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ENOUGH ROOM
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Honorable Members of the
Cambridge City Council
City of Cambridge
795 Mass Avenue
Cambridge MA 02139

July 10, 2001

Re: Tax Bills, H.3636 and H.4262

Attached is a copy of a letter to the Taxation Committee of the Massachusetts General Court concerning the bill that would revoke the tax exemption for some properties transferred to non profit corporations.

It addresses some of the arguments against the bill raised at the State House. As you can see their expressed concerns have no basis in law.

Moreover one provision included fearing challenges are unnecessary according to current US Supreme Court law.

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OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Sen. Marian Walsh, Chairman
Rep. Paul C. Casey, Chairman
and Members of the
Committee on Taxation
Commonwealth of Massachusetts
The State House Room 236
Boston MA 02133

July 8, 2001

Re. H.4262; H.3636

The reasons given by Members and staff of the Committee on Taxation for not voting favorably on H.3636 are not supported by law. Some fears expressed by Members of the General Court on this issue were likewise unfounded.

One argument against taxing non profits with assets more than $500 million was that it was unconstitutional. Yet there is no provision which would make H.3636 offensive either to the Constitution of Massachusetts or the Constitution of the United States.

One staff member suggested that taxing property which was purchased before the law was effective was a due process violation. Upon a brief search I found some US Supreme Court discussion on the subject. This is not a thorough review of current case law on the subject. But it does indicate that revoking the tax exemption as stated in H.3636 and H.4262 is not prohibited by current Supreme Court law.

The research also makes the final paragraph of H.4262 unnecessary. An unstated problem with Harvard, Watertown and Cambridge is that the university is at the beginning stage of a new large expansion program of purchasing land in the area. It will only make the problem of losing local tax income worse. It will not get better as can be seen from Harvard's public statements.

In *Harper v Virginia Dept. of Taxation 509 US 89 (1993)* the Court said, "A state retains flexibility in responding to the determination that it has imposed an impermissible discriminatory tax."

In *Eastern Enterprises v Apfel Commissioner of Social Services et al* (97-42) 110 F3d 150, rev'd and rem, the Court said, "Due process protection for property must be understood to incorporate the settled tradition against retroactive laws of great severity." With respect to non profits which have assets greater than $500 million the impact would not be severe. The interest on their investments would overcome any tax imposed by a retroactive law.

The idea that some taking is allowed even if unconstitutional is suggested in *Andrus v Allard 444 US 51*, 65 where the notion of government interest is suggested as a standard.

A compelling state interest is sufficient to overcome individual rights. In this case destroying a city or town's economy is such an interest. Compare to the First Amendment protection of free speech which is restricted in two areas; defamation and danger to citizens. Civil commitment laws in all states and US law,

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violate the 14th Amendment prohibition against taking of liberty without due process of law. This remains acceptable even without a reasonable basis or a compelling state interest.

Kaiser Aetna v US 444 US 164, 175 set out a three prong test for when a discriminatory tax may be imposed:
(1) the economic impact of regulation
(2) interference with reasonable investment backed expectation
(3) character of government regulation
These arguments apply to the final paragraph of H.4262 as well as H.3636.

Hughes v Oklahoma 441 US 322, 326 n.2 discusses the idea of not taxing being a threat to the city economy. A long list of cases discuss the idea of retroactive tax relief.

Harvard's Dean of Faculty, Jeremy Knowles stated in the *Harvard Crimson* that Harvard has plans to expand. Harvard Law School announced plans to reduce the size of their classes, without reducing the amount of students. This would require more space for increased faculty.

Harvard's PR staff sent letters to *landowners* in Watertown. (*Harvard Crimson* July 6, 2001). But renters and customers of business will also be affected by increased taxes. Landlords will simply pass along the increased tax burden to their tenants.

On July 6, 2001 *The New York Times* reported (Andrew Jacobs, "Bloomfield [New Jersey]: Church is sued for taxes," page A15) "Using a new state law that allows churches to be taxed for profit-making ventures, township attorneys have filed suit against a Roman Catholic church in an effort to share in revenues generated by six cellular towers that are mounted inside its steeple. Bloomfield tax officials are seeking to claim part of the money that St. Thomas the Apostle Church earns from the towers, all of them owned by VoiceStream Wireless."

The concern about taxing Church property may be addressed by this effort in New Jersey. It may be nuclear as suggested by Chairman Walsh, but it may also be constitutionally feasible. As queried in *The New York Times Magazine* on July 1, 2001 "What is Harvard doing with $19 billion anyway?" The same question may be asked of wealthy churches.

The Unitarian Universalist Association suggested in a 1967 Business Resolution: That tax exemption for church property may amount to a government subsidy to religious organizations which is incompatible with the First Amendment of the United States Constitution prohibiting establishment of religion." See their web site at <http://www.uua.org>

On the issue of bills filed "by request." It is a right of citizens of the Commonwealth. But if the General Court refuses to treat these bills with equal consideration as bills filed by Members of the General Court, the right to petition is diluted. In US Supreme Court case law it becomes an "exercise in futility." This suggests that the legislature itself violates rights of citizens uniformly and unlawfully.

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Reg Beccaw

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Communication #8

A communication was received from Roy Bercaw, Editor, Enough Room, regarding Tax Bills, H. 4262 and H. 3636.

In City Council July 30, 2001

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