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Massachusetts Department of Revenue  
Division of Local Services

LOCAL TAXES  
Assessment and Collection Issues



2009

Workshop A

Navjeet K. Bal, Commissioner  
Robert G. Nunes, Deputy Commissioner

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## Case 1.

It's September, and for many of us attention must be given to "Chapterland" applications (in addition to everything else that must get done.)

In this case, a large tract of cultivated and tillable land has applied for tax treatment under the provisions of G.L. c. 61A, the classification and taxation of agricultural or horticultural land. The property consists of 60 acres and has been farmed for a number of years. The farmer has raised a variety of crops over the years, but has recently been cultivating mostly apples, cranberries and grapes. This is because he has found it profitable to not only sell some produce wholesale, but also to process the apples into cider, the cranberries into sauces and juices, and the grapes into wine. The farmer performs this processing in a structure on site. After processing and packaging, the farmer sells his products in a separate building/structure. Also, the owner maintains open space areas with picnic tables and walkways available for customers and patrons on shaded land adjacent to the processing and farm stand buildings. Recently, he has offered seasonal tours of the farm, processing areas and winery to interested families.

- 1.) As an assessor, would you allow the land area around and under the first building and used for the processing to qualify as land in agricultural or horticultural use under G.L. c. 61A?
- 2.) Is the land under the farm store agricultural or horticultural land entitled to classification and the tax reductions afforded under G.L. c. 61A? How would you classify and code this area?
- 3.) How would you treat the open space and picnic area?

## Case 2

This case starts with the same property, but adds a twist!

Abutting the farmer's property is a 40 acre tax-exempt estate-type property that for many years has served as the site of a monastery. The monastery building is an historic stone structure, and the rest of the land is rich agricultural land. It seems the monks were very self-sufficient, and much of the land was used for gardens and vineyards, with much of the end products (a fine wine, maybe?) being consumed on the premises. The monastery is now being shuttered and sold, and the monks have determined that the farmer should be the first in line to purchase this fine agricultural land for assimilation into his farm business.

1.) If the farmer purchases this property in October, 2009, what may be the property tax impact for him immediately? How about in subsequent years, what property considerations may come into play?

## Case 3

The farmer's entrepreneurial son recently graduated from business school with his MBA. He views the confluence of circumstances as optimum for "growing" a new local area winery business. First he proposes to his dad to assimilate all the monastery acreage into the grape and vineyard operation. His business plan indicates they have the know-how, the product potential, an attractive facility, and a burgeoning market. His proposal is to buy the monastery, add more processing space, and utilize the monastery as the "wine shop" for direct sales as well as internet distribution. He is even considering the viability of a small bistro on site.

1.) If he proceeds immediately with a build-out plan, what property tax considerations will immediately come into play?



June 23, 2009

Mr. Paul Matheson  
Westport Board of Assessors  
816 Main Road  
Westport, MA 02790

Re: Horticultural Uses of Land  
Our File # 2009-734

Dear Mr. Matheson:

You have asked our opinion on whether certain activities carried out by a local taxpayer qualify the locus for classification under G.L. c. 61A as "agricultural" or "horticultural" land. Specifically, you refer to land used to cultivate crops including apples, cranberries, and grapes; the land under a building where apples, cranberries, and grapes are processed into juices, wines, and other such products; the land under a building used as a store to sell the products generated at the site to the public; and open areas with picnic tables and walkways for the use of members of the public who have purchased products from the store on-site.

Land is considered to be in "horticultural use" for purposes of G.L. c. 61A, § 2 when it is "primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption ... for the purpose of selling these products in the regular course of business; ... (or) when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market." Obviously the land devoted to cultivation of crops including cranberries, apples, and grapes qualifies for classification as "horticultural" land within the meaning of G.L. c. 61A, § 2. Moreover, some "accessory" land must be set aside to support the cultivation of crops such as cranberries, and qualifies as land "used in a related manner which is incidental to [horticultural] uses and represents a customary and necessary use in raising these products and preparing them for market." *Id.* As to cultivated and accessory land, c. 61A classification is warranted.

However, land devoted to food processing activities, *i.e.* making juice or sauce from cranberries or wine from grapes, goes beyond what is necessary to get produce ready for market. There is a difference between activities necessary to prepare cranberries, grapes, and apples to enter the stream of commerce, and food processing activities which create new products out of the farm produce. Juice-making is not a "customary and necessary use ... in preparing [fruits] for market..." because the fruits can be sold as such, and do not have to be processed in order to be marketable. *Cf.* G.L. c. 61A, § 1 (agricultural use extends to incidental activities "customary and necessary [to] raising [farm] animals and preparing them *or the products derived therefrom* for market.") (Emphasis added.)

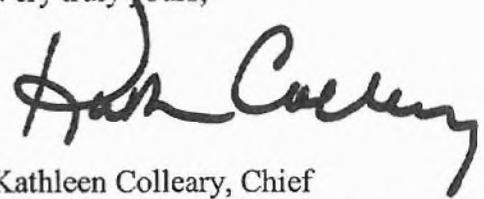
The land devoted to the commercial sale of the processed juices, sauces, and wines is still further removed from the c. 61A eligible activity of growing crops on the land. And open space made available for the convenience of customers purchasing products from the store on-site stands in clear contrast to the horticultural uses which qualify land for classification under G.L. c. 61A, § 2.

Mr. Paul Matheson  
June 17, 2009

In sum, it is our view that the land used for growing crops, and accessory land incidental to crop production activities, qualify for classification under G.L. c. 61A, § 2. Land devoted to food processing and the commercial marketing of processed products on site falls outside the scope of G.L. c. 61A.

If you have any further questions, please do not hesitate to contact us.

Very truly yours,



Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC:DG

# The General Laws of Massachusetts

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## PART I. ADMINISTRATION OF THE GOVERNMENT

### TITLE IX. TAXATION

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## CHAPTER 61A. ASSESSMENT AND TAXATION OF AGRICULTURAL AND HORTICULTURAL LAND

### Chapter 61A: Section 1. Land in agricultural use defined

Section 1. Land shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market.

### Chapter 61A: Section 2. Land in horticultural use defined

Section 2. Land shall be considered to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

**Massachusetts Department of Revenue Division of Local Services**

Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



March 24, 2009

Karen Rassias, MAA  
Chief Assessor  
Town Hall  
381 Main Street  
West Newbury, MA 01985

Re: G.L. c. 61A – Classified Agricultural Land  
Annual Gross Sales Requirement  
Our File No. 2009-66

Dear Ms. Rassias:

This is in reply to your recent letter requesting information regarding the gross sales requirement of G.L. c. 61A, the preferential property tax classification for qualifying agricultural and horticultural land. Specifically, you inquire as to the use of an affidavit to establish and document satisfaction of this statutory sales requirement.

Under G.L. c. 61A, a prerequisite to classification is that the land be used for an “agricultural” or “horticultural” use in a qualifying manner. The nature and type of these uses is defined in G.L. c. 61A, §1, which provides, in relevant part, as follows:

Land shall be deemed to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, ..., for the purpose of selling such products in the regular course of business; ..., or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market. (Emphasis added).

In addition, G.L. c. 61A, §3 requires certain minimum sales from farm products as follows:

Land not less than five acres in area shall be deemed to be actively devoted to agricultural or horticultural uses when the gross sales of agricultural, horticultural or agricultural and horticultural products resulting from such uses...total not less than five hundred dollars per year. (Emphasis added).

If the land is more than five acres, the minimum amount is increased by per acre rates depending on the type of land.

In our opinion, these special tax provisions demonstrate a clear intent to promote the regular, productive use of farmland in a commercial context. They plainly require the raising of animals or

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cultivation of crops for the express purpose of selling them or products derived from them in the regular course of business, thereby generating sufficient sales receipts to meet and document the established annual gross sales requirement.

In our view, compliance with this requirement generally requires a regular sale transaction with attendant business receipts or documentation such that qualification for the special tax treatment may be verified and documented with certainty in all cases. Regular business receipts would normally identify the product sold, the quantity included, the unit sales price and the aggregate money actually received. For typical working farms, the provision of specific gross sales information should be quite routine.

Your question, it seems, is whether an affidavit, prepared and submitted by a person with an arrangement with the landowner, may be sufficient alone to document satisfaction of the statutory sales requirement. In brief, the subject affidavit indicates that the person harvested approximately 600 bales of hay from the subject parcel; used the hay to feed his own horses and sold some to others; and as consideration for using the land and taking the hay, he provided the landowner with various "goods and services" having a fair market value of around \$1,000 to \$1,500 a year.

While an affidavit of sorts may provide some meaningful information regarding the use of the land and the disposition of products grown thereon, we would not consider such a statement alone to be the type of documentation necessary to sufficiently establish and clearly document routine sales in the regular course of business, the explicit statutory requisite. Rather, we think that specific sales receipts with standard information such as date of sale, quantity, unit price and total payment would be appropriate documentation. Alternatively or additionally, we believe that assessors may request other supporting documentation such as copies of federal or state income tax returns in order to verify the sales income. In summary, when it comes to the qualification for a special tax classification and the verification with certainty of a statutory dollar requirement, we do not believe that an affidavit with general approximations and estimates is sufficient. Where an exemption from regular taxation is sought, a property owner must clearly and conclusively demonstrate that all eligibility requirements are satisfied.

I hope this information proves helpful.

Very truly yours,



Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC:DJM

| COMPARISON              | CHAPTER 61 - FOREST LAND  | CHAPTER 61 A AGRICULTURAL/HORTICULTURAL  | CHAPTER 61B - RECREATIONAL LAND  |
|-------------------------|---|--|--|
| QUALIFICATIONS          | 10 contiguous acres – Same ownership<br>10 year management plan certified by state forester<br>Recertified every <u>10 years</u><br>Timely application<br><i>c.394, no more fee to state.<br/>c.394, state forester has sole responsibility for determining land use, may include "accessory" land.</i>   | 5 acres, same ownership, "actively devoted" to A/H.<br>2 prior years A/H use.<br>Gross sales in the regular course of business, starts at \$500 for initial 5 acres, \$5 per extra acre, and .50 for forest land.<br>Additional, contiguous and non-productive land may qualify but only up to 100% of productive land.<br>Forest land, certified by state forester, will qualify. | 5 acres, same ownership, and:<br>Condition - natural, wild, open or landscaped or Use-devoted to a recreational use as listed in the statute and available to the general public or to the members of a non-profit organization.<br><i>c. 394, adds "commercial horseback riding and equine boarding" c. 394 adds "managed forest" land with a state forester's certification.</i> |
| APPLICATION PROCEDURE   | (prior to)<br>JULY 1- application to state forester<br><i>c.394, prior to OCTOBER 1 (no longer September 1) certificate &amp; plan submitted to assessors.</i><br>JAN 1- listed as classified<br>JULY 1- taxation under Ch 61 commences   | Annual Application by October 1 to Board of Assessors on Form CL-1<br>Revaluation year filing extension provided.<br>Application deemed allowed if no action in 3 months   | Annual Application by October 1 to Board of Assessors on Form CL-1.<br>Revaluation year filing extension provided.<br>Application disallowed if no action in 3 months.   |
| RECORDING REQUIREMENTS  | RECORD a statement of lien on Form CL-3<br>Collect recording fees<br>Copies of lien to landowner and state forester.  | RECORD a statement of lien on Form CL-3, if first application, after a lapse when not classified, or after a change of record ownership.   | RECORD a statement of lien on Form CL-3, if first application, after a lapse when not classified, or after a change of record ownership.   |
| APPEAL OF DETERMINATION | (on or before)<br>DECEMBER 1- to state forester<br>MARCH 1- forester's decision will issue<br>APRIL 15- appeal to 3 person regional panel<br>MAY 15- panel hearing<br>Appeal to ATB or Superior Court within 45 days of notice of decision.   | Collect all recording fees.<br>Landowner may appeal a determination to:<br><i>c. 394, Board of Assessors-within 30 days, (previously 60 days) of notice, then to Appellate Tax Board-within 30 days of notice of decision or 3 months of application, whichever is later</i>   | <i>c.394, Collect all recording fees.</i><br>landowner may appeal a determination to:<br>Board of Assessors-within 60 days of notice (not changed by c. 394), then to Appellate Tax Board-within 30 days of notice of decision or 3 months of application, whichever is later  |
| TAXATION                | SPECIALIZED VALUATION<br><i>c. 394, new provisions begin for FY 2009.</i><br><i>c. 394, Assessed at its FOREST "USE" VALUE. Values for forestland will now be published annually by the FV/AC, and be used as a guide. (After FY 2008, no longer any stumpage tax)</i><br>Commercial rate (class 3) applied to Forest "USE" value.<br>Buildings, residences and land accessory to their use are taxed at regular, full value. | SPECIALIZED VALUATION<br>Assessed at its A/H "USE" VALUE.<br>Values published annually by F.V.A.C., used as a guide.<br>Commercial rate applied to A/H Use value.<br>Buildings, residences and land accessory to their use are taxed at regular, full value.<br>Change in ownership alone will not affect classification.  | SPECIALIZED VALUATION<br>Assessed at its RECREATIONAL "USE" VALUE<br>However, assessed "use" value may not exceed 25% of the full and fair cash value.<br>Commercial rate applied to CH61B value.<br>Buildings, residences and land accessory to their use are taxed at regular, full value.<br>Change in ownership alone will not affect classification.                          |
|                         | <i>c. 394, "OPEN SPACE" local option. If city or town accepts c.61, \$2A, classified forest land will be classified as "open space" and taxed at residential tax rate.</i>  | <i>c. 394, "OPEN SPACE" local option. If city or town accepts c.61A, \$4A, classified farmland will be classified as "open space" and taxed at residential tax rate.</i>   | <i>c. 394, "OPEN SPACE" local option. If city or town accepts c.61B, \$2A, classified recreational land will be classified as "open space" and taxed at residential tax rate.</i>  |

