WORKSHOP B
SPECIAL FUNDS

DISCUSSION SUMMARY
(Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop B is provided for educational and training purposes. 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).

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Discussion Questions

1. Sarah is tax collector in Puddlesby, MA and a firm believer in Murphy's Law. She has seen a variety of errors in the printing of tax bills during her years of service, and knows exactly to respond to each. Here are some of the issues she has encountered:

    A. The tax rate was not printed on some or all of the bills for the annual commitment.

    B. The collector's name is not on the bills.

    C. Last year's tax rates appear on the bills.

    D. The wrong valuations appear on the bills.

    E. The wrong amount due is reflected on the bills.

    F. The wrong address was given for certain taxpayers.

    G. The wrong date is given for the last day for filing abatement applications.

    G.L. c. 60, § 3A

Fatal errors in tax billing include misstatement of the assessed valuation, an erroneous amount due, and the wrong date due for payment and filing abatement applications. In each of these instances, the bills must be reissued, If the commitment also includes the wrong valuations and amount due, the entire commitment must be rescinded and reissued, or the erroneous assessments revised under G.L. c. 59, § 75. If the commitment is correct, only the bills need to be reissued. In quarterly communities, the due date of bills mailed after the first of the year becomes May 1st. If the tax rate was not printed or is inaccurate, bills needn't be reissued but taxpayer notification of the error should be made through other means. The collector's name is not required to be on tax bills. If the bill is not mailed to an address provided by a taxpayer, the tax is due but interest accrual does not start until a properly addressed bill is mailed.

2. Elmer, who is 68 years old, invested his savings in the coal industry, but saw his fortunes decline when Massachusetts denied a license to a proposed coal-burning power plant on Cape Cod. He has seen his income and assets diminish. His property taxes have suddenly become more burdensome, and he is considering the possibility of a tax deferral.

   A. His town has set the gross receipts threshold at the maximum amount allowed under Clause 41A of Chapter 59, § 5. How is this amount determined, and where does it stand in FY2019?

   B. Elmer's gross receipts were less than the maximum required for eligibility for tax deferral. Elmer is wondering about the maximum amount in taxes he can defer in relation to the value of his property. What is this threshold?

   C. Elmer applied for tax deferral by the deadline. What is the last day to apply for tax deferral?

   D. Elmer's application for a tax deferral was approved by the assessors, but he did not sign the required Tax Deferral and Recovery Agreement until late August, after the 1st quarter payment of his preliminary tax was due. He paid the 1st quarter bill in a timely fashion. How is the first quarter payment treated when the deferral goes into effect?

   E. How is the tax deferral account set up?

   F. What rate of interest is charged?

   G. Elmer reapplies for tax deferral in the next two fiscal years. After he signs the agreement for the third fiscal year of tax deferral, his son asks that he put the property in trust of which he is a co-trustee, while reserving for himself a life estate. His lawyer prepares a declaration of trust and tells Elmer that he will remain eligible for tax deferral because he is a trustee of the ownership trust. What are the tax consequences of this transfer of the property into trust?

   H. Does Elmer remain eligible for tax deferral in the fiscal year following the transfer of the property to trust ownership?

   G.L. c. 59, § 5, Clause 41A

For fiscal year 2019, the maximum eligible amount of gross receipts is $58,000. This is the threshold for the senior circuit-breaker income tax credit for a single head of household under G.L. c. 62, s 6(k) for state tax year 2018. It is the highest threshold a community can use at local option to measure eligibility of gross receipts for the tax deferral for the next fiscal year.

The total amount of taxes plus interest for the current and all prior fiscal years cannot exceed 50% of the owner's equity in the property (*i.e.*, value less encumbrances such as mortgages.)

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The deadline for applying for tax deferral is April 1, or 3 months after the mailing of the bills if that date is later. Under G.L. c. 59, § 59, deferrals have the same application deadline as personal exemptions.

When the tax deferral goes into effect, Elmer is entitled to a refund of his first quarterly payment without interest.

Taxes deferred under Clause 41A are treated as if secured by a tax title. The treasurer must create a modified tax title account for the parcel in the amount of the deferred taxes. The amount of the fee paid to record the parties' statement of entry into a deferral and recovery agreement is added to those taxes.

Deferral accounts should be maintained on regular tax title account forms (State Tax Form 410) and be marked to indicate that they secure taxes deferred under Clause 41A. The entries on the form 410 for "Date of Demand", "Date Advertised", and "Notices Posted" should be filled in with NA. The Deed of Purchase or Instrument of Taking blank should be filled in with the date of the recorded assessor's statement and the book and page reference.

Clause 41A deferral accounts should be segregated from ordinary tax title accounts, since the liens are not ripe for foreclosure until the transfer of the property or the death of the deferring taxpayer. Copies of the agreement and the assessors' recorded statement should be kept in the modified tax title file for the parcel.

The interest rate on deferred taxes is 8% unless the community has adopted a lower interest rate by legislative body vote.

Conveyance of the property from an individual owner to a trust is treated as a transfer of the property to another owner, and triggers the repayment obligation. The interest rate increases to 16% after the conveyance.

If the property owner continues to meet the qualifications of Clause 41A, the owner can enter a new tax deferral and recovery agreement so as to defer after-arising or future taxes. Foreclosure will be stayed by the new agreement, yet taxes previously deferred continue to accrue interest at 16%.

3. Mudville, MA has decided to provide sewer service to its Northside neighborhood. The intention is to split costs between the tax levy and special assessments imposed on properties that will gain access to the town sewer system.

   A. What is the procedure for ordering sewer special assessments?

   B. When and for what properties must a lien be recorded?

   C. When does the collector prepare a bill for the special assessment of benefitted properties? What information must the bill contain?

