

**PROPERTY TAX EXEMPTION
FOR LAND TRUSTS
in MASSACHUSETTS**

presented by

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OUTLINE:

Property tax exemption for land trusts:

Why is this important?

Why is it important now?

First Principles

What does it mean to be tax-exempt
from a state and federal perspective?

Your Charter: aim for consistency throughout

Preamble

Purposes

Practices

Property Tax Exemption: Implementation

Public Access

Public Benefits

Why is this important?

- Lands owned in fee simple (outright) by land trusts, not conservation restrictions or other interests
- Mass. land trusts have presumed property tax exemption but burden of proof is on land trusts
- Land trusts have been able to take on new parcels without regard to property tax consequences
- Land trusts are maturing, have acquired large portfolios
- Loss of exemption could pose existential threat

Why is it important *now*?

- Spate of recent cases rejected at Appellate Tax Board
- Change in Dept. of Revenue attitudes
- No effective guidance from SJC
- Land values so much higher
- Desperate need for more local revenues
- By our success, land trusts have become a target

First Principles

Forget what we have all assumed for so long. Get back to basics.

501(c)(3) is the GOLD Standard for land trusts in the eyes of the IRS

BUT,

Does not guarantee property tax exemption

MUST MEET THE TESTS! ALL THE TESTS!

Where do land trusts fit in as charities?

- Advancement of education and science
- Lessening a burden of government

How do we know that our open space protection work lessens a burden of government?

IRS says so:

“By preserving ecologically significant undeveloped land, the organization is enhancing the accomplishment of express national policy of conservation of the nation’s unique natural resources.”

1976 Revenue Ruling by IRS (76-204, 1976-1 C.B. 152)

State: Mass. Department of Revenue

Chapter 59, Section 5 cl.(3)

Exempt from local property tax if a parcel is:

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

*NOTE: exemption is parcel-specific, not a
blanket for an exempt organization*

CRUX of the Problem:

How do land trusts prove the negative? Are we “doing something” by leaving it alone?

How can we occupy a parcel for conservation?

Occupancy = “an active appropriation to the immediate use of the charitable cause for which the owner was organized”

- -225 Mass. 418 (1917)

EVOLUTION OF OPEN SPACE

PERCEPTION by Mass. taxing authorities

“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.”

- *Mass. Dept. of Revenue (Letter File #94-699)*

“Simply preserving property in its natural state is not enough to satisfy the requirement of “occupying” the property within the meaning of the statute...”

- *Mass. Dept. of Revenue (Letter File #2005-406)*

*In the absence of demonstrable
“active appropriation” to conservation use,
assessors and tax agents are beginning to
default to public access as a means test to
decide if a parcel is worthy of exemption
from local taxes.*

*Public access = public occupation =
charitable use for an indefinite class of
people = exempt property*

Property tax exemption occupancy test =

Firm, logical connection and consistency among your land trust's mission, purposes, by-laws, policies and their implementation as they pertain to any given parcel of land that you own

Need to go back and re-examine what you say you are doing and intending to do in light of what you have actually been doing; assess need to amend purposes and policies to fit practices

Example: “advancement of science” purpose; so....are you ever going to do or sponsor any research?

YOUR CHARTER

Articles of Incorporation, or
Declaration of Trust (if unincorporated)

Preamble:

Article 97 of State Constitution guarantees
the public's right to clean and scenic
environment

Note: does not guarantee public access to
anything

PURPOSES

State exemption law requires that property owned by a charity must be held and used in “furtherance of its recognized charitable purpose.”

ATB has said “conservation” means “keeping in perfect or unaltered condition; maintaining in an unchanged form”

YET, *reliance on and emphasis of public access may be incompatible with that definition*

Samples of Purposes *(handout menu)*

(comparative analysis of Mass. land trusts)

- *Protect land and water resources*
- *Education*
- *Science*
- *Planning (Land Use)*
- *Recreation*
- *Land Management/Stewardship*
- *Scenery*
- *Other*

Practices

Affirmative actions you can take to provide clear evidence of your intent to preserve land:

- *Two-year rule to prove occupancy*
- *Management plan*
- *Educational info*
- *Scientific studies*
- *Habitat enhancements*
- *Signs, trail markers (as appropriate)*
- *Consistency with resource plans (town, state)*