Shifting Burdens: An Objective Overview of Municipal Options to Gain Revenue from Nonprofit Organizations in North Carolina

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Executive Summary:
Over the past few years, increasing numbers of municipalities nationwide have started to seek revenue from nonprofit organizations to help offset budgetary deficits related to the recession. Notwithstanding this trend, little information exists to help North Carolina municipalities understand what their options are in this area. This report helps to remedy this problem by objectively reviewing the mechanisms legally available to North Carolina municipalities to increase revenue from nonprofits. These options include privilege license taxes, user fees, voluntary contribution arrangements and requesting in-kind donations. The report concludes with recommendations for implementation.
Introduction
Municipalities and nonprofit organizations\(^1\) have historically partnered to improve communities.\(^2\) In response to budgetary deficits related to the recession however, many municipalities have begun to fundamentally reevaluate these relationships.\(^3\) As a part of this trend, a growing number of municipalities have implemented strategies specifically designed to increase revenue intake\(^4\) from nonprofits.\(^5\) Such efforts are occurring despite record-high demands for nonprofit services,\(^6\) which are often subsidized by municipalities\(^7\). In light of these changes, it is necessary that North Carolina municipalities become aware of their options regarding how they can seek revenue from nonprofits. This report helps to provide such information by reviewing the mechanisms legally available to North Carolina municipalities to generate more revenue from nonprofits. Recommended practices for municipalities interested in gaining more revenue from nonprofits are also described.

Background
To gain a greater appreciation of how the financial relationships between municipalities and nonprofit organizations are changing in light of the recession, it is important to first understand the relation between the charitable property tax exemption and municipal revenue generation.\(^8\)

As North Carolina is a Dillon’s Rule\(^9\) state, municipalities can only act if they have authorization from the State.\(^10\) Under this system, the State has the right to retain exclusive jurisdiction over subject matters, which it has elected to do with the property tax paradigm.\(^11\) Municipalities are thus prevented from determining the subjects of property taxation or exemption because they lack the necessary authorization to do so. For example, the State created a charitable property tax exemption.\(^12\) As a result, municipalities are prohibited from subjecting exempted nonprofits\(^13\) to property taxation.\(^14\) This is true regardless of the quantity or value of the property that such exempted organizations possess, assuming that the property is being used for the exempted purpose.\(^15\)

While this exemption has effectively served its intended purpose of rewarding nonprofits for their contributions to their communities,\(^16\) it has come at a high price for municipalities.\(^17\) In particular, the exemption results in a decrease of municipal property tax revenue by a nationwide average of roughly 5%.\(^18\) In 2009, this equated to a national estimated governmental loss of between $17 billion and $32 billion.\(^19\) This loss, in turn, gets passed on to taxpayers because municipalities compensate for such lost revenues by raising residential and commercial property tax rates\(^20\) in order to maintain service delivery to tax-paying and tax-exempt properties alike.\(^21\) Because of these issues, some municipal officials thus consider the charitable property tax exemption to effectively be an unfunded state mandate.\(^22\)

While this detrimental effect of the charitable property tax exemption has always existed, it has been recently magnified in part due to the erosion of the property tax base during the recession. Increasing numbers of foreclosures among previously-taxable properties has led to a decrease in municipal property tax revenue in many areas. This has led many municipalities to attempt to diversify revenue streams to compensate for such lost revenue. In the midst of such efforts, nonprofits—particularly propertied nonprofits, such as hospitals and colleges—have often been identified as a source of potential revenue.\(^23\) This movement has started to reach North Carolina. For years, the City of Durham has received approximately $300,000 from Duke University to help offset the cost of the fire protection services that the City provided to the University.\(^24\) Additionally, in March 2011, Rowan County considered asking nonprofits to voluntarily contribute money to the county to help cover the costs associated with providing county services.\(^25\) Moreover, in the process of completing this report, the author spoke with representatives from two large (100,000+ citizens) municipalities in this state who mentioned that their communities are interested in possibly implementing a voluntary contribution program in the near future. In recognition of this shift, municipalities should be aware of what options legally exist in this State as and suggestions for how to implement such options.
Available Options

