



Bulletin

2008-09B

DEMAND CHARGES

TO: Assessors, Collectors, Finance Directors, Mayors, Selectmen and City/Town Managers

FROM: Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

DATE: August 2008

SUBJECT: Setting Demand Charge for Delinquent Local Taxes

This *Bulletin* explains an outside section of the fiscal year 2009 state budget that relates to the charge imposed on taxpayers when a local tax collector issues them a demand for payment of delinquent taxes. St. 2008, c. 182, § 15. This change took effect on July 1, 2008.

As you know, the collection costs imposed on delinquent local taxpayers are found in G.L. c. 60, § 15. These charges are fixed amounts that are added to the outstanding tax by law, not at the discretion of local officials. The collector may only waive accrued interest and collection costs where the total amount accrued is \$15 or less.

Under the amendment made by outside section 15, G.L. c. 60, § 15 now provides that the charge for issuing a demand is “not more than \$30.” Previously, the charge was \$5. However, the amendment does not include any language indicating that the collector is to determine the actual amount to be charged within the \$30 limit. Absent that direction, we think the amount must be set by each city or town based on the procedures that govern setting fees and charges in that municipality.

As a general rule, the power to set fees and charges resides in the municipality’s legislative body unless otherwise provided by statute or charter. Therefore, your town meeting or city or town council will have to fix the amount to be charged for demands issued by the collector unless a general or special law or charter provision authorizes the collector or other officer to set it.

With respect to general laws, if a city or town accepts G.L. c. 40, § 22F, then boards and officers may set certain fees and charges related to their operations instead of the municipality's legislative body. Demand charges, however, do not appear to come within the fees and charges that may be set under that statute. It applies to fees and charges for licenses, permits or certificates issued, or services rendered to or work performed for persons, by municipal boards or officers, *i.e.*, regulatory and user fees and charges paid by members of the public in exchange for receiving a particular privilege, benefit or service from the municipality. Demand charges on the other hand are not paid voluntarily in order to receive a particularized benefit or service. They are imposed as part of the collection process to ensure that the municipality receives the money it is owed.

The charge established by the municipality under the applicable local procedure applies until the time another amount is established under that procedure.

Where that procedure requires a town meeting or city or town council vote, the following or similar language may be used:

VOTED: That the city/town charge for each written demand issued by the collector a fee of \$_____ to be added to and collected as part of the tax, as authorized by Massachusetts General Laws Chapter 60, Section 15, effective as of _____, _____.

Any questions you have on this matter should be directed to the Division's legal staff at 617-626-2400 or DLSLAW@dor.state.ma.us.