27</sup> Jennifer Depaul, “Florida Governor Courts Yale University to Relocate,” *State Tax Notes*, Apr. 4, 2016, p. 14.

<sup>18</sup> Michigan Senate Fiscal Agency, *supra* note 16.

<sup>19</sup> Ind. Code section 6-3-3-14.6.

<sup>20</sup> Complaint, *Fields v. Trustees of Princeton University* (N.J. Tax Ct. Apr. 2, 2015).

<sup>21</sup> *Fields v. Trustees of Princeton University*, 28 N.J. Tax 574 (2015).

property were taxed. However, it conceded that “it is not known how much of this payment would have been for properties impacted by this bill.”<sup>28</sup> The explanation also noted that any municipal revenue gain would be partially offset by a reduction in the state’s PILOT program, which reimburses localities for private universities and general hospitals that are exempt from property taxes.<sup>29</sup>

Prestigious universities are not the only targets of property tax litigation in the educational sphere. The property-tax-exempt status of charter schools within a complex corporate structure is a looming issue. In Ohio, Shoup LLC, a property management company of related charter schools in the same nonprofit organization, challenged the denial of its property tax exemption. In 2016 the Ohio Supreme Court addressed the difficulty in distinguishing between for-profit and nonprofit entities within the same organization. The court denied the exemption because the company operated “with a view to profit through leasing at a substantial rent.”<sup>30</sup> The nonprofit parent argued that any surplus rent was redistributed to the other charter schools in its organization. However, the court rejected that argument regarding the school’s 2010 tax liability.

The court noted that the Ohio General Assembly changed the property tax exemption rules extensively in 2011 to allow property used by charter schools to qualify for tax exemptions.<sup>31</sup> Other states are likely to face similar litigation and legislation when the tax-exempt status of private charter schools that operate on a for-profit basis is questioned.

### Other Nonprofits

One municipality in Minnesota was recently sued for taking a different approach to raising revenue from otherwise exempt nonprofits by using alternative fee assessments instead of a property tax. St. Paul used a right-of-way (ROW) fee to provide for some city services. In 2011 two

churches filed a state court case claiming the assessment was a tax, and therefore unconstitutional as they were tax-exempt charitable organizations. In *First Baptist Church of St. Paul v. City of St. Paul*, the Minnesota Supreme Court agreed with that claim.<sup>32</sup> The assessment is “calculated by multiplying the property’s assessable frontage on the right of way by a rate that varies based on the property’s character and its location within the city.”<sup>33</sup> The ROW fee has grown in recent years, particularly since the Great Recession, and city officials admitted that “the

changes in the ROW assessment since 2003 were all a result of policymakers’ wishes to control the growth of property taxes.”<sup>34</sup>

The court found that in the city’s eyes, the “purpose of the assessment was to distribute the costs of street maintenance among all properties that benefit, including tax-exempt and taxable properties,” which implied that the ROW fee was a tax, rather than a lawful operation of its police power, and therefore unconstitutional as applied.<sup>35</sup>

A recently enacted New Jersey bill addresses property tax exemptions and public-private economic development. In response to the uncertainty created by *Morristown*, New Jersey enacted A. 2574, which reaffirmed that stadiums and arenas owned by government entities are entirely exempt from property tax even when they are leased to a for-profit entity.<sup>36</sup>

Before the passage of A. 2574, under the County Improvement Authorities Law, public facilities used essentially for public and governmental functions had a property tax exemption.<sup>37</sup> In a case before the superior court, appellate division, Red Bull Arena argued that it

<sup>28</sup> S.B. 414, *supra* note 26.

<sup>29</sup> Conn. Gen. Stat. sections 12-20a and 12-20b.

<sup>30</sup> *250 Shoup Mill LLC v. Testa*, 147 Ohio St. 3d 98, 99 (Ohio 2016).

<sup>31</sup> Ohio Rev. Code section 5709.07(A)(1).

<sup>32</sup> 884 N.W.2d 355, 365 (Minn. 2016).

<sup>33</sup> *Id.* at 357.

<sup>34</sup> Rinal Ray and Peter Nelson, “St. Paul Should Stop Using Fees’ to Fund Street Maintenance,” *TwinCities.com*, Nov. 2, 2016.