| COMPARISON                         | CHAPTER 61 - FOREST LAND  | CHAPTER 61 A AGRICULTURAL/HORTICULTURAL  | CHAPTER 61B - RECREATIONAL LAND   |
|------------------------------------|---|--|---|
| PENALTY TAXES                      | <p>c. 394, replaces the prior withdrawal penalty tax plus compounded interest with <u>alternative roll-back or conveyance tax provisions.</u></p> <p>c. 394, <u>Roll-back tax imposed upon a change to a non-qualifying use of the land.</u> c. 394, A non-qualifying use means <u>a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u></p> <p>c. 394, <u>Roll-back recovery period is FIVE (5) YEARS.</u> (previously up to 10 years) c. 394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>c. 394, <u>Conveyance tax, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of acquisition. Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back.</u></p> <p>c. 394, <u>"grandfather" exemption from conveyance tax for an owner in program for/before FY 2008.</u></p> | <p>Alternative taxes-only the greater will be imposed</p> <p><u>Roll-back tax</u> imposed upon a change to a non-qualifying use. c. 394, A <u>non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u> Roll-back recovery period is <u>FIVE (5) YEARS.</u> c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year:<br/>TAX: Ch 59, full value taxes<br/>- Ch 61A, reduced A/H "use" taxes<br/>= the difference (with 5% interest)</p> <p>c. 394, <u>"grandfather" exemption from INTEREST on roll-back tax for a parcel classified for FY 2007 and still owned by 7/1/2006 owner or certain specified close relatives.</u></p> <p><u>Conveyance tax, c. 394, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of acquisition. Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back.</u></p> <p>c. 394, <u>ABATEMENT-apply to Board of Assessors within 30 days (previously 60 days) of notice of tax APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</u></p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves A/H use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during A/H use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p> | <p>Alternative taxes-only the greater will be imposed.</p> <p><u>Roll-back tax</u> imposed upon a change to a non-qualifying use. c. 394, A <u>non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u></p> <p>c.394, <u>Roll-back recovery period is FIVE (5) YEARS.</u> (previously 10 years) c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year:<br/>TAX: Ch 59, full value taxes<br/>- Ch 61B, reduced rec. "use" taxes<br/>= the difference (with 5% interest)</p> <p><u>Conveyance tax., c. 394, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of first classification. Tax = price or value x conveyance tax rate. C.T. rate 10% within first 5 years, 5% within years 6-10. Only assessed if more than roll-back.</u></p> <p>ABATEMENT-apply to Board of Assessors within 60 days of notice of tax. (not changed by c. 394) APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves recreational use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during recreational use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p> |
| APPEAL OF ASSESSMENT               | <p>c. 394, <u>ABATEMENT-apply to Board of Assessors within 30 days (previously 60 days) of notice of tax APPEAL TO A.T.B. within the later of 30 days of notice of decision, or 3 months of application.</u></p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves forest use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during forest use. Suspended amount due and payable upon a change in use of land.</u></p> <p>not applicable</p>   | <p>Alternative taxes-only the greater will be imposed</p> <p><u>Roll-back tax</u> imposed upon a change to a non-qualifying use. c. 394, A <u>non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u> Roll-back recovery period is <u>FIVE (5) YEARS.</u> c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year:<br/>TAX: Ch 59, full value taxes<br/>- Ch 61A, reduced A/H "use" taxes<br/>= the difference (with 5% interest)</p> <p>c. 394, <u>"grandfather" exemption from INTEREST on roll-back tax for a parcel classified for FY 2007 and still owned by 7/1/2006 owner or certain specified close relatives.</u></p> <p><u>Conveyance tax, c. 394, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of acquisition. Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back.</u></p> <p>c. 394, <u>ABATEMENT-apply to Board of Assessors within 30 days (previously 60 days) of notice of tax APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</u></p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves A/H use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during A/H use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p> | <p>Alternative taxes-only the greater will be imposed.</p> <p><u>Roll-back tax</u> imposed upon a change to a non-qualifying use. c. 394, A <u>non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u></p> <p>c.394, <u>Roll-back recovery period is FIVE (5) YEARS.</u> (previously 10 years) c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year:<br/>TAX: Ch 59, full value taxes<br/>- Ch 61B, reduced rec. "use" taxes<br/>= the difference (with 5% interest)</p> <p><u>Conveyance tax., c. 394, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of first classification. Tax = price or value x conveyance tax rate. C.T. rate 10% within first 5 years, 5% within years 6-10. Only assessed if more than roll-back.</u></p> <p>ABATEMENT-apply to Board of Assessors within 60 days of notice of tax. (not changed by c. 394) APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves recreational use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during recreational use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p> |
| BETTERMENT AND SPECIAL ASSESSMENTS | <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves forest use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during forest use. Suspended amount due and payable upon a change in use of land.</u></p> <p>not applicable</p>  | <p>Alternative taxes-only the greater will be imposed</p> <p><u>Roll-back tax</u> imposed upon a change to a non-qualifying use. c. 394, A <u>non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u> Roll-back recovery period is <u>FIVE (5) YEARS.</u> c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year:<br/>TAX: Ch 59, full value taxes<br/>- Ch 61A, reduced A/H "use" taxes<br/>= the difference (with 5% interest)</p> <p>c. 394, <u>"grandfather" exemption from INTEREST on roll-back tax for a parcel classified for FY 2007 and still owned by 7/1/2006 owner or certain specified close relatives.</u></p> <p><u>Conveyance tax, c. 394, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of acquisition. Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back.</u></p> <p>c. 394, <u>ABATEMENT-apply to Board of Assessors within 30 days (previously 60 days) of notice of tax APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</u></p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves A/H use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during A/H use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p> | <p>Alternative taxes-only the greater will be imposed.</p> <p><u>Roll-back tax</u> imposed upon a change to a non-qualifying use. c. 394, A <u>non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u></p> <p>c.394, <u>Roll-back recovery period is FIVE (5) YEARS.</u> (previously 10 years) c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year:<br/>TAX: Ch 59, full value taxes<br/>- Ch 61B, reduced rec. "use" taxes<br/>= the difference (with 5% interest)</p> <p><u>Conveyance tax., c. 394, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of first classification. Tax = price or value x conveyance tax rate. C.T. rate 10% within first 5 years, 5% within years 6-10. Only assessed if more than roll-back.</u></p> <p>ABATEMENT-apply to Board of Assessors within 60 days of notice of tax. (not changed by c. 394) APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves recreational use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during recreational use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p> |
| CERTIFICATE OF TAXES DUE           | <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves forest use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during forest use. Suspended amount due and payable upon a change in use of land.</u></p> <p>not applicable</p>  | <p>Alternative taxes-only the greater will be imposed</p> <p><u>Roll-back tax</u> imposed upon a change to a non-qualifying use. c. 394, A <u>non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u> Roll-back recovery period is <u>FIVE (5) YEARS.</u> c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year:<br/>TAX: Ch 59, full value taxes<br/>- Ch 61A, reduced A/H "use" taxes<br/>= the difference (with 5% interest)</p> <p>c. 394, <u>"grandfather" exemption from INTEREST on roll-back tax for a parcel classified for FY 2007 and still owned by 7/1/2006 owner or certain specified close relatives.</u></p> <p><u>Conveyance tax, c. 394, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of acquisition. Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back.</u></p> <p>c. 394, <u>ABATEMENT-apply to Board of Assessors within 30 days (previously 60 days) of notice of tax APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</u></p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves A/H use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during A/H use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p> | <p>Alternative taxes-only the greater will be imposed.</p> <p><u>Roll-back tax</u> imposed upon a change to a non-qualifying use. c. 394, A <u>non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u></p> <p>c.394, <u>Roll-back recovery period is FIVE (5) YEARS.</u> (previously 10 years) c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year:<br/>TAX: Ch 59, full value taxes<br/>- Ch 61B, reduced rec. "use" taxes<br/>= the difference (with 5% interest)</p> <p><u>Conveyance tax., c. 394, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of first classification. Tax = price or value x conveyance tax rate. C.T. rate 10% within first 5 years, 5% within years 6-10. Only assessed if more than roll-back.</u></p> <p>ABATEMENT-apply to Board of Assessors within 60 days of notice of tax. (not changed by c. 394) APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</p> <p>c. 394, <u>subject to assessment only to "pro-rata" extent improves recreational use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during recreational use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p> |

MUNICIPALITY'S RIGHT OF FIRST REFUSAL: c. 394 makes significant changes to the "first refusal option" that applies when a landowner decides to sell classified land for a residential, commercial or industrial use, or convert it to such a use, and makes the option provision uniform in all three chapters. It also extends the operation of the first refusal option for one full tax year after a property is removed from classification. This protects the municipality's opportunity for acquisition in the event the landowner removes the land from classification and immediately decides to develop the land. It also spells out in greater detail than before the notices required, the definition of a bona fide offer and the appraisal procedures that apply in cases of conversion. The revised assignment provision now authorizes a city or town to assign its option to a nonprofit conservation organization or to the Commonwealth or any of its political subdivisions under the terms or conditions that the mayor or board of selectmen may consider appropriate, provided that no less than 70% of the land is maintained in forest, agricultural or horticultural, or recreational use.



**FVAC CHAPTER LAND RECOMMENDED VALUE – FISCAL YEAR 2010**

**Per Acre Range of Values**

| Land  |   |                  |         |                  |
|---|---|------------------|---------|------------------|
| Chapter Land 61 and 61A<br>Use Categories   | Productivity Based on Dominate<br>Soil Ratings* |                  |         |                  |
|   | Use Code  | Below<br>Average | Average | Above<br>Average |
| Cropland Harvested; Vegetables, Tobacco, Sod and Nursery  | 711, 712, 719                                   | \$636            | \$795   | \$954            |
| Cropland Harvested; Dairy, Beef and Hay, Tillable forage cropland etc   | 713   | \$142            | \$177   | \$213            |
| Cropland Harvested; Orchards, Vineyards and Blueberries   | 714   | \$608            | \$760   | \$912            |
| Christmas Trees   | 602, 715  | \$108            | \$108   | \$108            |
| Nonproductive Land<br>Wet land, Scrub Land, Rock Land   | 720   | \$29             | \$29    | \$29             |
| Cropland Pastured, Permanent Pasture., Necessary & Related Land –farms roads, ponds, etc.   | 716, 718  | \$115            | \$115   | \$115            |
| Productive Woodland; Land Use Categories – Chapter Land 61or 61A with a Forest Management Plan <b>West</b> of the Connecticut River | 601, 717  | \$78             | \$98    | \$117            |
| Productive Woodland; Land Use Categories – Chapter Land 61or 61A with a Forest Management Plan <b>East</b> of the Connecticut River | 601, 717  | \$53             | \$67    | \$80             |
| Range of Production / Barrels Per Acre  | 710   | <=88             | 89-133  | >=134            |
| Cranberries   |   | \$1,606          | \$2,008 | \$2,409          |

Cropland Harvested – This land represents the highest use of land in the agricultural enterprise. All land from which a crop was harvested or hay was cut, in the current year falls into this category. This includes the land in orchards, vineyards, nurseries, other perennial plantings and greenhouses.

Nonproductive Land – The land on the farm which is nonproductive primarily due to slope, drainage capacity, soil type or topography

Cropland Pastured & Other Cropland – Cropland used for pasture or grazing or land considered as tillable but is elected to be fallow or in cover crops. It can and often is used to produce crops, but its maximum income may not be realized in a particular year. This category also includes land planted in crops, which were to be harvested after the census year.

Permanent Pasture – This land is typically not tillable, best suited for grazing or possibly part of an erosion control program. This category also includes necessary and related lands.

Productive Forestland- New for this year, this category replaces the prior Chapter 61 forest land.

\*For information on soil ratings and capabilities please see our web site at <http://www.mass.gov/Ador/docs/dls/bia/pdfs/Soilguidefy2003.pdf>

Post Office Box 9569, Boston, MA 02114-9569, Tel: 617-626-2300; Fax: 617-626-2330



## Farmland Valuation Advisory Commission

### Crop Developmental Time Periods

| Type of Crop:                        | Developmental Time Period |       |
|--------------------------------------|---------------------------|-------|
| Tobacco                              | Annual                    |       |
| Truck Garden, Vegetables and Flowers | Annual                    |       |
| Strawberries                         | 1                         | Year  |
| Asparagus                            | 1                         | Year  |
| Cranberries                          | 2                         | Years |
| Grapes                               | 3                         | Years |
| Pears                                | 5-6                       | Years |
| Blueberries                          | 5-6                       | Years |
| Plums                                | 5-6                       | Years |
| Apples                               | 6-7                       | Years |
| Christmas Trees                      | 8                         | Years |
| <b>Nursery Stock:</b>                |                           | Years |
| Ground Cover                         | 2                         | Years |
| Deciduous Flowering shrubs           | 2-3                       | Years |
| Broadleaf Evergreens                 | 3-4                       | Years |
| Shade and Flowering Tress            | 4-5                       | Years |
| Evergreens                           | 7-10                      | Years |
| Shade Trees                          | 8-10                      | Years |

*Crop Developmental Time Periods* represent the approximate amount of time it takes from planting to crop harvest. For property in chapter land assessors should grant chapter land valuation status during development time.

