

Stakeholder Engagement

Division of Local Services

Municipal Law Seminar
2013

A Few Questions

- How many of you are attending today's seminar for the first time?
- How many of you are in assessing ?
- How many of you are in finance?
- How many of you are in legal?
- How many of you are from a city?
- How many of you are from a town?

DOR 360

- What is DOR 360?
 - DOR 360 is an initiative to connect and engage with DOR's many stakeholders. We are looking to find better ways to interact while sharing ideas and concerns.
- Who are DLS' Stakeholders?
 - Internal – Staff
 - External – Local and appointed officials
- What is DLS' Role?
 - Our role is to implement strategic planning initiatives solicited from internal and external stakeholders with the intention of moving in a new, more customer-focused direction.

Ideas And Questions To Think About

- Define, promote and advance transparency
- Improve efficiencies and foster innovation
 - What do we already do well?
 - How can we do things better?
 - How can we measure performance?
 - How do we assess and define stakeholder satisfaction as a regulatory agency?
 - How do we encourage innovation?
 - What else can we do to achieve our goals?
 - How do we want to be perceived?

Stakeholder Engagement

We Will Communicate

- Establish an open communication policy between internal and external stakeholders
- Ask our stakeholders to identify our strengths and weakness from their own unique perspective

Stakeholder Engagement

We Will Listen to Feedback

- Encourage our stakeholders to offer ideas and suggestions and express their concerns
- Accept and consider both positive and negative feedback with an open mind

Stakeholder Engagement

We Will

Improve and Expand our Use of Technology

- Continue to develop Gateway enhancements in order to create a culture and processes that support communication and collaboration

Stakeholder Engagement

We Will

Measure Performance

- Develop measurable standards that result in better processes for reporting, certification and information

What Did We Survey In FY13?

- Schedule A
 - 105 Responses
 - The majority of the users found all parts of Schedule A with the notable exception of part 3 either "very easy" or "relatively easy"
 - Wide range of comments were expressed
 - Users report taking from 2 hours to 3 months to complete Schedule A
- FY13 Tax Rate Setting Process
 - 10 question survey
 - 169 responses

What Did We Survey In FY13?

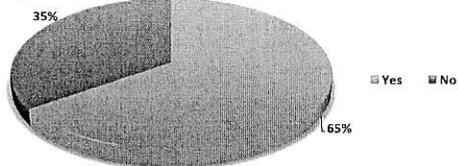
- ✦ FY13 Property Valuation Recertification
 - ✦ 8 question survey
 - ✦ 69 responses
- ✦ DLS Website
 - ✦ 10 question survey
 - ✦ 462 responses
- ✦ DLS Technical Assistance
 - ✦ 6 question survey
 - ✦ 123 responses
- ✦ Survey results are posted on www.mass.gov/dls

What Will We Survey In FY14?

- ✦ *City and Town e-newsletter*
- ✦ FY14 Property Valuation Recertification Process
- ✦ FY14 Tax Rate Setting Process, Schedule A and Free Cash Calculation Sheet
- ✦ Interim Year Communities
- ✦ Municipal Finance Law Services

Property Valuation Recertification Survey

Q: Do you believe there are improvements that can be made to ease your role in the property valuation certification/interim year adjustment and new growth review processes? here

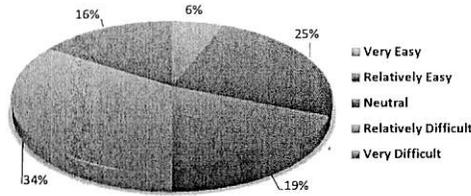


What Did We Did With The Survey Results?

- Any policy decisions will be shared with both internal and external stakeholders prior to implementation.
- Development of a "certification tab" within Gateway. This will allow assessors and staff to monitor their progress throughout the certification process.
- Management and field staff will review and eliminate steps and documentation that is determined to be redundant and ineffective to the certification process.
- Communicate annually with assessors during interim years on their outstanding Directives.
- Empower field staff in decision making.

Schedule A Survey

Q: Degree of Difficulty Entering Special Revenues Section



What Did We Do With The Survey Results?

- Part 3 (Special Revenues Section) was reformatted to look like the Excel version of Schedule A.
- Direct uploads from the Excel-based Auto schedule A are now possible thanks to partnership of DLS and the Community Software Consortium.
- These enhancements occurred because of feedback from the internal and external stakeholders.