At the time of this report, no comprehensive assessment existed to provide North Carolina municipalities with information regarding how they could gain revenue from nonprofits, should they decide that it is in the best interests of their citizens to do so. To rectify this situation, this report provides both an overview of the options legally available to North Carolina municipalities as well as some recommendations for implementing those options. The options available to municipalities were identified through a review of legal and administrative literatures. The author then collected data concerning the usage of such options in a variety of ways. First, the author generated an online survey instrument and distributed this survey to 122 of the municipal members of the North Carolina League of Municipalities with populations in excess of 5,000. Forty municipalities participated in the survey, resulting in a response rate of 32.7%. Survey respondent were allowed to remain anonymous out of respect for the fact that some municipalities may not wish to proactively disclose information regarding efforts to obtain revenue from nonprofits. Nevertheless, all respondents were encouraged to provide contact information if they consented to be interviewed about their community’s experience with any of the options. The author subsequently interviewed the consenting municipalities that had provided contact information and had indicated on their survey response that they had experience with at least one of the options. To help generate more recommendations for this report, these data were then supplemented with additional interviews with officials from communities that are often cited as leading the municipal movement toward gaining more revenue from nonprofits.

Taxes: Although nonprofits are eligible for exemption from a number of the taxes which municipalities are authorized to levy, an exception is the privilege license tax. The privilege license tax is an “excise tax levied on the privilege of conducting a particular trade or business.” Because the State provided municipalities with the ability to levy privilege license taxes for any purpose except those specifically restricted or prohibited by law, municipalities can thus levy privilege license taxes on most types of nonprofit organizations. Municipalities can act upon this authorization in two primary ways. First, municipalities can create new privilege license categories catered around the specific activities of particular nonprofit organizations. Alternatively, municipalities can also levy existing privilege license taxes upon nonprofit organizations based upon their quasi-commercial activities that other for-profit entities are already being taxed for (e.g. making a museum that owns and operates a café pay the same license tax that all other cafes in the municipality pay).

With respect to the former, a municipality may have a nonprofit university with 50,000 students within its borders upon which it wishes to levy a privilege license tax however the municipality may not wish to tax other educational institutions such as grammar schools. In furtherance of this end, the municipality could craft a privilege license tax upon all educational institutions with more 49,999 students either on a per-student basis or base the tax upon annual revenue. Given this ability to narrowly tailor a privilege license tax, the municipality would have the capability to selectively choose from whom to receive revenue, thus enabling the municipality to make more-informed, more-politically-viable policy decisions.

Municipalities could also use existing privilege license tax categories to tax the quasi-commercial services provided by nonprofits, such as parking lots and cafes. As such, a non-profit would be taxed at the same level that for-profit entities are taxed at for engaging in the same activity. Such targeted taxation has been successfully used in this state as well as others. For example, the City of Durham levies a license tax on Duke University for the revenue generated through the sale of beer and wine by the University-owned Washington Duke Inn. Using such pre-existing categories is arguably more politically viable insofar as municipalities would be taxing nonprofits based upon activities for which other competing entities (e.g. for-profit bars and cafes) are already being taxed.

In order to enact a privilege license tax, a municipality must adopt an ordinance levying the tax, listing the activities taxed and the rate of the tax. Once enacted, such a tax need not be reenacted every year.
**User Fees:** User fees are fees upon those who voluntarily receive or use certain government services or facilities. Such fees have become increasingly utilized by municipalities over the past few years to gain revenue from nonprofits. For example, in the Town of Knightdale, churches who wish to enter floats into community parades must pay the same entrance fees as all other participants.

This paper only addresses user fees as opposed to public enterprise fees (e.g. fees which all users of publicly-owned utilities (including nonprofits) must pay based upon their use of such utilities) or stormwater fees (fees which some municipalities collect (including from nonprofits) to raise funds to comply with various provisions of the federal Clean Water Act). The decision to focus on solely user fees was made because user fee revenue can be deposited directly into a municipality’s general fund. This allows the user fee funds to directly help alleviate the municipality’s budgetary problems. In contrast, public enterprise fees must first go toward covering the expenses associated with the provision of the services prior to any remaining balance becoming eligible to deposit into the general fund. Moreover, stormwater fees can never be deposited into the general fund.

Some have argued that user fees are effectively taxes upon nonprofits (in contravention to the spirit of tax-exemption). Nevertheless, courts have routinely upheld municipal fees charged to nonprofits so long as nonprofits are charged the same fee rate as all other entities.

