November 30, 1993

Stealth Taxation: The Use of Hidden Taxes to Impair Tax Exemption for Nonprofits

The big news in 1993 for so-called tax-exempt organizations is that they are not as tax-exempt as they, and almost everyone else, had thought they were. The exceptional efforts of Peter Swords and Harriet Bograd have identified and defined the scope of the incursions upon tax-exempt status in New York City.[1]

Harriet's research has identified 31 indirect taxes on nonprofits in New York City. Most of these taxes are in the nature of indirect sales taxes on items such as fuel for heating, gasoline and utilities. Their existence raises a host of questions for nonprofits.

When 1993 began, I had anticipated writing a paper in which I would seek to reveal, and focus

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1. This paper draws directly from their excellent work on this topic for the Nonprofit Coordinating Committee of New York. Tom Lehrer advised: "Plagiarize. Let no one else's work evade your eyes. But be sure always to call it 'research'." It is not necessary to consider whether I have taken his advice because they have graciously consented to my utilizing their work -- which permeates this paper.

attention on, some of the issues raised by the existence of these taxes. Events have, however, overtaken me. Peter's dynamism, abetted by Harriet's energy, plus the work of others, have already done the job I had planned to try to do -- at least for New Yorkers in the nonprofit community who have taken an interest in this subject. Harvey Dale has also thrown his considerable energy and talent into the exploration of this topic, making it the focus of the November 9 Mini-Conference sponsored by his N.Y.U. Program on Philanthropy and the Law.

Having reviewed this situation about one month before the due date for the paper and having concluded that, in essence, my topic was already blanketed with expertise, I was nonetheless concerned that the circle of those focusing on it was too small and too New York-based relative to the great importance, in my judgment, of the topic to the nonprofit community.

I then called Harvey Dale to discuss the situation -- politely offering a range of options from falling on my sword (cancellation of the dinner and payment of already incurred expenses for air-fare, etc.), substituting a new speaker, or proceeding with a discussion of hidden taxes, aided by the several hidden tax experts in our group, plus Harriet as a special guest. My first choice was the group discussion, and Harvey agreed.

Accordingly, what I am going to do here is note briefly some of the principal issues raised by the existence of hidden taxes, with added thanks to Peter and Harriet for their help in compiling the list. My hope is that our discussion will help to focus further attention on this topic and give all of us a sense of how we should be functioning to address it from the perspective of our work relating to nonprofits.

1. <u>The Importance of Hidden Taxes as an Expense and an Incursion on the Principle of Tax Exemption</u>. In general, people think of exemption from income taxation as the centerpiece of tax-exempt status. The fact is, however, that very few nonprofits make a profit and so very few would pay income tax, if taxable (assuming that their expenses were allowed as deductions against their income[2]). Exemption from real property

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2. How non-profits would compute their taxable income if they were taxable may be a topic of some complexity. (continued...)

taxes does result in savings for nonprofits, but only those that own real property. The extent to which exemption from sales taxes saves material amounts for nonprofits, relative to their budgets, of course depends on the nature of their operations.

In short, income, property and sales tax exemption may not be economically significant for many nonprofits. (I would expect that tax-deductibility of contributions is, in general, much more important than the foregoing exemptions.) What this means, as an economic matter, is that the presence or absence of hidden taxes may be the predominant element of being, or not being, tax-exempt for organizations not enjoying material benefits from income, real property and sales tax exemption. For me, at least, this changes my original perception of these taxes as peripheral, minimal cost aspects of the cosmic topic of TAX EXEMPTION to a position of much greater prominence.

2.(...continued)
Absent an objective to make a profit, expenses of a mission-related activity may well be deductible only against income derived directly from that activity and so I believe that it is not clear whether other income, such as investment income from endowment, could be offset by losses from the mission-related activity.

In this regard, we must be mindful of the slippery slope problem. Harriet believes that, in general, the hidden taxes apply to nonprofits only because of inadvertence. They are not, after all, taxes on nonprofits and so it appears that the draftspeople gave little, if any, thought to exempting nonprofits. Nonprofits themselves have been remarkably quiet about these taxes - at least until Peter began spreading the alarm "to every middlesex, village and farm for the [nonprofits] to be up and to arm." In large part the silence of the nonprofits has reflected ignorance of the taxes. But it has also reflected a sense that they were indeed minimal in the overall context of an operating budget.

The problem, of course, is that, once established, taxes go up. I believe that 3% was the top rate of the original income tax. Also, taxes of the hidden tax type can easily spread to other products and services. That kind of tax creep is very hard to arrest once the idea that such taxes are, in concept, permissible has gained acceptance.

The possibility of a new federal energy tax adds to my concern about having nonprofits staying on the slippery slope where they find themselves today. Such a tax could, in time, be a major source of federal revenues. If not protected from the start, nonprofits could find that this tax, more than state and local taxes, was the biggest exception, in dollar terms, to their tax-exempt status.

Since nonprofits, unlike businesses, are generally unable to pass along tax costs to their customers, the effect of hidden taxes is to reduce dollar-for-dollar the services nonprofits can perform. Accordingly, inherent in any debate on whether hidden taxes should be levied on nonprofits is the practical issue of reducing the ability of nonprofits to perform the functions providing the basis for their tax-exempt status. A garbage removal charge imposed on a private school -- however appropriate it may seem to some -- reduces the school's ability to provide scholarships to poor students. This trade-off should, of course, always be considered in analyzing incursions on the tax-exempt status of nonprofits.

