



## MUNICIPAL AUTHORIZATION TO TAX PROPERTY

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### DILLON'S RULE

Municipalities derive their powers from the state under "Dillon's Rule," a legal doctrine developed by Iowa Supreme Court judge John F. Dillon in *Clark v. City of Des Moines* (1865) and cited in many state and federal municipal powers cases.

The doctrine holds that municipalities can exercise only those powers: (1) state law allows, (2) that are necessarily implied or incident to exercising those powers, and (3) are essential to fulfilling a municipality's statutory purposes.

### 501 (c) (3) ORGANIZATIONS

Most states require municipalities to exempt charitable organizations from paying property taxes. These organizations may also qualify for a federal income tax exemption under 26 USC § 501 (c) (3). Whether such "501 (c) (3) organizations" also qualify for state and local tax exemptions depends on whether they meet state statutory criteria.

### QUESTIONS

1. Do municipalities derive their taxing power from the state or federal government?
2. Does that power include exempting different types of property from taxation?
3. Does federal law require municipalities to exempt nonprofit 501 (c) (3) organizations from paying property taxes?

The answers to these questions require a legal opinion, which the Office of Legislative Research is not authorized to give. Consequently, you should not regard this report as one.

### SUMMARY

Municipalities derive all of their powers from the state. Because the U.S. Constitution is silent on municipalities and other state political subdivisions, the federal government has no explicit

authority to specify their powers, duties, and organizational forms. Furthermore, the U.S. Constitution's Tenth Amendment implicitly gives states control over

municipal matters by granting them any power it does not delegate to the federal government or specifically deny to the states.

In addition, federal and state courts have upheld state laws defining municipal powers, often citing "Dillon's Rule," a legal doctrine holding that municipalities have no inherent powers and can exercise only those powers granted by the states. Those state-granted powers include the power to levy different types of taxes. The laws granting these powers usually specify how municipalities must exercise them.

Connecticut municipalities can levy only property taxes, and the state laws under which they do so exempt different types of property from taxation. For example, the law exempts from taxation property used exclusively for scientific, educational, literary, historical, charitable, or open space purposes if (1) the organization that owns the property is organized exclusively for these purposes and (2) its officers, members, or employees derive no profit from the use (CGS § [12-81 \(7\)](#)). Whether a property is used exclusively for a specified purpose must be determined on a case-by-case basis (*New Canaan Country School v. New Canaan* (138 Conn 347 (1951))). Other tax-exempt property includes land and buildings owned by the federal government, agricultural and horticultural societies, and religious organizations.

Nonprofit organizations, including those that qualify for Connecticut's property tax exemption, may qualify for a federal income tax exemption under the federal tax code (26 USC 501 (c) (3)). Because the code exempts these organizations only from federal income taxes, we infer that this exemption does not automatically apply to state and local taxes.

## **MUNICIPAL TAXING POWERS DERIVE FROM THE STATE**

### ***U.S. Constitution***

Municipalities derive their taxing powers from their respective states, not the federal government. The U.S. Constitution does not mention municipalities or other state political subdivisions. Furthermore, the Tenth Amendment to the Constitution reserves to the states all powers not delegated to the individual states or denied to them. State and federal case law affirm that these "reserved powers" include specifying municipal government powers, duties, and organization.

### ***Dillon's Rule***

The proposition that municipalities derive their powers from the state was first formulated in *Clark v. The City of Des Moines* (87 Am Dec 423 (1865)). In that decision, Iowa Supreme Court Judge John F. Dillon stated:

It is a general and undisputed proposition of law that 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 declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied.

Judge Dillon further developed this proposition in his 1872 *Treatise on Municipal Corporations*.

### ***Other Courts' Adoption of Dillon's Rule***

The U.S. Supreme Court cited Dillon's Rule in *Merrill v. Monticello* (138 USC 673 (1891)), holding:

Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. For the purpose of executing these powers properly and efficiently, they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state.

State courts, including Connecticut's, have applied Dillon's Rule. A 2003 Brookings Institution [study](#) found that courts in 39 states, including Connecticut, have applied Dillon's Rule when interpreting municipal powers.

The Connecticut Supreme Court applied Dillon's Rule in *Windham Taxpayers Association, et. al. v. Board of Selectmen, the Town of Windham, et. al.* (234 Conn. 513 (1995)), holding that:

It is settled law that, as a creation of the state, a municipality has no inherent powers of its own. A municipality has only those powers that have been expressly granted to it by the state or that are necessary to discharge its duties and to carry out its objects and purposes.

In another case, the court ruled that "municipalities in Connecticut have no independent authority or independent responsibility; they are administrative units of the state and can do only what the state authorizes or delegates them to do (*Moore v. Ganim*, 233 Conn. 557 (1995)).

## **PROPERTY TAX EXEMPTION**

### ***Authorization***

Connecticut law specifies municipalities' powers, duties, and organizational forms. It allows municipalities to levy only property taxes and specifies how they must do so. Among other things, the law (1) requires municipalities to exempt certain types of property from taxation (e.g., federal buildings, churches, and newly renovated factories in enterprise zones) and (2) allows them to exempt other types, such as buildings equipped with passive or hybrid solar energy heating and cooling systems.

Applying Dillon's Rule, the Connecticut Supreme Court concluded that "a municipality's powers of taxation can be lawfully exercised only in strict conformity to the terms by which they were given and statutes conferring authority to tax must be strictly observed" (*Joseph W. Pepin et. al. v. City of Danbury et. al.* (171 Conn. 74 (1976))). Consequently, "any doubt as to a municipality's power to tax should be resolved against the existence of the power and in favor of the taxpayer."

### ***Exemption for Property Used for Specified Purposes***

Municipalities must exempt property from taxation as the statutes require. For example, under CGS § [12-81\(7\)](#), they must exempt property owned by certain types of organizations based on the organization's purpose and how it uses the property. An organization owning such property is exempt from property taxes if:

1. the organization is organized exclusively for scientific, educational, literary, historical, or charitable purposes or preserving open space and
2. the property is used exclusively for these purposes.

Under CGS § [12-88](#), the organization does not qualify for the exemption if the property is "not used exclusively for carrying out one or more of such purposes but leased, rented, or otherwise used for other purposes...."

The Connecticut Supreme Court decided several cases testing whether a property was being used exclusively for the statutorily specified purposes, including property used for educational purposes. The court has not adopted a universal standard for determining if this criterion is being met, but instead ruled that, "the conclusion in each of these decisions is necessarily governed by the specific facts in the individual case" (*New Canaan Country School Inc. v. New Canaan*, 138 Conn 347 (1951)).

In *New Canaan*, the court held two New Canaan Country School houses were subject to property taxes because they were used solely as living quarters for its teachers. In a subsequent case, though, the court ruled that a private school's faculty houses were exempt from property taxes because they allowed faculty to advise and counsel boarding students after regular school hours (*Loomis Institute v. Windsor*, 234 Conn 169 (1995)).

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