Informational Guideline Release

Bureau of Accounts
Informational Guideline Release (IGR) No. 11-101
June 2011

Supersedes IGR 85-102, 86-204, 88-215 and 88-234 and Inconsistent Prior Written Statements

OVERLAY AND OVERLAY SURPLUS

(G.L. c. 59, §§ 25 and 70A)

This Informational Guideline Release (IGR) explains the statutory standard for maintaining an adequate overlay and the actions the Commissioner of Revenue may take to ensure compliance with that standard.

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OVERLAY AND OVERLAY SURPLUS

(G.L. c. 59, §§ 25 and 70A)

SUMMARY:

The Allowance for Abatements and Exemptions (overlay) is an annual account to cover anticipated abatements and exemptions of committed real and personal property taxes for that fiscal year. The overlay amount is determined by the board of assessors (assessors) and may be raised in the tax rate without appropriation. Excess overlay is determined, certified and transferred by vote of the assessors to a Fund Balance Reserved for Overlay Released by the Assessors for Expenditures (overlay surplus). Overlay surplus may then be appropriated by the legislative body for any lawful purpose until the end of the fiscal year, i.e., June 30. Overlay surplus not appropriated by year end is closed to the general fund undesignated fund balance.

These guidelines explain the statutory standard for maintaining an adequate overlay and the actions the Commissioner of Revenue (Commissioner) may take when approving a tax rate or determining available funds (free cash) to ensure compliance with that standard. The guidelines are in effect and supersede Informational Guideline Releases No. 85-102, Use of Overlay Surplus, 86-204, Overlay Surplus, 88-215, Overlay Reserve and 88-234, Overlay Surplus, and any inconsistent prior written statements or documents.

GUIDELINES:

I. BUDGETING OVERLAY

A. Assessors’ Determination

Cities, towns and tax levying improvement districts must budget an adequate overlay to fund anticipated property tax abatements and exemptions each fiscal year. The assessors determine the amount needed and may raise it in the municipal or district tax rate without appropriation. G.L. c. 59, § 25. Assessors should provide the amount they intend to raise to their local budget officials during the annual budget process.

Appropriation into any fiscal year’s overlay is not recommended except to fund an anticipated overlay deficit. See Section III-F below.
B. Commissioner’s Approval

In order to approve the annual tax rate, the Commissioner must determine that the overlay budgeted for the fiscal year is reasonable, i.e., adequate to fund anticipated abatements and exemptions. G.L. c. 59, § 25. The reasonableness of any year’s overlay will be judged based on the following factors:

- The 3-year average of granted abatements and exemptions.
- Whether local assessments are scheduled for review and certification by the Department of Revenue. G.L. c. 40, § 56.
- The potential abatement liability in cases pending before, or on appeal from, the Appellate Tax Board (ATB).
- Other significant assessment factors known to the Commissioner.

II. PROCESSING ABATEMENTS

A. Overlay Charges

The overlay for a fiscal year is charged for the following:

- Abatements of real and personal property taxes assessed and committed under G.L. c. 59. Property taxes include omitted assessments under G.L. c. 59, § 75, revised assessments under G.L. c. 59, § 76, supplemental assessments under G.L. c. 59, § 2D, pro rata pro forma assessments under G.L. c. 59, § 2C and annual taxes assessed on land classified under G.L. c. 61 (forest), c. 61A (agricultural and horticultural) and c. 61B (recreational).
- Exemptions from real and personal property taxes assessed and committed under G.L. c. 59.
- Municipal share of federal Social Security and Medicare taxes on real property tax abatements earned by seniors in a community that has adopted the senior work-off abatement program under G.L. c. 59, § 5K and has not budgeted those taxes.

Abatements or exemptions of other taxes, including motor vehicle, boat and farm animal excises, roll-back and conveyance taxes assessed under G.L. c. 61, 61A and 61B, community preservation surcharges, betterments and special assessments, are treated as adjustments to the revenue account. Revenue is also adjusted to account for any amount by which the real and personal property tax levy for the fiscal year exceeds the tax commitment.

B. Overlay Deficits

If abatements and exemptions charged to the overlay exceed the account balance for that fiscal year as of any June 30, the resulting deficit must be raised in the next annual tax rate unless otherwise funded by appropriation from overlay surplus or other financing source. See Section III-F below.
C. Interest

Abatements or exemptions of paid taxes refunded to a taxpayer must include interest at eight percent per year on the overpayment. If the assessors grant the abatement or exemption, interest is calculated from the due date or actual date of the payment that resulted in the tax, as abated, being paid, whichever is later, to the refund date. G.L. c. 59, § 69. If the ATB orders the abatement or exemption, the interest is calculated from the actual payment date. G.L. c. 58A, § 13 and c. 59, § 64.