2. <u>How Should Nonprofits Approach the Distinction Between Taxes to Support General Governmental Functions (e.g., for the Military) and Taxes to Pay for Services Rendered Directly to Nonprofits (e.g., for Water Charges or Garbage Pick-Up)</u>? Peter has taken the position that taxing nonprofits to pay for services rendered directly to them is not objectionable (or, perhaps, is not a matter as to which nonprofits, from a political perspective, would be wise to object). Harvey's November 9 conference was focused on this topic.

The distinction, like all distinctions, raises challenging questions as to classification, in this case of particular taxes. Water charges based on use are the easy case. Does it matter if garbage pick-up charges are tied to amounts of garbage picked up? Should it be assumed that such a charge is ordinarily levied in a way that reflects the extent of use of the service. What about charges relating to highway maintenance as applied to a nonprofit that uses highways to a significant degree in carrying out its mission (e.g., transporting the poor to appointments with doctors)? Should it matter whether the governmental service is only provided in certain areas (e.g., cities) so that obtaining it would simply be an operating expense in other areas (e.g., water or garbage removal)?

Dollars are, of course, fungible. Does the services-rendered-directly vs. support-of-general-governmental-functions distinction lead to undesirable results for nonprofits? Will this approach foster an attempt by local governments to put more taxes in the services-rendered category... such as fire and police protection? Does the theory of tax exemption based on defining the tax base to exclude nonprofits support the services-rendered exception? Doesn't the subsidy theory of exemption fail to explain a distinction between exemption from property taxes and a non-exemption from water charges?

Scholars find it easy to attack the services-rendered vs. governmental-functions distinction -- as evidenced by remarks at Harvey's Mini-Conference. But it does have a certain surface appeal. It seems to make sense -- when not examined too meticulously to find its inconsistencies and other flaws. From the standpoint of nonprofits facing an inherently political issue, this surface appeal is important. The distinction can function as a way for the nonprofits to make politically motivated peace offerings to the political subdivisions in which they exist. It has its risks -- particularly the risk of a very broad definition of service charges and a realignment of taxes to take advantage of such a definition -- but it also reflects a sense of fundamental fairness (particularly as to charges for services that are not rendered in all municipalities and that would, therefore, otherwise be incurred as operating expenses (rather than taxes) in such municipalities).

3. Should Public Charities be Treated Differently from Private Foundations or Should Some Other Distinction be Made (Such as Relieving the Burdens of Government)? Here, again, the question raises difficult issues as to making distinctions. We all would think of some organizations as being more worthy than others of governmental support (viewing the world from a tax expenditure perspective). Perhaps those in the strongest position are the organizations performing their functions pursuant to government contracts. They are, most directly, relieving the burdens of government. On the other hand, religious organizations are clearly not performing a governmental function in carrying out their

religious activities. Should they be accorded fewer or reduced tax-exemptions? If so, on what basis? What about private foundations created to study different topics, such as capitalism or communism? Should they be subject to "hidden taxes," or some of them, on the grounds that they are less worthy of tax-exemption?

Another approach might be to distinguish between functions performed. A church operating a non-sectarian day-care program for the poor might enjoy service charge exemption with respect to that program but not with respect to its religious activities. Such a distinction would, of course, be particularly difficult to administer in many cases.

A third approach -- the tax-by-tax approach -- is inherent in distinguishing between taxes to provide for specific services and taxes for general revenues. Many would view an exemption from a fire-police services tax as more appropriate than an exemption from a garbage pick-up charge -- in part because a tax on nonprofits for fire and police protection, even if viewed as properly being a service charge, would seem less appropriate to many than a tax to pay for garbage removal.

Ultimately, of course, it is the political process that will make the distinctions, but it is our job to help inform that debate. Perhaps the "right" answer is obvious. If hidden taxes are simply an end run around tax-exempt status under Section 501(c)(3) standards, then all Section (501)(c)(3) organizations should be treated alike. But that response may be overly simplistic for those who believe that it is appropriate to have tougher limits on deductibility of contributions to private foundations than to other Section 501(c)(3) organizations.

4. What Rules, If Any, Limit the Ability of Nonprofits to Fight Hidden Taxes? The only potentially applicable rules of which I am aware are those limiting efforts to influence legislation. They are contained in sections 501(c)(3), 501(h), 4911 and 4945 of the Internal Revenue Code and in references thereto in state laws. Section 4911 of the Code, which imposes an excise tax on "excess expenditures to influence legislation," provides that "influencing legislation" does not include, for its purposes, "appearances before, or communications to, any legislative body with respect to a possible decision of

such body which might affect the existence of the organization, its powers and duties, tax-exempt status or the deduction of contributions to the organization."

The term "tax-exempt status" is not defined. However, expenses to influence legislation include expenses to influence state legislation and so it seems obvious that the phrase "tax-exempt status" is not confined to the question of exempt status under Section 501(c)(3) of the Internal Revenue Code. It would, therefore, appear that the phrase should relate also to tax-exempt status under state law and, again, there seems to be no basis for limiting it to exemption from state income taxes, especially since a number of states, like New York, impose franchise taxes under which income is only one of the alternative bases for the tax.

