WORKSHOP A
TAX ADMINISTRATION
Administration of Classified Forest, Farm and Recreational Lands and Other Tax Administration Issues

DISCUSSION SUMMARY
(Prepared For Informational and Training Purposes Only)

This informal summary of the discussion presented at Workshop A is provided for educational and training purposes only. It does not constitute legal advice or represent Department of Revenue opinion or policy, except to the extent it reflects statements contained in a public written statement of the Department of Revenue (Informational Guideline Release or Local Finance Opinion).

CHAPTERLANDS

1. What are the minimum acreage requirements for classification? Under c. 61 – Forest Land? Under c. 61A - Farm Land? Under c. 61B – Recreational Land?

   G.L. c. 61, § 2; c. 61A, § 3; c. 61B, § 1; Chapterland FAQs 4, 7,

   Ch. 61 – Forest Land - 10 acres
   Ch. 61A - Farm Land - 5 acres
   Ch. 61B – Recreational Land - 5 acres

2. What action should assessors take on an application if a parcel does not meet the minimum acreage requirements? Under c. 61 – Forest Land? Under c. 61A - Farm Land? Under c. 61B – Recreational Land?

   G.L. c. 61, § 2; c. 61A, § 9; c. 61B, § 6; FAQ 11

   Ch. 61 – Forest Land – Assessors should appeal to the state forester. Assessors must allow the application if it is timely filed and contains a forest management plan certified by the state forester. This is because the state forester has sole responsibility for determining whether land is eligible for classification under c. 61. If assessors disagree with the forester's certificate or approval of the forest management plan, however, assessors may appeal to the state forester. Note that assessors also have a right to appeal to the state forester if previously classified land is being used in a manner inconsistent with the forest plan.
   Ch. 61A - Farm Land - Assessors should disapprove taxpayer's application for classification.

Ch. 61B – Recreational Land - Assessors should disapprove taxpayer's application for classification.

3. Does the following parcel meet the eligibility requirements for classification under c. 61A - Farm Land?

   G.L. c. 61A, § 3; FAQs 4B, 7B, 8, 10

   Mary has 4.75 acres of land. Her application states she has been raising sheep on the parcel for the past two years. The parcel contains fields where she grows hay for the sheep to forage, a barn where she houses the sheep and farm roads providing access throughout the farm. Mary's submitted tax returns and receipts show she has sold lambs for the past two years with gross sales of more than $500 each year.

   No, the parcel does not meet the 5-acre minimum size requirement.

4. What if Mary's parcel is exactly 5 acres in size? Does the land under the barn and roads count toward the 5-acre minimum required for classification under c. 61A - Farm Land?

   G.L. c. 61A, § 1; FAQs 4B, 7B

   Yes. To count toward the 5-acre minimum requirement, the land must be "actively devoted" to agricultural or horticultural use – used primarily and directly in raising animals or growing food or in a manner related or necessary to their production or preparation for market. Farm roads and land under farm buildings count as they are related and necessary land. So - Mary's parcel will meet the five-acre minimum.

5. What part of the land involved in cranberry production will count toward the 5-acre minimum required for classification under c. 61A - Farm Land?

   Land under storage barn/staging area
   Land under juice factory
   Land under pump house
   Land under company HQ building
   Adjacent Woodland
   Land used for bee-keeping
   Land under farm roads
   Sand pits
   Cranberry bogs, irrigation ponds

   G.L. c. 61A, § 2, 4; FAQs 4B, 7B; Advisory Opinion 2009-734

   To count toward the 5-acre minimum required for classification under c. 61A - Farm Land, the land must be actively devoted to horticultural use - used primarily and directly in raising cranberries or in a manner related or necessary to their production or preparation for market. To make this determination, assessors need to become familiar with the crops (or animals) that are the subject of applications for classification in order to determine whether land is used primarily and directly

in raising that crop or animal or in a manner related or necessary to their production or preparation for market. In this example, the storage barn is used to store the cranberries, the staging area is used to harvest them, the farm roads are used to access the cranberry bogs, the bees pollinate the cranberry plants, the pump house and irrigation ponds are needed to provide irrigation for the cranberries and the sand is used to improve the soil in which the cranberries grow. As a result, these land areas are actively devoted to horticultural use - used primarily and directly in raising cranberries or in a manner related or necessary to their production or preparation for market and count toward the 5-acre minimum required for classification under c. 61A - Farm Land.