This chart was first developed in 1974; it was reviewed and left unchanged in 2008 by the Farmland Valuation Advisory Commission.



# PROPERTY TYPE CLASSIFICATION CODES, Non-arms Length Codes and Sales Report Spreadsheet Specifications

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Prepared by the Bureau of Local Assessment  
Revised June 2009

New and Revised Codes 262, 273 – 276, 280, 290, 602, 713 – 716, 720 & 815  
(Changes are highlighted in yellow for ease of identification)

Deleted Codes 902 – 908

# INTRODUCTION

These Guidelines are intended to assist the Board of Assessors in determining the proper classification of property according to its use.

The coding structure has three digit level of detail. The first digit indicates a major classification. The second digit is a major division and the third digit is a subdivision, both within the major classification of property.

If the guidelines do not include a three digit code for a specific property use, the assessor should use the code that most appropriately identifies the property's use. For example, the assessors would use codes 321-326 to classify a retail condominium, based on the use of the property.

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**New and Revised Codes**  
 262, 273 - 276, 290, 280,  
 602, 713 - 716, 720 & 815

**Deleted Codes**  
 902 - 908

## MULTIPLE-USE PROPERTY

### CODE 0

Real property used or held for use for more than one purpose, including parcels with multiple detached or attached buildings, are considered multiple-use property for classification purposes. Any necessary related land on a multiple-use property must be allocated among the classes of property within the building.

The first digit of multiple-use property is always a zero (0). The second and third digits are the major classification of the property represented. The digits following zero (0) are listed in the order of major importance.

### Examples

Since the guidelines for coding multiple-use property are unique, several specific examples of how to identify such property with these codes are listed here. These are only examples and do not represent all possible multiple use codes.

#### 013 Multiple-Use, primarily Residential

A building with a retail store on the first floor, apartments on the upper floors, and a major portion of the related land is reserved for tenant parking.

#### 031 Multiple-Use, primarily Commercial

A building with retail use on the first floor, office space on the second and third floors, apartments on the fourth floor and a major portion of the related land is allocated for commercial use.

#### 037 Multiple-Use, primarily Commercial with part of land designated under Chapter 61A use

A farm property with land and buildings predominantly used for commercial farming with part of land (at least 5 acres) designated horticulture/agricultural under Chapter 61A.

#### 021 Multiple-Use, primarily Open Space

A single-family house with substantial acreage designated open space by the assessors.

## RESIDENTIAL

### CODE 1

**M.G.L. Chapter 59 §2A:** All real property used or held for human habitation containing one or more dwelling units including rooming houses with facilities assigned and used for living, sleeping, cooking and eating on a non-transient basis, and including a bed and breakfast home with no more than three rooms for rent. Such property includes accessory land, buildings or improvements incidental to such habitation and used exclusively by the residents of the property or their guests. Such property shall include: (i) land that is situated in a residential zone and has been subdivided into residential lots, and (ii) land used for the purpose of a manufactured housing community, as defined in Chapter 140, §32F. Such property shall not include a hotel or motel.

Incidental accessory land, buildings or improvements would include garages, sheds, in-ground swimming pools, tennis courts, etc. Non-incident accessory land, classified and coded differently, would include mixed use properties, such as a variety store, machine shop, etc. on a residential parcel.

### 10 Residences

- 101 .....Single Family
- 102 .....Condominium
- 103 .....Mobile Home (includes land used for purpose of a mobile home park)
- 104 .....Two-Family
- 105 .....Three-Family
- 106 .....Accessory Land with Improvement - garage, etc.
- 107 .....(Intentionally left blank)
- 108 .....(Intentionally left blank)
- 109 .....Multiple Houses on one parcel (for example, a single and a two-family on one parcel)

### 11 Apartments

- 111 .....Four to Eight Units
- 112 .....More than Eight Units

**12 Non-Transient Group Quarters**

- 121..... Rooming and Boarding Houses
- 122..... Fraternity and Sorority Houses
- 123..... Residence Halls or Dormitories
- 124..... Rectories, Convents, Monasteries
- 125..... Other Congregate Housing which includes non-transient shared living arrangements

**13 Vacant Land in a Residential Zone or Accessory to Residential Parcel**

- 130..... Developable Land
- 131..... Potentially Developable Land
- 132..... Undevelopable Land

**14 Other**

- 140..... Child Care Facility (M.G.L. Chapters 59 §3F; 40A §9C) (see also Code 352)

**OPEN SPACE****CODE 2**

**M.G.L. Chapter 59 §2A:** Land which is not otherwise classified and which is not taxable under the provisions of Chapter 61, 61A or 61B, or taxable under a permanent conservation restriction, and which land is not held for the production of income but is maintained in an open or natural condition and which contributes significantly to the benefit and enjoyment of the public.

For land designated as Forest, Agricultural/Horticultural and Recreational under Chapters 61, 61A, 61B, see Codes 6, 7, 8. Land placed under conservation restriction according to Chapter 184, §31 is to be classified according to its use as residential, commercial or industrial property.

**20 Open Land in a Residential Area**

- 201 .....Residential Open Land
- 202 .....Underwater Land or Marshes not under public ownership located in residential area (typically, privately owned ponds, lakes, salt marshes or other wetlands of non-commercial use)

**21 Open Land in Rural Area**

- 210 .....Non-Productive Agricultural Land (that part of an operating farm not classified as Chapter 61A Agricultural/Horticultural or Chapter 61 Forest Land)
- 211 .....Non-Productive Vacant Land

**22 Open Land in a Commercial Area**

- 220 .....Commercial Vacant Land (acreage without site improvements and not in commercial use)
- 221 .....Underwater Land or Marshes not under public ownership located in commercially zoned area

**23 Open Land in an Industrial Area**

- 230..... Industrial Vacant Land (acreage without site improvements and not in commercial or industrial use)
- 231..... Underwater Land or Marshes not under public ownership located in industrial area

**Chapter 61, 61A, 61B Property Being Classified as Open Space**

Forest, Agricultural/Horticultural and Recreational lands valued according to M.G.L. Chapters 61, 61A 61B and is being classified as open space. (Without an Open Space Classification they must be placed in Codes 6, 7 or, see page 8.)

**26 Forest Land**

- 261..... All land designated under Chapter 61
- 262..... Christmas Trees

**27 Agricultural/Horticultural**

All land that designated under Chapter 61A. (Land devoted to this use must be in excess of 5 acres and meet other requirements of the law and is being classified as open space.) Note Non-Productive land is being coded as 29.

**Productive Land**

- 270..... Cranberry Bog
- 271..... Tobacco, Sod
- 272..... Truck Crops - vegetables
- 273..... Field Crops - hay, wheat, tillable forage cropland etc.
- 274..... Orchards - pears, apples, grape vineyards etc.
- 275..... Christmas Trees
- 276..... Necessary related land-farm roads, ponds, land under farm buildings
- 277..... Productive Woodland - woodlots
- 278..... Pasture
- 279..... Nurseries

**Non-Productive Land**

- 290..... Wet land, scrub land, rock land

**28 Recreational Land**

All property designated under Chapter 61B. (If an area has more than one use according to the codes below, use the code which represents the primary use of the land and is being classified as open space.)

- 280 ..... Productive woodland - woodlots
- 281 ..... Hiking - trails or paths, Camping - areas with sites for overnight camping, Nature Study - areas specifically for nature study or observation
- 282 ..... Boating - areas for recreational boating and supporting land facilities
- 283 ..... Golfing - areas of land arranged as a golf course
- 284 ..... Horseback Riding - trails or areas
- 285 ..... Hunting - areas for the hunting of wildlife and Fishing Areas
- 286 ..... Alpine Skiing - areas for "downhill" skiing and Nordic Skiing - areas for "cross-country" skiing
- 287 ..... Swimming Areas and Picnicking Areas
- 288 ..... Public Non-Commercial Flying - areas for gliding or hand-gliding
- 289 ..... Target Shooting - areas for target shooting such as archery, skeet or approved fire-arms

## COMMERCIAL

### CODE 3

**M.G.L. Chapter 59 §2A:** All real property used or held for use for business purposes and not specifically included in another class, including but not limited to any commercial, business, retail, trade, service, recreational, agricultural, artistic, sporting, fraternal, governmental, educational, medical or religious enterprise for non-profit purposes.

#### 30 Transient Group Quarters

- 300..... Hotels
- 301..... Motels
- 302..... Inns, Resorts or Tourist Homes
- 303..... (Intentionally left blank)
- 304..... Nursing Homes - includes property designed for minimal care with or without medical facilities
- 305..... Private Hospitals
- 306..... Care and Treatment Facilities - designed and used on a transient basis, including half-way houses or other types of facilities that service the needs of people

#### 31 Storage Warehouses and Distribution Facilities

- 310..... Tanks Holding Fuel and Oil Products for Retail Distribution, either Above Ground or Underground (Underground tanks of service stations would be real estate; however, above ground tanks that rest on concrete saddles or steel frames that can be separated without damage are personal property.)
- 311..... Bottled Gas and Propane Gas Tanks
- 312..... Grain and Feed Elevators
- 313..... Lumber Yards
- 314..... Trucking Terminals
- 315..... Piers, Wharves, Docks and related facilities that are used for storage and transit of goods
- 316..... Other Storage, Warehouse and Distribution facilities (see also Industrial Code 401)
- 317..... Farm Buildings - barns, silo, utility shed, etc.
- 318..... Commercial Greenhouses

#### 32 Retail Trade

- 321 .....Facilities providing building materials, hardware and farm equipment, heating, hardware, plumbing, lumber supplies and equipment
- 322 .....Discount Stores, Junior Department Stores, Department Stores
- 323 .....Shopping Centers/Malls
- 324 .....Supermarkets (in excess of 10,000 sq. ft.)
- 325 .....Small Retail and Services stores (under 10,000 sq. ft.)
- 326 .....Eating and Drinking Establishments - restaurants, diners, fast food establishments, bars, nightclubs

#### 33 Retail Trade - Automotive, Marine Craft and Other Engine Propelled Vehicles, Sales and Service

- 330 .....Automotive Vehicles Sales and Service
- 331 .....Automotive Supplies Sales and Service
- 332 .....Auto Repair Facilities
- 333 .....Fuel Service Areas - providing only fuel products
- 334 .....Gasoline Service Stations - providing engine repair or maintenance services, and fuel products
- 335 .....Car Wash Facilities
- 336 .....Parking Garages
- 337 .....Parking Lots - a commercial open parking lot for motor vehicles
- 338 .....Other Motor Vehicles Sales and Services

#### 34 Office Building

- 340 .....General Office Buildings
- 341 .....Bank Buildings
- 342 .....Medical Office Buildings

**35 Public Service Properties (see Code 9 for Exempt Public Service Properties)**

- 350..... Property Used for Postal Services
- 351..... Educational Properties
- 352..... Day Care Centers, Adult (see also Code 140)
- 353..... Fraternal Organizations
- 354..... Bus Transportation Facilities and Related Properties
- 355..... Funeral Homes
- 356..... Miscellaneous Public Services - professional membership organizations, business associations, etc.

**36 Cultural and Entertainment Properties**

- 360..... Museums
- 361..... Art Galleries
- 362..... Motion Picture Theaters
- 363..... Drive-In Movies
- 364..... Legitimate Theaters
- 365..... Stadiums
- 366..... Arenas and Field Houses
- 367..... Race Tracks
- 368..... Fairgrounds and Amusement Parks
- 369..... Other Cultural and Entertainment Properties

**37 Indoor Recreational Facilities**

- 370..... Bowling
- 371..... Ice Skating
- 372..... Roller Skating
- 373..... Swimming Pools
- 374..... Health Spas
- 375..... Tennis and/or Racquetball Clubs
- 376..... Gymnasiums and Athletic Clubs
- 377..... Archery, Billiards, other indoor facilities

**38 Outdoor Recreational Properties (excluding those classified under General Laws 61B)**

- 380 .....Golf Courses
- 381 .....Tennis Courts
- 382 .....Riding Stables
- 383 .....Beaches or Swimming Pools
- 384 .....Marinas - including marine terminals & associated areas primarily for recreational marine craft
- 385 .....Fish and Game Clubs
- 386 .....Camping Facilities - accommodations for tents, campers or travel trailers
- 387 .....Summer Camps - children's camps
- 388 .....Other Outdoor facilities - e.g., driving ranges, miniature golf, baseball batting ranges, etc.
- 389 .....Structures on land classified under Chapter 61B Recreational Land

**39 Vacant Land - Accessory to Commercial parcel or not specifically included in another class**

- 390.....Developable Land
- 391 .....Potentially developable Land
- 392 .....Undevelopable Land
- 393 .....Agricultural/Horticultural Land not included in Chapter 61A

## CHAPTER 61, 61A, 61B PROPERTY

Forest, Agricultural/Horticultural and Recreational lands valued according to M.G.L. Chapters 61, 61A 61B are not specifically included in any of the four major classifications. The commercial property tax rate, however, is the applicable rate for land under these chapters.

