DATE: February 3, 2021
TO: Planning & Development Committee
FROM: Ben Shaiken, Manager of Advocacy & Public Policy, The Alliance
RE: H.B. 6103 An Act Concerning Property Tax Exemptions for Property Used for Charitable Purposes

Good afternoon Senator Cassano, Representative McCarthy Vahey, Senator Hwang, Representative Zullo and distinguished members of the Planning & Development Committee:

I am Ben Shaiken, Manager of Advocacy & Public Policy at the Connecticut Community Nonprofit Alliance (The Alliance). The Alliance is the statewide advocacy organization representing nonprofits. Community nonprofits provide essential services to over half a million individuals and families in Connecticut every year, and employ 14% of Connecticut's workforce, improving the quality of life in communities across the State.

The Alliance urges you to support H.B. 6103 An Act Concerning Property Tax Exemptions for Property Used for Charitable Purposes.

Nonprofits are explicitly exempt from federal, state and local taxes for good reason: they provide essential services to residents, so government doesn't have to. Nonprofits feed the hungry, house the homeless, support people with intellectual/developmental disabilities, treat people with mental health and substance abuse needs, provide arts and culture that make our communities vibrant, and much more.

Nonprofits exist for public benefit and must operate for specific charitable, educational, or religious purposes. The mission of nonprofits is to improve the health and well-being of our local communities, enhance the quality of life and serve the public good. In exchange, nonprofits are exempt from property, income and sales tax, and have access to tax-deductible contributions from individuals and corporations. This social compact dates back more than 100 years.

Nonprofits are being wrongfully assessed, impacting programs.

Charitable nonprofits are exempted from local property tax by Section 12-81 of the Connecticut General Statutes. Subsection (7)(a), which exempts the property owned by "a corporation organized exclusively for… charitable purposes." But **despite this statute, some tax assessors are taxing nonprofits for property that is exempt.**

In a survey from May 2018, The Alliance found that at least 40 assessors had recently issued tax bills for property used for charitable purposes. Two-thirds of nonprofits who responded said their **property is being assessed for taxes after a history of being exempt, without undergoing a change of use.** And the problem has only gotten worse since 2018.

Critical funding is diverted away from direct service provision to people in need when nonprofits, burdened by years of state budget cuts, are forced to choose between costly litigation and paying taxes on property that is exempt by state law.

One nonprofit stated, *"Funding for the program is already below program expenses and is subsidized by fundraising. A tax payment will further decrease our funding and make sustaining the current program model difficult going forward*."

People who depend on community services would have nowhere to turn if funding is redirected away from direct care to taxes. These cuts would come at a time when the demand for community services is increasing. Nonprofits told us:

- *"Having to pay taxes could literally force the close-down of our residential programs. There is no other source of revenue for taxes."*

- *"We cannot afford to pay property tax and continue individualized services to the DDS population."*

- *"We had paid almost $50,000 in taxes. $50,000 is the equivalent of 25,000 meals or one case manager."*

- *"Of course it will hurt. We have no dollars for anything but direct service. This will lead to more homeless men not getting housed - which will be a domino effect."*

What is exempt from property taxes?

As previously mentioned, charitable nonprofits are exempted from local property tax by C.G.S. § 12-81 of the Connecticut General Statutes. Subsection (7)(a), which exempts the property owned by "a corporation organized exclusively for… charitable purposes." The Connecticut Supreme Court has laid out a simple test for assessors to determine what does and does not constitute "charitable":

1. **The corporation must be organized exclusively for charitable purposes**. To make this determination, assessors must examine the organization's foundational documents and then consider whether the purpose described in those documents is truly charitable. The Court has held that, "Charity embraces anything that tends to promote the well-doing and the well-being of social man." (*St. Joseph's Living Center, Inc.,* 290 Conn. at 715-16)
2. **The organization must not be self-supporting**. This means the organization must rely on or expect private philanthropic support and cannot rely exclusively on fees for its services.
3. **The organization must relieve a state burden**. This means the organization must give "something to the state in return for the privilege [of being tax exempt], either by relieving it of a financial burden or by pursuing a publicly mandated moral obligation." (*Id.* at 730)

Attached is a legal memo that goes into more detail about the relevant case law. This test is important because it means that in Connecticut, not all nonprofit corporations are exempt from property taxes. In order **for the exemption to be granted, nonprofits must prove they meet the requirements of this test,**

which are more restrictive than federal Internal Revenue Service and state Department of Consumer Protection requirements for receiving the corporate designation as a "nonprofit."

Our members have reported receiving tax bills for day and employment programs for people with intellectual/developmental disabilities, outpatient behavioral health treatment facilities, arts and culture organizations, and more, all of which would clearly meet the requirements of this test.

Residential services are being targeted.

Many nonprofits that provide residential supports and services to Connecticut's most vulnerable residents are being targeted to receive tax bills.