The land under the juice factory and the land under the company HQ building, however, will not count toward 5-acre minimum because neither is actively devoted to horticultural use - used primarily and directly in raising cranberries or in a manner related or necessary to their production or preparation for market. See Advisory Opinion Letter 2009-734 in the Workshop A materials, which states: "It is our view that the land used for growing crops, and accessory land incidental to crop production activities, qualify for classification under G.L. c. 61A, § 2. Land devoted to food processing and the commercial marketing of processed products on site falls outside the scope of G.L. c. 61A."

The adjacent woodland does not count toward the 5-acre minimum requirement because the land is not actively devoted to agricultural or horticultural use - it is not used primarily and directly in raising cranberries or in a manner related or necessary to their production or preparation for market. However, the adjacent woodland area could be classified as contiguous non-productive land up to 100 % of amount of classified productive land. For example, if there are 50 acres of land actively devoted to raising cranberries, not more than 50 acres of the woodland may be classified as contiguous non-productive land.

6. What if Mary's sheep farm is 4.9 acres, but she adds the adjacent 4-acre sheep farm that she owns with her son John? Would the combined parcel meet the eligibility requirements for classification under c. 61A - Farm Land?

   G.L. c. 61A, § 4; FAQ 6

   The land must not only be contiguous, it must be under the "same ownership." Here, one parcel is owned by Mary and the other parcel is owned by Mary and John. This is not the "same ownership." Neither parcel alone meets the 5-acre minimum.

7. Mary's sheep farm is 5 acres and meets the requirements of c. 61A – Farm Land. Mary places solar panels in her pasture and the grass continues to grow under them and Mary's sheep continue to graze under them. Is the land still eligible for classification?

G.L. c. 61A, § 2A; FAQs 15C – 20, 19 (Example 2)

Effective FY18, under G.L. c. 61A, § 2A, land under a solar facility will count toward the 5-acre minimum needed for c. 61A Farm Land classification if:

1. **The facility produces energy for exclusive use of the land & farm on which it is located (including contiguous & non-contiguous land owned or leased by owner or in which owner has an interest) and does not produce > 125% of the annual energy needs of such land and farm; and**
2. **The land under the solar facility is simultaneously being used for A/H production.**

The assessor will need to determine if Mary's facility complies with G.L. c. 61A, § 2A. Here, because the sheep continue to graze under the solar panels, the land under the solar facility is simultaneously being used for A/H production – it is actively devoted to agricultural use, used primarily and directly in raising sheep. Therefore, the land satisfies the second requirement of G.L. c. 61A, § 2A above. However, the assessor still needs to determine if Mary's facility complies with the first requirement above – the purpose and size of the solar facility. Assessors can require the landowner to provide sufficient information regarding the production output of the solar facility and the properties for which the facility is producing energy to enable assessors to determine if the facility complies with G.L. c. 61A, § 2A. (Note – there is no similar provision for solar facilities under c. 61 Forest or c. 61B Recreation.)

8. What if the solar facility placed on Mary's 5-acre parcel is on a concrete platform that prevents forage from growing and the sheep from grazing? Is the land still eligible for classification?

G.L. c. 61A, § 2A; FAQs 15C - 20, 19 (Example 3)

No. In this case, the solar facility prevents the simultaneous use of the land for the raising of sheep, so it does not comply with the requirements of G.L. c 61A, § 2A. So, the land under the solar facility will not count toward the 5-acre minimum requirement for land actively devoted to A/H use and Mary's land will not be eligible for classification.

9. Mary's placement of a solar facility with a concrete platform on her pasture (preventing the forage from growing and the sheep from grazing) has caused the land under and associated with the solar facility to be ineligible for classification. Does this action also trigger a penalty tax or the ROFR?

G.L. c. 61A, §§ 2A, 12-14; FAQ 21

Yes. The installation of a solar facility that does not meet the requirements of G.L. c. 61A, § 2A will trigger a penalty tax (conveyance tax or roll-back tax) and a municipality's right of first refusal (ROFR). But - if the solar facility meets the size and purpose requirements of G.L. c. 61A, § 2A and the land on which the facility is located is simultaneously used for the grazing of the sheep (farm production) - then no penalty tax or ROFR is triggered under G.L. c. 61A, § 13. (Amendment effective FY18.)