That being said, are the "hidden taxes" with which we are here concerned somehow different because they are generally indirect taxes not imposed, by their terms, on nonprofits? Sages would differ on this question and strict constructionists could argue that such taxes do not relate to an organization's tax-exempt status. My view is that the intent of the exception is obviously to permit a nonprofit to combat incursions on its tax-exempt status. To read the rule as treating indirect incursions differently from frontal assaults seems inappropriate, as that reading would simply encourage legislators to try to skirt opposition by seeking to do indirectly acts that would face greater opposition if they sought to do them directly. I am not aware of such a foxy interpretation of section 4911 in its legislative history.

Similarly, I would reject an argument that has been made to Peter to the effect that, once a tax is enacted, an effort to have it reduced or repealed falls outside the exception relating to defense of an organization's tax-exempt status. The inherent silliness, to me at least, of such an interpretation is hammered home by the fact that the imposition of hidden taxes on nonprofits appears to have been largely inadvertent. A view that permits efforts to defeat such legislation when it is merely proposed but not efforts to reduce its impact or repeal it has a "gotcha" element that I have not previously encountered in dealing with questions of statutory interpretation. Accordingly, it seems to me that section 4911 should not be read as subjecting to its limitations lobbying expenditures relating to hidden taxes.

Unfortunately, any uncertainty regarding the application of the exception for defense of an organization's tax-exempt status can have a severe chilling effect on its willingness and ability to defend itself. In particular, such uncertainty may impair the ability of the organization to obtain grants from private foundations subject to the analogous restrictions imposed on them by section 4945 of the Code.

Organizations not making the election under section 501(h) (including those not eligible to do so) are outside the regime of section 4911 and so do not enjoy whatever protection is provided by the exception in it for protecting an organization's tax-exempt status. It remains to be seen whether such an exception would be read into the general prohibition on lobbying contained in section 501(c)(3). Given the vagueness of the "influencing legislation prohibition" in section 501(c)(3), it would seem natural to look to the more detailed text of sections 501(h) and 4911 for guidance -- though doing so is certainly subject to attack on the ground that it makes applicable to organizations provisions that are expressly inapplicable to them. (This argument seems stronger in the federal law context where it is clear whether sections 501(h) and 4911 apply.)

In the state law context, the wording and history of the state law may create ambiguity as to whether a state law analog, or reference, to section 501(c)(3) should be construed as encompassing the elaborations to section 501(c)(3) contained in sections 501(h) and 4911. (I have not made a survey of the extent to which state law tax-exemption provisions (including prohibitions on lobbying) specifically tie into section 501(h) of the Code.)

5. How Should Nonprofits Go About Opposing Hidden Taxes? This is largely a political question and so is not a natural focus for a legal issues-oriented group like the Nonprofit Forum. But it is probably the most important question inherent in the discovery of hidden taxes on nonprofits.

There appear to be four main political options: (1) do nothing; (2) seek to avoid new hidden taxes and/or increased rates for existing hidden taxes; (3) seek exemptions for some or all nonprofits from some of the hidden taxes; and (4) seek total exemption for nonprofits from all hidden taxes (with the possible exception of those taxes that provide funds for payment of services rendered directly to nonprofits, where the tax paid reflects the extent of the services rendered, e.g., a garbage pick-up tax based on tons of garbage picked up).

In my view, total exemption should be the ultimate goal (except for taxes relating directly to services rendered), but the best political path to that goal may vary from jurisdiction to jurisdiction and over time within a jurisdiction.

The first political goal should be a recognition that hidden taxes are a largely inadvertent violation of the principal of tax exemption. From that follows a recognition that no new hidden taxes should be imposed on nonprofits. The next logical step -- exemption for nonprofits from all hidden taxes (except those relating to services rendered directly to nonprofits) -- runs into political/fiscal constraints that are particularly acute at the present time. The consequence may well be a strategy that initially seeks exemption from only a few of the existing taxes. Implementing this strategy involves facing the fact that the more onerous the tax is on nonprofits -- the more it costs them today to pay it -- the bigger the budget hole created by exempting nonprofits from it. Recognition of this reality may well lead to use of the time-honored strategy for making awkward changes -- the phase-in/phase-out, i.e., a phase in of an exemption so as to phase out the tax with respect to nonprofits.

Finally, the question of the timing of the initiation of a political effort must be addressed. Peter has concluded, and I agree, that the right time is no later than now, given that the ideal time was when each of the hidden taxes was drafted. If the problem had been recognized then, it seems that it would have been a relatively simple matter (relative to succeeding with a legislative program today) to have crafted, and argued successfully for, exemptions for nonprofits.

CATEGORY: Utilities: Taxes on Utilities, Energy Sources, Telephone & Telegraph

1 Enhanced Emergency A Telephone System Surcharge NYC Admin. Code Art Sec 11-2321	Effective: Amended: Tax on: Telephone service Tax rate: $.35 per access line per mon th How measured:	Local tax authorized by New York County Law, Article 6, 300 ff. Service supplier retains 2% as a collection fee. "Lifeline" customers and New York City are exempt fron this tax.