   D. Does the taxpayer have to pay the entire liability in lump sum, or can the special assessment be divided up and paid over time with interest?

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E. What are the options for apportionment of the special assessment that affected residents have? Who decides which apportionment method will be used?

F. How does the unpaid portion of the special assessment get added to the property tax bill?

G. How often is the special assessment billed on the taxpayer's property tax notice?

H. What rate of interest is charged?

I. What happens if the special assessment is added to the tax bill for the wrong parcel and paid?

J. Who is liable for the special assessment?

K. Is it possible for a taxpayer to prepay the balance of a special assessment that was apportioned? What is the procedure?

G.L. c. 83, §§ 15, 15C, 15D, 16, 16B and 16E

The community needs a legislative body vote, which may be by ordinance or by-law, to assess sewer special assessments. The vote, ordinance or by-law will indicate where authority to order special assessments lies, usually with the sewer commissioners. The assessing board must formally adopt an order for construction of the improvement that describes the area to be benefited by the particular project and states that betterments or special assessments will be levied for the improvement.

The statute says the lien is to be recorded "forthwith" which means right away. Properties on all ways along which sewer pipes will run must have a recorded lien. Properties bordering sewer lines have a "right to connect" which benefits them even if they don't actually connect.

After receiving the commitment, the collector sends a bill showing the amount of the assessment to the owner of each parcel assessed. G.L. c. 80, § 4. The collector should include an explanation of the property owner's options and provide a form to request an apportionment from the assessors.

The taxpayer can request that the liability be apportioned into payments over time. The taxpayer must have the option to pay in full after 30 days of the mailing of the bills, to avoid interest charges. The request for an apportionment is made to the Board of Assessors.

The default method for apportionment divides the principal and interest liability into up to 20 equal portions. The Municipal Modernization Act provided new options for apportioning special assessments. The city or town may choose to apportion assessments into the same number of years for which the bonds used to finance the public improvement run. Another alternative is to divide the liability into portions so that the amount payable each year for assessment principal and interest are as nearly equal as practical. Or the community may decide to structure the liability to be payable in the same number of preliminary and actual installments as the real estate tax obligation.

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The vote, by-law or ordinance will specify the manner in which special assessments are apportioned. Or the assessing board, *e.g*., the sewer commissioners, may have discretion under the vote, by-law or ordinance to choose among the statutory alternatives for apportionment methodology. These methods cannot be varied by local action.

The collector must certify the amount due for unpaid assessments to the Board of Assessors before they complete the annual commitment. After the 30-day period for payment of the liability without interest, the assessors add one year's portion of the special assessment together with the interest to the first annual tax bill. A year's portion of the liability including interest is added to each tax bill in subsequent years until the liability is paid off.

Under a quarterly billing system the annual apportioned obligation is payable in two installments, either in the preliminary cycle or the actual cycle depending on the timing of the mailing of the bills. If the community elects to apportion the obligation into the same number of installments in which real estate taxes are payable, then the annual amount of the special assessment is divided among all 4 quarters or both semi-annual bills.

In the first year, the entire or apportioned amount is committed with interest on the amount of the entire assessment that remains unpaid calculated from the 30th day after the bills are mailed until October l. In subsequent years, the apportioned amount is committed with interest on the unpaid balance calculated from October 1 to October l, *i.e*., for one year.

The interest rate to be applied is five percent per year <u>unless</u> (a) a city or town has voted the optional rate, which is up to two percent above the rate charged the city or town if it borrowed for the project, or (b) a special act establishes another rate.

If apportioned betterments or special assessments are added to the tax bill for the wrong property and paid, the resulting overpayments should be refunded without interest. The original assessment remains payable in full. The apportionment should be added to the next tax bill of the property which is liable, with interest running from the 30th day after the bills are mailed.

The property owner is liable for the special assessment obligation, which runs with the land. That is, a subsequent purchaser assumes liability for the payment of apportioned installments. There is no personal liability for the special assessment, in contrast to assessed real estate taxes.

After an assessment has been apportioned, the property owner may choose to pay all or a part of the assessment. If a property owner makes a written request to prepay the assessment, the assessors commit the amount of the prepayment, with interest, to the collector with a warrant. If no apportioned amount has been added to the tax, the interest is calculated from the 30th day after the date the bill was mailed until the date of prepayment. If an apportioned amount has been added to the tax, then the interest is calculated from October 1 of the year the last portion was added until the date of prepayment and the prepayment will be applied to the final year(s) so as to reduce the payment period.

4. Roger Smith owned a property on Green Street in Harborside, MA for over a decade and was meticulous in paying his property taxes on time. In February of 2017, Carter Holiday

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purchased the property. Under the terms of the closing, the amount of taxes due for the fourth quarter of FY2017 was held in escrow and paid over to the town in April. Holiday hasn't paid property taxes since he moved in. He missed the first, second, third, and fourth quarterly payments for FY2018, and he has failed to pay his first quarterly bill for FY2019.

A. What is the first step in collecting the delinquent taxes by enforcing the lien on the real property, and what is the earliest date that the collector should act?

B. Who should receive notice?

C. What is the next step in enforcing the lien, and what is the earliest date it can happen?

D. How soon can the collector sign the instrument of taking?

E. How long after executing the instrument of taking does the collector have to record it? What happens if the instrument of taking is not recorded during that period?

F. What happens after the instrument of taking is recorded?

G. How are taxes that arise subsequently to the year for which the property taken accounted for?

H. How long must the treasurer wait before filing a petition to foreclose the right of redemption?

I. What happens if Mr. Holiday pays off the entire liability for taxes, interest, and costs?

J. Once the Land Court issues a decree foreclosing the right to redeem the property, how long does party with an interest in the property have to seek relief from the decree?

K. How should the treasurer account for taxes that had not been certified to the tax title account before the foreclosure decree?