10. Mary is ready to retire and does not timely file an application for classification of her sheep farm. Instead, she notifies the assessors that she will be giving her sheep to her son John and will be taking it easy in her retirement. She has no plans to do anything with her land. What should the assessors do?

G.L. c. 61A, §§ 12-14; FAQ 13, 14

Nothing. There is no penalty tax (roll-back or conveyance tax) or ROFR unless there is a change of use to a "disqualifying" use – a use or condition that would not qualify under the definitions of either c. 61, c. 61A or c. 61B. But, as of the next January 1, the parcel should not be classified and should be assessed at full and fair cash value for the upcoming fiscal year.

11. A 501(c)(3) nonprofit organization, Friends of the Trees, owns a 10-acre, nine-hole golf course and submits an application for classification of the parcel under c. 61B – Recreational Land. On page 2 of the CL-1 form, under "Recreational," #2 is checked. The application also states the land is used primarily for golfing 8 months of the year by many people; is not open to the general public; and is restricted to use by members of the Hoity-Toity Exclusively Private Golf Club for the Rich and Famous. Under "C – Lessee Certification," the President of Hoity-Toity signs as lessee, certifying the leased property is being used as stated in the application. Is the land eligible for classification?

G.L. c. 61B, § 1; FAQs 4C, 9; Advisory Opinions 96-709, 2003-57; *Cape Cod Five Cents Savings, et al v. Assessors of Harwich & Brewster,* ATB F277365, (July 17, 2009)

Generally, land may be classified under Chapter 61B – Recreational Land (5-acre minimum) under either of the below two options:

> **Option 1- Retained in one of the following conditions in a manner that preserves wildlife or other natural resources - substantially natural, wild or open condition, landscaped or pasture condition; or**
>
> **Option 2- Devoted to a qualifying recreational use in a manner that does not materially interfere with the environmental benefits derived from the land and must be open to public or members of a non-profit organization**
>
> - **Qualifying recreational use includes golfing**

As stated above, land is required to be open to the public or to members of a nonprofit only if the owner is seeking classification of the land under option 2 above – devoted to a qualifying recreational use.

Here - the land does not qualify for classification under c. 61B under either Option 1 or Option 2 because:

> **Option 1- The land is not retained in one of the following conditions in a manner that preserves wildlife or other natural resources - substantially natural, wild or open condition, landscaped or pasture condition; and**
>
> **Option 2- Although devoted to a qualifying recreational use …, the land is not open to public or to members of a non-profit organization. It is only open to the members of the Hoity-Toity Exclusively Private Golf Club for the Rich and Famous, which is not a non-profit.**

OTHER TAX ADMINISTRATION QUESTIONS

12. Robert Chase owned a two family house, Class Code 104, which was assessed for one million dollars for FY 2017. In April 2017 he recorded a master deed to create two condominiums. In June 2017 he sold one of the units to Edward Noonan for one and half million dollars, and kept the second condo for himself.

G.L. c. 59, § 11; G.L. c. 59, § 78A

A. How should the property be valued and assessed for fiscal year 2018? Who can file for an abatement?

The property should be valued and assessed as a two family house since the master deed was recorded after the January 1, 2017 assessment date for FY 2018. Only the assessed owner, Robert Chase, can file for an overvaluation abatement.

B. Noonan requested that the assessors provide him with a separate bill for his condo. Can the assessors comply with the request?

Yes. The assessors can apportion the FY 2018 tax bill upon the sale of the condominium.

C. Noonan visited town hall and explained to the assessors that he was a veteran. Can Noonan receive a veterans exemption for FY 2018?

Yes. Noonan can receive an exemption of the apportioned tax if he is a qualified veteran and owns and occupies the condominium as his domicile on July 1.