Interest due the taxpayer is charged to an appropriation for that purpose, such as a short-term interest or treasurer’s general expense appropriation. Interest expenditures may exceed the appropriation and must be raised in the next annual tax rate unless otherwise funded. G.L. c. 59, § 23.

III. DETERMINING OVERLAY SURPLUS

The overlay for a fiscal year remains open until it is exhausted or the assessors transfer excess no longer needed to cover potential abatements, exemptions and uncollectible taxes to overlay surplus.

A. Calculation of Excess Overlay

1. Statutory Definition

Excess overlay is the amount of overlay remaining for a particular fiscal year that exceeds:

a. Property Tax Receivables – The total real and personal property taxes, including omitted and revised assessments, still outstanding against the collector’s warrant (property tax receivables) for that fiscal year. Outstanding real property taxes secured by a tax title need not be included, except for the amount, if any, the assessors estimate may be abated as uncollectible after tax title disclaimer.

PLUS

b. Potential Abatements - The assessors’ estimate of the amount of potential abatements and exemptions of paid property taxes.

Example 1. The overlay balance for FY1 is $100,000. All outstanding real estate taxes for the year have been moved into tax title. Outstanding personal property taxes are $10,000. All FY1 abatement and exemption applications have been processed and only one appeal to the ATB was timely filed. That case could result in an abatement of up to $100,000 if the taxpayer prevails. Based on historical data, the assessors also expect to abate $5,000 in real estate taxes as uncollectible. No excess overlay exists because the $100,000 overlay balance is less than property tax receivables ($15,000) plus potential abatements ($100,000).
Example 2. One year later, the ATB orders an abatement of $75,000 in the pending case and no appeal is taken. The overlay balance is now $25,000 as a result of the abatement. All other facts are the same as in Example 1. There is now excess overlay of $10,000 [[$25,000 overlay balance - $15,000 ($15,000 receivables + 0 potential abatements).]]

2. **Use of Records**

   In making their determination, the assessors must use the overlay balances and property tax receivables that appear in the accounting officer’s records. The accounting officer is the city auditor, town accountant or other officer having similar duties in the city, town or district.

   a. **Overlay Balance** - If there is a variance in the overlay balance between the assessors’ and accounting officer’s records, the assessors must use the lesser of the two amounts.

   b. **Property Tax Receivables** - If there is a variance in the property tax receivables between the collector’s and accounting officer’s records, the assessors must use the greater of the two amounts.

B. **Timing of Determination**

   The amount of excess overlay, if any, for all or particular years may be determined by the assessors on their own motion at any time and must be determined by them within 10 days of a written request by the community’s chief executive officer. The chief executive officer is the manager in any city having a manager and in a town having a city form of government, the mayor in any other city, the board of selectmen in any other town and the district commissioners, prudential committee or other officer or body designated to perform the function in a district.

C. **Transfer to Overlay Surplus**

   Whenever the assessors determine there is excess overlay for any fiscal year, they must vote to certify the amount to be transferred to overlay surplus and must notify the accounting officer in writing of their vote. If the determination is made after the chief executive officer’s written request, the assessors must also take the vote within 10 days of the request and so notify the chief executive in writing.

D. **Verification of Transferred Amount**

   Before recording any voted transfer, the accounting officer must verify that the amount voted by the assessors is excess overlay under G.L. c. 59, § 25. See Section III-A-1 and 2 above. If the accounting officer determines that the amount voted is greater than excess overlay, the assessors’ action is not effective to the extent of that portion of the amount
voted that is greater. The accounting officer may not record a transfer of the ineffective amount to overlay surplus and must so notify the assessors, and chief executive officer if the assessors’ vote was made after a written request of the officer, in writing immediately.

E. **Sanctions for Excessive Transfers**

The Commissioner may take any of the following actions where the assessors certify and the accounting officer records a transfer from overlay to overlay surplus greater than excess overlay under G.L. c. 59, § 25:

- Reduce certified free cash by the excessive transfer.
- Treat any appropriation from overlay surplus as an appropriation from free cash.
- Require local action to remedy the excessive transfer before approving the tax rate.

F. **Use of Overlay Surplus**

A city, town, or district may appropriate overlay surplus for any lawful purpose, including funding any known or anticipated overlay deficit for any fiscal year. Any amount not appropriated by June 30 closes to undesignated fund balance in the general fund. In the normal course of events, this will increase certified free cash.

G. **Management of Overlay Accounts**

Excess overlay may be declared for any fiscal year whenever the statutory standard explained in Section III-A-1 and 2 above is met. However, communities are encouraged to manage their overlay accounts in a prudent manner in order to avoid having to raise significant overlay deficits in the tax levy. They might consider, for example, a general policy of using excess overlay to fund potential overlay deficits in other fiscal years before making it available for operating or other spending purposes, *i.e.*, analyzing all overlay balances to see whether they can reasonably cover their property tax receivables and abatement exposure for other years. This practice would maintain adequate overlay to cover potential deficits.