**Voluntary Payments:** Local governments can negotiate with nonprofits in an effort to encourage voluntary financial contributions to help fund municipal services. Increasing numbers of municipalities across the country are doing precisely this and, at times, such efforts have generated sizable revenues. Duke University, for example, provides a $300,000 negotiated donation to the City of Durham dedicated to help offset the cost of fire services provided to the University. The survey conducted for this report found that a surprisingly large percentage of respondents (30%) had received some form of voluntary contribution from nonprofits. Such contributions can either be donated for a specific purpose or, absent such a dedication, can be deposited into the general fund.

As an example of a dedicated donation, in 2004 Duke paid Durham $35,000 to cover the cost of acquiring ten public safety radios. More recently, a Morehead City nonprofit provided a one-time payment to the City for the express purpose of having the City erect a veterans’ memorial.

Many municipalities receive general non-dedicated donations from nonprofits. In 2010, the City of Boston (MA) received $34 million in donations from nonprofits throughout the City.

Municipalities do not need authorization from the State prior to soliciting or collecting such payments because the donations are voluntary.

**In-kind contributions:** Municipalities can ask nonprofits to provide in-kind contributions of goods, services or property. Like voluntary contributions of money, since in-kind contributions are made voluntarily, no legislative authorization is necessary. The survey conducted for this report found that 12.5% of respondents reported receiving some form of in-kind contribution from nonprofits.

In-kind donations are particularly prevalent when nonprofits perform the same functions as municipalities. For example, the Wake Forest University Police Department has agreed to patrol non-University areas bordering its campus, which decreases the workload of the Winston-Salem Police Department. Durham has a similar arrangement with the Duke University Police Department. Additionally, community development is a burgeoning type of in-kind contribution that nonprofits are donating to municipalities. For example, one of the major community initiatives of Duke University is to “accelerate and sustain the economic development and revitalization of downtown Durham.” As a part
of this initiative, Duke University and its Health System have located close to 2,000 employees in
downtown Durham and are presently leasing 528,000 square feet of office space in downtown Durham. Additionally, Duke also helps to develop downtown Durham by underwriting a hybrid bus route between
the University and downtown. Specifically, Duke provides $350,000 to Durham to help fund the
operation of the Bull City Connector which transports any person between the Duke campus and
downtown Durham free of charge. Interestingly, this bus not only contributes to community
development but also it helps to alleviate the City of Durham’s transportation costs.

Anecdotal evidence not only suggests that municipalities would greatly benefit from the donation of services, but also that nonprofits favor this option more than any of the other previous options.

**Recommendations**
The decision regarding whether (and how) to generate revenue from nonprofits can be a legal and political tinderbox. Yet given the increasingly-deteriorating financial condition of many municipalities, more communities than ever are actively considering this avenue. In an effort to make the most informed decision, municipalities should consider the following recommendations suggested by researchers, commentators and other municipalities.

Plan ahead to ensure that sufficient revenue would be generated: None of the above options is a one-size-fits-all panacea. A municipality should thoroughly investigate each option’s potential for revenue generation and the associated administrative and legal costs. Prior to implementing any option, municipalities should assess the value of tax-exempt property owned by nonprofits as a percentage of total property value as well as the types of nonprofits that own property in their communities, and their ability to contribute. This is particularly true for voluntary contribution arrangements because oftentimes voluntary contribution estimates are derived, in part, from the amount of property which particular nonprofits possess.

**Be open, transparent and encouraging of partnership**: Maintaining effective relationships with nonprofits is crucial because nonprofits provide many benefits to municipalities. To help maintain such relationships in the midst of efforts to obtain more revenue from nonprofits, municipalities should utilize an open decision-making process. A municipality should consider finding partners within the nonprofit community who will be willing to discuss relevant issues with the municipality and involve them early in the process. Even municipalities considering levying a privilege license tax or user fees upon nonprofits should consider providing affected nonprofits with the opportunity to speak with the municipality because such discussions may lead to voluntary contributions or in-kind donations in lieu of the proposed taxes/fees. Moreover, such an approach could actually strengthen relationships with nonprofits, and protect against the threat of lawsuits, bad press and ill will that some municipalities have received from not collaborating prior to seeking revenue. While municipalities have the capability to unilaterally enact a privilege license tax or a user fee charge upon nonprofits, they lack the legal authorization to independently demand an otherwise-voluntary contribution from nonprofits. Thus, while municipalities should generally be encouraging of public participation, they should be particularly mindful to involve the nonprofit community when seeking a voluntary contribution or in-kind donation. While keeping the nonprofit community involved with pending license taxes or user fees is still important, ultimately a municipality should not lose sight of its legal right to enact such instruments as a means to collect revenue from nonprofits notwithstanding the objection of the nonprofit community.

