

City and Town

Arny Pitter, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



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Appellate Tax Board Rules Closed Church Taxable

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In a decision rendered on December 16, 2011 the Appellate Tax Board (ATB) rejected a claim for exemption by the Archdiocese of Boston with regard to a closed Scituate Catholic church. The case is Roman Catholic Archbishop of Boston, a Corporation Sole v. Board of Assessors of the Town of Scituate.

The Roman Catholic Archbishop of Boston, a Corporation Sole (RCAB) was formed pursuant to Chapter 506 of the Acts of 1897 by the Massachusetts Legislature. RCAB owns seven parcels in the Town of Scituate which consist of the St. Frances X. Cabrini Church with a parish center and parking area on one lot; a rectory on a second lot, as well as five parcels of vacant land. St. Frances X. Cabrini parish was exempted for many years by the Scituate assessors. In October 2004, however, RCAB issued what is called an "Order of Suppression" thereby dissolving the parish pursuant to Roman Catholic Canon Law. RCAB took steps to secure the parish from further use. A group of parishioners, self described as "Vigilers", in a surprise move occupied the church in late October 2004. Nevertheless, RCAB ceased all worship and instructional activities at the church. The Vigilers maintained their occupancy of the church to protest its closing. Their presence continued for over seven years. In December 2005 the Vigilers formed a nonprofit corporation called The Friends of St. Frances X. Cabrini, Inc. (Friends) which, notwithstanding the provisions of its articles of organization, was portrayed by the ATB as having being organized to re-open the church as a viable Catholic parish.

In light of the church closure, the Scituate assessors placed the church property on the tax rolls. At issue in this case were the taxes for fiscal years 2008 to 2011 inclusive. The RCAB paid the taxes for these years, filed timely exemption applications and brought appeals to the ATB upon the refusal of the assessors to exempt the property taxes. RCAB raised two arguments. First, RCAB contended the subject property was exempt as a house of worship. Second, RCAB argued the real property was entitled to a charitable exemption since the church building was occupied by Friends for charitable purposes. The ATB rejected both claims.

In accordance with prior Massachusetts court decisions, the ATB wrote that exemption from taxation is based on state statute, and the burden of proof is on the taxpayer to establish eligibility for exemption. Taxation is the rule and exemption is the exception to the rule. A taxpayer must demonstrate he satisfies the express terms of the particular statute which grants the property tax exemption. In the case at hand, RCAB claimed its Scituate property was exempt under M.G.L. Ch. 59 Sec. 5 Cl. 11 as a house of worship. The ATB disagreed. Under the facts presented, RCAB ceased all religious activities in the church as of October 2004. Dominant use of the property either by the Vigilers or Friends was not for religious worship or instruction as sanctioned by RCAB. The Vigilers or Friends merely conducted a 45 minute service at the church on Sundays, and these services were not officiated by a priest. In addition, there was no lease or formal trust agreement between RCAB and the Vigilers or Friends regarding use of the property. According to the ATB, the dominant use of the church was not for religious worship. Rather, there was an unauthorized occupancy of the church premises with the goal of re-opening the church as a viable Catholic parish.

Second, the ATB rejected the claim that the subject property was occupied for charitable purposes pursuant to Chapter 59 Section 5 Cl. 3. The assessors argued there was no charitable occupancy by RCAB since RCAB simply closed the church and planned to sell the parcels. The ATB also ruled that Friends' use of the property was merely unauthorized

occupancy of the premises with the goal of re-opening the parish. Such use of the premises by Friends, according to the ATB, was not recognized as a traditional charitable purpose.

For these reasons, the ATB held that the Scituate property was not eligible for a religious exemption under Clause 11 or a charitable exemption under Clause 3. Having determined the taxable status of the property, the ATB then scheduled a conference with the parties for January 31, 2012 at which time the assessors' valuations of the seven parcels could be disputed by RCAB.

Notwithstanding this ruling by the ATB, there could be a further appeal by RCAB to the Appeals Court.

DLS Guide Provides Answers to Questions Regarding Local Property Exemption for Church and Charitable Organizations

City and Town Editorial Board

DLS receives questions from time to time not only about the tax status of churches no longer used for worship, but also about the status relative to property tax of social clubs. As a general rule, the property owned by social clubs is subject to local property taxation. In fact, the only way a social club becomes exempt from local property tax is for that club to be organized exclusively for the benefit of a charity.

