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DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

2015

“What’s New in Municipal Law”

RECENT LEGISLATION

Local Taxes

FY2015 State Supplemental Budget

Chapter 10 of the Acts of 2015
Effective 1/26/2015 [1:16]

§§ 9-11, 69 Property Tax Due Dates

- Amend G.L. c. 59, §§ 57, 57C and 59
- Statutes set dues dates for:
 - Property tax payments
 - Abatement applications
 - Exemption applications

Chapter 10 of the Acts of 2015 (continued)

- Now extends due date by law to next business day when it falls on:
 - Saturday
 - Sunday
 - Legal holiday and
 - Day municipal offices closed for weather or public safety emergency under local procedures

RECENT LEGISLATION

Local Collections

Tax Title Collection Revolving Fund

Chapter 390 of the Acts of 2014 [1:XX]
Effective 12/16/2014 [1:10]

- Adds local acceptance G.L. c. 60, § 15B
- Allows city or town to create separate revolving fund for its:
 - Tax collector
 - Treasurer
 - Treasurer-collector
- Must establish each fund by by-law, ordinance or vote

Chapter 390 of the Acts of 2014 (continued)

- Credited with collection fees, charges, costs incurred by officer and collected on redemption or sale of tax title
 - Collector's and treasurer's interest stays with general fund
- May be spent without appropriation for tax taking and tax title foreclosure expenses
- Interest earned belongs to general fund

RECENT LEGISLATION

Local Finances

Legal List of Investments

Chapter 343 of the Acts of 2014
Effective 1/7/2015 [1:1]

- Amends municipal finance laws regarding investment of trust funds and safe deposit of municipal and district funds
- Amends banking laws that authorize the Commissioner of Banks (COB) to establish a list of sound investments

Chapter 343 of the Acts of 2014 (continued)

§§ 1 and 2 Municipal/District Investments

- § 1 amends G.L. c. 44, § 54
 - Governs investment of municipal/district trust funds
- Expands trust companies, cooperative banks and savings banks into which trust funds may be deposited
- Now includes out-of-state banks with main or branch office in MA and FDIC insured

Chapter 343 of the Acts of 2014 (continued)

- § 2 amends G.L. c. 44, § 55A
 - Protects municipal/district treasurer from liability if listed bank in which funds are deposited fails
- Now also protects treasurer for deposits in failed out-of-state banks with main or branch office in MA and FDIC insured

Chapter 343 of the Acts of 2014 (continued)

- § 3 amends G.L. c. 167, §§ 15A and 15B; Adds §§ 15C-K
- Allows COB to add to legal list of investments for banks, credit unions and some municipal/district trust funds
- Allows COB to add new kinds of investments to legal list and eliminate outdated ones

Cable Fee Accounting

Chapter 352 of the Acts of 2014
Effective 1/15/2015 [1:9]

- Allows city or town to separately account for cable franchise fees and other cable-related revenues
- Receipts are ordinarily general fund revenue under G.L. c. 44, § 53

Chapter 352 of the Acts of 2014 (continued)

- § 1 amends G.L. c. 44, § 53F^{1/2}
- Allows city or town operating cable Public, Educational and Government (“PEG”) programming to adopt enterprise fund for cable related receipts and expenditures

Chapter 352 of the Acts of 2014 (continued)

- § 2 adds new local acceptance statute, G.L. c. 44, § 53F^{3/4}
- Lets city or town establish special revenue fund for cable receipts
- May appropriate from fund to:
 - Support cable PEG programming
 - Monitor cable franchise compliance
 - Prepare for cable license renewal

RECENT LEGISLATION

Local Employees Miscellaneous

Districts

Chapter 455 of the Acts of 2014
Effective 4/6/2015 [1:12]

- Makes several benefits for municipal firefighters available to fire and water district firefighters
- Adds districts to procedure for accepting gifts of tangible personal property

Chapter 455 of the Acts of 2014 (continued)

- § 1 amends local acceptance G.L. c. 32, § 57B
- Allows water or fire district to accept
 - Acceptance by district meeting
- Allows firefighter who retires under G.L. c. 32, §§ 56-60 to receive creditable service while working as call firefighter
 - Determined by retiring authority

Chapter 455 of the Acts of 2014 (continued)

- § 2 amends G.L. c. 32, § 85H
- Authorizes benefits for city and town call firefighters and reserve, special or intermittent police officers
- Makes fire or water district firefighters eligible for same pension and disability benefits

Chapter 455 of the Acts of 2014 (continued)