<sup>35</sup> *First Baptist Church*, *supra* note 32.

<sup>36</sup> 2016 N.J. Laws Ch. 65.

<sup>37</sup> N.J. Stat. Ann. section 40:37A-85, which provides in pertinent part that “all public facilities . . . [that] are devoted to an essential public and governmental function and purpose, [] shall be exempt from all taxes and special assessments of the State or any subdivision thereof.”

was entitled to a property tax exemption under that statute, as it served a qualified public purpose. The court rejected that argument, finding that Red Bull's use stretched the public exception of the statute too far because "Red Bull operate[d] the stadium privately for its own economic benefit, not for recreation or activities freely open to the general public."<sup>38</sup> The New Jersey Supreme Court agreed to hear Red Bull's appeal.<sup>39</sup> However, before arguments were held, Red Bull settled with the municipality and the local redevelopment

corporation, transferring its ownership stake in the stadium to the authority and agreeing to an annual lease payment for a specified time.<sup>40</sup>

### Economic Development

Economic development packages are offered by state and local governments to attract businesses to their location. Those packages, designed to strengthen and expand local economies, generally include a broad range of incentives from improved permitting processes to new infrastructure and a variety of lower business and property taxes.

This year New Jersey sought to revitalize Atlantic City and its distressed casino industry, which has experienced increased competition from the expansion of gambling outside the state. There were two components to the legislation: a property tax arrangement for the Atlantic City casinos, and a voter initiative to expand casinos in the state outside Atlantic City.<sup>41</sup>

Although the voters rejected that initiative in November, the property tax arrangement is still available.<sup>42</sup> The state enacted S. 1715, which uses the PILOT structure as an innovative method to bolster the local economy.<sup>43</sup> The legislation exempts casino gambling properties in Atlantic

City from taxation on real property in exchange for their contributions to a PILOT. Payment would be apportioned among the casino owners by a formula that takes into account each casino's gaming activities. The PILOT allows an owner to withdraw from the financial agreement on the commencement of its operation of a New Jersey casino located outside Atlantic City.<sup>44</sup>

States continue to target data centers through economic development initiatives, with Kentucky being one of the latest. In a statutory change, the state clarified that data centers could be in the class of manufacturing establishments that could qualify for existing local tax breaks where available.<sup>45</sup> A recent report from Good Jobs First questions the effectiveness of these tax incentive programs by demonstrating how "new economy" firms cause

state and local governments to "grossly overspend" on these investments.<sup>46</sup>

Despite the extensive use of data center packages, as well as incentives targeting other types of investment, there is limited agreement regarding their effectiveness. For example, the deal crafted by Nevada to win Tesla Inc.'s new battery factory in 2014 has implications for more than just the forgone revenue. The incentives are estimated to be worth \$1.25 billion over 20 years, and the state's economic development agency anticipates that the factory will generate \$100 billion in economic activity.<sup>47</sup> However, as with other such packages, it will be difficult to monitor and analyze those programs. According to *The Verge*, the state projected Tesla would create 4,700 jobs by 2017, whereas Tesla's application only guarantees 4,000 jobs by October 2019. In addition to discrepancies in the job numbers, infrastructure costs resulting from that project must be borne by the local taxpayers and may not be accounted for in the deal's forgone revenue.<sup>48</sup>

<sup>38</sup> *Red Bull Arena Inc. v. Township of Harrison*, No. A-1616-12T2, (N.J. App. Div. 2014).

<sup>39</sup> 99 A.3d 835 (N.J. 2014).

<sup>40</sup> Ron Leir, "Town Scores Red Bull Revenues," *Theobserver.com* (July 27, 2016).

<sup>41</sup> Sen. Con. Res. 1, 217th Leg., Reg. Sess. (N.J. 2016) (enacted).

<sup>42</sup> Ryan Hutchins, "After Record Ad Spending, New Jersey Voters Reject Casino Expansion," *Politico*, Nov. 8, 2016.

<sup>43</sup> 2016 N.J. Laws Ch. 5.

<sup>44</sup> *Id.*

<sup>45</sup> 2016 Ky. Acts Ch. 3.

<sup>46</sup> Kasia Tarczynska, "Money Lost to the Cloud: How Data Centers Benefit from State and Local Government Subsidies," *Good Jobs First* (Oct. 2016).

