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DOR 360



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Hurricane May Still Trigger Emergency Expenditure

Hurricane Sandy did not barrel into Massachusetts full speed, but still managed to cause considerable damage to private and public property.

For those towns facing extraordinary cleanup costs, Chapter 44 Section 31 allows communities to deficit spend for emergency purposes, providing immediate spending authority until other financing sources, such as emergency borrowing or appropriations from available funds, can be put in place to cover the spending.

The mere fact that the law exists, however, is insufficient to employ it. To use this law, a community must declare a local emergency to health and safety by a majority vote of the select board, or two-thirds vote of the municipal council, as soon as practicable, and then must request approval from the Director of Accounts to pay the liabilities incurred for emergency purposes without appropriation.

The select board or mayor should then notify the Director by letter of the declaration.

Those communities that may need to borrow to pay the cost of emergency clean ups should review short-term emergency borrowing allowed under Chapter 44 Section 8(9) which allows for borrowing up to two years; or Chapter 44 Section 8(9A) which allows for borrowing that goes beyond two years.

All of these options are outlined and explained in [Bulletin 2011-12B](#), which was issued shortly after Hurricane Irene hit in August 2011.

On a separate note, city and town officials should be scheduling classification hearings this month to avoid the last-minute rush in December. There is still much work to be done, as evident from the fact that less than half of the Commonwealth's cities and towns have submitted tax base growth (LA-13) reports to DLS.

Lastly, if you have a moment, please visit the new [Library of Presentations web page](#) on the DLS web site. This new page features powerpoints from a variety of recent DLS-sponsored events and is designed to capture our presentations and showcase them in a more user-friendly manner.

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Motor Vehicle Excise on Pumpers Set in Concrete

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The Appellate Tax Board (ATB) recently issued a motor vehicle excise tax decision entitled *Independent Concrete Pumping Corporation v. Assessors of Wakefield*, (ATB docket #F300394, October 20, 2011). At issue was whether the assessors could assess motor vehicle excise on concrete pumpers which were operated with owner-contractor plates. If subject to excise, the next issue was how the concrete pumpers should be valued for excise tax purposes.

The Wakefield assessors for years had questioned the tax status of the concrete pumpers. For calendar year 2008, as a sort of test case, Wakefield decided to assess excise taxes on two of the pumpers. For one of the pumpers, the assessors based the excise on the chassis value alone. For the second pumper, the assessors based the higher excise value on the truck chassis as improved by the pump and boom equipment.

As most are aware, excise taxes under M.G.L. Ch. 60A are imposed on motor vehicles and trailers for the privilege of registration. The ATB first had to address whether the concrete pumpers were motor vehicles. M.G.L. Ch. 90 defines "motor vehicle" as "All vehicles constructed and designed for propulsion by power other than muscular power" with certain exceptions, including, "vehicles used for other purposes than the transportation of property and incapable of being driven at a speed exceeding twelve miles per hour'."

In the case at hand, the concrete pumpers were registered with owner-contractor plates since the Registry of Motor Vehicles (RMV) had designated them as "special mobile equipment" used to lift building materials at a construction site. The RMV, however, did not address the taxability of the pumpers. For its part, the Department of Revenue (DOR) advised the assessors that the RMV designation of the pumpers as special mobile equipment was not incompatible with the pumpers being "motor vehicles" subject to excise. Since the concrete pumpers could travel at highway speed, the DOR had written that a concrete pumper satisfies both definitions and is subject to excise.

The taxpayer argued that the pumpers with their owner-contractor plates were exempt from excise. Owner-contractor plates are included among the special registration plates issued under M.G.L. Ch. 90 Sec. 5. Other categories include farmers, dealers and manufacturers. The Legislature made changes to M.G.L. Ch. 90 in 1989. Before 1989, owner-contractor plates were called owner-repair plates, and the excise statute (M.G.L. Ch. 60A Sec. 1) afforded an excise exemption to owner-repairmen on vehicles they operated with such plates provided the vehicles were operated exclusively for business use. In 1989, however, the Legislature substituted the term "owner-contractor" for "owner-repairman" and abolished the excise exemption.

In this case, the ATB found no express or implied exemption for the concrete pumpers. In agreement with the DOR, the ATB held that the registration with an owner-contractor plate had no bearing on the tax status of the pumpers. The pumpers were subject to excise. With regard to the valuation, the ATB ruled that the excise must be based on the applicable percentage of the manufacturer's list price. The excise should not be based merely on one component, namely, the truck chassis. Instead, the excise should be based on the value of the truck chassis as improved by the pump and boom equipment which are firmly welded onto the truck chassis. In fact, there was testimony that concrete pumpers are purchased as complete integrated units. When new, each of the two pumpers in this case had a manufacturer's list price of \$349,000. Accordingly, the pumpers were taxable and the taxpayer was not entitled to any abatement of the excise.

Roll-Your-Own Cigarette Machines in Your City or Town May Be Subject to Excise Tax

DOR Audit Division

As part of the Department of Revenue's ongoing efforts to inform and educate the public about the rules and regulations surrounding roll-your-own (RYO) cigarette machines, please be aware that all retail establishments, social clubs, cooperatives and non-profits who use these machines may be subject to an excise tax. The U.S. Court of Appeals for the Sixth Circuit ruled in August that retailers with RYO tobacco machines can be considered cigarette manufacturers and are responsible for federal tobacco excise taxes.

http://www.ttb.gov/announcements/ttb_announcement_ryo_on_6th_circuit_court_decision.pdf

Federal excise tax is due immediately on any tobacco products produced on or after July 7, 2012. To pay the tax, the manufacturer must file TTB F 5000.24, Excise Tax Return, along with payment of all taxes due. Further information can be found on the Treasury Department's Alcohol and Tobacco Tax and Trade Bureau website at

<http://www.ttb.gov/tobacco/index.shtml>

November Municipal Calendar

1 - Taxpayer - Semi-Annual Tax Bill - Deadline for First Payment

According to M.G.L. Ch. 59, Sec. 57, this is the deadline for receipt of the first half semi-annual tax bills or the optional preliminary tax bills without interest, unless bills were mailed after October 1, in which case they are due 30 days after mailing.

1 - Taxpayer - Semi-Annual Tax Bills - Application Deadline for Property Tax Abatement

According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on the same date as the first actual tax installment for the year.

1 - Taxpayer - Quarterly Tax Bills Deadline for Paying 2nd Quarterly Tax Bill Without Interest

1 - Treasurer - Deadline for Payment of First Half of County Tax

15 - DESE - Notify Communities/Districts of Any Prior Year School Spending Deficiencies

By this date, or within 30 days of a complete End of Year Report (see September 30), DESE notifies communities/districts in writing of any additional school spending requirements.

30 - Selectmen/Mayor - Review Budgets Submitted by Department Heads

This date will vary depending on dates of town meeting.