Feedback On Other Surveys

- **Tax Rate Setting Survey**
 - "CPA forms can be tricky"
 - "The input to Gateway is not user friendly"
 - "Cherry Sheet numbers should be auto filled"
 - "Internally, departmental cooperation"
 - "Improvements are always good thing but I think there has been major improvements over the past few years"
- **DLS Website Survey**
 - An internal working group was established to revise the website's format and content based on the more than 200 written comments.
 - Users desire more robust legal opinion and publication search capabilities.
 - Users want an easier way to find contact information for DLS staff.
 - Each bureau's existing content is under review.

Feedback On Other Surveys

- **Technical Assistance Survey**
 - The TA Section developed an action plan to respond to the more than 175 written comments.
 - Best Practices/Case Studies will be posted on the DLS website.
 - A DLS team approach to limited scope projects will be marketed to city and town officials in February.
 - Six web-based training modules will be posted on the DLS website.

My Contact Information

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**Division of Local Services
Department of Revenue**

**2013
“What’s New in Municipal Law”
Seminar**

RECENT LEGISLATION

Local Taxes

**Transportation Finance
Chapter 46 of the Acts of 2013
Effective 1/1/2014 [1:6]**

- §§ 29-31, 39, 84 Utility Corporations**
- Repeals separate state corporate excise treatment of incorporated utility companies
 - Utility corporations, except landline telephone and telegraph corporations, treated as business corporations for local tax purposes
 - Business corporations taxed for machinery used in conduct of business
 - Utility corporations only taxed on machinery used in manufacturing or supplying or distributing water

Chapter 46 of the Acts of 2013 (continued)

§ 50 MBTA Lessees

- Amends G.L. c. 161A, § 24 exemption from local taxes and betterments for MBTA property
- Appellate Tax Board (ATB) recently held G.L. c. 59, § 2B does not apply to MBTA commercial lessees and leased portion of South Station used for business was exempt under § 24
 - *Beacon South Station Associates v. Assessors of Boston (3/22/2013)*
- Lessees, users, occupants of MBTA real property in connection with for profit business now taxable under § 24

RECENT LEGISLATION

Local Finances

Borrowing for Dams and Seawalls

Chapter 448, § 4 of the Acts of 2012
Effective 1/9/2013 [1:1]

- Adds G.L. c. 44, § 8, cl. 25
- Allows borrowing to acquire, remove, repair, reconstruct or improve dams and appurtenant real property owned by city or town
- Borrowing is outside debt limit
- Maximum term is 40 years
- See DLS Asset Useful Life Schedules (Effective 4/1/2013)

FY2013 Supplemental State Budget

Chapter 3 of the Acts of 2013
Effective 2/15/2013 [1:2]

**§ 5 Community Preservation Act
(CPA) Fund Uses**

- Amends G.L. c. 44B, § 5(b)(2)
- 2012 amendment prohibited use of CPA funds to acquire artificial turf for athletic fields
- 2013 “grandfathers” expenditures made before amendment effective (7/1/2012)

FY2014 State Budget

Chapter 38 of the Acts of 2013
Effective 7/1/2013 [1:3]

§ 71 Education Reform Waivers

- Adds G.L. c. 70, § 6A
- Codifies annual process for cities, towns and regional school districts to obtain reduction in Education Reform minimum required contributions to schools
 - Previously in annual State Budget
- Applications Due to DOR by 10/1
- See IGR 13-302

PROPOSED LEGISLATION

Local Taxes

**Classified Land
Corrective Changes**
House 2551 [1:7]

- Amends G.L. c. 61, 61A and 61B
- Classified forest, farm and recreational land statutes amended in 2006 to clarify and standardize common features
- Corrects inadvertent drafting errors and makes conforming amendments
- Proposed by Massachusetts Association of Assessing Officers (MAAO)

Personal Exemptions
Senate 1415 [1:10]

- Creates a Clause 22F to codify exemption for paraplegic veterans, spouses and surviving spouses
- Codifies “optional additional exemption” in Chapter 73, § 4 of the Acts of 1986 and updates for new personal exemption clauses since then
- Amends G.L. c. 59, § 59 to include new personal exemptions and create uniform due date for all personal exemption applications
- Sponsored by MAAO

PROPOSED LEGISLATION

Local Finances

Cable Peg Special Funds

House 1860 [1:12]

- Permits separate accounting of cable franchise fees and other revenues to fund cable public access services
- Amends G.L. c. 44, § 53F½ for cities and towns operating own public access facilities to establish enterprise fund
- Adds local option G.L. c. 44, § 53F¾ for cities and towns that contract for public access services to establish receipts reserved for appropriation account

FY2013 Supplemental State Budget

House 3611 [1:13]