**Structure budgets so as to encourage collaboration**: Municipalities may also wish to seek out opportunities for greater collaboration. For example, when deciding how to fund the purchase of a new fire engine, the municipality could finance a set amount of the purchase price and then contact area nonprofits to inquire whether such organizations would be interested in donating the remaining portion of the costs. Because such contributions would directly benefit the nonprofits (i.e. increased fire protection)
as well as enable the nonprofits to receive positive press from the donation (since citizens tend to have a highly favorable opinion of fire departments), this would conceivably create a win-win situation for the municipality and the nonprofit and hence increase the likelihood of a donation.

**Have a rational basis for all decisions**: Regardless of how municipalities seek revenue from nonprofits, decisions should be grounded in some objectively reasonable basis. This will prevent the appearance of arbitrariness or perceived inequality.

**Whom to Charge**: Municipalities tend to seek revenue from larger, propertied nonprofits that tend to have the most resources, such as private colleges and hospitals. Research suggests that municipalities with several large propertied nonprofits might benefit from implementing a uniform voluntary contribution program—as was the case in Boston, and other cities. An alternative for communities with only a few large propertied nonprofit organizations would be enacting a privilege license tax on those nonprofits and/or negotiating a voluntary contribution arrangement with each specific organization. For example, while Durham contains numerous nonprofit organizations, when it decided to seek a voluntary contribution arrangement with each specific organization, it directly approached Duke University and the Duke Medical Center to make payments.

Almost all communities which have sought revenue from nonprofits have established some sort of limitation on whom they sought funding from—in large part to avoid public outrage over asking smaller nonprofits or religious organizations. For instance, Boston enacted a threshold requirement that it would not ask nonprofits with less than $15 million in property holdings for a contribution. Other cities have developed a list of general attributes which nonprofits must possess in order to be solicited for voluntary contributions. Still other municipalities only seek revenue from certain types of nonprofits. Some nonprofit advocates have argued that this last strategy is preferable insofar as certain nonprofits (e.g. hospitals, colleges) can build the cost of payments into their business models while others cannot.

**How Much to Request Nonprofits to Voluntarily Contribute**: A consistent theme among municipalities that have received negative backlash regarding their attempts to seek voluntary contributions from nonprofit organizations is that such municipalities were not clear in how they determined requested payment amounts. Various parties have thus stated the need for municipalities to use clear methodologies when determining how much nonprofits are asked to pay. Yet there is no consistent methodology for municipalities to determine such payments, even among leading municipalities. Durham arrived at its roughly $300,000 request for Duke University by using a formula that the State of North Carolina adopted to reimburse municipalities for the municipal fire protection services provided to state buildings. Boston (MA), on the other hand, has a much more complex methodology. Given that various municipalities have achieved success utilizing different determination methodologies, it appears that a determinant of success is not necessarily ascribing to a particular methodology, rather just adhering to a methodology to begin with.

**Conclusion**

In this age of fiscal austerity, municipalities must remain close partners with nonprofits. In many communities the success and vitality of the municipality is inexplicably linked with that of its nonprofit community. Yet the prolonged recession has led many communities to reevaluate key aspects of these relationships. Nevertheless just as though there is no “right” relationship between municipalities and nonprofits, there is also no one-size-fits-all approach for municipalities to weather the current economic storm. While many communities would benefit from gaining more revenue from nonprofits, to others the political risks may outweigh the monetary gain. The tools and recommendations highlighted in this report have hopefully illuminated the options available to municipal decision-makers such that communities can now make more informed decisions about how best to serve their citizens.
In North Carolina, nonprofit organizations are either corporations or unincorporated associations. If the organization is organized as a corporation, its governing statute is Chapter 55A of the North Carolina General Statutes. If the organization is an unincorporated association, then is governed by Chapter 59B of the General Statutes. Furthermore both types of nonprofits are also subject to the common law. Gordon P. Whitaker and James C. Drennan, *Local Government and Nonprofit Organizations*. Article 11 in *County and Municipal Government in North Carolina*, UNC-Chapel Hill School of Government Press: Chapel Hill, North Carolina (2007). Available at http://sogpubs.unc.edu/cmg/cmg11.pdf.