L. How is the shortfall accounted for if an auction is held and the proceeds of the sale are less than the amount of the liability?

G.L. c. 60, §§ 37, 40, 42, 53 and 65

A collector should protect against the possibility of the municipality's losing its automatic lien by making tax takings within the time period set forth in G.L. c. 60, § 37 (*i.e*., three years and six months from the end of the fiscal year for which the taxes were assessed). When the standard tax taking procedure cannot be pursued (due to a bankruptcy filing, for example), the collector must preserve the lien by filing a continuation of the lien certificate under G.L. c. 60, § 37A.

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G.L. c. 60, § 40 requires that a published notice of intent to sell or take real estate must include all owners known to the collector. While the language of § 40 itself does not define the word owners, G.L. c. 60, § 54 requires that the instrument of taking be in the name of the assessed owner, and G.L. c. 60, § 56 provides that a taking in the name of any assessed owner will be valid against all owners of the property. A demand for real estate taxes, which is a prerequisite to a valid tax taking, may be made only to an assessed owner. Therefore, we believe that the word owners in § 40 is best read in an inclusive sense, to refer to assessed owners as well as any other known owners at the time of taking.

The collector must issue a demand, wait 14 days, then post notices of intention to take the property in a newspaper and in a public building.

The instrument of taking may be executed no earlier than 28 days after issuance of the demand.

After the taking, the collector must record or register an instrument of taking at the Registry of Deeds within 60 days of the date of taking, for the taking to be effective.

The collector should prepare a list of recorded takings to be set up as tax title accounts, giving one to the treasurer, one to the accounting officer, and keeping one for the collector's own records. The list of recorded takings should contain the names of the delinquent taxpayers, a brief description of the property included, the years, and taxes, interest and costs for which the property was taken at the time of the taking.

From the list, the treasurer should set up a tax title account for each parcel of real estate included in the list.

In each subsequent year, for all parcels of real estate taken into tax title and not redeemed, the collector, after sending a demand, must certify to the tax title account all unpaid taxes and assessments, together with any costs and interest accrued.

Foreclosure proceedings may begin in six months after the taking unless the property is abandoned or the land of low value procedure is used.

The treasurer must issue an instrument of redemption if the tax title is redeemed and the liability is paid off. If the tax title is not redeemed, the treasurer is responsible for enforcing the tax title through foreclosure.

Owners have one year to file a motion to vacate the decree of foreclosure. Vacating the decree is at the discretion of the Land Court.

Taxes that remain on the collector's books after the Land Court issued a foreclosure decree on the property, or the treasurer deeded the property to the municipality after a land of low value auction, should be certified to the tax possession account rather than abated, provided that the municipality stills holds the property as a tax possession, *i.e.*, has not sold the property, or voted to dedicate it to a municipal use.

If the municipality later disposes of the property for less than the tax possession account (due to conversion to public use or sale for lower amount), the loss of revenue is accounted for in the General Fund, not by abatement.

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5. Witches' Brews Cosmetics, Inc. ("WBC") manufactures theatrical make-up for the use of stage, film, and television actors. Among its best known products is a heavy white paste which simulates the appearance of death, and a fierce red paint that looks uncannily like blood. WBC owns a chemical manufacturing and distribution plant in Dark Shadows, MA, and on the same site a warehouse, a laboratory, an administrative office building, and underground storage tanks. WBC has been recognized as a manufacturing corporation since its inception.

There are eight underground storage tanks on the premises of the manufacturing site containing the commodity chemicals WBC uses to manufacture its specialty chemicals. The tanks hold between 1000 and 5000 gallons and are double-walled and steel-coated or glass-coated. When they are needed in the manufacturing process, the chemicals flow from the tanks to the main manufacturing facility through color-coded pipes. These pipes begin inside the tanks and travel to cylindrical reservoirs above ground. The pipes then travel above ground to tanks inside the manufacturing facility. By using pumps, WBC draws chemicals from the underground tanks through the color-coded pipes and into the above-ground tanks. The chemicals are then blended according to proprietary formulas for the creation of WBC's product line. The tanks include electronic monitoring equipment to provide readings, from a location outside the tanks, of the temperature and volume of stored commodity chemicals. There are also shut-off valves.

Each tank rests on a concrete pad located about twelve feet underground, to which it is joined by removable straps. The tops of the tanks are about three feet under the surface. Sand or peastone is placed above and around the tanks so that they can be removed quickly and easily. A small backhoe is used to dig out the sand or peastone surrounding the tanks. The removable straps are unfastened, then a crane with an attached hook draws the tank to the surface.

A. Are the underground storage tanks real or personal property? Does it matter whether WBC owns the real estate? Why is the classification of the assessed property important?

B. WBC argues that the underground storage tanks are personal property, but the assessor taxes them as part of the real estate. What characteristics do the storage tanks share with real property? With personal property?

C. WBC refuses to pay the portion of the property tax bill that reflects the value if the underground storage tanks. They argue that the assessment of this equipment as real property is invalid. How should the collector respond?

D. WBC bypasses the abatement process, intending to raise the allegedly excessive amount of the assessment as a defense to foreclosure proceedings. What is the collector's next step?

E. Six months has passed since the taking. The treasurer is eager to get the WBC dispute resolved. What is the next step?

F. In Land Court WBC argues that the assessment was excessive in amount because items of personal property were taxed as real property. It argues it should be able to redeem for a lesser amount. Is that a valid defense in a foreclosure proceeding?