DLS has published [a brochure](#) which explains the law governing the collection of property tax from social clubs as well as religious organizations. The law in this area has been settled for some time. As the brochure states:

"A charitable organization for property tax exemption purposes is a corporation or trust, established for literary, benevolent, charitable, or temperance purposes. Non-profit status is not sufficient, nor is exempt status for state or federal tax purposes. The organization must be organized for charitable purposes and must actually operate as a public charity. Its dominant purposes and activities must benefit the public at large, not just a limited group of people. In addition, its income and assets cannot be distributed to officers, directors or shareholders while it operates or when it dissolves, nor used for non-charitable purposes.

"Examples of charitable organizations include non-profit, private schools, colleges, universities, hospitals, museums and cultural facilities. Trade groups, professional associations or social clubs generally do not qualify since they operate primarily for the benefit of their members."

Course 101 Information Now Available

DLS Seminars and Training

DLS is pleased to announce the Department of Revenue's basic course for assessors, Course 101: *Assessment Administration: Law, Procedures and Valuation*, will be offered for six consecutive weeks (participants must attend five of the six nights) starting March 7th at Kingston Town House, 26 Evergreen Street, Kingston, MA.

Further information on dates and times can be found [here](#). An overview and downloadable information of Course 101 can be found [here](#). Any specific inquiries regarding this training opportunity should be directed to Training Coordinator Donna Quinn at 617-626-3838.

Buying the Farm: DLS Publishes FY13 Farmland Valuations

DLS Bureau of Local Assessment

The Farmland Valuation Advisory Commission (FVAC) recently adopted the range of recommended agricultural, horticultural and forest land use values for the various categories of land classified under *Chapter 61 and Chapter 61A*

for Fiscal Year 2013. Wondering if your bovines are "cash cows?" The cover letter and a link to a previously published *City and Town* article on the subject can be found by clicking [here](#).

Final FY2013 Levy Limit Instructions

DLS Bureau of Accounts

The Division of Local Services has posted preliminary FY2013 levy limit worksheets and instructions can be found [here](#). This information should assist local officials in developing their community's FY2013 budget.

The worksheets include final data from FY2012 which provides the basis for the FY2013 calculation. The instructions detail how the FY2013 worksheet is completed.

All local officials and other interested parties are welcome to view this info.

February and March Municipal Calendars

February 1: Taxpayer Deadline for Payment of 3rd Quarterly Tax Bill Without Interest

According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the 3rd Quarter actual tax payment without interest, unless the actual tax bills were mailed after December 31. If mailed after December 31, the actual tax is due as a single installment on May 1, or 30 days after the bills were mailed, whichever is later.

February 1: Taxpayer Quarterly Tax Bills — Application Deadline for Property Tax Abatement

According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on Feb. 1 unless actual tax bills were mailed after December 31. In that case they are due May 1, or 30 days after mailing, whichever is later.

February 15: Treasurer 2nd Quarter Reconciliation of Cash

February 28: Finance Committee Continue Budget Review and Develop Recommendations

This date will vary depending on dates of town meeting.

MARCH

March 1: DOR/MDM-TAB Notification of Cherry Sheet Estimates for the Following Year (pending action taken by the Legislature)

The Cherry Sheet is an estimate of: 1) Receipts — local reimbursement and assistance programs as authorized by law and appropriated by the General Court; and 2) Assessments — state and county assessments and charges to local governments. All amounts listed on the Cherry Sheet are estimates. Actual receipts and charges are determined based on detailed formulas or guidelines for each program. Cherry Sheets are posted on the DLS website and updated at each juncture of the state budget process.

March 1: Personal Property Owner Submit Form of List

This is a listing of all personal property filed by the owner with the Assessors each year for the purpose of determining taxes in the next fiscal year.

March 1: Non-Profit Organization Final Filing Date for 3-ABC Forms

These must be filed on or before March 1 (this deadline may be extended by the Assessors). In no event may the extension granted be later than 30 days after the tax bill is mailed.

March 1: DOR/BLA Filing Deadline for Telecommunications Forms of List

March 31: State Treasurer Notification of Quarterly Local Aid Payment on or Before March 31

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