- § 3 amends local acceptance G.L. c. 41, § 100G¼
- Allows water or fire district to accept
 - Acceptance by district meeting
- Provides payment up to \$15,000 for funeral expenses of firefighter killed in performance of duties while at or responding to fire or emergency

Chapter 455 of the Acts of 2014 (continued)

- §§ 4 & 5 amend G.L. c. 44, § 53A½
- Governs city or town acceptance of gifts of tangible personal property and use as intended by donor
- District prudential committee may now accept gifts of personal property on behalf of district

Town Meetings
Chapter 487 of the Acts of 2014
Effective 1/8/2015 [1:12]

- Adds G.L. c. 39, § 10A
- Creates procedure for town moderator to declare recess and continue scheduled town meeting due to weather-related or public safety emergency

Chapter 487 of the Acts of 2014 (continued)

- Moderator must consult with public safety officials and selectboard first
 - Consultations not “deliberation” under Open Meeting Law
- Moderator need not appear at site
- Decision to be announced as far in advance as practicable

Chapter 487 of the Acts of 2014 (continued)

- Moderator must prepare notice and provide to town clerk as soon as practicable:
 - Date, time, continued meeting site
 - Reason for declaration
- Continued meeting must be held within 30 days
- Must report reason for continuance to Attorney General within 10 days

Chapter 487 of the Acts of 2014 (continued)

- **Town clerk must post notice as soon as practicable:**
 - **At clerk's office**
 - **As required by law, charter, by-law**
 - **Main entrance of original site**
 - **Town's website**
- **May provide notice by other means, such as news media**

Chapter 487 of the Acts of 2014 (continued)

- **If new meeting site required, but not known at time of recess, selectboard to determine place, and moderator to give amended notice, within 3 days of original notice**
- **Meeting may be held in abutting community if required by emergency**

RECENT CASES

Employment

***City of Somerville v. Commonwealth
Employment Relations Board***

470 Mass. 563 (2015) [2:15]

- City decreased its contribution for retired employee indemnity/HMO plans
- Unions filed grievances claiming rate changes had to be bargained
- Supreme Judicial Court (SJC) holds city did not violate employee collective bargaining agreements (CBAs)
- G.L. c. 32B lets city determine contribution rates

Galenski v. Town of Erving

471 Mass. 305 (2015) [2:67]

- Town by-law required minimum 10 years employment to receive contribution to retiree health plan
- Town accepted G.L. c. 32B, § 9E requiring more than 50% retiree health insurance contribution rate
- SJC strikes down by-law as conflicting with G.L. c. 32B, § 9E

***Town of Athol v. Professional
Firefighters of Athol***

470 Mass. 1001 (2015) [2:115]

- Town unilaterally increased health insurance co-pays for fire service union employees covered by CBA
- SJC rules active employee health insurance benefits must be bargained
- Upholds arbitration award restoring prior co-pays and restitution

***City of Worcester v.
Civil Service Commission***
87 Mass. App. Ct. 305 (2015) [2:27]

- City terminated police officer for failure to testify at hearing on disciplinary action for noncriminal misconduct
- Appeals Court overturns city action
- Court holds officer may not be sanctioned for failure to testify

McGrath v. Town of Foxborough
87 Mass. App. Ct. 1133 (2015) [2:81]

- Sworn police officer claims G.L. c. 41, § 96B entitlement to full CBA officer pay while training at police academy
- Town claims by-law requiring lower student officer wages was past practice
- Appeals Court holds by-law or past practice cannot override law

Vitali v. Reit Management & Research
88 Mass. App. Ct. 99 (2015) [2:118]

- Private employer failed to assure employee required to work during lunch did not invoke overtime, FLSA, Wage Act
- Appeals Court orders payment
- Court holds employer has affirmative duty to monitor employees' time and off-hours work requirements

RECENT CASES

Home Rule Miscellaneous

Easthampton Savings Bank v. City of Springfield
470 Mass. 284 (2014) [2:56]
Doe v. City of Lynn
472 Mass. 521 (2015) [2:47]

- SJC addresses municipal power to adopt local legislation under home rule amendment (HRA) to state constitution, Article 89 (1966)
- § 6 - Authorizes local ordinances and by-laws not inconsistent with state constitution or state laws
- § 7 – Reserves powers to legislature, including power to tax and borrow

Easthampton Savings Bank v. City of Springfield
Doe v. City of Lynn (continued)

- Ordinance/by-law inconsistent when:
 - Legislative intent to preclude local action on subject (express or inferred intent, i.e., comprehensive state law)
 - “Sharp conflict” with state law
 - Frustrates purpose of state law