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G.L. c. 59, §§ 2A and 18; G.L. c. 60, § 65

The reason the differentiation between real and personal property matters is that cities and towns have a lien to enforce real property tax collections. No lien attaches to personal property subject to tax. It can plausibly be argued that the underground storage tanks are real or personal property, although the Appellate Tax Board (ATB) held in the *Perma v. Assessors of Billerica*, ATB 2001-805, that such storage tanks are personal property not subject to tax as real property. *Perma* is problematic because it does not apply the governing definition of real property at G.L. c. 59, § 2A. If WBC owns the real property, there is a strong argument that the underground storage tanks can be taxed as part of the real estate into which they are embedded. If WBC doesn't own the land then only by treating the storage tanks as personal property can they be taxed to the owner of the storage tanks.

The underground storage tanks are embedded in real estate. G.L. c. 59, § 2A provides that real property includes "land … and other things thereon or affixed thereto." The storage tanks are "things" and they are either on real estate or affixed to the land. On the other hand, the underground storage tanks are "movable," even if great effort is required to do so. Portability is characteristic of personal property.

The tax is due and payable notwithstanding WBC's contentions. If they don't pay their full tax obligation by the due date, they are subject to a demand notice. Any quibbles with the merits of the assessment must be raised through the process for abatements and appeals.

The Collector must wait 14 days after the demand. The Collector must then advertise and post notice of an intention to take the property for non-payment of taxes. After another 14 days passes, the collector may take the property and execute an instrument of taking.

A petition for foreclosure of the right of redemption must be filed in the Land Court under G.L. c. 60, § 65.

The rule in foreclosure proceedings is that defenses that would reduce the amount required for redemption are outside the scope and may not be relied upon. Defenses that are available go to due process of law, *i.e.,* insufficiency of notice, lack of jurisdiction to assess the tax against the assessed owner. So it is arguable that issues appropriate for resolution in the context of abatement proceedings may not be litigated in Land Court. You get one bite at the apple unless a potential due process problem with the assessment or the taking arises.

6. Jane Parker owns an incorporated art gallery in leased space in Mountain View, MA called Exceptional Aesthetics, Inc. She sells the works of a variety of Western Massachusetts and Southern Vermont artists, almost all of which are priced under $10,000. She is taxed on her personal property including antique furniture, special lighting equipment, a computerized art viewing portal which offered more complete collections of the works of featured artists, and a state of the art sound system which filled the space with the music of French impressionist composers

   She is an energetic promoter of the creations of local artists and is highly regarded in the arts community. As a token of appreciation, a particular artist, Badger Drift, developed

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for the gallery space a contemporary work consisting of items of household junk assembled into a unique shape and pattern. The artist gifted the installation to her for display. Although the local assessor thought the installation was repulsive and warranted a low assessment, a New York arts publication reviewed the piece and pronounced it a work of genius. The publication estimated the value at $100,000. The gallery owner failed to declare the contemporary art installation on her form of list but reported the rest of her personal property subject to tax. The assessor assessed a personal property tax on the property declared on the form of list, but assumed the installation was part of the inventory for sale. When the assessor read in the review that the work was owned by gallery for purposes of display, he issued a revised assessment. Ms. Parker was furious because she considered the installation as another piece of art on display, like the paintings for sale. Ms. Parker refused to pay the personal property tax assessed on her installation, but otherwise paid the personal property tax due on the other items situated in the gallery. She applied for abatement of the assessment on the installation, but the assessors denied her. She filed an appeal with the Appellate Tax Board.

The tax collector conferred with the assessment director as to options the town had for collecting the unpaid personal property tax.

A. What are the means by which the collector can attempt to collect the unpaid personal property tax?

B. The gallery requires an entertainment license to operate its sound system. Would it be possible to suspend or revoke the entertainment license if the tax remains unpaid?

C. Ms. Parker is entitled to a tax abatement on her personal residence. Can the treasurer intercept the payment to Ms. Parker and have it applied it to the tax debt.

D. The tax in dispute is less than $7000 in amount. What recourse might the collector have in litigation?

E. How might Ms. Parker legitimately avoid personal property tax on the installation?

G.L. c. 40, § 57; G.L. c. 60, §§ 35 and 93

There are three statutory tools collectors have available that are especially important in the personal property context. First, there is denial, suspension, or revocation of licenses as authorized by local acceptance G.L. c. 40, § 57. There are certain limitations that apply to this remedy. The person or entity owing the tax must be identical to the applicant for a license or permit for denial, revocation, or suspension to come into play.

Two other limitations have been eased so as to make that remedy more viable. First, it used to be required that the tax be past due for at least a year. Now there is no minimum time period for tax arrearages before resort can be had to license or permit revocation, suspension, or denial. Second, the law used to give the collector only one opportunity a year to forward the names of tax delinquents to license-issuing departments and boards. Now notice of delinquencies can be supplied on a frequency determined by the ordinance or by-law required to implement this remedy. So notice of a tax delinquency can be more flexibly

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given to license-issuing departments and boards and make this remedy apply more expeditiously to tax delinquents.. To take advantage of these changes, cities and towns will need to have current ordinances and by-laws that reflect the changes in the Municipal Modernization Act. We will discuss the two additional statutory remedies shortly.

Certain licenses are excluded from the denial, suspension, or revocation procedure. Bicycle permits, dog licenses, permits for open burning, hunting, fishing and trapping licenses, marriage licenses and certain other licenses are not subject to deprivation under G.L. c. 40, § 57. However, an entertainment license required to operate a sound system under a municipal ordinance or by-law is not excluded from the operation of the statute. The municipality decides in its ordinance or by-law implementing G.L. c. 40, § 57 which licenses or permits are subject to denial or suspension for non-payment of taxes, and an entertainment license may be subject to this remedy.

Because the gallery is incorporated, the entity is subject to tax separately from Ms. Parker. The gallery incurred the liability for the unpaid personal tax, while Ms. Parker the individual is liable for the real estate taxes subject to abatement. The payment is due to Ms. Parker individually, and she is not liable for the tax assessed against the corporation.