§ 4 Other Post-employment Benefits (OPEB) Trust Fund

- Amends G.L. c. 32B, § 20
- Establishes process to create OPEB trusts in various local governmental units and for units to participate in State Benefits Trust Fund or OPEB trust of another governmental unit
- Clarifies custody, investment standard and appropriations into and out of fund

RECENT CASES

Property Taxation

Boston Gas Company v. Assessors of Boston

82 Mass. App. Ct. 517 (2012) [2:6]

- Appeals Court upheld ATB valuation of rate regulated utility personal property
- In calculating operating expenses, ATB used actual property taxes and not tax factor
- Court held ATB decision supported by substantial evidence

Wickles v. Assessors of Hatfield
ATB 2013-185 (March 13, 2013) [2A:120]

- ATB held revised FY2010 real estate tax assessment invalid
- Assessors failed to send report to DLS by June 30th
- 2010 amendment to statute might lead to different result today

Koppelman v. Assessors of Amesbury
ATB 2012-950 (October 2, 2012) [2A:68]

- ATB addressed affordable housing restriction on value of condominium
- Rent Regulatory Agreement and Affordable Housing Restriction limited pool of renters and buyers to those income eligible
- ATB held fair cash value of property exceeded maximum sales price in agreement given benefits of mortgage-interest savings and declining term of restriction

W.A. Wilde Company, Inc. v. Assessors of Holliston
84 Mass. App. Ct. 102 (2013) [2:124]

- Procedural decision interpreting G.L. c. 58A, § 12A regarding burden of proof in overvaluation appeals in two fiscal years after year ATB determines fair cash valuation
- Appeals Court holds burden of proof in case did not shift to assessors
- ATB ruling taxpayer had not met burden of proof in appeals for two prior fiscal years did not determine value

Community Involved in Sustainable Agriculture, Inc. v. Assessors of Deerfield
ATB 2013-395 (May 28, 2013) [2A:51]

- ATB upholds denial of charitable exemption to non-profit entity
- Found dominant purpose of entity was to create business market for local farmers and other members
- Benefit to public of entity's activities only incidental

New England Forestry Foundation, Inc. v. Assessors of Hawley
ATB 2013-63 (January 28, 2013) [2A:94]

- ATB denied charitable exemption to non-profit conservation organization
- Found forest management is not a traditionally charitable effort
- Taxpayer failed to show sufficiently active appropriation of property to achieve a public benefit

RECENT CASES

Employment

Boston v. Boston Police Superior Officers Federation

466 Mass. 210 (2013) [2:13]

- Supreme Judicial Court (SJC) upheld City's position that assignment of union official officer is non-delegable duty
- Union argued City previously agreed to allow bargaining of union official assignments
- SJC reasoned 1906 BPD Commissioner statute conferred strong managerial control re: assignments, deployments

Dixon v. Malden

464 Mass. 446 (2013) [2:17]

- Discharged employee filed MA Wage Act claim seeking 50 days of vacation wages
- City sought to mitigate claim since it made gratuitous weekly payments to employee for 3 months after termination
- SJC held city's gratuitous payments do not offset employees claim and city must pay wages and legal costs

***O'Neill v. School Committee
of North Brookfield***

464 Mass. 374 (2013) [2:100]

- Prior school committee contracted to provide retired superintendent with post-employment 70% subsidized health insurance plan
- Present committee sought to rescind health plan benefits on grounds no authority to award lifetime benefits
- SJC held G.L. c. 71, § 41 allows committee to contract for no longer than 6 years, but post-employment benefits may be provided after contract end date

***Rotondi v. Contributory Retirement
Appeals Board***

463 Mass. 644 (2012) [2:109]

- Town moderator sought decision that value of town health insurance/professional dues was “fixed regular compensation” for retirement eligibility
- SJC held that regular compensation for retirement eligibility does not include non-cash benefits and health premiums vary and are not “fixed”

***Lynnfield v. Commissioner, Division
of Unemployment Assistance (DUA)***

Peabody District Court (February 5, 2013) [2:170]

- Town appeal from DUA decision that retired officer performing details may get unemployment compensation after maximum 960 hours worked
- District Court judge holds officer not “terminated from employment” after working annual maximum of 960 hours
- Spurred Task Force Report and reforms

RECENT CASES

Miscellaneous

Koontz v. St. Johns River Water Management District, 133 S. Ct. 2586 (2013) [2:32]

- 5th Amendment land-use permitting case – “unconstitutional conditions” doctrine
- Extends Nollan/Dolan rule to cases where permit denied and condition is monetary exaction
- Nollan & Dolan require:
 - (1) “*nexus*” between legitimate state interest and permit condition (that requires relinquishment of property interest) and
 - (2) “*rough proportionality*” between condition and impact of proposed development