Note that while there are various forms of nonprofits (for more see §501(c) of the Internal Revenue Code of the United States of America) this report will focus exclusively on charitable nonprofit organizations (designated 501(c)(3) organizations by the United States Internal Revenue Service). This is because such organizations control a substantial percentage of the total nonprofit assets in North Carolina (82.8% of all nonprofit assets) and hence they would be the most likely source of revenue. The Urban Institute’s National Center for Charitable Statistics, *The Number and Finances of all Registered 501(c)(3) Nonprofits in North Carolina* (2011). Available at http://www.nccsdataweb.urban.org/tablewiz/tw_bmf.php. As such, all references to “nonprofit” or “nonprofit organization” shall be understood to mean 501(c)(3) organizations unless stated otherwise.


1 See Whitaker and Drennan, supra note 1.


3 The author acknowledges that many nonprofit organizations presently contribute to municipal coffers in a variety of ways. For example, some nonprofit colleges, such as Duke University, pay some property tax on their non-educational spaces. Moreover, nonprofit organizations also contribute to the state and federal governments as well. For more, see Gulati-Partee, supra note 1.


8 Under Dillon’s Rule, “a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the

10 Bowers v. City of High Point, 339 N.C. 413, 417 (N.C. 1994) (“It is a well-established principle that municipalities, as creatures of statute, can exercise only that power which the legislature has conferred upon them.”).


North Carolina’s property tax framework is governed by the North Carolina Machinery Act (Subchapter II of Chapter 105).

12 The North Carolina Constitution formally provides for three types of exemptions from property taxation in Article V, Section 2(3), including the charitable property tax exemption. However, the only mandatory exemption is for governmental property, whereas the remaining exemptions are left to legislative discretion. With respect to the charitable property tax exemption, the State Legislature exercised this discretion in enacting the Machinery Act (G.S. §§105-271 through 105-395.1 ((2003). Specifically, the Act implements the property tax exemption for cemeteries (G.S. 105-278.2), property held for educational purposes (G.S. 105-278.4), property held for religious purposes (G.S. 105-278.3), property of religious educational assemblies (G.S. 105-278.5), property held for charitable purposes (G.S. 105-278.6), property used for educational, scientific, literary or charitable purposes (G.S. 105-278.7) and charitable hospitals (G.S. 105-278.8). Collectively, G.S. 105-278.2 through G.S. 105-278.8 will hereinafter be referred to as the “charitable property tax exemption” for ease of readership.

13 There are no automatic exemptions or exclusions from property tax. However, there are provisions within the North Carolina statutes that provide exemptions for certain real and personal property held by nonprofit religious, educational, charitable and scientific or ganizations.” North Carolina Department of Revenue, State Taxation and Nonprofit Organizations (2008). Available at http://www.dor.state.nc.us/publications/nonprofit2008.pdf.

Hence, while nonprofit organizations are not automatically exempted from the property tax, many are eligible under the Machinery Act to apply for exemption.

14 “The General Assembly may exclude or classify property for tax purposes, but such exemptions and classifications must apply on a statewide basis... The constitutional authority for exemption and classification is Article V, sections 2(2) and 2(3). The statutes implementing that authority are found at G.S. 105-275 through 105-278.9). A county or municipality may not exempt, classify, or otherwise give a tax preference to property within its jurisdiction.” Kara A. Millonzi, A Guide to County and Municipal Revenues in North Carolina, UNC-Chapel Hill Press: Chapel Hill, North Carolina (2011). Nevertheless, nonprofits can still be required to pay municipalities if they own property within a special district, assuming that such property would benefit from the services/improvements which the special district is funding.