<sup>47</sup> Nevada Governor's Office of Economic Development, "Incentive Agreement: A Contract Between the State of Nevada and Tesla Motors, Inc." (2014).

<sup>48</sup> Colin Lecher, "Inside Nevada's \$1.3 Billion Gamble on Tesla," *The Verge*, Feb. 8, 2016.

## Transparency in GASB Statement No. 77

The difficulty of properly assessing the effectiveness of economic development incentives is due in part to limited public information about the transactions and other resources for monitoring. One measure designed to improve transparency is the requirement that local and state government audits include information about tax abatement agreements.

In 2015 the Governmental Accounting Standards Board released Statement No. 77, requiring that tax abatements used for economic development be reported as part of an annual audit. Governments are now required to report on the dollar amount of the abatement, the purpose of the program, how tax reductions occur, and the criteria for eligibility for the abatement.<sup>49</sup>

GASB 77 will begin to address concerns regarding the impact of those programs on local economies. However, the usefulness of GASB 77 is limited. It will provide some transparency, but the reporting does not include information regarding the company's obligations, such as employment numbers or investment size.

Thus far, New York City is the only locality in compliance with GASB 77. Its reporting reveals that more than \$3 billion — roughly 4 percent of the total budget — was lost because of tax abatements in 2016.<sup>50</sup> Only two of the 11 city tax abatement programs included provisions for recapturing abated taxes. Those clawback provisions have resulted in the collection of only \$130 million.<sup>51</sup>

### Conservation

Many states continue to enact provisions that encourage conservation through various tax mechanisms. To protect its wetlands, Virginia provided that any living shoreline project approved by the Virginia Marine Resources

Commission or the applicable local wetlands board qualifies for a full property tax exemption.<sup>52</sup> While Virginia uses a property tax exemption to encourage conservation efforts, Georgia, along with several other states, uses a limited income tax credit for the qualified donation of land for some conservation purposes.<sup>53</sup> The state recently extended the sunset of that credit by five years, to December 31, 2021.<sup>54</sup> Among the required restrictions on the donated real estate are subdivision limits, stream buffers, and mining prohibitions; however, the donation has no public accessibility requirement.<sup>55</sup> Pennsylvania, rather than addressing property taxes directly, made changes to its property transfer fees, providing that property transferred or sold to specific dedicated conservancies as well as government entities may be made without the seller paying the realty transfer tax.<sup>56</sup>

Some states have increased their conservation efforts at the ballot box. California residents approved a measure authorizing a parcel tax of \$12 per year, raising approximately \$25 million annually for 20 years. The intent of the tax is “to protect San Francisco Bay for future generations by reducing trash, pollution and harmful toxins, improving water quality, restoring habitat for fish, birds and wildlife, protecting communities from floods, and increasing shoreline public access.”<sup>57</sup> Voters in Missouri approved a measure to renew existing sales and use taxes, designed to “continue to generate approximately \$90 million annually for soil and water conservation and operation of the state park system.”<sup>58</sup>

### Big-Box Valuation: Dark Store Theory Hits Local Revenue

States continue to grapple with the valuation of big-box stores, with the issue being the appropriate comparable sales. The

<sup>49</sup> Governmental Accounting Standards Series, “Statement No. 77 of the Governmental Accounting Standards Board: Tax Abatement Disclosures,” No. 353 (Aug. 2015).

<sup>50</sup> The City of New York: Office of the Comptroller, “Comprehensive Annual Financial Report of the Comptroller of the City of New York for the Fiscal Year Ended June 30, 2016” (Oct. 31, 2016).

<sup>51</sup> *Id.*

<sup>52</sup> Va. Code Ann. section 58.1-3666.

<sup>53</sup> The tax credit is equal to 25 percent of the appraised donation value up to \$250,000 for individual donations.

<sup>54</sup> 2016 Ga. Acts 502.

<sup>55</sup> *Id.*

<sup>56</sup> 2016 Pa. Act 84.

<sup>57</sup> Amending Cal. Rev. and Tax. Code sections 66703, 66704, 66705, and 66706.

<sup>58</sup> Mo. Const. Art. IV section 47 (a).