Under the Municipal Modernization Act, the doors of the District Court Small Claims Session are open to municipalities seeking to enforce liability for property taxes, and it doesn't matter if the amount is greater or less than the $7,000 ceiling that typically restricts access to the small claims session. The small claims process is fast and accessible to litigants without lawyers. If you reduce the tax claim to a judgment, then other assets of the taxpayer can be seized under the stage known as supplementary process. So you get an enforceable lien after all.

Ownership of the art installation determines who is taxed. The work was treated as property of the corporation for assessment purposes, logically enough, because it is situated in the gallery. But ownership is not readily apparent. Ms. Parker can claim that the gift was made to her, not her gallery, and is thus her personal property. She would then fall subject to personal property tax herself, but could claim exemption if she moved the artwork to her residence on December 31 for her traditional New Years' Eve party, then returned it to the gallery on January 2. Personal property is exempt under Clause 20th of Chapter 59, § 5 in the domicile of its owner on the assessment date.

7. Rhoda owns a small bungalow on a quiet street in Canterbury, MA. For most of fiscal years 2014 and 2015, she was unemployed and missed three quarterly tax payments that fell due. In mid-2015 she found a new position, and began paying her taxes on time and in full going forward. However, she did not pay the arrearages due from fiscal years 2014 and 2015. On July 12, 2018, the collector sent out demands for the amounts due for FY 2014 and FY2015.

   A. When can the collector post and advertise the Notice of Intent to take?

   B. Assume that the demand named and was mailed to an abutting property owner by mistake. What is the effect of the misdirection of the demand?

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C. The demand was reissued on August 1, 2018. After posting and advertising the Notice of Intent to Take on August 17, 2018, the collector prepared an Instrument of Taking, which she executed on September 5, 2018. Is the lien for FY2014 still in effect for the subject property?

D. Alternatively, Rhoda decided she wanted to offer her house for sale, and requested a municipal lien certificate (MLC). The MLC was issued in early September, but failed to list the liabilities for unpaid taxes from fiscal years 2014 and 2015. What is the effect of that omission? Can the taking proceed?

E. Assume the MLC listed the FY2014 arrearages but failed to state the tax debt for FY2015. Rhoda sold her house in early October, 2018, with a closing on October 15, 2018. The collector proceeded to take the subject property on Halloween 2018. Is the taking valid?

F. How might the collector have perfected her lien for FY2014?

G. As a general rule, how does a collector ensure that the lien for unpaid taxes from a particular fiscal year is not lost?

G.L. c. 60, §§ 40, 53 and 65

Advertisement and posting of the notice of intention to take are timely if both are made no sooner than 14 days after July 12, 2018, the date the demand was mailed.

Mailing the demand to an improper address invalidates the taking.

Tax liens run 3 ½ years from the start of the relevant fiscal year, or until the property is sold, whichever is later. So the 2014 tax lien might have expired on December 31, 2017. However, there was no sale of Rhoda's property in the following year or two, according to the fact pattern. Therefore the lien for FY 2014 remains in effect on September, 2018, the date the lien was perfected by the tax taking of the property.

Liens for unpaid property taxes that have been committed to the collector and not secured by a valid tax taking will be dissolved if the taxes are left off a municipal lien certificate that is timely recorded. In municipalities that have accepted the statutes creating liens for other municipal charges, liens for overdue water, sewer, and other utility bills are also lost if left off timely recorded municipal lien certificates. Obviously, if the tax arrearages which warranted a tax taking are discharged the taking cannot proceed.

The putative October 31, 2018 taking is invalid because the lien for the FY 2014 taxes expired with the sale of the property on October 15. The lien was not in effect on October 31, 2018. The property should have been taken on or before December 31, 2017. Although the lien continues unless there has been a sale of the property, the point in time that the sale occurs marks the expiration of the lien.

A timely tax taking perfects the lien.

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8. Brunhilde is Collector-Treasurer for Sussex, MA. She has twenty properties with delinquent property taxes and interest owed, half of which have been taken into tax title. She is interested in assigning some or all of these outstanding receivables to a third party to collect.

   A. What options for assignment of real estate tax receivables do collectors and treasurers have?

   B. How does the assignment process work?

   C. How are multiple receivables categorized for bulk assignment?

   D. What amounts are included in an assignment?

   E. Can assignees be offered a discount on interest? Can different rates of discount be offered on different receivables?

   F. How is an assignee chosen?

   G. What paperwork is required?

   H. What provisions are included in an assignment agreement?

   I. Whom should the taxpayer pay?

   G.L. c. 60, §§ 2C and 52

Treasurers may assign property tax receivables in tax title either on an individual basis, or in bulk. The relevant statutes are G.L. c. 60, § 2C for bulk assignments and G.L. c. 60, § 52 for individual assignments. Collectors have only the option to assign delinquent receivables under G.L. c. 60, § 2C (for properties not yet in tax title.)

Let's look first at G.L. c. 60, § 52: the treasurer may assign a tax title on one or more parcels. The assignment is by auction to the highest bidder and must be for at least the amount the taxpayer would have to pay to redeem the parcel on the date of the auction.

At least 14 days before the auction, the treasurer must publish notice of the proposed assignment in a newspaper printed in the city or town, if any, otherwise in a newspaper published in the county The Treasurer must also post in at least 2 public places within the city or town. The notice and posting must include the same information as the notice a collector gives of a proposed tax taking under G.L. c. 60, §40.

At least 10 days before the auction, the treasurer must mail a notice of the intended assignment to the current owner of record at his last known address.

Failure of the taxpayer to receive the notice will not affect the validity of the assignment.