Nonprofits pay 35 cents per phone line per month. Revenues pay for "911" emergency telephone equipment and system setup.

2 Franchise Tax on A Waterworks, Gas, Etc. (See Note) Corporation & Utilities Tax New York Tax Law Art 9 Sec 186	Effective: Amended:1990 Tax on: Gross earnings of utilities companies. Tax rate: .75% + temporary surcharge + MTA surcharge How measured: % of gross earnings	Franchise tax on waterworks companies, gas companies, electric or steam heating, lighting and power companies. (Con Ed and other utilities pay other franchise taxes a well, but since these are not "metered", they are not listed here).

Nonprofits pay this tax when they pay their Con Edison bills for gas, electricity, or steam. This tax, on gross earnings of utility companies, is passed on to the consumer. It is a "metered" tax; the more electricity we use, the more taxes we pay.

CATEGORY: Utilities: Taxes on Utilities, Energy Sources, Telephone & Telegraph

3 Gross Receipts Tax **A on Utility Services** Corporation & Utilities Tax New York Tax Law Art 9 Sec 186-a	Effective: Amended:1991 Tax on: Utilities, including telephone service Tax rate: 3.5% + temporary surcharge + MTA surcharge How measured: % of gross income	This applies to "first class" utilities - those regulated by the Public Service Commission. This includes Con Edison, Brooklyn Union Gas, Lilco, and New York Telephone. 186-a.6 says this tax may not be passed on to consumers. History: Was 3% until 1/1/91. Applies to all intrastate phone calls & allocated portion of interstate calls.

Nonprofits also pay this tax when they pay their Con Edison bills and their telephone bills. This is another "metered" tax. These multiple taxes on utilities are among the most burdensome taxes for nonprofits. See the category, "Surcharges", below.

4 Gross Receipts Tax **A on Utility Services** **(2nd Class)** Corporation & Utilities Tax New York Tax Law Art 9 Sec 186-a	Effective: Amended:1991 Tax on: Utilities, including telephone service Tax rate: 3% + temporary surcharge + MTA surcharge How measured: % of gross operating income	"Second class utilities" are those only incidentally involved in provision of utility services - e.g. landlords which resell telephone, gas, electric, steam or water to tenants at a metered rate.

Nonprofits which pay their utilities or telephone bills to their landlords or other intermediaries pay 3% instead of 3.5%, in addition to the other taxes.

CATEGORY: Utilities: Taxes on Utilities, Energy Sources, Telephone & Telegraph

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5 NYC Utilities Tax **A**	Effective:1933 Amended:1965 Tax on: Utilities companies	
NYC Admin. Code Art Sec 11-1101 ff	Tax rate: 2.35% How measured: % of gross income	Sec. 1230 says that transactions "by and with" 501(c)(3) type nonprofits are exempt from New York City taxes. But in practice, Con Ed bills on nonprofits include New York City utility taxes, and there is some case law that supports this.

Nonprofits pay this, yet another tax, with their Con Edison and telephone bills.

6 Petroleum Business **A Tax (Heating Oil)** (Formerly Gross Receipts Tax) New York Tax Law Art 13-A Sec 301 ff.	Effective:1984 Amended:1992 Tax on: A) #2 oil B) #4-6 oil Tax rate: A) 14.03 cents/gallon B) 12.42 cents/gallon How measured: Per gallon sold or used	The rates listed include the temporary surcharge, and have been in effect since 1/1/92. Sales to government (fed, state, local) entities are exempt from tax. This law also taxes businesses importing petroleum into New York State for their own consumption. Nonprofit organizations which are exempt under the sales tax and which import petroleum for their own use are exempt from tax as petroleum businesses.

Nonprofit groups who pay for heat must pay 12.42-14.03 cents per gallon for heating oil for commercial (not residential) space. This costs the nonprofit community millions of dollars per year. Sellers of oil pay the tax, and pass it through to conumers

CATEGORY: Utilities: Taxes on Utilities, Energy Sources, Telephone & Telegraph

7 A Transportation and Transmission Companies Corporations & Utilities Tax New York Tax Law Art 9 Sec 184	Effective: Amended:1990 Tax on: Gross earnings Tax rate: .75% + temporary surcharge + MTA surcharge How measured: % of gross earnings within NY State.	This is a tax on telephone, telegraph, and cable TV companies. Tax on gross earnings had been .3% since 1975. Increased to .75% in May, 1990. Taxes all intrastate telephone service and a prorated portion of interstate phone service, based on mileage. Also taxes telegraph companies and cable TV. The same 184 tax on transportation companies is listed separately under "Vehicles".

When nonprofits pay bills for telephone, telegraph, or cable TV service, they also are paying this hidden tax, on top of the 3.5% tax under 186-a (see above), New York City Utility taxes (see above), and multiple surcharges (see below).

8 C Franchise Tax on Importing Natural Gas Corporation & Utilities Tax New York Tax Law Art 9 Sec 189	Effective:1991 Amended: Tax on: Out-of-state purchases of natural gas Tax rate: 4.25% + temporary surcharge + MTA surcharge How measured: Value of natural gas purchased	Franchise tax on businesses importing natural gas for their own consumption.