15 Id.

16 See Gulati-Partee, supra note 1.

17 “In every community, local governments provide certain services to property owners free of charges other than tax... Because tax-exempt property owners do not pay taxes, they receive these services truly free—at the expense of the local government.” Lauralyn Beattie, Local Government Power to Impose Fees on Tax Exempt Property, Local

18 Nationwide, it is estimated that, on average, the value of foregone revenue lost because of the charitable property tax exemption is equivalent to roughly 5% of the total municipal property tax revenue collected by each municipality in 2002. Woods Bowman, Joseph Cordes, and Lori Metcalf, Preferential tax treatment of property used for social purposes: Fiscal impacts and public policy implications. In Erosion of the Property Tax Base: Trends, Causes, and Consequences, ed. Nancy Y. Augustine, Michael E. Bell, David Brunori, and Joan M. Youngman. Lincoln Institute of Land Policy: Cambridge, Massachusetts (2009).


Also see the Providence (Rhode Island) Commission to Study Tax Exempt Institutions, “[i]n a static view, an acre of land consumed by the expansion of a tax-exempt institution is one less acre for future tax-paying development.” Providence (Rhode Island) Commission to Study Tax-Exempt Institutions, A Call to Build the Capital City Partnership for Economic Growth: Report to the Providence City Council (2010). Available at http://council.providenceri.com/webfm_send/40.

The counter-argument, however, is that nonprofit development of previously-taxable property often encourages higher value development on the adjoining parcels than would otherwise occurred. As such, while a “…city may forego direct revenue from the exempt parcel, [it] gain[s] revenue from adjoining development.” Id.

21 See Beattie, supra note 17.

22 There is a “perception [among] local officials that property tax exemption is an unfunded state mandate.” insofar as the “exemption is often granted at the state level, leading local governments to deal with the financial repercussions.” This is particularly true since “[m]any nonprofits are large businesses (i.e. hospitals, universities, and cultural institutions) that remove large portions of taxable property from the local tax rolls.” See Anderson, Dunn et al., supra note 11.

23 See Cooper, supra note 5.

24 Telephone interview with Julie Brenman, former Budget Director, City of Durham (January 12, 2012).

25 In particular, “[i]n this program, nonprofit agencies would make voluntary or negotiated contributions to the county to help pay for services and buildings they use while exempt from property taxes. Total fees would range from 10 percent to 65 percent of the normal tax base, depending on the type of exemption and probability of profit.” Karissa Minn, Commissioners to Consider Fee Schedule, Salisbury Post, March 6,2011. Available at http://www.salisburypost.com/News/030611-Commissioners-advance-qcd.

26 This paper only discusses the mechanisms by which municipalities may augment their general fund. As such, revenue-generating mechanisms that fund specific projects or special assessments are outside of the scope of this paper. Moreover, this report does not detail all of the procedural requirements for each revenue-raising mechanism. Rather this report is simply meant to initiate discussions. As such, local government officials should
review the applicable constitutional, statutory and case law citations and consult with local legal counsel before making any decisions.

27 For a complete listing of the survey question as well as a list of the recipients of the survey, please consult Appendix A.


29 These communities included Boston (MA), Nashville (TN) and Cambridge (MA).

30 David M. Lawrence and Kara A. Millonzi, *Revenues*, Article 13 in *County and Municipal Government in North Carolina*, UNC-Chapel Hill School of Government Press: Chapel Hill, North Carolina (2007) (“As creatures of the legislature, counties and cities may impose only the local taxes specifically authorized by the General Assembly. The following local taxes are available to them under the general law: the property tax, the local-option sales and use tax (levied by counties but shared with cities), the privilege license tax, the animal tax, the motor vehicle license tax (cities only), and the charge for 911 services”).


32 G.S. 160A-211.

Municipalities do, nonetheless, have to maintain uniform tax rates within each taxpayer class—although such rates may differ between classes.

33 Exceptions include G.S. §105-41(a) which provides that the State of North Carolina taxes the privilege of being an attorney-at-law. Hence, municipalities are expressly excluded from gaining privilege license taxes from attorneys.

34 Of course, if such services are provided by a for-profit third party (e.g. an eatery that rents out space in a nonprofit college’s cafeteria) then such entities would be subject to all otherwise applicable taxes. Hence, the mere notion that they operate surrounded by a nonprofit does not in any way affect the tax burden borne by such for-profit tenants. For example, the City of Winston-Salem charges a privilege license tax to Aramark for its food service operations within Wake Forest University, Salem College, and the North Carolina School of the Arts. Email from Gil Rush, Senior Financial Analyst, City of Winston-Salem, to Scott Tesh, Budget and Evaluation Analyst, City of Winston-Salem (January 30, 2012).

