



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.*

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**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).

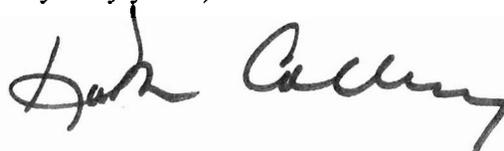
The dissenting members of the Appellate Tax Board ("Board") in **WB&T Mortgage Co.** argued that the sixteen-month time lapse between purchase and billing afforded a ground for invalidating the tax that did not reach the merits of the constitutional question. *See* ATB Findings of Fact and Report at 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