CATEGORY: Surcharges on "Business" Taxes

9 MTA Surcharge **A** New York Tax Law Art 9A&13 Sec Several	Effective:1982 Amended:1990 Tax on: Surcharge on business taxes in 12-county NYC area Tax rate: 17% of business taxes How measured: By taxes otherwise due, after deduction of credits	Surcharge on business taxes otherwise due, after deduction of credits, allocable to the 12-county Metropolitan Commuter Transportation district. This includes NY City, Long Island, and the mid-to-lower Hudson River Valley. 1982 through 1993, so The MTA surcharge applies to "business" taxes on transportation & transmission, utility and insurance corporations. We have also noted the MTA surcharge with each business tax listing to which it applies.

The MTA 17% surcharge is another tax which nonprofits in the New York City area must pay with their Con Edison, New York Telephone, and long distance telephone bills.

10 Temporary Surcharge **A (Transp, transmsn, utilities)** New York Tax Law Art many Sec many	Effective: Amended:1992 Tax on: Business taxes Tax rate: 15% through tax yrs ending 6/30/93, 10% after How measured: % of underlying tax, varies from year to year	The legislature keeps extending the 15% rate for one more year - this was intended to be a temporary surcharge. It is enacted separately with each underlying tax. For Article 9-A taxes, it is in 188.

The temporary surcharge also increases the taxes paid by nonprofits on utility, telephone, and transportation; heat, motor fuel under the Petroleum Business Tax; and insurance premiums.

CATEGORY: Vehicles: Laws Related to Motor Fuel, Motor Vehicles, Boats, Transportation Companies

11 Motor Fuel **A Sales/Use Tax** New York Tax Law Art 28 Sec 1105	Effective: Amended:1989 Tax on: Retail sales of motor fuel & diesel motor fuel Tax rate: 8.25% How measured: % of retail sales, pd by purchaser	501(c)(3)-type organizations must pay sales taxes on motor fuel up front, but they can get full refunds afterwards. Probably many nonprofits are unaware of this refund or don't claim refunds because the required record-keeping is too burdensome. 501(c)(3)-type nonprofits can buy diesel fuel for their own heating use free of up-front sales taxes. Hospitals and governments agencies can buy motor fuel and diesel motor fuel without tax up front - they don't have to wait for refunds.

There are three cumulative taxes on motor fuel: sales, excise, and business taxes. This is the sales tax. Nonprofits prepay sales tax but can get a refund, most nonprofits must pay the excise taxes, and all nonprofits must pay the Petroleum Bus. Tax.

12 Motor Fuel Taxes: **A Non-Diesel Fuel** (Excise Tax on Motor Fuel) New York Tax Law Art 12-A Sec 289-c	Effective:1929 Amended:1991 Tax on: Non-diesel motor fuel for highway purposes Tax rate: 8 cents per gallon How measured: Per gallon imported or produced	Law requires pass-through to consumers. Fed, state, & local governments exempt. Complex rules allocate percentages to various highway revenue funds. Private bus systems or taxicabs may get full or partial refunds. Exemptions for sales to: federal government & State of NY & its municipalities, volunteer fire companies, voluntary ambulance services, volunteer rescue squads. Nonpublic school operator entitled to refund if used exclusively in educational

This is the second tax on motor fuel, the "excise" tax. No refund is given to nonprofits. Nonprofits must pay this tax, for example, on fuel for vans which tranport the elderly, homeles, and disabled, thrift shop vans, blood drive vehicles.

CATEGORY: Vehicles: Laws Related to Motor Fuel, Motor Vehicles, Boats, Transportation Companies

13 Motor Fuel Taxes: A Diesel Fuel (Excise Tax on Diesel Fuel) New York Tax Law Art 12-A Sec 289-C	Effective:1929 Amended:1991 Tax on: Diesel motor fuel for highway purposes Tax rate: 10 cents per gallon How measured: Per gallon sold or used	Law permits pass-through to consumers. Fed, state, & local governments exempt. Complex rules allocate percentages to various highway revenue funds. Private bus system or taxicabs may get full or partial refund Exemptions for sales to: federal government & State of NY & its municipalities, volunteer fire companies, voluntary ambulance services, volunteer rescue squads. Nonpublic school operator entitled to refund if used exclusively in educational

This "excise" tax on diesel motor fuel is similar to the tax on non-diesel motor fuel, except the tax on diesel is 10 cents per gallon, not 8 cents per gallon.

14 Petroleum Business A Tax (Motor Fuel) Formerly Gross Receipts Tax New York Tax Law Art 13-A Sec 301 ff.	Effective:1983 Amended:1991 Tax on: Petroleum products Tax rate: 14.84 cents per gallon How measured: Per gallon sold or used	The Petroleum Business Tax is listed in this report both under "Utilities" for taxes on heating oil and here, under "Vehicles" for taxes on motor fuel. This law also taxes businesses importing petroleum into New York State for their own consumption. Nonprofit organizations which are exempt under the sales tax and which import petroleum for their own use are exempt from tax as petroleum businesses.

This is the third major tax on motor fuel - all nonprofit users have to pay 14.84 cents per gallon for gasoline.