Valianti v. Marshfield

Plymouth Superior Court (August 6, 2013) [2:182]

- Suit challenging town moderator’s ruling that Community Preservation Committee (CPC) recommended appropriation under G.L. c. 44B, § 5(b)(2) and (d) cannot be amended
- Judge ruled absent town bylaw, charter or town meeting rule to the contrary, moderator must allow motion to appropriate amount less than amount recommended by the CPC
- Moderator’s interpretation on substantive issue of law subject to judicial review

**Globe Newspaper Company v.
Executive Office of Administration & Finance
Suffolk Superior Court (June 14, 2013) [2:127]**

- Employee separation agreements are public records, including employee's name and dollar amount, but "personnel information" is exempt under G.L. c. 4, § 7(26)(c)
- Personnel information includes: administrative leave entitlement, demand of resignation, agreement to remove a letter from personnel file, agreement concerning references, continuation of benefits, grievances, disciplinary action, etc.

AGENCY DECISIONS

**Supervisor of Public Records
SPR 13/077 (June 27, 2013) [1:21]**

- Supervisor upholds Town's refusal to release resident email addresses under public records "privacy" exemption (c)
- G.L. c. 4, § 7(26)(c) exempts "materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy"
- Email addresses – no public email listings, similar to mobile and unlisted phone numbers, favors non-disclosure

**Department of Revenue
Letter Ruling 13-6 (June 19, 2013) [1:18]**

- Rules sales tax applies to public school leases or sales of laptops to students
- Sales to political subdivisions are exempt, not sales by them
- “Sale” includes lease
- School is “vendor” and “retailer” for sales tax purposes
- Laptop leases are not exempt as “casual and isolated” sales

TAX AGREEMENTS

Tax Agreements

1. What is the statutory authority for a city or town to enter into a property tax agreement or a payment-in-lieu-of tax (PILOT) agreement with an owner of an electric power generating facility?

Tax Agreements

2. Which city or town officer, board or commission has authority to enter into electric generating PILOT agreements?

Tax Agreements

3. Are solar and wind electric generating plant owners considered generating companies for purposes of qualifying for a PILOT agreement?

Tax Agreements

4. Are any solar and wind power improvements entitled to a property tax exemption?

Tax Agreements

5. Are solar panels on the roof of a building owned and occupied by a tax exempt charitable organization exempt? What about panels owned by 3rd party or when electricity is sold to the grid with proceeds going to the organization?

Tax Agreements

6. Are solar panels constructed by a 3rd party on vacant land leased from regional school taxable under G.L. c. 59, § 2B? What if all the electricity is used by the school and the energy company is under a license, not a lease?

Tax Agreements

7. May a PILOT agreement provide a tax incentive for the electric generating company?

Tax Agreements

8. May the increased benefits received from lower electricity costs or lease payments for municipal land be considered value that is added to the negotiated tax payment to approximate agreed upon taxes?

Tax Agreements

9. Must the city or town have an expert appraisal of the power plant in order to negotiate a PILOT agreement?

What documentation must the assessors provide in order to meet its triennial certification requirements for assessing at full and fair cash value?

Tax Agreements

10. For how many years may a power plant PILOT agreement be negotiated?

Tax Agreements

11. If a power plant PILOT agreement runs for 20 years and the tax in the 1st year is pro-rated from the date the plant goes online, must it be extended to the fiscal year after its termination year to pick up a pro-rated portion in that year?

Tax Agreements

12. Are solar panels or wind turbines considered personal property for purposes of entering a PILOT agreement with the power producer?

Tax Agreements

13. Does a power plant PILOT agreement have to specify a "value" for the plant to which the annual tax rate will be applied?

Tax Agreements

14. May a power plant PILOT agreement be structured to allow a back-loaded, front-loaded or level payment structure over the life of the PILOT?

How does each payment structure impact new growth?

Tax Agreements

**15. How is the PILOT billed?
How is payment of the PILOT enforced?**

Tax Agreements

16. May a city or town enter into tax agreements to promote job growth or economic development in the community?

Tax Agreements

17. What state level approvals, if any, are required for municipal Tax Increment Financing (TIF) and Special Tax Assessment (STA) agreements to take effect?

Tax Agreements

18. What must be included in a TIF agreement to promote economic development?

Tax Agreements

19. How is personal property taxed on a parcel subject to a TIF agreement?

Tax Agreements

20. May more than one TIF agreement be approved for a parcel of real property?

Tax Agreements

21. Can a parcel of real property subject to a TIF agreement be taken for non-payment of taxes?

Tax Agreements

22. If a TIF recipient fails to create the jobs or economic benefits provided in the agreement, can the city or town "claw back" the property tax benefits received in prior years?