35 For example, Pittsburgh’s college and universities pay $23 million annual in taxes to the city for payroll, parking, business privilege and any real estate not directly related to their educational missions. Moreover, every college in Worcester (Massachusetts) pays property taxes on properties that are not used as part of the school’s core educational mission, totaling $328,048 paid in fiscal year 2008. See Providence Commission to Study Tax-Exempt Institutions, *supra* note 20.

36 Email from Paul Mason, Collections Supervisor (City of Durham) to Christopher McLaughlin, Assistant Professor of Public Law and Government (University of North Carolina-Chapel Hill) (January 30, 2012).

37 See Campbell, *supra* note 36.

38 *Id.*
With declining federal aid and constraints on property taxes, local governments have needed to find other ways to raise revenue. The most notable increases are seen in user charges...” See Kenyon and Langley, supra note 20.

Telephone interview with James Overton, Finance Director, Town of Knightdale (January 13, 2012).


See Millonzi, supra note 14

Id.

Id.

See Anderson et al., supra note 12.

See Beattie, supra note 17.

While such payments are in effect similar to so called “payments in lieu of taxes” in other jurisdictions, in North Carolina payments-in-lieu-of-taxes refers specifically to payments made by governmental entities that otherwise do not pay property tax (because of exemptions granted in the general statues) but which nevertheless provide payments. E.g. Payments made by the Tennessee Valley Authority are governed by G.S. 105-458.

As such, this report refers to all “payments-in-lieu of taxes” programs established between nonprofit organizations and municipalities as “voluntary contributions” so as to avoid confusion.

See Whitaker and Drennan, supra note 1.

“Even if a college is only one of many nonprofit entities in the municipality, the larger its exempt footprint, the more it will appear to have the financial wherewithal to make contributions—and be pressured to do so.” Evelyn Brody, Payments in Lieu of Taxes: ‘Contributions’ Say the Towns; ‘Extortion’ Say the Colleges, The Chronicle of Higher Education, January 31, 2010. Available at http://chronicle.com/article/Payments-in-Lieu-of-Taxes-63804/

For instance, according to Kenyon and Langley, supra note 20, at least 117 municipalities in 18 states presently have some voluntary contribution arrangement in place with at least one nonprofit.

Moreover, in Cooper, supra note 6, Kenyon revealed that even more cities have considered implementing voluntary contribution arrangements even since the publication of that study.

“...[T]he dollar magnitudes can be significant, such as Boston’s $15.7 million [voluntary contribution] from nonprofits in FY2009, and the percentage contribution can be significant in smaller cities, such as in Bristol, Rhode Island, where [voluntary contributions] account for 5 percent of the city’s budget. With an annual [voluntary contribution] of $7.5 million, Yale University makes the largest payment among colleges and universities in the United States.” See Kenyon and Langley, supra note 20.

See telephone interview with Julie Brennan, supra note 24. For more information on how this payment was derived and negotiated, see Appendix C.

Letter from Nannerl O. Keohane, then-President of Duke University, to Marica Conner, then-City Manager, City of Durham (June 22, 2004). Available at http://today.duke.edu/2004/06/conner_0604.html.

Specifically, the nonprofit was organized expressly for the purpose of raising money to donate to Morehead City for the erection of a veterans’ memorial. The City’s public works committee received the initial request from the nonprofit and subsequently met with the nonprofit to discuss the size and costs associated with creating the veterans’
memorial. Telephone interview with Ellen Sewell, Finance Director of Morehead City (January 12, 2012).


56 Email from Patrick Baker, City Attorney, Durham, North Carolina, to Neil Dermody (January 19, 2012).

57 “Nonprofits can make direct contributions to their municipalities by providing needed services such as health clinics, legal clinics, or scholarships.” See Kenyon and Langley, supra note 20.


60 Id.

61 Id.


63 Telephone interview with David Heinen, Director of Public Policy and Advocacy, North Carolina Center for Nonprofits (November 9, 2011).

64 For example, Kenyon and Langley, supra note 20, found that the number of communities which are receiving voluntary contributions from nonprofits has increased dramatically over the past 20 years.