“dark store theory,” supported by large retail chain stores, states that the property’s comparable sales should include other big-box properties, which usually comprise vacant store sites, many of which may have restrictive covenants for reuse. To curb the use by tax tribunals of that theory, the Michigan Legislature reintroduced H.B. 4397, which precludes the use of a single method of assessment and would force them to use other methods.<sup>59</sup> The bill is still pending.

Alabama has passed preemptive legislation to combat Lowe’s Companies Inc.’s suits seeking reductions for 27 home centers with the potential of approximately \$1.5 million annually in forgone property tax revenue.<sup>60</sup> S.B. 128 allows county commissions to hire outside counsel instead of relying on individual district attorneys to defend local governments against property tax appeals.<sup>61</sup> By allowing the hiring of outside counsel, counties would be able to pool resources for a stronger defense against valuation challenges.

### Residential Relief

Homeowners, and in some cases renters, benefit from a variety of relief programs. In recent years, much relief has come in the form of adjustments to existing programs — increasing or decreasing eligibility requirements and benefits — rather than the creation of new programs. Those recalibrations reflect the fiscal challenges states have faced since the Great Recession, as well as the financial stress felt by homeowners and taxpayers. Some state legislatures shifted the burden of increased benefits onto local governments by allowing them to expand relief while bearing the full cost of those expanded benefits. Other actions reduced relief programs that are funded by state revenue.

Increasingly, states are expanding their veterans’ programs or creating parallel programs for first responders. Connecticut’s effort to provide additional relief for veterans increased the optional local government exemption by allowing municipalities to set their own eligibility income levels.<sup>62</sup> Massachusetts expanded its disabled veterans’ relief programs to include those who are blind because of their military service.<sup>63</sup>

Programs for veterans often specify dates of service, usually to include periods of war or international conflicts. To avoid having to amend legislation when new conflicts arise, New Hampshire (H.B. 430) extended its tax credit to include honorably discharged veterans regardless of their date of service.<sup>64</sup> Often veteran and first responder benefits are extended to spouses when the veteran dies. Most states provide that benefit to those who have not remarried; however, Nebraska (L.B. 683) removed that restriction and now has extended the tax exemption to surviving spouses who remarry after age 57.<sup>65</sup>

In Tennessee, the legislative changes are more complex and perhaps reflect the tension between providing property tax relief and the state’s fiscal position. In 2015 Tennessee sought to limit the disabled veteran homeowners program by adding an income ceiling of \$60,000 for new applicants and dramatically reducing the maximum market value for property tax reimbursement from \$170,000 to \$100,000.<sup>66</sup> The reduction in market value alone is estimated to save the state approximately \$3 million to \$5 million annually.<sup>67</sup> Perhaps as an attempt to mitigate some of the adverse effects and publicity surrounding those changes, 2016 legislation removed the income ceiling, although the maximum value remains in place.<sup>68</sup> Similarly, the property value for tax

<sup>59</sup> H.B. 4397, 99th Leg., Reg. Sess. (Mich. 2017) (pending as of May 9, 2017).

<sup>60</sup> John Sharp, “Lowe’s Lawsuits Could Start Chain Reaction; Loss of State Revenue ‘Unconscionable,’” AL.com (Sept. 22, 2016).

<sup>61</sup> 2016 Ala. Laws Ch. 127.

<sup>62</sup> 2016 Conn. Pub. Act No. 16-191.

<sup>63</sup> 2016 Mass. Acts Ch. 161.

<sup>64</sup> 2016 N.H. Laws Ch. 217.

<sup>65</sup> L.B. 683, 2016 Leg., Reg. Sess. (Neb. 2016) (enacted).

<sup>66</sup> 2015 Tenn. Pub. Acts Ch. 481.

<sup>67</sup> Fiscal Note: H.B. 176-S.B. 254. Fiscal Review Committee: Tennessee General Assembly (Mar. 5, 2017).

<sup>68</sup> 2016 Tenn. Pub. Acts Ch. 1065.



reimbursement for low-income elderly and disabled homeowners was reduced in 2015 by \$2,000, with only \$500 restored in 2016.<sup>69</sup>

### Conclusion

Above is a selection of property tax actions that, while specific to their particular states, may have broader implications. In the coming year, expect state and local governments to give special attention to the tax-exempt status of nonprofits and to the analysis of existing economic development programs. ■

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<sup>69</sup> *Id.*