Tax Agreements

23. If the state decertifies the project and terminates the state tax credit, can the city or town continue the property tax exemption?

Tax Agreements

24. Are there other types of TIF agreements cities and towns may offer property owners?

Tax Agreements

25. May a city or town or its assessors agree to a property tax valuation before the tax is assessed?

Tax Agreements

26. May a city or town or its assessors agree to an assessed valuation after the tax is assessed?

Tax Agreements

**27. If the assessors settle a valuation appeal before the ATB, are they bound by the settlement valuation in subsequent years?
Is the agreed upon valuation considered prima facie evidence of the fair cash valuation in those years?**

Tax Agreements

28. If the assessors agree to a value in one or more pending cases for a particular parcel, may they agree to a value going forward for any number of future years?

Tax Agreements

29. If an abatement application is settled by abatement of the tax for one or more years, must the city or town pay the taxpayer interest? If the abatement is ordered by the ATB?

Tax Agreements

30. Is the overlay account for the year charged for interest as well as the abatement refund?

Tax Agreements

31. What statute authorizes the assessors or other officer or board of a city or town to enter into PILOT agreements with property tax exempt private entities?

Tax Agreements

32. Are PILOT agreements with tax exempt private entities legally binding on the parties?

Tax Agreements

33. Is there a formula for determining an in-lieu-of-tax payment for exempt charitable organizations?

Tax Agreements

34. How are anticipated PILOT payments from private entities treated for accounting purposes?

Tax Agreements

35. May a city or town have a PILOT agreement with exempt governmental entities and are the agreements binding?

Tax Agreements

36. May the city or town have a PILOT agreement with one of its enterprises, such as a municipal light plant, water and sewer facility or municipal airport?

SPECIAL TAX PROVISIONS

VALUATION AGREEMENTS	
STATUTE	PURPOSE
G.L. c. 23A, § 3E	Economic Development Special Tax Assessment Agreements
G.L. c. 40, § 59	Economic Development Tax Increment Financing (TIF) Agreements
G.L. c. 40, § 60	Urban Center Housing TIF Agreements
G.L. c. 40, § 60A	Manufacturing Workforce Training TIF Agreements
G.L. c. 59, § 5(51)	TIF Property Tax Exemption
G.L. c. 59, § 5(46)	Post 1/1/79 Hydropower Plant PILOTs
G.L. c. 59, § 38H(b)	Electric Generation Company Payments in Lieu of Taxes (PILOTs) DOR Informational Guideline Release (IGR) 98-403, as amended by Bulletin 2005-11B (July 2005) (Form LA-4W discontinued)

ABATEMENT & PAYMENT AGREEMENTS	
STATUTE	PURPOSE
G.L. c. 58, § 8C	Affordable Housing Agreements to Abate or Restructure Payment of Outstanding Interest and Costs DOR IGR 02-207 (DOR approval required)
G.L. c. 59, § 59A	Brownfield Agreements to Abate or Restructure Payment of Outstanding Taxes, Interest and Costs DOR Bulletin 99-09B (May 1999) & 1999 Legislative Bulletin 2000-03B (February 2000)
G.L. c. 60, § 62A	Tax Title Payment Agreements to Waive Interest Authorized by By-law/Ordinance (up to 50%) DOR IGR 02-207
G.L. c. 60, § 77C	Deed in Lieu of Foreclosure to Satisfy Tax Obligation DOR IGR 02-206

INTERGOVERNMENTAL STATUTORY PAYMENTS TO HOST CITY OR TOWN

STATUTE	PURPOSE
G.L. c. 40N, § 19	Independent Water and Sewer Commission Agreements (outside Municipality)
G.L. c. 58, § 13-17	State owned Land
G.L. c. 59, §§ 5D and 5E	Pre-1946 Municipal and District Land for Water Supply, Watershed, Sewage Disposal or Public Airport DOR IGR 88-407
G.L. c. 59, § 5F	Post-1946 Municipal and District Land (outside District) for Public Purpose DOR IGR 88-407
G.L. c. 59, § 5G	Department of Conservation and Recreation Watershed Land (held for Massachusetts Water Resources Authority) DOR IGR 88-407
G.L. c. 121B, § 16	Housing Authorities DOR IGR 88-407
G.L. c. 121C, § 9	Economic Development and Industrial Corporations
G.L. c. 164, § 47C(j)	Municipal Light Plant Cooperatives
G.L. c. 164A, § 8	Municipal Light Plant Interests in Pooled Electric Power Facilities