***Easthampton Savings Bank v. City of Springfield
Doe v. City of Lynn (continued)***

- **Mediation and foreclosure ordinances inconsistent with state foreclosure law, State Sanitary Code and G.L. c. 21E**
 - **However, fee for administration not unlawful tax**
- **Sex offender ordinance inconsistent with state laws governing sex offender registry, civil commitment and lifetime parole supervision**

***Touher v. Town of Essex
87 Mass. App. Ct. 837 (2015) [2:109]***

- **Lessees of town-owned land built cottages and homes on land**
- **Lessees claimed they owned buildings and owed value by town at end of lease**
- **General Rule: Building “affixed” to land by lessee becomes property of lessor unless agreement that building remains personal property removable by lessee**

Touher v. Town of Essex (continued)

- **Court finds buildings “affixed to land” and no express or implied agreement on ownership of buildings at end of lease**
 - **Building “affixed” if loses identity or cannot be removed without injury to land or itself**
 - **Here affixed due to concrete wall, fireplace, concrete patio, attachment to bedrock, brick basement dug into ground, cisterns**

**1148 Davol Street LLC v.
Mechanic's Mill One LLC**

86 Mass App. Ct. 748 (2014) [2:1]

- Appeals Court holds private party may not defend against adverse possession claim by deducting time of adverse use during city's ownership
- Purpose of G.L. c. 260, § 31 is to permit public entities to defend property held for public purpose against adverse possession claim

Higginbottom v. City of Boston

Land Court No. 271339 (2015) [2:128]

- 3 Parcels taken for taxes in 1975 and 1976
- City foreclosed rights of redemption 1989 and 1994
- Abutter used and maintained parcels for over 20 years from 1977 to 1999

Higginbottom v. City of Boston (continued)

- Court holds 20 year adverse possession clock began running against city at time of takings
- City did not claim property held for public purpose under G.L. c. 260, § 31

RECENT CASES

Property Taxes

***Russell Block Associates v.
Assessors of Worcester***
88 Mass. App. Ct. 351 [2:103]

- Appeals Court upholds Appellate Tax Board (ATB) decision on usage classification of part of garage as Class One, Residential under G.L. c. 59, § 2A(a)
- 300-space garage provided minimum 100 spaces for tenants of 24-story residential tower

Russell Block Associates v. Assessors of Worcester
(continued)

- Court found exclusive use of entire garage by tenants not required to be residential accessory use
- Garage classification is mixed-use based on:
 - % residential accessory use (by tenants) and
 - % use as commercial parking garage

***Community Involved in Sustaining
Agriculture v. Assessors of Deerfield***

86 Mass. App. Ct. 1119 (2014) [2:32]

- Appeals Court reverses ATB and holds organization eligible for charitable exemption under G.L. c. 59, § 5, Clause 3
- Court finds organization operates more like traditional charity than commercial enterprise
- Activities benefit indefinite number of people through farm products guide and food assistance

Airflyte, Inc. v. Assessors of Westfield

ATB 2014-731 (October 1, 2014) [2A:1]

- ATB holds for-profit corporation not taxable under G.L. c. 59, § 2B on leased parcels at municipal airport
- Taxpayer serves as fixed base operator at Westfield-Barnes Regional Airport
- Taxpayer exempt where lease was “reasonably necessary to the public purpose of a public airport”

***Cape Cod Shellfish & Seafood Co., Inc.
v. City of Boston***

86 Mass. App. Ct. 651 (2014) [2:9]

- Appeals Court upholds Boston’s taxation of Massport tenants with expired leases
- Massport enabling legislation exempts Massport property from property taxes
 - Exception for taxation of business lessees located in Commonwealth Flats
- Court finds “holdover” provision in lease permits Boston to continue taking tenants as lessees

***Anna Harris Smith Conservation Trust
v. Assessors of Pembroke***
ATB 2015-123 (April 1, 2015) [2A:8]

- ATB denies charitable exemption to trust claiming land held for conservation purposes
- ATB applies standards in 2014 SJC New England Forestry Foundation, Inc. (NEFF) case
- Trust does not engaged in land conservation activities like NEFF

***Collings Foundation v.
Assessors of Stow***

ATB 2015-1 (January 14, 2015) [2A:30]

- ATB accepts jurisdiction of FY2012 charitable exemption claim before actual tax bill issued
- Taxpayer's evidence of charitable occupancy pre-dated July 1, 2011 qualification date for exemption
- Taxpayer did not successfully claim it operated a living history museum

