

9/13 Bill Johnson  
Tax Dept.

Presentation to Property Tax Exemption Committee  
Bill Johnson, Director, Property Valuation and Review, Tax Department  
September 13, 2013

### **Authorization for the 1999 Report Commission Report on Exemptions**

1997 Adjourned Session, Act 71, Section 59

#### **Sec. 59. COMMISSION ON PROPERTY TAX EXEMPTIONS**

(a) There is created a Commission on Property Tax Exemptions of 11 members, composed of:

(1) five citizens of the state, with knowledge of property taxation, collection and appraisal, municipal and local government, nonprofit tax exempt organizations, education finance, or regional and municipal planning, appointed by the governor;

(2) two members of the House, not of the same political party, appointed by the Speaker;

(3) two members of the Senate, not of the same political party, appointed by the Committee on Committees; and

(4) the Commissioner of Taxes, or his or her designee, and the Director of the Division of Property Valuation and Review, or his or her designee.

(b) The Commission shall elect its chair from among its membership, may hold public hearings, and meet as necessary to perform its duties. For attendance at meetings, members of the Commission who are not state employees or members of the General Assembly shall be entitled to compensation for services and reimbursement for expenses as provided to members of state boards under 32 V.S.A. § 1010. Members of the Commission who are members of the General Assembly shall be entitled to compensation for services and reimbursement for expenses under 2 V.S.A. § 402. The Commission shall be attached to the Department of Taxes for administrative support, and staff assistance to the Commission shall be provided by the department.

(c) The Commission shall review all exemptions from property taxation under chapter 125 of Title 32 and any other provisions of law, including mandatory exemptions, partial exemptions, and exemptions subject to municipal vote. The Commission shall also review the construction and interpretation of such property tax exemptions by municipal and state officials and the courts of the state. The Commission shall review the equity, uniformity, costs, efficiency, purposes and public benefit of property tax exemptions, particularly within a system of state property taxation for education and municipal property taxation for municipal services. The Commission shall report and make any recommendations for revision of exemptions from property taxation to the General Assembly on or before January 15, 1999.

## **Scope of Commission's Review**

All exemptions from property taxation throughout statute with major types identified as:

- Exemptions for property owned by governmental entities
  - Federal
  - State
  - Municipal
- Exemption to promote conservation
  - Current use
  - Conservation easements
  - Local land contracts
- Exemptions for economic development
  - Full and partial exemptions (often based on local approval)
  - Tax stabilizations agreements (often based on local approval)
  - Tax increment financing
  - State approval through the VEPC
- Exemptions based on public, pious or charitable uses of property
  - An array of properties owned by nonprofits that are expressly exempted under other provisions of law (e.g., YMCA/YWCA and federally chartered properties like the American Legion)
  - Status of municipal property under Sec. 3802(4). (see also 32 V.S.A. § 5401(10)(F))
  - Other Public, Pious and Charitable exemption through Sec. 3802(4)
  - Eligibility of these types of exemptions (initially determination by Listers)

## **Focus and Recommendations of Commission's Review**

- Update existing exemption statutes to modernize language for easier interpretation and compliance with Act 60.
  - Example, repeal language for housing exemption for Civil and Spanish American War veterans as none appeared to remain alive.
- Change or eliminate redundant provisions or those contrary to current prevailing public policy.
  - Example, eliminate the exemption for college fraternities and sororities.
- Improve the application of the Public, Pious and Charitable range of exemptions.
  - Example, provide for an explicit statutory provision for the exemption of municipally owned property used for municipal purposes.

## **Focus and Recommendations on Public, Pious and Charitable Exemptions**

- Ensuring equitable treatment of this class of exemptions Statewide (Tax Department review of non-profits for eligibility).
- Ensuring the integrity of the Education and Equalized Education Grand Lists.
- Reasonable compensation to municipalities for services provided to exempt entities (when and how much).
- Reducing the amount and cost of litigation associated with the determination of exemption eligibility.
- Review of the use of Public, Pious and Charitable standard for determination of eligibility – would moving to a different standard like “Essential Government Function” be preferable?

### **What is Public, Pious and Charitable or the “Fly Fishing Test” (Properties’ Use and Ownership must comply with the following)**

From easiest to apply to the more difficult ...

- Property must be owned and operated on a not-for-profit basis (not all non-profit owned properties are eligible, e.g., most fraternal organizations like the Grange).
- Property must be “unconditionally dedicated to a public use.” (Is use of property restricted?)
- Whether the property’s primary use directly benefits an “indefinite class of persons” who are part of the general public. (For example, are the blind an “indefinite class”?)
- Whether the use of the property confers an immediate benefit on society as a whole as a result of the benefit it confers on the persons directly served.

### **Perceived Problems with the use of Public, Pious and Charitable Standard**

- Test is difficult to interpret, particularly by local assessment officials with limited training.
- Open to competing interpretations that can lead to contentious disputes (both within a municipality and between a municipality and the State) and possibly result in costly litigation.
- Because the application of the test can end with an inconclusive result, municipalities sometimes grant possibly questionable exemptions to avoid litigation and, at times, enter into municipal PILOT agreements with property owner.

### **Results of the Commission's Work**

- Commission's Report to the General Assembly
- H.53 introduced in the 1999 Session and passed the House but failed to make it through the Senate.
- Most of the issues that lead to the authorization of the Commission remain with us today.