An alternative statute, G.L. c. 60, § 2C allows either a collector or treasurer to assign in bulk receivables secured by liens or tax titles. A bundle of receivables to be assigned cannot include any parcels with respect to which the treasurer has entered into a payment

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agreement with the taxpayer under G.L. c. 60, § 62A. Assignments may otherwise bundle together receivables based upon categories of receivables. Assignment of receivables under G.L. c. 60, § 2C is by auction. Before treasurers or collectors assign delinquent taxes, they must publish a list of those accounts that may be assigned. The list must be published in a newspaper printed in the city or town, if any, otherwise in a newspaper published in the county. The list must include the names of the assessed owners and, in the case of real estate taxes, the addresses of the parcels involved. The publication must precede the assignment by at least 60 days.

Here are some criteria according to which receivables may be categorize

- **Parcel value (for example, land of low value).**
- **Ownership status, including unknown owner:**
- **Owners' exemption eligibility**
- **Owner occupancy.**
- **Age of the delinquency**
- **Receivable value.**
- **Parcel characteristics (For example, single- or multi-family residential**
- **parcels)**
- **Square footage, for commercial or industrial property.**

Collectors start with 100% of the taxes and other charges added to the tax, plus interest. Treasurers start with the redemption amount, which includes tax, other charges, collector's interest at 14%, subsequent taxes certified to the tax title account, and treasurer's interest at 16%.

Under G.L. c. 60, § 2C, the request for bids may provide for the discount of interest up to maximum of 50%. The percent of the discount must be uniform for all the tax titles being assigned. Town meeting or Mayor/Council authorization is needed to discount interest.

A discount on interest in a tax title has a different impact on the value of a receivable depending on whether the discount applies to collector's or treasurer's interest. In a tax title, treasurer's interest is simple, not compounded. Collector's interest is part of the "principal" of such a receivable, that is, the amount payable on the date of assignment and the amount upon which the accrual of additional (treasurer's) interest is calculated. Therefore, to the extent that collector's interest in a tax title account is discounted, the assignee pays less for the tax title than the principal or interest-earning amount of the tax title. A discount of treasurer's interest reduces the assignee's obligation to pay over to the municipality the first dollars collected after assignment on account of the receivable.

If a discount applies to collector's interest, the bid should make that clear. It is also essential that the municipality be able to produce a listing of both types of interest for every parcel in tax title. The solicitation of bids for an assignment of treasurer's receivables (tax titles) must therefore specify not only the maximum discount percentage that may be accepted (up to 50 percent) but also whether the discount percentage can apply to collector's interest as well as treasurer's interest. If the discount can apply to collector's interest, the treasurer must furnish a listing of all tax titles included in the offering, with the total amount of interest broken down between collector's interest for the original sale or taking and for all subsequently certified taxes, and treasurer's interest. If the discount will apply only to treasurer's interest, the treasurer must furnish as part of the bid

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documentation a listing of each parcel in tax title with the sum of the amount for which the parcel was taken and all subsequently certified taxes, charges and interest, and the amount of accrued treasurer's interest for each tax title property.

Tax receivables must be sold by public sale to the most responsible and responsive offeror taking into consideration the following evaluation criteria:

- **The price proposed by the offeror.**
- **The offeror's qualifications and experience.**
- **The offeror's plan for communicating with the taxpayers.**
- **Whether the offeror has a regular place of business in the Commonwealth.**
- **Whether the offeror is in good standing with the Department of Revenue.**
- **The offerors' ability to supply timely information**

The treasurer or collector and the assignee must enter into an assignment agreement. An agreement to assign receivables under G.L. c. 60, § 2C must be in writing.

An agreement with a collector must include the information contained in the assessors' commitment for each receivable being assigned; state the remaining balance of the tax and other charges being assigned; and state for each receivable the amount of interest and charges accrued that will be payable from the first amounts collected by the assignee.

A treasurer's agreement must include the information contained in the collector's deed or instrument of taking for each tax property being assigned, as well as the amount of all taxes and other charges subsequently certified to the tax title account. The agreement must state the remaining balance of each tax title account being assigned, and indicate for each receivable the amount of interest and charges accrued that will be payable from the first amounts collected by the purchaser or assignee.

Both types of assignment agreements must provide that the agreement is binding on any subsequent transferee of the assignee. An assignment agreement must prohibit the imposition by the purchaser or assignee, his agents or transferees, of any fees or charges other than those that could have been added to the amount due by the collector or treasurer in accordance with G.L. c. 60, § 15.

The purchaser or assignee receives payment. Yet the Treasurer may issue certificates of payment. Treasurers are supposed to provide copies of certificates of payment to the assignee or purchaser, who in turn is required to report on collections activity at least quarterly.

9. Ned Conover, the treasurer-collector of Neuhardt, MA is working to assist a senior citizen with numerous tax payment issues. The assessors had entered into a hardship tax deferral agreement with the senior citizen. The senior's property was already in tax title, and there are prior year tax delinquencies. How does the treasurer-collector handle the simultaneous dual tax deferral agreement and tax delinquencies, including interest rates and ability to foreclose?

   G.L. c. 59, § 5, Cl. 18

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A first-time filer for a tax deferral can receive the deferral even if the taxpayer owes real estate taxes for prior fiscal years. The biggest take-away for this question is that the treasurer-collector segregate the deferral accounts from ordinary tax title accounts, since the liens under Cl. 18 are not ripe for foreclosure until the transfer of the property or death of the deferring taxpayer. Taxes deferred are treated as if secured by a tax title. If the property is already in tax title, the treasurer-collector should add the deferred taxes to the tax title account. Copies of the deferral and recovery agreement with the taxpayer and a recorded statement by the assessors should be kept in the modified tax title file for the parcel.

Interest on deferred taxes accrues at eight percent per annum, while the interest rate for outstanding taxes in tax title is 16 percent per annum. After the death of the deferring taxpayer, the surviving spouse may continue the deferral. After the death of the deferring taxpayer or the sale of the property, the tax title interest rate of 16 percent applies to outstanding taxes.