CATEGORY: Vehicles: Laws Related to Motor Fuel, Motor Vehicles, Boats, Transportation Companies

15 Lubricating Oil Tax **B** New York Tax Law Art 24 Sec 803	Effective:1990 Amended: Tax on: Retail sale or use of lubricating oil Tax rate: 10 cents per quart How measured: Per quart	Paid by person making the sale. Tax must be included in gross receipts for purposes of calculating Article 28 sales tax. Exempts NY State & related agencies, U.S., U.N., some international orgs., diplomats, Indians on reservations. Non-profits are not exempt. This is an interesting contrast with the Automobile Rental Tax, passed about the same time.
16 Motor Vehicle Fees **B** Vehicle & Traffic Law Vehicle& Traffic Law Art Sec	Effective: Amended:1991 Tax on: Motor vehicle registration & driver licenses Tax rate: Operator/chauffeur's license : $4-8, regis, $48-55 How measured: Flat fees per year or two years.	The following are exempt: ambulances, governmental vehicles, consular vehicles, and disabled veterans' vehicles.

CATEGORY: Vehicles: Laws Related to Motor Fuel, Motor Vehicles, Boats, Transportation Companies

17 B Transportation and Transmission Companies Corporations & Utilities Tax New York Tax Law Art 9 Sec 184	Effective:1975 Amended:1990 Tax on: Gross earnings Tax rate: .75% + current surcharge + MTA surcharge How measured: % of gross earnings within New York State	Tax on gross earnings had been .3% since 1975. Increased to .75%in May, 1990. Includes companies engaged in any type of rail, road, or water transportation. Includes baggage & express companies. Currently excludes taxicab and buses. Telephone and telegraph companies also covered by 184 - see duplicate entry under

Nonprofits pay this tax, for example, when they buy railroad tickets, pay moving companies, ship food and medical supplies overseas, or send packages by Federal Express or UPS.

18 C Aviation Fuel Business Tax New York Tax Law Art Sec	Effective:1990 Amended: Tax on: Tax rate: How measured:	Part of Petroleum Business Tax? or Motor Fuel Tax? or Sales/Use Tax?

CATEGORY: Vehicles: Laws Related to Motor Fuel, Motor Vehicles, Boats, Transportation Companies

19 Fuel Use Tax **C** (Additional Highway Use Tax) New York Tax Law Art 21 Sec 504	Effective:1968 Amended: Tax on: Fuel bought out of NY fortruck, tractor, & busses Tax rate: How measured:	Three-part tax combines the motor fuel and sales and use taxes, and the tax on petroleum and other energy businesses, for fuel bought out-of-state. Carriers in loca transit are exempt. Vehicles 18,000 lbs or less are exempt. Same exemptions as Truck Mileage tax - governments and volunteer fire departments are exempt.

This tax only applies to vehicles over 18,000 pounds. We are not aware of nonprofit vehicles which are big enough to be subject to this tax.

20 NYC Tax on Motor **C Fuels Containing Lead** NYC Admin. Code Sec. 11-2033 NYC Admin. Code Art Sec 11-2033	Effective:1971 Amended: Tax on: Motor fuel which contains lead Tax rate: 1 cent per gallon How measured: per gallon sold or held for sale within NYC	This is a rare example of a NYC tax which does not exempt non-profits. It has little impact now, since leaded fuel is rarely used, if ever. City officials report that they collect almost nothing on this.

CATEGORY: Vehicles: Laws Related to Motor Fuel, Motor Vehicles, Boats, Transportation Companies

21 Petroleum Testing **C Fee** New York Tax Law Art 12-A Sec	Effective:1990 Amended: Tax on: Motor fuels imported, sold, or manufactured in NY Tax rate: $.0005 cents per gallon How measured: Per gallon	Distributor may neither pass this on to the consumer nor obtain a refund for non-highway use. May apply even when motor fuel tax does not apply. Money goes to a special fund for petroleum testing.
22 Truck Mileage Tax **C** (Highway Use Tax) New York Tax Law Art 21 Sec 504	Effective:1952 Amended:1990 Tax on: Mileage of motor vehicles over 18,000 lbs. Tax rate: Rates increase according to vehicle weight How measured: Mileage	1990 amendments a) applied this tax to operation on NYS Thruway and b) added supplemental tax that effectively doubles the tax rate.

CATEGORY: Real Estate: Laws Which Impose Taxes on Real Estate Transactions of Nonprofits

23 Mortgage Recording A Tax New York Tax Law Art 11 Sec 252	Effective:1906 Amended:1989 Tax on: Mortgages of real property Tax rate: Basic: $.50/100 plus two add itions ($.25/100 each) How measured: per $100 property	State and federal agencies exempt; nonprofit housing sponsors, hospitals, nursing home companies, and mortgages by the Dormitory Authority are exempt. Qualified nonprofits exempt from special additional tax.

Most nonprofits which obtain mortgages must pay basic tax and first additional tax - on a $1 million mortgage, this would be about $7500.

24 NYC Mortgage A Recording Tax New York Tax Law Art 11 Sec 253-a	Effective: Amended:1989 Tax on: Recording mortgages Tax rate: $1.00/$100 - $1.75/$100, dep ending on value How measured: Per $100 of property mortgaged	Similar to state Mortgage Recording Tax - the taxpayer has to pay both of these at once to the State.

Nonprofit groups that take out mortgages have to pay this - it could be up to $17,500 on a $1 million mortgage (in addition to state tax).