### CODE 6

#### Forest Land

601..... All land designated under Chapter 61  
602..... Christmas Trees

### CODE 7

#### Agricultural/Horticultural

All land that has been designated under Chapter 61A. (Land devoted to this use must be in excess of 5 acres and meet other requirements of the law.)

#### 71 Productive Land (Including Necessary and Related Land)

710..... Cranberry Bog  
711..... Tobacco, Sod  
712..... Truck Crops - vegetables  
713..... Field Crops - hay, wheat, tillable forage cropland etc.  
714..... Orchards - pears, apples, grape vineyards etc.  
715..... Christmas Trees  
716..... Necessary Related Land-farm roads, ponds, Land under farm buildings  
717..... Productive Woodland - woodlots  
718..... Pasture  
719..... Nurseries

#### 72 Non-Productive Land

720..... Wet land, scrub land, rock land

### CODE 8

#### Recreational Land

All property that has been designated under Chapter 61B. (If an area has more than one use according to the codes below, use the code which represents the primary use of the land).

801 .....Hiking - trails or paths  
802 .....Camping - areas with sites for overnight camping  
803 .....Nature Study - areas specifically for nature study or observation  
804 .....Boating - areas for recreational boating and supporting land facilities  
805 .....Golfing - areas of land arranged as a golf course  
806 .....Horseback Riding - trails or areas  
807 .....Hunting - areas for the hunting of wildlife  
808 .....Fishing Areas  
809 .....Alpine Skiing - areas for "downhill" skiing  
810 .....Nordic Skiing - areas for "cross-country" skiing  
811 .....Swimming Areas  
812 .....Picnicking Areas  
813 .....Public Non-Commercial Flying - areas for gliding or hand-gliding  
814 .....Target Shooting - areas for target shooting such as archery, skeet or approved fire-arms  
815 .....Productive Woodland - woodlots

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## PART I. ADMINISTRATION OF THE GOVERNMENT

## TITLE IX. TAXATION

## CHAPTER 59. ASSESSMENT OF LOCAL TAXES

## PERSONS AND PROPERTY SUBJECT TO TAXATION

**Chapter 59: Section 2C. Real estate sold by governmental or exempt entities; pro rata taxation; computation; collection remedies**

Section 2C. Except as provided in section sixty-three A of chapter forty-four, whenever in any fiscal year the United States, the commonwealth, or a county, city or town, or any instrumentality thereof, or any entity whose real estate (s exempt under clauses Third, Four, Four A, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth of section five, shall sell any real estate after January first in any year, the grantee of the real estate shall pay a pro rata amount or amounts, as hereinafter defined, to the city or town where such real estate is located in lieu of taxes that would have been due for the applicable fiscal year under this chapter if the real estate had been so owned on January first of the year of sale and, with respect to a sale between January first and June thirtieth, if the real estate had been so owned on January first of the year of sale and the preceding year. The pro rata amounts payable to the city or town shall be determined as follows:

(a) A portion of a pro forma tax for the fiscal year in which such sale occurred allocable on a pro rata basis to the days remaining in such fiscal year from the date of sale to the end of the fiscal year; and

(b) A pro forma tax for the succeeding fiscal year where the sales take place between January first and June thirtieth of any year.

The pro forma tax shall be computed by applying the tax rate or the appropriate classified tax rate of the city or town for the fiscal year in which such sale occurs, to the sale price after crediting any exemption to which the grantee would have been entitled under this chapter if the real estate had been so owned on January first of the year of sale.

Such amounts shall be paid by the grantee to the collector of the city or town within thirty days of the date of the issuance by said city or town of a notification of such liability to said grantee or the date by which a tax assessed upon real estate would otherwise be payable without interest for the applicable fiscal year, whichever is later. Any amount not paid by said date shall bear interest from said date at the rate per annum provided in section fifty-seven. The collector shall have for the collection of sums assessed under this section all remedies provided by chapter sixty for the collection of taxes upon real estate.

Sums received under this section shall not be subject to section sixty-three of chapter forty-four, but shall be credited to the general fund of the city or town.

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July 31, 2009

Donna Champagne O'Keefe  
Assistant Assessor, Town of Swampscott  
22 Monument Ave.  
Swampscott, MA 01907

Re: Pro Forma Tax/G.L. c. 59, § 2C  
Our File # 2009-986-1

Dear Ms. O'Keefe:

You have requested an opinion as to whether a pro forma tax under G.L. c. 59, § 2C applies to a property sold by an exempt organization to a non-exempt purchaser on August 8, 2008. Specifically you question whether a pro forma tax owing for fiscal year 2009 can be assessed, committed, and billed subsequent to the end of the fiscal year in which the sale occurred. Our conclusion is that the pro forma tax is due and owing for the property at 143 Burrill Street in Swampscott (the "subject property"), and that the assessment, commitment, and billing would not be untimely in fiscal year 2010. (Your question as to the appropriate classification of the subject property is separately addressed in another opinion letter, Our File # 2009-986-2.)

G.L. c. 59, § 2C "employs, as an interim measure, a method for assessing taxes on real property purchased from a tax-exempt entity different from the method imposed on other real property pursuant to G.L. c. 59, § 2A(a)." *WB&T Mortgage Co. v. Board of Assessors of Boston*, 451 Mass. 716, 717-18 (2008). Referred to as a "pro forma tax," the imposition applies "in lieu of taxes that would have been due for the applicable fiscal year under this chapter if the real estate had been ... owned [by the non-exempt purchaser] on January first of the year of sale ...." G.L. c. 59, § 2C. The pro forma tax is pro-rated to the number of "days remaining in such fiscal year from the date of sale to the end of the fiscal year." *Id.* at subparagraph (a). The pro forma tax is computed "by applying the ... appropriate classified tax rate of the city or town for the fiscal year in which such sale occurs, to the sale price after crediting any exemption to which the grantee would have been entitled under this chapter if the real estate had been so owned on January first of the year of sale." *Id.* at subparagraph (b).

G.L. c. 59, § 2C was upheld against challenge on grounds of proportionality in the *WB&T Mortgage Co.* case. *See* 451 Mass. at 721-28. In that case, the non-exempt acquirer of property previously owned by an exempt organization purchased the property on December 17, 1999, during the 2000 fiscal year. Sixteen months after the purchase, during fiscal year 2002, "on November 21, 2001, the city issued a tax bill for fiscal year 2000 (July 1, 1999, to June 30, 2000) to WB&T pursuant to G.L. c. 59, § 2C, in the amount of \$82,861.11." *WB&T Mortgage Co.*, 451 Mass. at 719. Despite the time lapse between the date of sale and the issuance of the bill, the taxpayer did not challenge the bill for the pro forma tax as untimely. *See WB&T Mortgage Co. v.*

Ms. Donna Champagne O'Keefe  
July 31, 2009

*Board of Assessors of Boston*, ATB Docket No. F264697 (2006), ATB Findings of Fact and Report at 2006-405, n.6, *aff'd*, 451 Mass. 716 (2008).

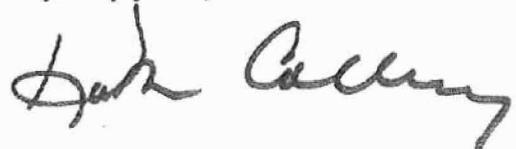
The dissenting members of the Appellate Tax Board ("Board") in *WB&T Mortgage Co.* argued that the sixteen-month time lapse between purchase and billing afforded a ground for invalidating the tax that did not reach the merits of the constitutional question. See ATB Findings of Fact and Report at 2006-420-423. The Board majority, in dicta, rejected the argument that the sixteen-month time lapse affected the validity of the tax. First, the majority pointed out that failure to send a tax bill does not affect the validity of the tax. See ATB Findings of Fact and Report at 2006-405, n.6, *citing* G.L. c. 60, § 3. The Board majority also emphasized that the taxpayer had not been prejudiced by the delay (*i.e.* no interest was charged). Third, the Board majority noted that there was no evidence on the record suggesting that the bill had not been mailed "seasonably upon commitment" as required. See ATB Findings of Fact and Report at 2006-405, n. 6, *citing* G.L. c. 59, § 57. Finally, the Board majority disagreed with the dissenting members' view that an implicit deadline was set by the provision for revised and omitted assessments at G.L. c. 59, § 75, which requires that such assessments be made before June 20<sup>th</sup> of the relevant fiscal year.

While the Supreme Judicial Court did not directly address the time lapse between acquisition of the property and billing of the pro forma tax in the *WB&T* case, the view expressed by the Board in dicta is strong indication that a period of delay between a taxpayer's purchase of property from an exempt seller and issuance of the bill is no impediment to assessing, committing, and billing the pro forma tax. This Bureau agrees that such delay is of no legal consequence, and notes additionally that the plain terms of G.L. c. 59, § 2C impose no time requirements for the assessment of the pro forma tax. In these circumstances, the Board dissenters' proposed borrowing of a time limitation from the inapposite provision for revised and omitted assessments, G.L. c. 59, § 75, is unpersuasive.

In sum, on the facts you describe a non-exempt purchaser acquired property from an exempt seller on August 8, 2008, approximately one year before the date of this opinion letter. The pro forma tax accordingly stands due for fiscal year 2009, to be based on the tax rate for the applicable class and the sale price for the subject property, and pro rated to the number of days remaining in fiscal year 2009 after August 8, 2008. Assessment, commitment, and billing of the tax would not be untimely notwithstanding the intervening close of fiscal year 2009.

Please do not hesitate to contact us if we can be of further assistance.

Very truly yours,



Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC: DG

## The General Laws of Massachusetts

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**CHAPTER 59. ASSESSMENT OF LOCAL TAXES****PERSONS AND PROPERTY SUBJECT TO TAXATION****Chapter 59: Section 2D. Taxation of improved real estate based on value at issuance of occupancy permit; pro rata**

Section 2D. (a) Whenever in any fiscal year real estate improved in assessed value by over 50 per cent by new construction is issued a temporary or permanent occupancy permit after January 1 in any year, the owner of the real estate shall pay a pro rata amount or amounts, as herein defined, to the city or town where such real estate is located that would have been due for the applicable fiscal year under this chapter if the real estate had been so improved on the assessment date for the fiscal year in which the occupancy permit issued. The amounts payable to the city or town shall be determined as follows:

- (1) A real estate tax based on the assessed value of the improvement for the fiscal year in which such improvement and issuance of an occupancy permit occurred allocable on a pro rata basis to the days remaining in the fiscal year from the date of the issue of the occupancy permit to the end of the fiscal year; and
  - (2) A real estate tax based on the assessed value of the improvement for the succeeding fiscal year where the occupancy takes place between January 1 and June 30 of any year.
- (b) A real estate tax based on the assessed value of the improvement shall be computed by applying the tax rate or the appropriate classified tax rate of the city or town for the fiscal year in which such improvement and issuance of an occupancy permit occurs to the assessed value of the improvement as if the real estate had been so improved on January first of the year of occupancy.
- (c) Such amounts shall be paid by the property owner to the collector of the city or town within 30 days of the date of issuance by said city or town of a notification of such liability to said property owner or the date by which a tax assessed upon real estate would otherwise be payable without interest for the applicable fiscal year, whichever is later. Any amount not paid by the said date shall bear interest from the said date at the rate per annum provided in section 57. The collector shall have for the collection of sums assessed under this section all remedies provided by chapter 60 for the collection of taxes upon real estate.
- (d) A person upon whom a tax has been assessed pursuant to the provisions of this section shall have all remedies provided by section 59 and section 64 of chapter 59 and all other applicable provisions of the General Laws for the abatement and appeal of taxes upon real estate.
- (e) Whenever in any fiscal year, the assessed value of real estate is decreased by over 50 per cent as the result of fire or natural disaster, the city or town shall abate or refund taxes received, as the case may be, in an amount to be calculated in the same manner as a real estate tax increase, based on the assessed value of an improvement, is calculated pursuant to the provisions of this section.

(f) The local appropriating authority, as defined in section 21C, may reject this section by written notification to the department of revenue.



April 28, 2009

Jennifer Yarid  
Treasurer/Collector  
120 Main Street  
North Andover, MA 01845

Re: Lien for Supplemental Assessments – Lien Certificate  
Our File No.2009-537

Dear Ms. Yarid:

This is in reply to your letter asking what collection remedies you have with respect to supplemental assessments on parcels for which municipal lien certificates were issued that did not list the assessments as outstanding. You state that the assessors gave you a listing in June 2007 of residents to bill for supplemental assessments. Because of problems with the town's billing software, no bills were actually sent until December of 2007. Before the mailing of the supplemental bills, some of the properties were sold and clean municipal lien certificates (MLCs) were issued and recorded.