13. The assessors have been busy responding to requests for overvaluation abatements and exemptions.

G.L. c. 59, § 59; G.L. c. 59, § 5C; G.L. c. 59, § 64; *Wiggins v. Board of Assessors of Boston*, ATB Docket No. X299727 (January 13, 2009)

A. The board of assessors has an e-mail account in their town hall office. At 6:15 PM on the last day for filing timely abatement applications, a taxpayer e-mailed an abatement application to the assessors' e-mail address. Was the application properly and timely filed?

No. The e-mailed abatement application must be received by the assessors at town hall during normal business hours. If the assessors' office was closed at 6:15 PM, the application was not timely filed.

B. Your municipality, a quarterly tax billing community, has adopted the residential exemption and it has been in effect for many years. John Davis bought a house in town on July 7, 2016. Davis filed an application for the FY 2018 residential exemption with the assessors on August 30, 2017. The assessors sent a denial notice to Davis on December 30, 2017 with a decision date of December 30, 2017. The first actual tax bills were also sent on December 30, 2017. Davis appealed to the Appellate Tax Board on April 4, 2018. The assessors then filed a motion to dismiss the appeal on jurisdictional grounds. Was Davis' appeal to the ATB timely?

Davis occupied the house as his domicile on January 1, 2017 and qualified for a residential exemption for FY 2018. In the *Wiggins* case, the ATB held that the first business day after the actual tax bills were mailed was the earliest date on which a residential exemption application could have been filed. An earlier filed application required by the assessors before the tax bills were issued was disregarded. Since no action was taken by the assessors subsequent to that date, the application was deemed denied three months later. According to the ATB, the taxpayer then had 3 months from the deemed denial date to file an appeal at the ATB. In this case December 31 was the earliest date the application could have been filed.

14. The assessors recently sent a warrant and tax list to the collector for motor vehicle excise tax.

G.L. c. 60A, §§ 1 and 6; 18 USC 2721

A. Richard Murdock who registered his tractor-trailer in Massachusetts under the International Registration Plan filed an abatement application with the assessors because he used the tractor-trailer outside the Commonwealth. Should Murdock receive an abatement?

No. The vehicle is registered here and the taxpayer therefore owes the excise tax.

B. The Holmes, MA assessors are concerned because a trucking firm paid excise on only a few trucks to the town which was its principal place of business. Most of the trucking fleet was parked in a lot in the neighboring town of Baskerville, MA. Which town is entitled to the excise on the trucks regularly parked in Baskerville?

Baskerville is entitled to the excise since the trucks are regularly kept there.

C. A taxpayer who was upset about the number of cars parked near his house brought to the assessors a list of registration numbers of these vehicles. The taxpayer wanted to learn the names and addresses of the registrants. Should the assessors supply this information?

No. This information cannot be disclosed because of federal law, the Driver Privacy Protection Act.

15. A taxpayer owns a 30 acre parcel of undeveloped land which has extensive frontage on the main street in the town. The town is a Chapter 653 community which recognizes new development as of June 30th as existing on January 1st. How should this property be assessed in the following scenarios for FY 2019?

G.L. c. 59, § 11; G.L. c. 59, § 2A; *Town of Lenox v. Oglesby*, 311 Mass. 269 (1942*); City of Boston v. Boston Port Development Co.*, 308 Mass 72 (1941)

A. Before January 1, 2018 the assessors had in their files an unrecorded subdivision plan for 30 lots which was endorsed by the planning board as not requiring subdivision approval, i.e., an ANR plan.

The assessors may rely on the unrecorded plan since it is in their files. The land therefore could be assessed as 30 lots or as one lot in the discretion of the assessors.

B. The subdivision plan for 30 lots was prepared and endorsed after January 1, 2018.

Since the plan was not prepared or endorsed until after January 1, the land should be assessed as one parcel.

C. The taxpayer took no action and a subdivision plan was never created.

The assessors should assess it as one parcel but the valuation should reflect its highest and best use for development.

16. The owner of the 30 acre parcel has been approached by the trustees of a private high school in town. The trustees want to build an elementary school on the site.

G.L. c. 59, § 5(3); G.L. c. 60A, § 1; G.L. c. 59, § 5(16)

A. Negotiations were successful and the deed to the school trustees was recorded in May 2018. The trustees informed the assessors about the purchase and told them the property was now exempt. Is the property exempt as of May 2018 for FY 2018? What is the parcel's tax status for FY 2019?

