

Property Tax Exemption for Land Owned for Protection Purposes

Attorney Advisory Panel of the Mass Land Trust Coalition

Under Massachusetts law, (Chapter 59, Section 5) real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized is exempt from taxation.

A number of recent rulings by the Appellate Tax Board (ATB) have indicated that a land trust may be denied an exemption for a property unless there is some provision for public use.

Discussion Points

1. Is a land trust due its statutory exemption where it owns a property for protection purposes, but has not provided public access because either:
 - a) the property does not easily lend itself to public access because of terrain or the nature of the flora, or
 - b) the property is not appropriate for public access because of the presence of an endangered or threatened species or habitat that is particularly fragile or susceptible to damage by the presence of the public.
2. If a land trust owns a property for protection purposes, what is the level and nature of "occupation" required to meet the local assessors' or ATB's requirement that the property be used for the purposes for which the non-profit land trust was established under its Articles of Incorporation.

Discussion

- ◆ Many new ATB cases involve entities that may not have appropriate provisions in their Articles of Incorporation to establish them as Conservation Land Trusts holding land or interests in land for conservation purposes. The purposes of the organization must be very clearly articulated in incorporation documents.
- ◆ ATB rulings denying tax exemption often point to limited public benefit / limited class of beneficiaries because of the location of the property.
- ◆ If ATB treats public access as a prerequisite for tax abatement, land trusts face problems:
 - Land with particular types of conservation value may not be appropriate for public access and use, such as properties with endangered species or threatened natural characteristics.
 - Land may not be easily accessible for public purposes, or may present hazards, such as eroding cliff faces.
- ◆ Tax is overly burdensome, particularly for a small LT with limited resources.
- ◆ For some regions, like Cape Cod, the average size of properties is small (half are less than 5 acres), too small to enroll under Ch. 61B if these lands were to become taxed. Mark Robinson noted that in NH and ME, land trusts do pay property tax but most parcels are enrolled under current use statutes to provide savings, though not exemption.

- ♦ It was proposed that we go back to “first principles” as to the role of land trusts in society, articulated in the 1940 ruling by Mass Supreme Judicial Court in Assessors of Quincy v. Cunningham Foundation, 305 Mass 411, 418: “The ground of the exemption is that the use of the exempted property alleviates some burden of government by conferring benefits which would advance the public interest.”

Land held for conservation confers public benefits such as open space, water quality and natural resource protection, wildlife habitat, scenic views, etc.—as a supplement to long-established government action in this area.

- ♦ Examples of conserved fee land where public access is appropriately denied: farmland, ground-nesting bird sites, view sheds
- ♦ Requirement of *occupation* – either the organization or the public must “occupy” the land. Need clear definition of what else constitutes occupancy. (See the “*conservation purposes*” section of *Internal Revenue Code (IRC) chapter 170*.¹)
- ♦ Occupancy regulation applies to all charitable corporations
 - “used and occupied for tax exempt purpose” -- see tax exemption statute
 - Documentation of occupation for a public purpose
 - A better presentation of occupancy is needed – it is an evidentiary problem in cases
- ♦ Previously considered good examples of appropriate purpose and occupancy are noted in the 1994 Mass. Dept. of Revenue letter (Letter File #94-699) examining property tax exemption for the Westford Conservation Trust (WCT).²
- ♦ Does preservation constitute occupancy?
 - Nature Conservancy in NY had similar issue; find out what TNC in NY did and how they did it
 - Irene Del Bono mentioned two cases that might be helpful in defining occupancy: Assessors of Dover v. Dominican Fathers at: <http://masscases.com/cases/sjc/334/334mass530.html> and New England Mountain Bike Association v. Assessors of Milford³ DOR opinion letter at: http://www.mass.gov/Ador/docs/dls/mflb/opinions/2005_406.pdf

Conclusions / Recommendations

There are no practical guidelines for talking with assessors; there has been no engagement with DOR on this issue. There are varying practices among the 351 assessment officers in Mass. Land trusts need a set of persuasive arguments to present to their local assessors before a case gets to the ATB.

- ♦ Use the IRS standard for “significant public benefit:” either allow public access, which proves, *prima facie*, public benefit, OR show compliance with other high standards enumerated in 170(h)⁴
- ♦ Prohibiting public access is appropriate in some cases
- ♦ Conservation purpose is established by virtue of the Secretary’s signature and/or 501 (c)(3) status (but ATB is not required to give deference to either of these in evidence)

It may be possible to defend tax exemption based on consideration of public benefit rather than just public access. Although the ATB ruled against Forges Farm in *Forges Farm v Board of Assessors of Plymouth*, the ATB signaled that it might look at other aspects of public benefit than public access.

All land trusts should review / revise Articles of Incorporation and Charters to be certain the organization’s purposes and actual practices are clearly and completely stated to address any deficiencies in occupancy.

¹IRC chapter 170(h) Conservation Purposes:

4) Conservation purpose defined.

- (A) **In general.** For purposes of this subsection, the term “conservation purpose” means—
- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,
 - (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
 - (iii) the preservation of open space (including farmland and forest land) where such preservation is—
 - (I) for the scenic enjoyment of the general public, or
 - (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or
 - (iv) the preservation of a historically important land area or a certified historic structure.

² Mass. Dept. of Revenue (Letter File #94-699) on the Westford Conservation Trust (WCT):

1. WCT’s purpose was examined and found appropriate:
“[T]o acquire and preserve natural resources to include land, water, wetland, woodland and open spaces, and the plan and animal life within...including without limiting...the acquisition and development of land for the purpose of establishing trails, to preserve and protect historic sites, to educate the public about the wise use of natural resources”
2. WCT’s “occupancy” of the land for its charitable purpose was found appropriate:
“Where a property is owned by a corporation whose charitable purposes include the preservation of natural resources, we think the simple act of maintaining that property in its natural condition would satisfy the occupancy requisite.”—DOR
3. The Assessor presumably also questioned the permanence of the preservation intent, asking DOR to comment on the (standard) clause in the WCT charter that gives WCT the power to “sell, convey...all or any of its property...” DOR was not troubled by that fact:
“The corporation’s tax status depends on whether it satisfies the Clause Third [occupancy of land in natural condition] requisites on the qualification date [1 July].”

³ 2006 - Mass. Dept. of Revenue (Letter File #2005-406) examines property tax exemption for the New England Mountain Bike Association (NEMBA.) (excerpts below)

1. “Non-profit status alone does not make an organization charitable. Thus, the question here is whether the dominant purposes and actual activities of NEMBA are for the public good and benefit a relatively large class or indefinite group from among the public as opposed to providing specific benefits for a limited group...Mass. courts have focused mostly on public access in determining whether a charitable organization benefits the general public...”
2. “Simply preserving property in its natural state is not enough to satisfy the requirement of “occupying” the property within the meaning of the statute...NEMBA must show that it is actively using its property to promote recreation, conservation and education.”

Attorney Advisory Panel of the Massachusetts Land Trust Coalition May 12, 2006

Attorneys Present: David Baron, Gordon Bell, Kathleen Connolly, William Constable, Irene Del Bono (via teleconference), Deborah A Eliason, Richard Evans, Robert T Ford, Robert A Levite, Ray Lyons, Attorney, Stefan Nagel, Kathleen O’Donnell, Jenny Ewing Outman, Gregory Peterson, Julie Taylor, Walter Van Dorn, Margaret Wheeler

MLTC Present: Kathy McGrath, Bernard J McHugh, Mark Robinson

Others Present: Samantha Khosla, volunteer; Kathy Roth, Community Preservation Coalition

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