According to C.G.S. § 12-81(7)(B), subsidized low-income housing is not exempt from property taxes. This language was added to the law in 1975 and was meant to apply to property known then as "project housing," now referred to as "low-income housing developments." In 2003, because some assessors were using this statute to tax services provided by nonprofits, the **legislature passed a law to specifically exempt different types residential services provided by nonprofits from property taxes.** The statute currently reads:

> "(B) On and after July 1, 1967, housing subsidized, in whole or in part, by federal, state or local government and housing for persons or families of low and moderate income shall not constitute a charitable purpose under [subsection A]**. As used in this subdivision, "housing" shall not include** real property used for ***temporary housing*** belonging to, or held in trust for, any corporation organized exclusively for charitable purposes and exempt from taxation for federal income tax purposes, **the primary use of which property is *one or more* of the following: (i) An orphanage; (ii) a drug or alcohol treatment or rehabilitation facility; (iii) housing for persons who are homeless, persons with a mental health disorder, persons with intellectual or physical disability or victims of domestic violence; (iv) housing for ex-offenders or for individuals participating in a program sponsored by the state Department of Correction or Judicial Branch; *and* (v) short-term housing operated by a charitable organization where the average length of stay is less than six months**. The operation of such housing, including the receipt of any rental payments, by such charitable organization shall be deemed to be an exclusively charitable purpose;"

The point of contention regards the words "temporary housing" (which are undefined in statute) and the word "and" between subdivisions (iv) and (v) in the list of types of nonprofit-operated residential services exempt from taxation (in ***green*** above). Some assessors have contented in public hearings, exemption denials and in ensuing court cases that the current law means that as soon as the average length of stay in one of these settings is more than six months (or some other length of time they alone are entitled to define as "temporary" or "short-term") the property is no longer tax-exempt. In other words, they contend the word "and" before item (v) governs items (i)-(iv), meaning the list mandates that exempt property must encompass all of the various and often-conflicting uses in it, despite the fact that the list begins, "the primary use of which is **one or more** of the following."

By this logic, for a residential facility to be exempt, it must be a drug treatment orphanage that houses people who are homeless ex-offenders and who live there for less than six months. This is counter to the clear intent of the legislature and to the reality of service provision.

It is clear, based on a review of the committee and floor debate from 2003, that when the legislature added this language, they intended to exempt each of the types of services listed in subdivisions (i) through (v) independent of the others. The legislature intends to exempt from property taxes separately and independently:

1. Orphanages;
2. Drug or alcohol treatment or rehabilitation facilities;
3. Housing for people who are homeless, have a mental health disorder, an intellectual or physical disability;
4. Victims of domestic violence, ex-offenders in programs sponsored by DOC or the Judicial Branch; and,
5. Short-term housing operated by a charitable organization where the average length of stay is less than six months.

But nonprofits across Connecticut are being forced to spend tens of thousands of dollars to hire lawyers to fight this semantics dispute in court.

That's why we support the language in Section 1 of H.B. 6103, which provides technical and clarifying changes to statute that amends C.G.S. § 12-81(7)(B) to**:**

1. **Remove the word "temporary,"**
2. **Change the word "and" in between subdivisions (iv) and (v) to "or,"**
3. **Add definition to the term "subsidized housing."**

These changes clarify that group homes and other kinds of residential services provided by nonprofits are tax exempt and will make a substantial difference to nonprofits who are providing residential services to the State's most vulnerable.

The legislature should also address the process of determining tax exemption.

While this is not the case everywhere, we believe **some municipalities are aggressively pursuing tax-exempt properties**, making it difficult, costly and confusing for nonprofits to be granted the exemption to which the law entitles them. That's why we support the provisions of H.B. 6103 that address process-related changes to the law:

- **Section 1 of the bill amends C.G.S. § 12-81(7)(A) to require towns post the M-3 form on their website.** Nonprofits are required to fill out an M-3 form in each town every four years to be granted their exemption. Often, community nonprofits own and operate exempt property across many municipalities. Requiring the form be posted is a no-cost measure to make sure nonprofits have access to all forms in all towns without having to visit Town Halls in communities the forms are not posted.

- **Section 2 of the bill amends C.G.S. § 12-89 to require assessors provide a detailed reason for their denial** of a charitable property tax exemption in writing at the time the denial is issued. Despite best practices, some assessors do not tell nonprofits why their exemption application was denied, leaving nonprofits to go through the appeals process or file a lawsuit to determine the reason for denial. Section 2 also requires assessors consider an organization's federal 501(c)(3) status when determining whether or a not a property is exempt.

It is important to note that **H.B. 6103 does not propose any additional exemptions or the expansion of existing exemptions.** We understand that many municipalities, particularly urban centers, have large amounts of tax-exempt property. H.B. 6103 is a reasonable proposal that only clarifies current law and addresses process. **For municipalities already following the law, it would have no fiscal impact.**

Nonprofits are always willing to work with municipalities to ensure their properties and the people served in them are welcomed into their communities—to be "good neighbors." They often go to great lengths, well beyond their statutory and contractual obligations, to work closely with emergency services and others.

We look forward to working with this Committee and other stakeholders to continue to design a bill that can solve this problem without opening the door to abuse by anyone—municipalities or property-owners.

We thank the Committee raising this important bill and respectfully request your support for H.B. 6103.

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Incl.: Appendix A: Legal Memo re: Charitable Property Tax Exemptions