No. The parcel is not exempt for FY 2018 since it was not owned by the school on the July 1, 2017 exemption qualification date. The parcel could be exempt for FY 2019 if the school presented evidence that it intended to remove to the site within 2 years of acquisition by building and occupying the school within that time period.

B. The private high school offers a driver education course for its students. The vehicles are leased. Is the high school exempt from the motor vehicle excise on the leased vehicles?

No. The vehicles are taxable since they are leased to a charitable corporation which is a degree granting or diploma awarding institution.

C. The assessors visited a local private school and noticed a bank ATM in the campus center. Is the ATM taxable?

No. The ATM is exempt. Financial institutions are taxable on machinery used in manufacture or in supplying or distributing water.

17. The new principal assessor wants to increase revenues for the town and has created new personal property accounts. Assessments were made for the first time to taxpayers who operated businesses in their homes.

G.L. c. 59, § 2; G.L. c. 59, § 29; G.L. c. 59, § 61; G.L. c. 59, § 5(54); G.L. c.. 59, § 38; G.L. c. 59, § 38F; G.L. c. 59, § 75

A. One taxpayer who received a personal property tax bill filed for abatement because his "office" consisted of an old desk with a chair and an out-of-date computer. Should the assessors abate the tax?

No. The business personal property is fully taxable and has a utility value. The taxpayer could not receive an overvaluation abatement because he failed to file a form of list.

B. Could the taxpayer's personal property be exempted? Could the town establish a minimum value of personal property subject to tax? Alternatively, could the assessors send a $50 minimum personal property tax bill, regardless of value, to all small business owners?

By local option, the community could exempt a personal property account with a value not in excess of $10,000. The assessors could not create minimum bills since personal property tax is based on full and fair cash value.

C. The taxpayer complained that several of his neighbors had business offices in their homes but never received tax bills. Could the assessors use this information to tax the neighbors for business personal property?

Not this year. The assessors could not send omitted bills since there was no clerical or data processing error or other good faith reason on the part of the assessors for the failure to commit taxes.

18. A three acre parcel has been assessed for many years to Owners Unknown. The parcel is in tax title.

G.L. c. 59, § 11; G.L. c. 59, § 77; G.L. c. 59, § 57; G.L. c. 59. § 59; G.L. c. 60, § 37

A. The treasurer is planning to foreclose on the property and a question has been raised about the validity of the assessments. What do the assessors have to show to support the Owner Unknown assessments?

The assessors must conduct a diligent search of the records at the Registry of Deeds and the Registry of Probate and find no owner. The assessors on their own authority can assess to Owner Unknown for FY 2018 and later years. For prior years they must have obtained a letter from the Commissioner of Revenue authorizing an Owner Unknown assessment. If such a letter cannot be found, or was never requested, and taxes were assessed to Owner Unknown before FY 2018, they possibly could reassess the erroneously assessed taxes. The validity of such a reassessment ultimately would have to be determined by Land Court.

B. A title search has disclosed that Robert Higgins is the actual owner. What actions must the assessors take?

The collector should disclaim the taking. The assessors should reassess tax to Higgins for years for which the town still has a valid lien.

C. Assume the assessors learned of the Higgins ownership from his deed conveying ownership to Henry Tilden. Can the town collect all outstanding taxes? Does the town still have a lien for all tax years?

Tilden is not personally responsible for the taxes since he was not a record owner. The sale of the property to Tilden would result in a loss of lien for many of the tax years. Only FY 2015 taxes and subsequent years can be placed in tax title.

19. Upon the death of his mother, who was the sole owner of the house, her son inherited the house. He moved to the house and was informed by town officials that his mother had deferred real estate taxes on the house for many years under G.L. c. 59, § 5, Clause 41A. The total amount of outstanding taxes and interest was in excess of $30,000.

G.L. c. 59, § 5(41A); G.L. c. 59, § 57

A. The son complained that he never agreed to the deferral and the tax bills never listed an outstanding amount in deferred taxes. Can the son successfully challenge the deferral?

No. The son's approval was not required for the deferral since he was not an owner of the property for the fiscal years in question. The tax bills would not show the deferred amounts since they did not become due until the death of the mother.