CATEGORY: Real Estate: Laws Which Impose Taxes on Real Estate Transactions of Nonprofits

25 Real Estate **A Transfer Tax** **(State)** New York Tax Law Art 31 Sec	Effective:1968 Amended: Tax on: Transfer of real property Tax rate: $2.00 for each $500 or addit ional fraction How measured: Value of transferred real property	Paid by transferror. Also applies to transfers of economic interest in real property, such as coop shares. Additional tax, known as "mansion tax", paid by buyer is 1% of consideration for residences selling for $1 million or more.

Nonprofits which sell real property (or buy from the government) must pay this tax, which would be $4,000 on the transfer of a $1 million building.

26 NYC Real Property **B Tax (on nonprofit renters)** Real Property Tax Lw Art Sec	Effective: Amended: Tax on: Real property Tax rate: rates set each yr, within co nstitutional limits. How measured: % of assessed value	

Although nonprofit owners of real property are exempt from tax, nonprofit renters must pay their share of their building's property tax. This especially impacts smaller nonprofits, and larger ones that need to expand to rented space.

CATEGORY: Other: Miscellaneous Laws Which Impose Taxes on Nonprofit Organizations

27 Insurance A Corporations Tax Additional Franchise Tax New York Tax Law Art 33 Sec 1512	Effective:1974 Amended:1992 Tax on: Value of insurance premiums Tax rate: Varies w type of ins. .8% to 1.3% + surch. + MTA. How measured: % of premiums. Not to exceed 2.6% of premiums.	The additional tax is .8% of life insurance premiums, 1% of accident & health ins premiums, 1.3% of other insurance (includes property & casualty)+.08% of allocated subsidiary capital. Also 15% temporary surcharge & 17% MTA surch (see separate This is in addition to basic franchise taxes, not "metered". Government insurers exempt. Nonprofit insurers which would have been exempt before 1940 are exempt as are insurance policies by non-profit insurers on out-of-state risks.

Nonprofits must pay tax on liability, property, health, and life insurance premiums from companies authorized in NY State - with few exceptions for out-of-state risks of nonprofits.

28 Insurance: Direct A Writings Tax New York Tax Law Art 33-A Sec 1550	Effective:1990 Amended: Tax on: Premiums paid for insurance from out-of-state cos. Tax rate: 3.6% How measured: % of premiums paid.	Tax paid by purchasers of insurance from companies not authorized to do business in New York. Governments are exempt. Purpose of tax is to "ensure fair taxation of New York insurers."

Nonprofits must pay 3.6% tax on insurance premiums from out-of-state companies.

ATEGORY: Other: Miscellaneous Laws Which Impose Taxes on Nonprofit Organizations

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29 Paging Device Fee
A

New York Tax Law
Art 28??
Sec

Effective:1992
Amended:
Tax on:
Paging devices

Tax rate:
$1 on each paging device per month
How measured:
Per paging device per month

State of NY and its instrumentalities, U.S., U.N. and certain volunteer fire and ambulance companies exempt. This probably has a big impact on hospitals. Check the statute to verify whether non-profits are exempt.

Some nonprofits, such as hospitals, use many paging devices - for an institution with 100 beepers, this would cost $1200 per year.

30 Alcoholic Beverage
B Tax

New York Tax Law
Art 18
Sec 424.5

Effective:1933
Amended:1990
Tax on:
Alcoholic beverages, paid by distributors.
Tax rate:
Varies from 1 cent-$1.70 per liter
How measured:
Beer per gallon, others per liter

Tax is included in cost of alcoholic beverages used for fund-raising or public relations events. (Wine in sealed containers sold to religious organizations for sacramental purposes is exempt).

CATEGORY: Other: Miscellaneous Laws Which Impose Taxes on Nonprofit Organizations

31 NYC Insurance C Companies Fire Dept. Tax/Fire Patrol Ass NYC Admin. Code Art Sec 11-903	Effective: Amended:1968 Tax on: A) Fire ins. prems. B) fire/sprinkler leakage prem Tax rate: A) 2% B) rate not to exceed 2% How measured: % of premiums - see note	A) Fire Department Tax only applies to fire insurance companies, associations, and individuals from outside NY State. Law was authorized by Ch 383, Laws of 1968 (Unconsolidated State Laws). Does not exempt premiums paid by nonprofits.

Nonprofits must pay up to 4% of fire insurance premiums.

Hidden Taxes on Nonprofits in New York City

Case Studies – Total Annual Impact of Hidden Taxes

The many different hidden taxes add up to a great burden on nonprofit groups in New ork City. The following chart gives the results of our in-depth study of several organizations in New York city. In the past year, one Catholic program providing homeless shelters and feeding programs paid about $6,000 in hidden taxes; a larger Catholic program serving the homeless, former drug abusers, youth, and the elderly paid about $33,500. A Jewish elementary school serving about 340 children paid about $18,500 in hidden taxes. And a large nursing home complex paid about $328,000.

It appears that the impact of hidden taxes is proportionately greater on smaller organizations than on larger ones.