Assuming that the listing the assessors gave you in June 2007 was a valid commitment list, we think the issuance of the clean MLCs discharged the lien for those assessments. The assessors' commitment creates the tax liability. From the date of the commitment forward, liens for the amounts committed are discharged if omitted from an MLC and not yet in tax title. G.L. c. 60, § 23. If the assessors did not commit the tax until after the issuance of the MLCs, then we think the liens for the supplemental assessments would be valid for the reasons set out in the enclosed letters (Our Files No. 91-429 and 92-1070).

We are not certain from your letter who was assessed the supplemental taxes. A supplemental tax should be committed in the name of the assessed owner on the January 1 assessment date for the fiscal year to which the supplemental tax relates. G.L. c. 59, § 2D. Also see Section II-B-3 of Informational Guideline Release No. 03-209. Although a bill may be mailed care of a subsequent owner (G.L. c.60, § 3), a properly assessed supplemental tax is a personal liability of the property owner on the assessment date. If the bills in question were for fiscal 2007, then they should have been assessed to the owner of record on January 1, 2006. If that was the case, then they would be valid personal liabilities of the assessed owner (presumably the builder), and could be enforced by suit (G.L. c. 60, § 35), by set-off, if the town owes the builder money (G.L. c. 60, § 93), or by the denial or revocation of licenses or permits, if the town has adopted an appropriate bylaw under G.L. c. 40, § 57. If you assessed the wrong person, then the assessors can reassess the unpaid tax to the January 1, 2006 owner under G.L. c. 59, § 77.

If you have any other questions, please contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC: CH  
Enclosures (Our Files No. 91-429 and 92-1070)



# Informational Guideline Release

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Property Tax Bureau  
Informational Guideline Release (IGR) No. 03-209  
August 2003

(Supersedes IGR 99-206)

## SUPPLEMENTAL TAX ASSESSMENT ON NEW CONSTRUCTION

Chapter 46 §§41 and 42 of the Acts of 2003  
(Amending G.L. Ch. 59 §2D)

This Informational Guideline Release (IGR) informs local officials that effective immediately the law that allows supplemental tax assessments on the value of certain improvements to real estate constructed after January 1 upon issuance of an occupancy permit applies in all cities and towns that do not notify the Department of Revenue of its rejection. The law is no longer a local acceptance statute.

Topical Index Key:

Abatements and Appeals  
Assessment Administration  
Tax Bills

Distribution:

Assessors  
Collectors  
Accountants/Auditors  
Mayors/Selectmen  
City/Town Managers/Exec. Secys.  
Finance Directors  
Finance Committees  
City/Town Councils  
City Solicitors/Town Counsels

Informational Guideline Release (IGR) No. 03-209  
August 2003

(Supersedes IGR 99-206)

SUPPLEMENTAL TAX ASSESSMENT ON NEW CONSTRUCTION

Chapter 46 §§41 and 42 of the Acts of 2003  
(Amending G.L. Ch. 59 §2D)

SUMMARY:

Under G.L. Ch. 59 §2D, cities and towns may make a pro rata tax assessment on the value of certain improvements to real estate made after the January 1 assessment date. The assessment is made only on those parcels for which an occupancy permit is issued during the fiscal year and the new construction increases the parcel value by over 50 percent. This assessment is in addition to the regular property tax that is assessed on the property based on its January 1 status. It is calculated by applying the tax rate to the value of the improvement and pro-rating that amount over the remainder of the fiscal year after the permit was issued. If the permit was issued between January 1 and June 30, a pro forma tax assessment may be imposed for the following fiscal year as well. In addition, the assessors must abate property taxes on any parcel in the community whenever it loses more than 50 percent of its value due to fire or other natural disaster after the assessment date. The purpose of this supplemental assessment is to provide the city or town with some of the real estate taxes that would have been due for the fiscal year if the new construction had existed on that year's assessment date.

Under a recent amendment, the statute **now applies automatically unless** the Department of Revenue is notified in writing by the selectmen, town council or city council, with the mayor's approval if required by law, of its rejection. Previously, the statute only applied if accepted by voter referendum.

Assessors must assess supplemental assessments on any qualifying new construction for which an occupancy permit issues, and grant abatements on any qualifying property loss that occurs, after **July 31, 2003**, the effective date of the amendment, unless their city or town rejects the statute and notifies the Department. **Any community that does not intend to implement the statute for FY04 should notify the Department of its rejection by the time it sets its FY04 tax rate.** See Section I below.

These guidelines amend Section I of the guidelines issued when G.L. Ch. 59 §2D was enacted to reflect the new rejection process. See Property Tax Bureau Informational Guideline Release No. 99-206, *Supplemental Tax Assessment on New Construction* (April 1999). Examples have also been updated, but the other sections are unchanged.

**GUIDELINES:**

**I. APPLICATION OF STATUTE**

Assessors must make supplemental assessments and grant abatements on qualifying parcels **unless the Department of Revenue has been notified that their city or town has rejected** the provisions of G.L. Ch. 59 §2D.

**A. Decision to Reject**

The decision to reject application of the statute is made by majority vote of the selectmen, town council or city council, with the approval of the mayor if required by law. The rejection will apply until rescinded. See Section I-D below.

A city or town that had previously accepted the statute may reject it in this manner at any time. The community does not need to wait a minimum of three years before changing its decision because the statute is no longer a local acceptance provision subject to G.L. Ch. 4 §4B.

**B. Notice of Rejection**

The Department of Revenue **must be notified** in writing of the rejection for it to be effective. To do so, the municipal clerk should submit the attached "Notice of Rejection," with a certified copy of the vote to the Bureau of Accounts.

**C. Effective Fiscal Year**

The vote and notification should ordinarily be made before the beginning of the fiscal year the rejection is to take effect so that the assessors and collector can properly plan in the event implementation is required. In all cases, the vote should **expressly** state the fiscal year the rejection takes effect. The following language is recommended for the vote:

VOTED: That the city/town of \_\_\_\_\_ reject the provisions of G.L. Ch. 59 §2D, which impose a supplemental property tax assessments on certain improvements to real estate constructed after January 1 once an occupancy permit is issued, for fiscal years that begin on or after July 1, \_\_\_\_\_.

**D. Revocation of Rejection**

A community may rescind its rejection at any time.

Rescission is also by majority vote of the selectmen, town council or city council, with the approval of the mayor if required by law, and written notice must be given to the Department to be effective. See the attached "Notice of Rescission." The vote and notice should be made before the beginning of the fiscal year the rescission is to take effect to allow the assessors and collector sufficient time to plan for implementation. The following language is recommended for the vote:

VOTED: That the city/town of \_\_\_\_\_ rescind its vote of \_\_\_\_\_, \_\_\_\_\_ to reject the provisions of G.L. Ch. 59 §2D and make those provisions applicable in the city/town for fiscal years that begin on or after July 1, \_\_\_\_\_.

## II. SUPPLEMENTAL ASSESSMENTS

A supplemental tax assessment is made on a real estate parcel for the fiscal year whenever (1) a temporary or permanent occupancy permit is issued for that parcel during that fiscal year and (2) the new construction or improvement made after the annual assessment for the fiscal year has increased the assessed value of the parcel by over 50 percent. In some cases, a supplemental tax assessment may be made for the following fiscal year as well.

### A. Occupancy Permits

Assessments are triggered by the issuance of a temporary or permanent occupancy permit. Therefore, the assessors and building inspectors will have to develop a system for ensuring that the assessors' office receives timely notification of all occupancy permits issued.

### B. Assessment

#### 1. Pro Rata Supplemental Assessment

For the fiscal year in which the occupancy permit is issued, any supplemental tax assessment will be pro-rated based on the number of days left in the fiscal year after the permit issued. The assessment is based on the increased valuation that results from the parcel's being improved by new construction after the regular tax assessment on the property was determined for that fiscal year. An assessment may be made only if the value of the parcel, as improved by the new construction, is more than 50 percent higher than the assessed value for the year. No assessment is made if the construction results in a 50 percent or less increase in the valuation of the parcel.

The pro rata assessment is computed by applying the tax rate for the current fiscal year, *i.e.*, the fiscal year in which the occupancy permit is issued, to the value of the improvement and multiplying the result by a fraction.

- a. The value of the improvement is the difference between (1) the assessed valuation of the parcel for the current fiscal year, and (2) the valuation of the parcel as improved, *i.e.*, the assessed valuation that the parcel would have had if the improvement had existed on that year's assessment date.
- b. The numerator of the fraction is the number of days remaining in the fiscal year after the permit was issued and the denominator is 365.

#### Example 1

A parcel of vacant residential land is assessed for \$25,000 as of January 1, 2003, at a FY04 tax rate of \$10.00. On April 1, 2004, an occupancy permit is issued after construction of a new house. If the house had existed when the FY04 assessment was determined, the assessed valuation of the parcel would have been \$130,000. Here the value of the parcel with the improvement (\$130,000) is more than 50% of the FY04 assessed valuation of the parcel (\$25,000). A FY04 pro rata supplemental tax assessment is made on the value of the improvement as follows:

$$(\$105,000 \times \$10.00/1000) \times 90/365 = \$258.90$$

#### Example 2

A parcel with a house is assessed for \$200,000 as of January 1, 2003, at a FY04 tax rate of \$10.00. During FY04, the house is torn down and a larger, modern house is built. An occupancy permit for the new house is issued on April 1, 2004. If the new house had existed when the FY04 assessment was determined, the assessed valuation of the parcel would have been \$350,000. Here the value of the parcel with the improvement (\$350,000) is also more than 50% of the FY04 assessed valuation of the parcel (\$200,000) so a FY04 pro rata supplemental tax assessment is made on the value of the improvement as follows:

$$(\$150,000 \times \$10.00/1000) \times 90/365 = \$369.87$$

2. Pro Forma Supplemental Assessment

If the permit is issued between January 1 and June 30, the parcel may also be subject to a full pro forma supplemental tax assessment for the following fiscal year unless the community has adopted Chapter 653 §40 of the Acts of 1989. In that case, the value of the improvement will already be included in the following year's regular property tax assessment and therefore, only a pro rata assessment could be made for the fiscal year in which the permit was issued.

Here, the assessment is based on the increased valuation that results from the parcel being improved by new construction after the regular tax assessment on the property was determined for the fiscal year of the pro forma assessment, *i.e.*, for the next fiscal year. Again, an assessment may be made only if the value of the parcel with the improvement is more than 50 per cent higher than the assessed value for that particular year. Therefore, both the improved valuation and the assessed valuation of the parcel may differ from those used to determine the pro rata assessment depending on when the construction occurs and the community revalues.

The pro forma assessment is computed by applying the next fiscal year's tax rate to the value of the improvement for that year. The value of the improvement is the difference between (1) the assessed valuation of the parcel for the next fiscal year, and (2) the valuation of the parcel as improved, *i.e.*, the assessed valuation that the parcel would have had if the improvement had existed on that year's assessment date.

Example 3

The construction activity for the new house on the parcel of vacant land described in Example 1 all takes place after January 1, 2004 and the community does not revalue for FY04. In a community not adopting Ch. 653, the FY05 assessed valuation of the parcel would still be \$25,000 and the value of the parcel as improved would still be \$130,000. The value of the improved parcel (\$130,000) would also still be more than 50% of the FY05 assessed valuation of the parcel (\$25,000). Therefore, a FY05 pro forma supplemental tax assessment would be made on the value of the improvement using the FY05 tax rate of \$10.15 as follows:

$$\$105,000 \times \$10.15/1000 = \$1,065.75$$

**Example 4**

The construction activity for the new house on the parcel of vacant land described in Example 1 all takes place after January 1, 2004, but the non- Ch. 653 community revalues so the FY04 assessed valuation of the parcel is now \$40,000. In addition, the value of the improved parcel is now \$175,000. Since the value of the improved parcel (\$175,000) is more than 50% of the FY05 assessed valuation of the parcel (\$40,000), a FY05 pro forma supplemental tax assessment would be made on the value of the improvement using the FY05 tax rate of \$9.75 as follows:

$$\$135,000 \times \$9.75/1000 = \$1,316.25$$

**Example 5**

The new house on the parcel of vacant land described in Example 1 was about 75% complete before January 1, 2004 and the non-Ch. 653 community does not revalue for FY05. The FY05 assessed valuation of the parcel is now \$105,000, with the value of the rest of the house constructed after January 1 at \$25,000. Here, the assessed value of the parcel with the completed house (\$130,000) is not more than 50% of the FY2001 assessed valuation of the parcel (\$105,000). Therefore, no FY05 pro-forma supplemental tax assessment would be made.

3. Person Assessed

Supplemental tax assessments are made to the person(s) assessed the regular real estate tax on the parcel for the fiscal year of the supplemental assessment, *i.e.*, the record owner as of the applicable January 1 assessment date. Therefore, if a parcel subject to both a pro rata and pro forma supplemental tax assessment has had a change in ownership, the assessments could be made to different owners depending on when the transfer occurred.

4. Usage Classification and Tax Rate

In communities using multiple tax rates, the usage classification of properties on January 1 of the fiscal year of the supplemental tax assessment will generally govern the tax rate to apply. However, if the construction activity results in a change in classification, the assessors should use the tax rate that would have applied if the construction had been completed by January 1.

