



# Bulletin

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2008-13B

## **MTBE Litigation Settlement Proceeds**

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

FROM: Gerard D. Perry, Director of Accounts

DATE: November 2008

SUBJECT: Treatment of MTBE Products Liability Litigation Settlement Proceeds

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We have received a number of inquiries regarding the treatment of settlement proceeds received as a result of a class action products liability lawsuit, *In Re: Methyl Tertiary Butyl Ether ("MTBE")*, brought against manufacturers and distributors of gasoline containing MTBE. This *Bulletin* explains the accounting treatment and expenditure of proceeds received from the settlement. G.L. c. 44, §§ 38 and 43.

We understand the settlement compensates cities, towns and districts for damages attributable to MTBE contamination of their water supplies. In addition to the monies now being distributed, the settlement provides for additional compensation should contamination be detected in other supplies in the future. We also understand the settlement does not place any restrictions on the use of these funds, although recipients may use all or some of the monies for current or future clean-up costs.

As is the case for proceeds payable to a city, town or district from the settlement of litigation claims generally, the MTBE settlement monies are unrestricted revenues that belong to the general fund and require an appropriation to spend. G.L. c. 44, § 53. Due to the timing of these distributions, many recipients would be unable to appropriate these monies for water or other purposes until after the close of FY09. The reason is that ordinarily any unanticipated general fund proceeds not reported in the tax rate are unavailable for appropriation until the Director of Accounts certifies them as part of a community's free cash at the close of the fiscal year. G.L. c. 59, § 23. In this case, however, recipients may reserve these settlement proceeds for appropriation during FY09. This treatment is consistent with longstanding Bureau policy that allows payments over \$20,000 received as restitution for damage to public property to be accounted for as available funds during the fiscal year received. (See G.L. c. 44, § 53(2), which allows smaller restitution payments to be spent without appropriation for repairs.)

Therefore, a city, town or district has the following options regarding the treatment and use of MTBE settlement proceeds received during FY09:

- It may report all or a part of the proceeds as estimated receipts when setting the FY09 tax rate. The receipts may be applied to offset existing appropriations, or if a town or council meeting is held before the rate is set to offset new appropriations, for water or other purposes.
- It may reserve and appropriate the proceeds as an available fund for water or other purposes during FY09. Any monies not appropriated in FY09 will close to fund balance (free cash) at the end of FY09.
- It may reserve the proceeds for appropriation during FY09 by requesting an update to free cash. See [Bulletin 2008-04B](#).

The same options will apply to additional payments received in any other fiscal year as compensation for newly detected contamination. The monies may be reported as estimated receipts in that year's tax rate, reserved and appropriated as an available fund during the year or reserved for appropriation through a free cash update.

For FY09 and future years, any proceeds not used or reserved under these options will close to fund balance at the end of that year.

Any questions you have should be directed to your Bureau of Accounts representative.