Further information on the hardship tax deferral process may be found in Informational Guideline Release (IGR) 2006-201.

10. Waterville has a property in tax title consisting of three acres that is located next to its elementary school that the town is seeking to replace. The tax title property, located on a major thoroughfare, would be an ideal location on which to build a new elementary school to replace the existing one, while not interrupting the educational use of the existing elementary school. The town is concerned, however, that if it were to foreclose and conduct a tax title auction a developer wishing to purchase the property at a high value would thwart the effort of the town to use the property for its desired educational use. Does the town have any options by which to achieve its goals? If so, how would it handle the issue of outstanding taxes on the property?

    G.L. c. 60, § 77B; G.L. c. 60, § 77C

Under G.L. c. 60, § 77C, municipalities may accept title from owners on which there are municipal liens as an alternative to tax taking and foreclosure proceedings. Properties accepted under this option are then treated as if a tax title foreclosure has been completed. Acceptance of title to the parcel is by majority vote of the municipal legislative body. The vote should specifically state that the acceptance is under G.L. c. 60, § 77C. Liens for outstanding real estate taxes or other municipal liens must exist on the parcel at the time title is accepted, but the parcel does not have to be in tax title. Acceptance should generally be limited to parcels with a current fair cash value of at least the amount owed, unless a parcel is being acquired for public use or enforcement of personal liability against the assessed owner is unlikely or impossible. In the case of the Waterville property, since the property is being acquired for a public use, there is no requirement that the current fair cash value meet or exceed the amount owed.

Further information on the deed in lieu of foreclosure process may be found at IGR 2002-07B.

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11. The Mayor of Bainbridge MA appointed a Tax Title Custodian to manage and maintain properties acquired by the city through tax title foreclosures and to collect rents from the properties. The Bainbridge City Council accepted G.L. c. 60, § 15B and approved an ordinance creating a Tax Title Collection Revolving Fund. The ordinance provided that the collector may credit to the account fees, charges and costs emanating through the tax title process. The Mayor, seeking to find other revenue sources in a tight fiscal year, is requesting that the collector pay the salary of the Tax Title Custodian from the Tax Title Collection Revolving Fund. May he do so?

G.L. c. 60, § 15B; G.L. c. 60, § 77B

A municipality that accepts G.L. c. 60, § 15 may establish a tax title collection revolving fund for the treasurer, collector or treasurer-collector for the deposit of "…any fees, charges and costs incurred by such officer under sections 15, 55, 62, 65 or 79 and collected upon the redemption of tax titles and sales of real property acquired through foreclosures of tax titles."

G.L. c. 60, § 15B(b) states in part that

> **"<u>Expenditures</u> from a tax title collection revolving fund … <u>shall be spent to pay</u> expenses incurred by such officer under this chapter in connection with a tax taking or tax title foreclosure, including, but not limited to, <u>fees and costs of recording or filing documents and instruments, searching and examining titles, mailing, publishing or advertising notices or documents, petitioning the land court, serving court filings and documents and paying legal fees</u>. [Emphasis supplied]**

G.L. c. 60, § 77B provides for the appointment of a tax title custodian who shall have the care, custody, management and control of tax title properties in their respective municipalities. Under the statute, the tax title custodian shall receive as compensation a sum fixed by the mayor or selectboard. Because the expenditure purposes of G.L. c. 60, § 15B do not allow for compensation of a tax title custodian from a tax title collection revolving fund, a municipality employing such a tax title custodian must pay said compensation from general revenue funds.

Further information on tax title collection revolving funds may be found at IGR 2016-101.

12. Lori Winward (Winward), the owner of the SpendBig Casino located in Gamblefield, MA received an offer she couldn't refuse to sell the casino to the Easy Money Real Estate Investment Trust (Easy Money), located in the Las Vegas. Winward also owns two hotels in the city that were not sold to Easy Money. The city, grateful for the tax revenue and economic spin-off that the SpendBig Casino had brought to the city, and eager to develop a positive relationship with Easy Money, worked expeditiously to facilitate the property transfer. Bob Levy, the recently-hired collector for the city, without thoroughly vetting all possible taxes and other assessments and charges that Winward owed to the city, issued a MLC showing that Winward was current in all of her outstanding monetary obligations. Easy Money's attorney, Frank Feloney, overwhelmed by the enormity of the licensing, property vetting and other legal issues involved with the casino sale, placed the MLC in a file folder on his desk. Feloney eventually realized that the MLC must be

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recorded with the county registry of deeds. Feloney filed the MLC 149 days after the collector issued it.

In issuing the MLC, the collector reviewed real estate and personal property tax records and determined that Winward owed no outstanding taxes to the city. He failed, however, to contact other city departments. Six months after issuing the MLC, he received notifications from other city departments that Winward had not made payments owed to the city, totaling $214,000, from the following sources:

A. $124,000, owed to the Police Department, representing private police details that city police officers had worked for casino construction details for which Winward had contracted. City police officers commenced a court action against the city for failure to pay the work detail compensation and were seeking triple damages and attorney fees under the State Wage Act.

B. $47,000, owed to the Building Inspector, representing payments made by the city for outside consultants to assist the Building Inspector in performing inspections of the casino buildings to assure expedited permitting of final building certificates and certificates of occupancy.

C. $8,000, owed to the Traffic and Parking Department for parking fines by the City's parking control officers for casino vehicles owned by Winward.

D. $35,000, owed to the Water Department for water used for the casino's fountains and reflecting pools. The Water Department had not yet issued the water bill before the MLC was issued.

How may the city collect the outstanding amounts owed? Is Winward or Easy Money liable for making payments, or did the city lose its ability to collect any or all of the outstanding sums?