B. What action will the town now take?

The treasurer must wait 6 months and if full payment is not made, the treasurer can file a petition to foreclose in Land Court.

20. Real estate tax bills for FY 2019 have been sent and some taxpayers have visited the assessors' office.

G.L. c. 59, § 11; G.L. c. 59, § 2A; G.L. c. 59, § 12D; G.L. c. 59, § 12E; *Tobin v. Gillespie*, 152 Mass. 219 (1890)

A. Property at 84 Main Street was assessed to Ruth Hill. She told the assessors that she recently married and requested that tax bills be issued in her married name, Ruth Saunders. How should the assessors respond? Is a new deed necessary?

A new deed is not required. The owner must record a marriage certificate at the Registry of Deeds to have the change show in the record chain of title. She is the actual owner, regardless of the name change, and the assessors may continue to assess to Ruth Hill with a notation in their records of the new name, e.g., aka Ruth Saunders.

B. Acme, Inc. leased undeveloped land to the Dawes Corporation under a 50 year lease. Dawes Corporation built a large apartment building on the site. Dawes requested that the town assess the building to Dawes and assess the land to Acme. Can the assessors agree to separate assessment of the land and building?

No. Even if there is a private agreement, separate assessments cannot be made for land and building. Taxes are assessed to the fee owner of the land for all improvements and interests in the land.

C. William Barnes, the sole owner of a house, passed away on May 14, 2018. How should the FY 2019 property taxes be assessed? Would your answer be different if he died on December 15, 2017?

Taxes should be assessed to Barnes since he was alive **on the January 1, 2018 assessment date. If he died in December 2017 and his death is of record on January 1, 2018, then the assessors must review probate records up to the commitment. If a will has not been allowed or intestate estate administered so that the new owners have not been established, then taxes should be assessed to the devisees of William Barnes (if a will) or heirs of William Barnes (if no will).**

21. **A.** A taxpayer who was upset about the passage of a debt exclusion for the new high school inquired whether the assessors could show as a "separate charge" on the tax bill the amount of the additional taxes assessed because of the debt exclusion. How should the assessors respond?

G.L. c. 60, § 3A

No. The assessors cannot change the content of the tax bill, which is prescribed by state law. The selectboard or mayor, however, can approve a stuffer with nonpolitical municipal information to include with the tax bills. The stuffer could present factual information about the impact of the exclusion on the tax bills.

B. A group of taxpayers inquired whether the assessors could abate a portion of their tax bills because some tax dollars were used to pay for municipal rubbish collection from which these taxpayers derived no benefit because they paid for rubbish collection services in their condominium association fees. Should the assessors grant the abatement?

Opinion of the Justices, 357 Mass. 846 (1970)

No. The assessors cannot reduce the taxes due to lack of municipal services. A tax is not a user fee which is based on benefit conferred.

C. A local factory, National Fabric Inc., is experiencing financial difficulties due to the loss of major customers. The company has filed for a hardship abatement. How should the assessors respond?

No. Only a natural person can receive a Clause 18 hardship abatement.

22. The assessors are reviewing exempt organizations that own real property in town. A religious organization owns a church, a church hall, a large parking lot and two parsonages.

G.L. c. 59, § 5(11); G.L. c. 59, § 5(3); *Assessors of Boston v. Old South Society*, 314 Mass. 364 (1943); *Shrine of Our Lady of La Salette, Inc. v. Assessors of Attleboro*, 476 Mass. 690 (2017)

A. One of the parsonages is in an adjoining town. Are both parsonages exempt? Is one of them taxable?

Both are exempt. In the Old South Society case, the Supreme Judicial Court stated that Clause 11 exempted "each parsonage" in the same situation. A church in Boston owned a dwelling in Brookline which was exempted by Brookline assessors since it was occupied by the minister. The church owned house in Boston which was taxed by Boston assessors. The court held that house was exempt as a parsonage since the associate minister resided there and he performed essentially the same functions as the minister.

B. The church hall is used for religious instruction and for meetings of various church groups and civic organizations, such as, the local realtors. The hall is also used for wedding receptions. Is the church hall exempt?

Yes. Since the dominant purpose of the hall is for religion, the hall is exempt.