Example 6

A parcel of vacant land is classified as commercial property as of January 1, 2003 for FY04. During the fall of 2003, a ten-unit apartment building is constructed on the property. An occupancy permit is issued January 15, 2004. Any pro rata supplemental tax assessment made for FY04 would be computed using the residential tax rate.

5. Commitment and Warrant

a. Form and Content

The assessors must commit the supplemental tax assessments, with a warrant, to the collector. The commitment should be in the same form as the regular real estate commitment, but captioned to indicate it is for supplemental tax assessments under the provisions of G.L. Ch. 59 §2D, and should contain the same information. This includes, at a minimum, (1) the name of the assessed owner of the parcel as of January 1, (2) property identification, (3) the amount of the supplemental assessment and (4) the amount of each installment payment (See Section III-B below).

Separate commitments must be made for each year's supplemental assessments, whether pro rata or pro forma.

Regular real estate tax warrants may also be used if modified to indicate that they are for supplemental tax assessments under G.L. Ch. 59 §2D.

b. Deadline

There is no statutory deadline for committing the supplemental tax assessments, unlike omitted and revised assessments made under G.L. Ch. 59 §§75 and 76. Wherever possible, however, assessors should have all supplemental assessments for a particular fiscal year committed no later than the date of the actual commitment for the year the improvement becomes subject to regular real estate taxes.

Assessors should make a first commitment of supplemental assessments contemporaneously with, or shortly after, the actual tax commitment each fiscal year. That first commitment should include all (1) pro rata assessments for that year due to occupancy permits issued before the tax rate was set, and (2) pro forma assessments for the year due to permits issued between January 1 and June 30 of the previous fiscal year.

Thereafter, assessors should establish a monthly or other appropriate schedule for committing pro rata supplemental assessments triggered by occupancy permits issued after the tax rate is set. This will ensure the assessments are made in a timely fashion after the permit is issued.

**III. COLLECTION OF ASSESSMENTS**

The provisions of law regarding the procedures for issuing, mailing, paying and collecting property tax bills generally apply to supplemental tax assessments.

**A. Bill Form and Content**

After receiving the commitment, the collector will issue bills for the supplemental tax assessments. If a property is subject to a pro rata and pro forma supplemental assessment, separate bills must be issued for each year's assessment. The bill should show just the additional amount assessed. Regular real estate tax bills issued for the applicable year may be used to bill the supplemental assessment, but the bill or an enclosure should explain that the bill is for an assessment under G.L. Ch. 59 §2D.

**B. Due Date and Interest**

Supplemental tax assessments for a fiscal year are due at the same time and in the same number of installments as regular real estate assessments for that year. Therefore, if a parcel is subject to a pro rata and pro forma assessment, the assessments will be due at different times depending on when the bill for each fiscal year's assessment is mailed.

1. Semiannual Payment System

The first half of the supplemental bill is due on November 1, or 30 days after the supplemental bill was mailed, whichever is later. The second half is due May 1. Interest on delinquent first installments would be charged from October 1, or the date the supplemental bill was mailed, if later, and on delinquent second installments from April 1. If the bill is mailed on or after April 1, however, it is due in full 30 days from the date the bill was mailed and interest would be charged from the mailing date.

**Example 7**

The bill for a FY04 pro rata assessment is mailed on October 20, 2003. One half is due November 19, 2003 and the second half is due May 1, 2004.

**Example 8**

A parcel is assessed for both a FY04 pro rata and FY05 pro forma assessment. The FY04 pro rata bill is mailed on May 10, 2004. It is due in a single payment on June 9, 2004. The pro forma bill for FY05 is mailed on October 1, 2004. One half of that bill is due November 1, 2004 and the second half due May 1, 2005.

2. Quarterly Payment System

If the supplemental bill is mailed on or before December 31, the amount is payable in two equal installments due February 1 and May 1. Interest on delinquent installments would be charged from the due date. Supplemental bills mailed after December 31 are due May 1, or 30 days from the date the bill was mailed if later, and interest would be charged from the due date.

**Example 9**

The bill for a FY04 pro rata assessment is mailed on December 15, 2003. One half is due February 1, 2004 and the balance is due May 1, 2004.

**Example 10**

A parcel is assessed for both a FY04 pro rata and FY05 pro forma assessment. The FY04 pro rata bill is mailed on January 10, 2004. It is due in a single payment on May 1, 2004. The pro forma bill for FY05 is mailed on December 29, 2004. One half of that bill is due February 1, 2005 with the balance due May 1, 2005.

**C. Collection**

The same remedies available to the collector for collection of regular real estate taxes are available for collection of supplemental assessments, including a tax taking. The lien for the supplemental tax assessment arises as of the January 1 assessment date of the fiscal year the assessment relates to and terminates the same time as that year's real estate tax lien.

Collectors must list only those supplemental assessments actually committed on municipal lien certificates. However, a standard notation should be pre-printed on all municipal lien certificates that real estate parcels in the community are subject to supplemental tax assessments under G.L. Ch. 59 §2D.

**IV. BUDGET AND ACCOUNTING PROCEDURES**

**A. Revenue**

Revenue from supplemental tax assessments belongs to the general fund and is not part of the tax levy limited by Proposition 2½. The amount estimated to be received during the fiscal year should be itemized under the "Miscellaneous Non-recurring" line on Page 3 of the Recapitulation Sheet. Receipts in excess of that amount will close to surplus revenue at the end of the year and become part of the community's free cash upon certification by the Director of Accounts.

**B. Tax Base Growth**

The calculation of tax base growth for purposes of increasing the levy limit under Proposition 2½ is not affected. Once the improvements are subject to regular real estate taxes in the next fiscal year, they become part of that year's tax base growth.

**C. Municipal Revenue Growth Factor**

Revenue from supplemental tax assessments will not be used to calculate the municipal revenue factor. Revenue from the improvements will continue to be included in the calculation when they are subject to regular taxes and become part of the levy limit as growth.

**V. ABATEMENT PROCESS**

**A. Abatement of Supplemental Assessments**

The taxpayer may contest a supplemental tax assessment by filing an application for abatement with the assessors. The application is due the same day payment of the first installment of the supplemental assessment for that fiscal year is due. See Section III-B above. The assessors' decision on the application may be appealed in the same manner and by the same deadline as a decision on an application for an abatement of a regular property tax assessment.

Regular abatement application forms (State Tax Form 128) may be used by taxpayers to apply for an abatement of a supplemental tax assessment. An abatement should be processed in the same manner as an abatement of a regular real estate tax and charged to the overlay account for the fiscal year of the assessment. Forms used in processing any abatement, denial or deemed denial should be modified to indicate that the action relates to a supplemental tax assessment made under G.L. Ch. 59 §2D.

**B. Abatements on Damaged Properties**

**1. Calculation of Abatement**

The assessors must grant a pro rata abatement of the regular real estate tax assessed on a parcel whenever damage due to fire or natural disaster after the applicable assessment date results in a loss in value of more than 50 percent. The abatement is to be calculated in the same manner as a pro rata supplemental assessment, but on the amount of valuation lost instead, and then pro-rated for the balance of the fiscal year remaining after the fire or natural disaster.

If the damage occurs between January 1 and June 30, a pro forma abatement of the next year's real estate tax on the parcel must also be given, unless the community has adopted Chapter 653 §40 of the Acts of 1989, where the damage would already be reflected in the following year's regular property tax assessment.

**Example 11**

On April 1, 2004, a fire occurs that significantly damages the structure on a parcel. The FY04 assessment on the property was \$125,000. If the damage had existed when the FY04 assessment was determined on January 1, 2003, the parcel, as damaged, would have been assessed for \$35,000. A valuation of \$35,000 reflects a loss of more than 50% of the FY04 assessed valuation of \$125,000. Therefore, a pro rata abatement of the FY04 real estate tax is granted on the \$90,000 reduction in the value using the FY04 tax rate of \$10.00 as follows:

$$(\$90,000 \times \$10.00/1000) \times 90/365 = \$221.91$$

A pro forma abatement of the FY05 real estate tax must also be granted if there is at least a 50% loss in the FY05 assessed valuation, except in Ch. 653 communities where the damage would already be reflected in the actual tax assessment for that year. Here, assuming the non-Ch. 653 community did not revalue for FY05, there would still be at least a 50% loss in value, so an abatement would still be based on a \$90,000 valuation loss. If the FY05 tax rate is \$10.15, the abatement for the full fiscal year would be granted as follows:

$$\$90,000 \times \$10.15/1000 = \$913.50$$

If the community had revalued, however, the assessors would first have to determine the value of the damaged parcel using the FY051 valuation schedules. If the damaged parcel value reflects a loss of at least 50% of the FY05 assessed valuation of the undamaged parcel, then a pro forma abatement would still be granted, but it would be based on the difference between the assessed valuation of the undamaged parcel and the valuation of the damaged parcel, as determined using the new schedules.

2. Abatement Procedure and Deadline

The abatement may be made on the assessors' own motion or upon written application by the taxpayer. Before granting an abatement on their own motion, however, assessors with knowledge of damage should first try to obtain an application from the taxpayer. This will establish a timetable for the assessors' action and any taxpayer appeal. An application should be processed in the same manner and using the same forms as regular property tax abatements. However, the assessors' records should reflect that the abatement is authorized by G.L. Ch. 59 §2D. All abatements granted are charged to the overlay for the applicable fiscal year.

2. Reconstruction or Repair of Property

A rebuilt or repaired property is subject to a supplemental tax assessment if an occupancy permit is issued and the value of the parcel, as improved by the new construction, is more than 50 percent higher than the assessed valuation of the parcel, as abated.

\_\_\_\_\_  
(City/Town)

**NOTICE OF REJECTION  
General Laws Chapter 59 §2D  
(Supplemental Assessment of New Construction)**

The Commissioner of Revenue is hereby notified that the City/Town of \_\_\_\_\_, by vote of the Board of Selectmen, Town Council or City Council, with the Mayor's approval, on \_\_\_\_\_, \_\_\_\_\_, rejected the provisions of General Laws Chapter 59 §2D.

The rejection applies for fiscal years that begin on or after July 1, \_\_\_\_\_.

\_\_\_\_\_  
(City/Town Clerk)

\_\_\_\_\_  
(Date)

**PLEASE ATTACH A CERTIFIED COPY OF THE VOTE AND SUBMIT TO:**

**Bureau of Accounts  
Division of Local Services  
P.O. Box 55490  
Boston MA 02205-5490**

\_\_\_\_\_  
(City/Town)

**NOTICE OF RESCISSION  
General Laws Chapter 59 §2D  
(Supplemental Assessment of New Construction)**

The Commissioner of Revenue is hereby notified that the City/Town of \_\_\_\_\_, by vote of the Board of Selectmen, Town Council or City Council, with the Mayor's approval, on \_\_\_\_\_, \_\_\_\_\_, rescinded its vote on \_\_\_\_\_, \_\_\_\_\_ to reject the provisions of General Laws Chapter 59 §2D.

The provisions of G.L. Ch. 59 §2D will apply for fiscal years that begin on or after July 1, \_\_\_\_\_.

\_\_\_\_\_  
(City/Town Clerk)

\_\_\_\_\_  
(Date)

**PLEASE ATTACH A CERTIFIED COPY OF THE VOTE AND SUBMIT TO:**

**Bureau of Accounts  
Division of Local Services  
P.O. Box 55490  
Boston MA 02205-5490**

## **Comparability Analysis**

### Illustrative cases

- **Ricci v. Assessors of Dennis** (No. F294079, May 7, 2009), Mass. ATB Findings of Fact and Reports 2009-542
  - Half-acre parcel improved with 2666 sq. ft. Cape-style home constructed in 2003
  - Deeded beach access, 4 bedrooms, 3 full baths, 2-car garage, deck, and central air conditioning
  - FY 08 assessed value of \$917,400
  - Taxpayer offered assessed values of 35 properties in the area, but failed to give detail necessary to support a finding of comparability
  - Taxpayer offered 9 sales but “drew only generalized comparisons”
  - Assessors offered 3 comparable sales adjusted to account for differences from subject property
  - Board credited assessors’ sales analysis but gave taxpayer’s evidence no weight; decision for appellee
  
- **Finer Realty Trust v. Assessors of Mansfield** (Nos. F283979 *et al.*, August 7, 2008), Mass ATB Findings of Fact and Reports 2008-1009
  - 9730 sq. ft. lot improved with 3-story, 5-unit apartment building with 2448 sq. ft. of rentable area
  - FY 06 assessed value of \$527,300/FY 07 assessed value of \$534,200
  - Appellant’s appraiser offered comparisons to 11 apartment properties ranging in size from 6 to 16 units (6 of which were outside Mansfield), but ignored timely sale of 4-unit apartment building next door
  - Large percentage adjustments made to sales prices
  - Appraiser’s income analysis given “diminished weight” because of flaws and weak foundation in market data
  - Assessors relied on sale of property next door, but failed to offer adjustments
  - Taking the property next door as the only good comparable and making its own adjustments, ATB found fair cash value at \$492,000 for FY 06 and \$500,000 for FY07; decision for appellant