65 For a list of cities interviewed, please consult Appendix B.

66 For example, a study in Minnesota calculated that if Minnesota municipalities were to adhere to a common formula to determine voluntary contribution amounts from charitable institutions, over seventy-five percent of such communities would raise revenue equivalent to less than one percent of their overall property tax revenue. Please note though, that this assessment did not include nonprofit colleges, which are arguably the nonprofits that are most-frequently petitioned for voluntary contributions. Minnesota Budget Project and the Tax Study Project, Cost Estimate of Payments in Lieu of Taxes on Charitable Institutions and Hospitals. December 12, 2000.

67 See Kenyon and Langley, supra note 20.

68 Id. Also see Worcester Regional Research Bureau, supra note 62.

69 For more, see Appendix C.

70 Although creating an open, transparent process is recommended for any of the options discussed herein, it is particularly important if a municipality is considering implementing a voluntary contribution program, given that nonprofits don’t have to participate and that nonprofits can stop paying at their leisure.

71 See Whitaker and Drennan, supra note 1.

72 See telephone interview with Julie Brenman, supra note 24.

73 See Kenyon and Langley, supra note 20.

74 E.g. Town of Peterborough v. MacDowell County Inc., 157 N.H. 943 (N.H. 2008) (In 2005 the Town of Peterborough, New Hampshire denied the application for tax exempt status of an area nonprofit artists-in-residence program (called the MacDowell Colony) on the basis that the nonprofit “failed to meet the statutory requirement that residents of New Hampshire be admitted to a charity’s benefits.” The nonprofit subsequently appealed all the way to the Supreme Court of New Hampshire. The Court ruled that the
nonprofit’s activities benefited society as a whole and thus it satisfied New Hampshire’s requirement that tax-exempt organizations provide some public benefit.)

Kenyon and Langley report that prior to the denial of the MacDowell Colony’s application for tax exempt status, the Town of Peterborough offered to accept a “substantial” voluntary contribution in exchange in lieu revoking the MacDowell Colony’s tax exemption. See Kenyon and Langley, supra note 20. Also “In the process of fighting over [voluntary contributions], both municipalities and nonprofits can spend significant amounts of money on legal fees and end up with their reputations tarnished.”

75 In Salamon et al.’s 2010 survey of nonprofits, respondents reported responding to governmental efforts to gain revenue from nonprofits in a number of ways including writing an op-ed piece, letter to the editor or news commentary, as well as testifying at public hearings and calling upon clients/customers/patrons to contact the government. Lester M. Salamon, Stephanie L. Geller and S. Wojciech Sokolowski, Johns Hopkins University Center for Civil Society Studies, Comminique no. 21: Taxing the Tax-Exempt Sector—A Growing Danger for Nonprofit Organizations (2011). Available at http://ccss.jhu.edu/publications-findings?did=244.

76 “Because if you don’t make it collaborative — if it’s highly contentious, you could end up with no increase in revenue for the municipalities, a lot of legal bills and a lot of ill will.” See Cooper, supra note 5.

77 In particular, according to a recent survey of nonprofit organizations, while nearly three-quarters of the respondents from the largest organizations in the survey responded that they were currently paying some type of tax, fee or voluntary contribution, less than half of the smallest organizations reported doing so. See Salamon et al., supra note 75.

78 See Kenyon and Langley, supra note 20. Specifically, the report notes that while hospitals and higher education institutions account for only 1 percent of charitable nonprofits registered with the IRS, they control 51 percent of total nonprofit revenues and 42 percent of total nonprofit assets.

79 Id.

80 For more information on these and other voluntary contribution programs, see Appendix C.

81 See Kenyon and Langley, supra note 20.

82 See telephone interview with Julie Brenman, supra note 24.

83 This $15 million threshold was arbitrarily chosen rather than the result of a calculation. Telephone interview with Matthew Englander, Director of Tax Policy, City of Boston (Massachusetts) Assessing Department (January 12, 2012).


86 See telephone interview with David Heinen, supra note 63.

87 See Kenyon and Langley, supra note 20.

88 See telephone interview with Julie Brenman, supra note 24.

89 Id.

90 For more, see Appendix B.

Also see, Kevin Kiley, *A Fair Fare Affair*, Inside Higher Education, February 10, 2012. Available at http://www.insidehighered.com/news/2012/02/10/brown-dispute-questions-whats-fair-payment-lieu-taxes. “‘Boston University’s president once said that the university can only be better if the city thrives,’ said Daphne Kenyon, an economist at the Lincoln Institute of Land Policy, in Cambridge, Mass.”