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Boston's Coercive PILOTs Experiment Should Crash

By: Tim Delaney

Leaders of nonprofit organizations across America were stunned by reports this week in the [Boston Globe](#) and NPR's [Marketplace](#) that the City of Boston would turn its back on the nonprofit cultural, educational, and health care institutions that have played such vital roles in making that city great.

What stunned nonprofit leaders nationwide is that Boston sent letters essentially mandating that various nonprofits make "Payments-In-Lieu-Of-Taxes" (PILOTs) to the city based on the value of their property, even though Massachusetts law -- like the law in all 50 states -- prohibits local governments from taxing nonprofit property. What in turn shocked nonprofit leaders is how Boston intends to enforce its supposedly "voluntary" PILOT program: with a Scarlet-letter campaign designed to coerce compliance with the city's demand for "voluntary" payments.

Boston has concocted an Orwellian program that uses euphemisms -- such as "PILOTs" instead of "property taxes" and "voluntary" instead of "coerced" -- apparently attempting to hide what is really happening to evade what the law prohibits. The city, knowing the courts would strike down as an illegal act any attempt to directly impose property taxes on charitable nonprofits, invented a program to coerce "voluntary" Payments-In-Lieu-Of-Taxes. But slapping on a

misleading label to cover a bad act does not render it any more acceptable; a payment based on property value is still a tax.

To enforce its legally unenforceable program, Boston has threatened to paint a Scarlet letter of shame on every nonprofit that does not comply with the city's demands for payments. Such coercion to obtain what the Commonwealth's law prohibits is outrageous and threatens everyone; who's next, when Boston -- or any government -- wants something the law prohibits?

The city's program also disregards unique aspects of nonprofit law, thus putting coerced nonprofits at risk of running afoul of the Massachusetts Attorney General, who has jurisdiction to oversee that funds donated to nonprofits are used as donors intend. By demanding that nonprofits pay the city 25 percent of their property's tax value, the city is whipsawing nonprofits, putting them in a lose-lose dilemma: either undergo the city's shameful public branding, or cave in to the city's demands to pay, only to have the Massachusetts Attorney General come after the nonprofit if donors complain that they gave their money for purposes other than transfers to the city treasury.

In trying to balance its budget on the backs of people served by charities and those who donate to them, Boston has disregarded not only the law, but also fiscal reality. The recession already has stretched nonprofits too far financially as demands for their services have skyrocketed while their revenues have nosedived, with corporate contributions declining, foundation grants down, and [governments delaying payments and not paying full costs on legally-binding contracts](#). According to the IRS, even individual giving has sagged by 20 percent. Nonprofits understand that the economy has bashed our government partners with whom we serve the same communities and the same constituents; governments need to understand the same about nonprofits that have been doing so much more with so much less for so much longer. Nationwide, nonprofits committed to serving the public good could not continue meeting local needs in their local communities if Boston's short-sighted, Orwellian experiment spreads elsewhere.

Before bending to the city's heavy-handed grab for money, the tens of thousands of people of Boston who serve nonprofits as board members (who will be forced to raise even more money to meet nonprofit missions) and as employees (who could see reduced hours and increased layoffs) should answer these questions:

1. Will complying with the city's demands cause you problems with the Attorney General's Office, which enforces donor intent? (If your donors had wanted the city to have the money, they would have given it directly to Boston.)
2. Is the request from the city truly voluntary? (Scarlet letters, administrative obstructions, and threats of retaliation are hardly the stuff of "voluntary" relationships. Indeed, courts reject coerced "voluntary" confessions, so why would they allow coerced "voluntary" payments? Plus, if the program was truly voluntary, why didn't the city send similar invoices to the federal and state governments that own lots of "tax-exempt" property, or send similar invitations for businesses or residents to give extra "voluntary payments"?)
3. Where will the city draw the line the next time if it can successfully coerce enough nonprofits to fork over money this strong-arm tactic? (Larger nonprofits must realize if they willingly yield now they will be asked to pay not 25 percent in the future but 50 percent, 75 percent, or more over time, just as smaller nonprofits beneath the level of the city's first wave of letter invoices must realize they could be next, further diverting already limited and scarce resources away from missions.)

Any nonprofit that feels it is in the best interest of the people it serves to devote resources to bail out the local government has every right to do so. But when the people served by nonprofits will be hurt, nonprofit board members, staff members, volunteers, and service recipients deserve answers to those questions.

It's not too late. For centuries, Boston's nonprofits have attracted talent and industry to help the city prosper. Recognizing that this program threatens the golden goose that has allowed the city to flourish, city officials can remove the coercive threat and take other steps to make this program truly voluntary.

Should city officials refuse, nonprofits can rally together to refuse to enter the dangerous trap that has been set for them. Indeed, Bostonians -- to protect themselves from being the next targets for improper coercion -- should tell their elected officials to back off. The people of Boston should recall their proud history of fighting against tyranny of the Coercive Acts of England by halting this improper, coercive experiment.

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