***West Beit Olam Cemetery Corp. v.
Assessors of Wayland***

ATB 2014-857 (November 10, 2014) [2A:117]

- ATB finds portion of parcel used solely for cemetery purposes exempt under G.L. c. 59, § 5, Clause 12
- Finds portion used as residence of "caretaker" not exempt
 - "Caretaker" did not perform cemetery administrative duties
 - Rent-free occupancy was due to land-swap agreement

**Verizon New England, Inc. v.
Assessors of Boston**

ATB 2015-335 (June 26, 2015) [2A:97]

- Telephone company challenged personal property tax rate alleging unconstitutional disproportionality
- Argued taxation of personal property at commercial and industrial (C&I) rate unlawful because property tax classification amendment to state constitution, Article 112 (1978), silent as to personal property

**Verizon New England, Inc. v. Assessors of Boston
(continued)**

- Appellant claimed personal property had to be taxed at "unclassified" single rate of \$18.24 for FY2012
- ATB rules SJC approved taxing personal property at C&I rate in 1979
Opinion of the Justices

**Verizon New England, Inc. v. Assessors of Boston
(continued)**

- ATB rules operation of constitutional proportionality requirement qualified by Article 112
- Taxpayers' proposed remedy would create disproportionality
 - Taxpayers' personal property would be taxed at rate different from any class of real property

***Shrine of Our Lady of LaSalette v.
Assessors of Attleborough***

ATB 2015-454 (September 9, 2015) [2A:83]

- Religious order owned 199 acres site
- ATB holds 110 acres with former convent and used as wildlife sanctuary not exempt under G.L. c. 59, § 5, Clause 11
- Apart from houses of worship and parsonages, remainder was mixed religious and non-religious use
- 40% of remainder considered taxable based on apportionment of use

***Forrestall Enterprises, Inc. v.
Assessors of Westborough***

ATB 2015-1025 (December 4, 2014) [2A:47]

- Appellant sought exemption for 5-acre parcel on which about 856 solar panels were installed
- ATB finds 100% of energy output used by multiple properties owned by Forrestall or corporations owned by him

***Forrestall Enterprises, Inc. v.
Assessors of Westborough (Continued)***

- ATB rejected argument that G.L. c. 59, § 5, Clause 45 requires energy be used on the same or contiguous parcel
- ATB relied on "Legislature's past support of solar energy use and net metering" in upholding applicability of Clause 45 exemption

Sunset Realty Group of the Berkshires, Inc. v. Assessors of Peru
ATB 2015-158 (April 1, 2015) [2A:94]

- Taxpayer and assessors agreed subject and five other parcels to be valued at specific amounts prospectively until one of parcels sold
- Assessors set values for FY2012 and FY2013 higher than agreed amounts
- ATB held agreement did not provide probative, credible evidence of subject's fair cash value

Boquist v. Assessors of Lincoln,
ATB 2014-704 (September 26, 2014) [2A:21]

- Taxpayer challenged valuation of prime residential site, 0.57 acres of 5.79 acres otherwise classified under G.L. c. 61A
- ATB finds assessments comparable to prime site not probative of fair cash value
- Assessed value of subject as a whole significantly lower than overall assessed values of comparison properties

Barbara J. DeLuca, Trustee of Hawthorne Street 30 Realty Trust v. Assessors of Newton
ATB 2015-454 (September 9, 2015) [2A:41]

- ATB granted taxpayer senior exemption under G.L. c. 59, § 5, Clause 41C
- Taxpayer and late husband created nominee trust
 - Both co-trustees of nominee trust
 - Both the trustee and beneficiary of separate revocable trusts (2nd trusts)
 - As trustee of 2nd trust each held 50% beneficial interest in nominee trust

Barbara J. DeLuca, Trustee of Hawthorne Street 30 Realty Trust v. Assessors of Newton (continued)

- Individual revocable (2nd) trusts provide for transfer of interest to family (3rd) trust upon death of trustee
 - Surviving spouse and 2 adult children trustees of 3rd trust
 - Surviving spouse lifetime beneficiary of 3rd trust

Barbara J. DeLuca, Trustee of Hawthorne Street 30 Realty Trust v. Assessors of Newton (continued)

- ATB rejected argument taxpayer did not have sufficient beneficial interest to be owner for exemption purposes
 - Beneficial interest did not have to be held in taxpayer's individual capacity
 - After husband's death, taxpayer was:
 - Beneficiary of her (2nd) trust
 - Co-trustee and lifetime beneficiary of family (3rd) trust