	Nursing Home Complex	Parochial School	Multi-Service Program	Homeless Shelters
Taxes On:				
Utilities	$138,440	$4,970	$6,195	$2,078
Heating Oil	$123,428	$4,044	$0	$1,408
Telephone	$38,258	$1,596	$2,005	$900
Vehicles	$4,388	$0	$402	$1,009
Real Estate*	$0	$7,600	$23,750	$0
Insurance/Misc.	$23,358	$234	$1,190	$658
*Non-recurring tax	$0	$7,600	$23,750	$0
Recurring Taxes	$327,872	$10,843	$9,793	$6,053
TOTAL	$327,872	$18,443	$33,543	$6,053
Total Annual Budget	$110,000,000	$3,200,000	$2,500,000	$800,000
Hidden taxes as % of budget				
Recurring hidden tax	0.30%	0.34%	0.39%	0.76%
Total hidden tax	0.30%	0.58%	1.34%	0.76%

Nonprofit Coordinating Committee, Hidden Tax Study, by Harriet Bograd, 5/19/93

ew York Hidden Tax Rates & Examples

Heating Oil – Petroleum Business Tax

Heating Oil Tax Rates

#2 Heating Oil — $0.1403 per gallon

When a group pays $73 for 100 gallons of #2 heating oil, $58.97 goes to the oil company and $14.03 to taxes. This is equivalent to a 23.8% sales tax.

#4 or #6 Heating Oil — $0.1242 per gallon

When a group pays $64 for 100 gallons of #4 heating oil, $12.42 goes to the oil company and $12.42 goes to taxes. This is equivalent to a 19.4% sales tax.

Heating Oil Tax Examples: Survey of 90 Nonprofit Groups

(based on responses of 90 nonprofit organizations in NPCC survey)

Nonprofit Groups	Annual Taxes
26	Under $1,000
40	$1,000–$5,000
8	$5,000–$10,000
11	$10,000–$100,000
5	$100,000–$1.55 million
90	**Total $2.7 million**

Heating Oil Tax Examples: Typical Groups

Group	Gallons/Year	Annual Tax
Nursery	3,000	$421
School	20,323	$2,524
Museum	20,463	$2,871
Nursing Home	993,752	$123,428
Drug Treatment Org.	2,231,575	$227,162

lotor Fuel

Motor Fuel Tax Rates

Each time you fill up your car or van with gas, you pay three taxes.

	Tax Rate	Cost
		$29.80
Sample purchase -- 20 gal @$1.49	8.25%	$2.46
Sales or Use Tax*	$0.08	$1.60
Motor Fuel ("Excise") Tax (per gallon)**	$0.1484	$2.97
Petroleum Bus. Tax (per gallon)***		$7.03
Total taxes		$4.57
Nonrefundable taxes		

*Nonprofits (except hospitals) must pre-pay this sales/use tax at the pump, then apply for refund.

**Volunteer fire & ambulance companies & school busses are exempt from the excise taxes; all other nonprofits pay this. For diesel fuel, excise tax is $0.10 per gallon, all other rules are the same.

***All nonprofits must pay the Petroleum Business Tax -- even volunteer ambulances and firetrucks.

Motor Fuel Tax Examples

	5	20	45	62
1. Number of Vehicles	$2,000	$8,000	$21,000	$25,600
2. Number of gallons/yr	$1.40	$1.25	$1.18	$1.18
3. Average Cost Per Gallon	$2,800	$10,000	$24,780	$30,208
4. Annual Expense, Motor Fuel	$231	$825	$2,044	$2,492
5. Sales/Use Tax (8.25% of Expense)	$160	$640	$1,680	$2,048
6. Excise Tax ($0.08/gal)**	$497	$1,987	$5,216	$6,359
7. Petroleum Bus. Tax ($0.2484/gal)	$888	$3,452	$8,941	$10,899
Total Tax (lines 5+6+7)	$657	$2,627	$6,896	$8,407
Nonrefundable Taxes (lines 6+7)				

*Many groups do not have a system for collecting the refunds on gasoline sales tax.

**The numbers above assume that you are using regular gasoline. For diesel fuel, the excise tax is $0.10 per gallon instead of $0.08.

Telephone and Utilities (Electricity, Natural Gas, or Steam Heat)

Telephone & Utilities Tax Rates

For every $100 on your bill from Con Edison or New York Telephone*, for example, about $8.00 goes to "hidden taxes" – taxes on the gross receipts of utilities companies, passed through to consumers.

Name of Law	Rate
Gross Earnings Tax	$0.75
Gross Receipts Tax	$3.50
MTA Surcharge	$0.72
"Temporary Surcharge"	$0.64
NYC Utilites Tax	$2.35
Total	$7.96

Hidden taxes on long distance phone service are approximately 5%.

Utilities & phone companies are allowed a "gross-up" because their tax is based on gross receipts, which includes amounts collected in tax. In effect, the tax is equivalent to an 8.65% sales tax ($7.96/$92.04 = 8.65%).

The above rates apply to publicly held utilities and phone companies under the Public Service Commission.

Taxes on "second class" utilities would add up to $7.46.

Utilities (Electricity, Natural Gas, or Steam Heat) Tax Examples

Group	Utilities bill/yr	Annual Tax
Elderly Services & Homeless Shelter	$10,000	$880
Synagogue	$36,300	$3,194
Religious School	$62,434	$4,970
Multi-Service Program	$77,830	$6,195
Nursing Home Comple	$1,739,191	$139,440