- **Wood v. Assessors of Fall River**, (Nos. X295567 *et al.*, February 26, 2008), Mass. ATB Findings of Fact and Reports 2008-213
  - Two office properties, both 5-story, one with 11,918 sq. ft. of gross leaseable area and the other with 38,200 sq. ft. of gross leaseable area
  - Taxpayer proceeded without appraiser, offering assessed values of allegedly comparable office properties and an income analysis based on actual vacancy levels
  - Assessors offered assessed values of allegedly comparable office properties, but pointed out errors in the assessed values of the comparison properties
  - ATB rejected both parties' comparable assessment information
  - Owner opinion of value based on do-it-yourself income analysis rejected for lack of expert foundation
  - Finding no evidence to support a finding of fair cash value, ATB decided case for appellee on burden of proof grounds
  
- **Antonino v. Assessors of Shutesbury**, (F278868, January 16, 2008), Mass ATB Findings of Fact and Reports 2008-54
  - 34 acres improved with contemporary-style dwelling with 5634 sq. ft. of effective area, constructed in 1996, situated on hilltop with commanding view
  - Total of 15 rooms, including 3 bedrooms, 4 baths, 3 rooms used for taxpayers' law practices, 2 decks, open porch, patio, and customized amenities such as cherry cabinets, whirlpool bath, and cathedral ceilings
  - FY 05 assessed value of \$790,100 as abated; ATB finding of value for FY 03 of \$691,800, casting burden of proof onto assessors
  - Assessors relied on town-wide rise in assessed values of 16-17%
  - Taxpayers offered assessed values of allegedly comparable properties in nearby Amherst
  - ATB deemed the subject property to be "superadequate" for Shutesbury given the lack of comparable properties in town
  - Reliance on generalized trends in assessed values unavailing for a superadequate property
  - Taxpayers' failure to offer adjustments for Amherst comparison properties precluded finding of value in line with owners' opinion of value
  - Rejecting valuation cases of both parties, ATB decided case in accordance with burden of proof; decision for appellants

**ATB Findings of Fact and Reports since the year 2000 are available at [www.mass.gov/atb](http://www.mass.gov/atb). For Findings older than 2000, you may call the ATB at 617-727-3100 to request a copy.**

Propositions of law bearing on the sales comparison approach to value

- “In valuing owner-occupied residential property, this Board has tended to rely on the comparable sales or market approach to value.” *Carney v. Assessors of Plymouth*, Mass. ATB Findings of Fact and Reports 2008-443
- “Evidence of the sale price of ‘reasonably comparable property’ is next best evidence to the sale of the property in question.” *Lattuca v. Robsham*, 442 Mass. 205, 216 (2004)
- Party proffering evidence must establish basic comparability of subject and comparison properties. *Finer Realty Trust*, Mass. ATB Findings of Fact and Reports at 2008-1036.
- “Once basic comparability is established, it is then necessary to make adjustments for the differences, looking primarily to the relative quality of the properties, to develop a market indicator of value.” *New Boston Garden Corp. v. Assessors of Boston*, 383 Mass. 456, 470 (1981).
- Failure to offer adjustments undermines probative weight of indication of value derived from comparable sales or assessments. *Antonino*, Mass. ATB Findings of Fact and Reports at 2008-70.
- “‘Excessive’ adjustments ‘compromise[] the indicated values derived from [the] comparable sales methodology’ and ‘raise[] serious questions regarding the initial comparability of’ properties utilized.” *Finer Realty Trust*, Mass. ATB Findings of Fact and Reports at 2008-1037 (Citation omitted.)
- ATB may use its own expertise to make adjustments to sales prices or assessed values of properties deemed sufficiently comparable. *Finer Realty Trust*, Mass. ATB Findings of Fact and Reports at 2008-1040, 1041.
- Reliance on comparable sales fails where there is “insufficient information in the record about the characteristics of the comparison properties and how they lined up with the features of the subject properties in the various respects relevant to comparability analysis.” *Wood*, Mass. ATB Findings of Fact and Reports at 2008-228.
- “[R]eliable comparable sales data will ordinarily trump comparable assessment information for purposes of finding a property’s fair cash value.” *Ricci*, Mass. ATB Findings of Fact and Reports at 2009-551 (Citation omitted.)
- “Superadequacy ... complicates sales comparisons, because substantial differences in square footage, grade, or amenities must usually be accounted for, yet adjustments cannot be made on a one-for-one basis.” *Antonino*, Mass. ATB Findings of Fact and Reports at 2008-69.
- Sales of property in a different community may be admitted in evidence provided there is “[s]ufficient evidence of comparability ... to establish a foundation for consideration of the evidence[.]” *Roach v. Newton Redevelopment Authority*, 8 Mass. App. Ct. 618, 632 (1979).
- ATB is reluctant to give weight to out-of-town sales when comparable sales are available within the subject community. *Finer Realty Trust*, Mass. ATB Findings of Fact and Reports at 2008-1026.

## **Highest and Best Use Analysis**

### **Illustrative cases**

- **SLT Realty Limited Partnership v. Assessors of Barnstable** (Nos. F272349 *et al.*, July 27, 2009), Mass. ATB Findings of Fact and Reports 2009-684
  - 54.54 acre parcel in downtown Hyannis improved with a 224-room, full-service resort hotel, known as the Sheraton Hyannis Resort.
  - 30-acre par three golf course surrounding hotel
  - FY 04 assessed value of \$14,387,000; FY 05 assessed value of \$16,821,000
  - Assessors contended that highest and best use of golf course was for residential development of single-family dwellings, and valued the land comprising the golf course based on the cost approach.
  - Appellant's appraiser valued the golf course as a function of its income and expenses, essentially assigning a negative value to the 30-acre area
  - ATB rejected assessors' highest and best use theory as lacking evidentiary support and "far too speculative"
  - ATB repudiated appellant's appraiser's notion that "30 acres of property located in Hyannis were worthless"
  - ATB held that the golf course should be valued as an "amenity" to the hotel; took the land value of the property as reflected in the property record card and divided by the total acreage to yield a per-acre value, which was then applied to the area of the golf course. Golf course value was added to value of property as indicated by the income approach, to arrive at fair cash value in between the assessed values and the values proposed by appellant's appraiser.
  
- **Cosenzi v. Assessors of Springfield** (Nos. F281089 *et al.*, October 15, 2008), Mass. ATB Findings of Fact and Reports 2008-1299
  - 2.52 acre site in busy retail area of Springfield, improved with a concrete block structure with 19,924 sq. ft. of gross building area, used prior to the valuation dates at issue as a Ford dealership
  - Appellant's appraiser offered a highest and best use analysis concluding that the property with the existing improvement was best suited for use as an industrial site; and as vacant, the highest and best use was for a single 40,000 sq. ft. business site, with the remainder of the land area treated as excess
  - Appellant's appraiser opined that the property had insufficient frontage and access to support two retail sites
  - Appraiser failed to apply the four criteria governing determinations of highest and best use—legally permissible, physically possible, financially feasible, and maximally productive.
  - Evidence showed that, subsequent to valuation dates, the vacant structure was razed, and two retail businesses—one a bank, the other a restaurant—were operating on the site

- Assessors offered evidence of comparable sales of retail properties in Springfield; decision for the appellee.
- ***Mason v. Assessors of Winchester***, (Nos. F263659 *et al.*, February 27, 2004), Mass. ATB Findings of Fact and Reports 2004-110
- 50 duplexes, consisting of 100 side-by-side housing units, were separately valued as 50 individual parcels; complex operated as “Winchester Gardens” rental housing under single ownership
  - Assessors treated highest and best use as condominiumization of the duplexes, with a combined assessed value of \$18,607,300 for FY 02 and \$20,159,300 for FY03
  - Appellant’s expert asserted that highest and best use was existing use as an apartment property
  - Assessors offered no expert evidence and “never directly addressed or analyzed the highest-and-best-use issue, although they clearly believed as evidenced by their actions, that each of the fifty parcels should be assessed and valued separately.” Mass. ATB Findings of Fact and Report at 2004-138.
  - ATB stressed “the complex’s reputation in the community ... as a rental apartment complex with some low-income tenants” and found that “a conversion to independently owned two-family homes would necessitate a lengthy and costly transformation.” Mass. ATB Findings of Fact and Reports at 2004-139.
  - Rejecting assessors’ theory of highest and best use, ATB also relied on such factors as the relatively undesirable location; the small size of the units; shared heating and hot water systems; and the decision of the landlord, “an astute businessman” to operate the units as a garden apartment complex;
  - ATB adopted values close to those proposed by appellant’s expert: \$12,200,000 for FY02 and \$13,500,000 for FY03.

Propositions of law bearing on highest and best use analysis

- “Regardless of which method is employed to determine fair cash value, the Board ‘must determine the ‘the *highest* price which a hypothetical willing buyer would pay to a hypothetical willing seller in an assumed free and open market.’” *Cosenzi*, Mass. ATB Findings of Fact and Reports at 2008-1320 (Citation omitted, emphasis added.)
- Ascertainment of a property’s highest and best use is a prerequisite to valuation analysis. *Peterson v. Assessors of Boston*, 62 Mass. App. Ct. 428, 429 (2004).
- Highest and best use determinations require support in expert testimony. See generally *SLT Realty Limited Partnership*, Mass. ATB Findings of Fact and Reports at 2009-684, 722.
- Highest and best use “has been defined as the use for which the property would bring the most.” *Tennessee Gas Pipeline Co. v. Assessors of Agawam*, Mass ATB Findings of Fact and Reports 2000-859, 875.
- “In determining the property’s highest and best use, consideration should be given to the purpose for which the property is adapted.” *Lashway Lumber, Inc. v. Assessors of Westfield*, Mass. ATB Findings of Fact and Reports 2009-300, 314.
- “A property’s highest and best use must be legally permissible, physically possible, financially feasible, and maximally productive.” *Northshore Mall Limited Partnership v. Assessors of Peabody*, Mass. ATB Findings of Fact and Reports 2004-195, 246, *aff’d*, 63 Mass. App. Ct. 1116 (2005).
- “‘As a general rule, the highest and best use statement should ... follow the sequence of the four tests. A logically structured review of the four tests forms the foundation for the opinion of value.’” *Cosenzi*, Mass. ATB Findings of Fact and Reports at 2008-1321, 1322.
- “An ‘existing use is obviously physically possible’”. *Cosenzi*, Mass. ATB Findings of Fact and Report at 2008-1322. (Citation omitted.)
- Property cannot be valued on the basis of hypothetical or future uses that are remote or speculative. See *Skyline Homes, Inc. v. Commonwealth*, 362 Mass. 684, 687 (1972.)

## **Weight Given to Owners' Opinions of Value**

### Illustrative cases

- **45 Rice Street Realty Trust v. Assessors of Cambridge**, (No. F258865 *et al.*, November 20, 2007) Mass ATB Findings of Fact and Reports 2007-1269
  - Four multi-unit apartment properties in Cambridge at issue for 4-5 fiscal years
  - Appellant presented expert appraisal evidence proposing indicated values lower than the assessed values, based on the sales comparison and income approaches to value
  - Appellant's appraiser was impeached on cross-examination by counsel for the appellee
  - ATB gave no weight to valuation evidence of appraiser, whose "credibility ... suffered a death by a thousand cuts." Mass. ATB Findings of Fact and Reports at 2007-1324
  - Owner, who had decades of experience buying, selling, and managing apartment properties, offered opinions of value for all the apartment properties based on the "gross income multiplier" appraisal methodology
  - ATB rejected owner's opinions of value given his lack of expertise in applying sophisticated appraisal techniques.
  - Appellee's motion for a directed finding was allowed, resulting in a decision for the assessors.
  
- **Mason v. Assessors of Brookline**, (No. F270548, May 4, 2005) Mass. ATB Findings of Fact and Reports 2005-237
  - 1.5 acre parcel improved with two-story, brick Colonial-style home with a total living area of 4,710 sq. ft.
  - FY03 assessed value of \$3,154,280
  - Owners offered the assessed values of two nearby properties, each with less land but more living area than the subject property
  - Properties cited by taxpayer assessed for roughly \$650,000 less than subject property
  - Assessors offered comparable sales, but ATB rejected sales given lack of analysis of differences between subject and comparison properties and timing of sales
  - Relying on the comparable assessment data, ATB found a value of \$2,900,000 for the subject property, without specifying how it arrived at that number; decision for appellant
  - Taxpayers' disproportionate assessment claim was rejected.