C. The church operates a summer camp in the Berkshires for 7 weeks each year. The camp offers musical and theatrical training to campers who must pass an audition to receive admission to the camp. Tuition is $2,100 but some participants receive financial assistance. Is the camp exempt?

Yes. The camp would be exempt under Clause 3 (and not Clause 11) provided the Church was also formed for charitable purposes and filed a form of list (Form 3ABC).

23. The assessors reported receipt of 28 abatement applications signed by a tax agent. On each application, it was written in the statement of reasons for the application that "We are presently reviewing the assessment on this property and are filing to reserve the right to appeal should we find a discrepancy exists."

G.L. c. 59, § 59

A. Were the abatement applications proper?

There must be evidence the tax agent was authorized by the owners to file abatement applications on their behalf, as they are the persons who have standing to apply. The applications should express some basis for abatement, but the application is notice of a claim only. The absence of information about the basis for

the claim is not a jurisdictional bar to the assessors granting an abatement if they determine it is warranted.

B. Would the Appellate Tax Board have jurisdiction in the event of any appeal?

The ATB would make the determination as to the validity of the applications.

24. Julie and Ann who are sisters moved to the Commonwealth in 2017 from New York and purchased a house in your town in November 2017. Julie is over 70 years of age and Ann, age 63, is a surviving spouse. They visited the assessors where they inquired about possible real estate exemptions for FY 2019. The town has adopted Clause 17D and Clause 41C.

DeCenzo v. Assessors of Framingham, 372 Mass. 523 (1977); *Sylvester v. Assessors of Braintree*, 344 Mass. 263 (1962*); Lee v. Commissioner of Revenue*, 395 Mass. 527 (1985)

A. If eligible, could each sister receive a property tax exemption?

Yes. Each owner, if qualified, could receive a personal exemption.

B. How should the assessors advise these taxpayers?

Ann could receive the Clause 17D surviving spouse exemption provided she meets the whole estate test since there is no waiting period under the statute. Julie would not qualify for a Clause 41C exemption since she was not domiciled in Massachusetts for the 10 preceding years and did not own real property in Massachusetts for five years.

25. Actual tax bills have been issued and many residents have filed overvaluation abatement applications and personal exemption applications. A local newspaper reporter is writing a story on the financial condition of the municipality.

G.L. c. 59, § 60; G.L. c. 30A, §§ 18-25; Attorney General Frequently Asked Questions (Open Meeting Law)

A. Are abatement and exemption applications open to public inspection?

No. The applications are not open to public inspection.

B. May the assessors meet in executive session to discuss applications for abatement and exemption? Does the exemption or abatement applicant have a right to attend the executive session?

The assessors may meet in executive session since the open meeting law allows executive sessions in order to comply with a state law. In this case, state law makes the content of applications exempt from public disclosure and a discussion in open session would defeat that statutory exemption from disclosure. The taxpayer does not have the right to attend the executive session but can be invited by the assessors.

26. Three situations have been discussed in the assessors' office.

G.L. c. 58, § 2; G.L. c. 59, § 5; G.L. c. 59, § 25

A. A taxpayer is having financial difficulties. The taxpayer turned 70 years of age and was advised by a neighbor to file for an elderly exemption. The taxpayer also saw an article in the local newspaper about Clause 41A tax deferrals. If the property is in tax title, can the taxpayer receive a Clause 41C elderly exemption? Can he defer his taxes? Can he receive both a Clause 41C elderly exemption and a Clause 41A tax deferral?

If the property is in tax title, the taxpayer can still receive a senior exemption or defer the taxes. A taxpayer can receive a personal exemption and defer the balance of the taxes since a deferral is not a true exemption.

B. Another taxpayer, Strategy Inc., was assessed business personal property taxes for FY 2018. The taxpayer claimed to be exempt from personal property taxes as a manufacturer and filed for abatement. Is there a basis for the abatement?

If the taxpayer applied for and received a manufacturing designation from the Commissioner of Revenue, which would result in the taxpayer being listed in the Corporations Book as an "M" corporation.

C. A third taxpayer who filed an abatement application negotiated a settlement with the assessors. He wants interest to be paid on the abatement refund. What is the source of any interest payment?

Interest on an abatement/exemption is now paid from the overlay account.