- *Cardaropoli v. Assessors of Longmeadow*, (No. F257826, February 8, 2001) Mass. ATB Findings of Fact and Reports 2001-158
  - Parcel improved with 3,712 sq. ft. two-story Colonial-style home with ten rooms and a brick and clapboard exterior
  - Constructed in 1987, home had five bedrooms, two full and three half baths, two fireplaces, open porch, patio, and central air conditioning.
  - FY00 assessed value of \$433,800;
  - Taxpayer's opinion of value at \$330,000 was based on his 7/30/98 purchase of home at an FDIC auction for \$311,000
  - Taxpayer offered three sales of inferior properties, but failed to provide deeds, photographs, or property record cards, and failed to propose adjustments
  - Assessors offered sales of "three reasonably proximate properties that were essentially equivalent to the subject property in style, square-footage, age, condition, amenities, lot size, and attractiveness" while offering "appropriate adjustments" to account for differences
  - ATB credited the assessors' case while rejecting taxpayer's opinion of value based on FDIC auction sale, not considered arms-length
  
- *Bubier v. Assessors of Lynn*, (No. F255132, January 19, 2001) Mass. ATB Findings of Fact and Reports 2001-12
  - 4,293 sq. ft. parcel of land improved with a single-family house
  - FY99 assessed value of \$96,000
  - Assessors argued for dismissal of claim since appellant was not owner as of 1/1/98, but ATB found jurisdiction under 1977 amendment to G.L. c. 59, s 59
  - Appellant gave an opinion of value based on \$50,000 purchase price of subject property in transaction completed 6/28/99
  - Appellant testified as to arms-length character of sale
  - Assessors reargued motion to dismiss at trial but did not contest appellant's evidence, or offer comparable sales data in defense of the assessment
  - ATB found value in accordance with appellant's opinion, based on the sales price of the property

Propositions of law bearing on weight accorded to  
owner's opinion of value

- “An owner of property is entitled to express his opinion of its value during the relevant time period if he is experienced in dealing with the property, is familiar with its characteristics, and recognizes its proper uses or potential uses.” *Bubier*, Mass. ATB Findings of Fact and Reports at 2001-25
- “Although a property owner’s opinion of value cannot be based solely on the opinions of others ... , the owner may consider the opinion of others and market information in an effort to inform his own opinion of the value of his property.” *Bleicken v. Stark*, 61 Mass. App. Ct. 619, 624 (2004).
- “An officer of a corporation may testify to value of business assets but only if he has knowledge of and familiarity with the property at issue which qualifies him to express an opinion. [Citations omitted.] Whether an owner or corporate officer is so qualified is a preliminary question for decision of the trier of fact.” *Salem Traders Way Realty LLC v. Assessors of Salem*, Mass ATB Findings of Fact and Reports 2007-236, 246.
- Admissibility of non-expert opinion evidence of value requires a proper foundation, and is discretionary with the trial court. *See Newton Girl Scout Council, Inc. v. Massachusetts Turnpike Authority*, 335 Mass. 189, 198 (1956).
- “An owner who gives his opinion of the value of his property and the reasons therefor is subject to ... proper testing of his reasoning [on cross-examination.]” *Carlson v. Holden*, 358 Mass. 22, 27 (1970)
- Owner’s attempt to quantify effect of contamination on property value was rejected in the absence of “reasonable foundation.” *Morris Realty Trust v. Assessors of Seekonk*, (No. F240990, December 7, 1998)
- “There is no authority for the proposition that the owner’s competence to offer an opinion of value about his own property extends to the application of complex appraisal techniques which are the province of experts in the field of real estate valuation.” *45 Rice Street Realty Trust*, Mass. ATB Findings of Fact and Reports at 2007-1328, 1329.
- Owner’s opinion of value, supported by evidence of comparable sales or assessments, receives greater weight in valuing single-family residential properties than with respect to income-producing properties. *Compare Mason v. Assessors of Brookline*, Mass. ATB Findings of Fact and Reports 2005-237 with *Wood*, Mass. ATB Findings of Fact and Reports at 2008-228-230.
- Owner’s opinion of value rejected where “appellant’s reliance on his purchase price for the property, that he bid at an auction and purchased from the FDIC, was misplaced.” *Cardaropoli*, Mass. ATB Findings of Fact and Reports at 2001-167.



## CASE STUDY 1

Robert Green, a decorated U.S. Army veteran, owned a two family house in Boston. He lived in the second floor apartment and his son, Robert Green, Jr., resided on the first floor. In February 2008, the father hired an attorney to prepare an estate plan. Various options were discussed. The father executed his will, a power of attorney, a health care proxy and a living will on February 18, 2008. Three days later, on February 21, 2008, the father signed a quitclaim deed for nominal consideration whereby he deeded the house to his son but reserved for himself the right to reside on the premises for the rest of his life. The son did not learn of the conveyance until months later. Robert, Sr. and his son resided peacefully in the house until August 2008 when the father, at the insistence of his two daughters, requested Robert, Jr. to convey the house back to the father. The son was pleasantly surprised about the conveyance but Robert, Jr. also refused to deed the property back to him.

- A. To whom should the assessors assess the parcel for fiscal year 2010?  
Can the father continue to receive a Clause 22 veterans exemption?
- B. The father demanded that the son leave the house. Can the father legally evict the son?
- C. Angered at the actions of his son, the father hired another attorney who immediately filed suit in Superior Court to have the deed rescinded on the theories of undue influence by the son, his son's breach of fiduciary duty and unilateral mistake by the father as to the legal consequences of the conveyance. Will the father prevail?

G.L. Ch. 59 § 11

Spring v. Hollander, 261 Mass. 373 (1927)

Breare v. Assessors of Peabody, 350 Mass. 391 (1966)

Ward v. Ward, 70 Mass. App. 366 (2007), further appellate review denied

## CASE STUDY 2

Motor vehicle excise is an important revenue source for the town. Several issues have been raised.

- A. The "Cash for Clunkers" program has received a great deal of publicity. A local official wants town meeting to enact a bylaw whereby owners of fuel efficient vehicles would receive an abatement/refund on their motor vehicle excise bills. Is this permissible?
- B. The assessors received an abatement application from a taxpayer who paid \$36,000 for a vehicle in February with a manufacturer's list price of \$44,000. The taxpayer believes the motor vehicle excise should have been based on the lower purchase price. Is the taxpayer correct? Can the taxpayer receive an abatement due to overvaluation?
- C. Another taxpayer returned to the Commonwealth after residing in another state for several years. He complained to the collector and assessors about his inability to register a motor vehicle due to marking at the Registry of Motor Vehicles for an unpaid 1995 excise bill. He no longer owns that particular vehicle. The taxpayer believes there must be a statute of limitations on excise taxes. Is the taxpayer correct?

G.L. Ch. 60A § 2

Section 7 of Article 89 of Articles of Amendment to the State Constitution (Home Rule Amendment)

Lily Transportation Corp. v. Assessors of Medford, 427 Mass. 228 (1998)

### CASE STUDY 3

A taxpayer paid taxes for twenty years on a small wood lot adjacent to his house. When the taxpayer attempted to sell both parcels, his attorney discovered that the taxpayer did not have title to the wood lot.

- A. The taxpayer was outraged and demanded that the town refund the taxes he mistakenly paid for the wood lot. What would be the result?
- B. The assessors did a diligent search of county land records and probate records and could not locate an owner. How should the assessors assess the parcel for fiscal year 2010?
- C. Assume taxes were assessed for fiscal year 2010 and remain unpaid. What course of action should the collector and the treasurer take?

Massachusetts Mutual Life Insurance Company v. Green, 185 Mass.

306 (1904)

G.L. Ch. 59 § 11

G.L. Ch. 60 § 53

G.L. Ch. 60 § 79

#### CASE STUDY 4

Due to the death of the owner, an estate property was recently put up for sale. A private university in March 2009 purchased the property which contained a mansion, a garage and tennis courts on seven acres of land. The purchase price was twenty million dollars. The university is weighing options for the parcel.

- A. The university trustees are considering the use of the property as the residence of the university President. The parcel is one third of a mile from the campus center. If the parcel is used for this purpose, would the parcel be exempt for a portion of fiscal year 2009? Would the parcel be exempt for fiscal year 2010?
- B. Assume the university plans to use the property as a much desired hotel/conference center. The school intends to renovate the mansion for university meetings and build a nine story, thirty million dollar hotel addition which would contain one hundred and fifty rooms. Will the parcel be exempt for fiscal year 2010?
- C. Upon learning of the sale, the collector and the selectmen are concerned about the possible loss of tax revenue. Thousands of tax dollars had been received annually by the town from the former owner. What could the university and local officials do to offset the loss of revenue?

G.L. Ch. 59 § 5 Cl. 3

Bay Path College v. Board of Assessors of Longmeadow, 57 Mass. App. 807 (2003), review denied 439 Mass. 1106 (2003)

## CASE STUDY 5

A new owner of a vacation home in a trendy Cape community received a personal property tax bill which he believed was excessive. He never filed a form of list. He learned from neighbors that the personal property tax was based on the dwelling value.

- A. Can the taxpayer file an abatement application to contest the personal property tax? Can the taxpayer appeal to the Appellate Tax Board?
- B. The assessors asked to view the premises. On the inspection the appraiser observed paintings by Matisse and Degas. What action should the assessors take?
- C. The appraiser observed several European racing cars in a garage. The vehicles were not registered. Can the vehicles be taxed?

G.L. Ch. 59 § 29

G.L. Ch. 59 § 61

G.L. Ch. 59 § 61A

G.L. Ch. 59 § 76

G.L. Ch. 59 § 5 Cl. 35

## CASE STUDY 6

A shopping mall in town has experienced financial difficulties due to poor management and the economic downturn. The parcel is in tax title and the total tax delinquency exceeds \$200,000. A developer is interested in acquiring the site and converting it to an office park.

- A. The proposed buyer views the tax liabilities as a deal breaker. He has requested that town officials "write-off" a substantial amount of the taxes. Can the treasurer abate any of the amount in tax title?
- B. The developer wants to negotiate a tax agreement with local officials to lessen the taxes in future years and make the tax obligations more predictable. Is this permissible?

G.L. Ch. 60 § 62A

G.L. Ch. 59 § 5 Cl. 51

G.L. Ch. 23A § 3E

G.L. Ch. 121A

## CASE STUDY 7

For estate planning purposes, a husband and wife decided to make their son a co-owner. A new deed was recorded in April 2009 which listed the husband, wife and son.

- A. For fiscal year 2009 the assessors had granted a Clause 41C elderly exemption to the father. Can he continue to receive the \$500 Clause 41C exemption for fiscal year 2010?
- B. The father became ill and was forced to enter a nursing home in May 2009. The house is being kept up for his return. If otherwise eligible, can the father receive a personal exemption for fiscal year 2010?
- C. The parents had been deferring taxes under Clause 41A since FY 2005. Can they continue to defer for fiscal year 2010? Can they deduct from gross receipts the father's nursing home care and medical expenses?

G.L. Ch. 59 § 5 Cl. 41C

G.L. Ch. 59 § 5 Cl. 41A

## CASE STUDY 8

Town meeting has authorized borrowing for a new fifty million dollar high school. Passage of a debt exclusion is critical for financing the project.

- A. The board of selectmen has reluctantly agreed to hold a debt exclusion referendum election for the high school. The selectmen want to include language in the referendum question which makes the voter approval contingent on a 90% State reimbursement. Is this permissible?
- B. The school department has a taxpayer funded automated calling system. Would the school committee be permitted to use the calling system to notify parents of the upcoming election date and to encourage them to vote?
- C. The selectmen want to include in the tax bills a stuffer which discusses school spending, the proposed capital expenditure and the tax ramifications. Is this permissible?

G.L. Ch. 59 § 21C

G.L. Ch. 55

G.L. Ch. 60 § 3A

## CASE STUDY 9

Tax bills were mailed and residents have been contacting town hall about the amounts due.

- A. Some taxpayers believe they are entitled to an abatement or refund of that portion of their taxes used to pay for municipal trash collection. Their rationale is they already pay for trash collection services in their condominium association fees. Are these condominium owners eligible for real estate tax abatements?
  
- B. A taxpayer who recently purchased a house complained to the water commissioners about the apportioned water betterment which appeared on the real estate tax bill. The betterment had been divided into twenty installments at the request of the former owner. The buyer believed the betterment amount was excessive. He also questioned the assessors about the parcel valuation which was more than he paid for the property. The new owner mailed abatement applications on the apportioned betterment and the parcel valuation in an envelope addressed to the water commissioners. Neither board took action on the applications. The new owner then appealed to the Appellate Tax Board. Does the Appellate Tax Board have jurisdiction? Did the unpaid balance of the betterment become due and payable upon the sale of the house?

Emerson College v. Boston, 391 Mass. 415 (1984)

Opinion of the Justices, 357 Mass. 846 (1970)

G.L. Ch. 80 § 5

G.L. Ch. 59 § 59

## CASE STUDY 10

The board of selectmen has received complaints from residents about certain topics.

- A. The tax collector mailed tax bills to residents who occupy leased dwellings on park land owned by the Commonwealth and controlled by the Department of Environmental Management (DEM). The lessees are DEM employees who use the dwellings as their homes. The residents contend the houses are not subject to taxation. Is this assertion correct? How can the tax collector enforce collection of these taxes?
  
- B. "Work at home" is a popular phrase today in job descriptions. Town residents are becoming more interested in operating a home business. The selectmen have been urged to support changes in the town bylaw to ease restrictions on home business. The bylaw would be amended to allow "any occupation, profession or activity that is conducted for gain." Would such an amendment to the bylaw increase revenue for the town? Are there other considerations?
  
- C. Some residents are presently unable to meet their tax obligations. They have requested that the town waive interest where financial need can be shown. Can the selectmen comply with this request?

G.L. Ch. 59 § 2B

G.L. Ch. 59 § 18

G.L. Ch. 59 § 5 Cl. 18

G.L. Ch. 59 § 5 Cl. 18A

G.L. Ch. 60 § 62A

G.L. Ch. 60 § 15