G.L. c. 40, § 22A; G.L. c. 40, § 42A; G.L. c. 44, § 53C; G.L. c. 44, § 53G; G.L. c. 60, § 23; G.L. c. 149, § 148

The fact pattern presents a number of unique tax collection scenarios that one can imagine a sale of a large-scale development could invoke. First, let's look at the issues involving the MLC:

G.L. c. 60, § 23 provides that a collector shall furnish to an applicant "… certificate of all taxes and other assessments, including water rates and charges, and charges due to municipal lighting plants, under the provisions of sections fifty-eight B to fifty-eight F, inclusive, of chapter one hundred and sixty-four which at the time constitute liens on the parcel of real estate specified in such application and are payable on account of such real estate." A certificate "… shall show the amounts then payable on account of all such taxes and assessments, rates and charges, so far as such amounts are fixed and ascertained, and if the same are not then ascertainable, it shall so be expressed on the certificate." A certificate may be filed in the county registry of deeds "…within one hundred and fifty days after its date, and if so filed shall operate to discharge the parcel of real estate specified from the liens for all taxes, assessments or portions thereon…"

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Feloney filed the MLC showing no outstanding taxes and assessments on the casino parcel within the 150-day period required by G.L. c. 60, § 23. Therefore, the city lost the ability to enforce the lien for any taxes and other assessments covered by G.L. c. 60, § 23. Let's go through each of the sources for which payments are owed to the city:

A. Police detail charges are accounted in accordance with G.L. c. 44, § 53C. A police detail charge is not a tax or assessment for which a lien attaches for non-payment. Therefore, such a charge may not be subject to an MLC, in accordance with G.L. c. 60, § 23. Therefore, a collector should look to other collection remedies to collect the police detail charges. Collectors are not limited to pursuing one collection option. A civil lawsuit filed within six years of the due date of the police detail charges is one such option. Additionally, if the charges are under the name of Lori Winward, who owns two hotels in the city, the city may utilize G.L. c. 40, § 57 to suspend, deny or revoke any licenses and permits needed for the hotels. Additionally, the city could refuse to authorize police details at the two hotels until payment is made for the unpaid police details for the casino. A final collection remedy would be available if the city adopted G.L. c. 40, § 58, the municipal charges lien statute, and designated police detail charges as part of the lien process. With respect to the police officers' court action alleging violations of the State Wage Act (G.L. c. 149, § 148), G.L. c. 44, § 53C provides that compensation for private details shall be paid to the police officers "…no later than 10 working days <u>after receipt by the city … of payment for such services</u>." As the city has not yet received payment for the police details, the city has no obligation, absent a collective bargaining agreement to the contrary, to make police detail payments to the police officers. See *Malden Police Patrolmen's Association v. City of Malden*, 92 Mass. App. Ct. 53 (2017)

B. Under G.L. c. 44, § 53G, municipalities may charge individual entities for outside consultant fees to be used to assist municipal permitting officers and boards in issuing permits and licenses. Like the police detail charges discussed above, no lien attaches to non-payment of outside consultant fees, outlined in G.L. c. 60, § 23. The best collection practice is to require up-front payment of outside consultant fees prior to issuing the permit or license. G.L. c. 44, § 53G provides for a revolving account for the deposit of such fees. The city may utilize the collection remedies specified in Example A to collect the unpaid outside consultant fees.

C. Outstanding parking tickets are not subject to a lien either. If the city adopted G.L. c. 90, § 20A, then the city could enforce the outstanding parking fines by notifying the Registrar of Motor Vehicles, who cannot renew Winwood's vehicle registration or driver's license until she pays the fines. The city could likewise sue Winwood in court to pay the fines, or utilize G.L. c.40, § 57 to suspend or deny licenses to the two hotels owned by Winwood.

D. The final scenario pertains to $35,000 owed to the city's water department. In this case, because the city has not yet issued the bills for water usage, the charges did not belong on the MLC, as they were not payable and did not constitute a lien when the MLC was issued. Because the city adopted G.L. c, 40, §§ 42A-42F, in accordance with G.L. c. 40, § 42B, water bills unpaid after the due date will become an automatic lien on the property and may be committed to the real estate tax bill under G.L. c. 40, § 42C. Enforcement of the lien is not the only collection remedy available. G.L. c. 40, § 42B provides that the outstanding water bills may be collected through "…any legal means, including the

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shutting off of water…" through civil court action or through the process outlined in G.L. c. 40, § 57.

13. The owner of Artie's Place, a financially struggling restaurant in Somertown, MA has routinely fallen behind in its payment of bills for police details ordered by the selectboard to handle the persistent disorderly conduct of its patrons and unpaid fine amounts resulting from State Sanitary Code violations discovered at the establishment. Artie's Place paid the outstanding police detail bills and State Sanitary Code violation fines that it owed for the previous year. However, over the past three months, Artie's Place has incurred additional police detail bills and State Sanitary Code violations totaling over $4,000. Motivated by the urge to target the liquor and meals licenses at Artie's Place, without going through a contentious selectboard license hearing involving the popular and litigious Artie, town meeting accepted G.L. c. 40, § 57, allowing municipalities to deny, revoke or suspend licenses on the basis of failure to pay municipal taxes or charges. How and when may the Town take action to revoke the licenses of Artie's Place on the basis of non-payment of the police detail bills and State Sanitary Code violation fines?

    G.L. c. 40, § 57

Under G.L. c. 40, § 57, a municipality may deny, revoke, suspend or not renew certain local licenses and permits to applicants who are delinquent in payment of their local taxes or charges. In order to use this collection remedy, the municipality must accept G.L. c. 40, § 57and adopt an implementation by-law or ordinance. Acceptance is by vote of the legislative body, subject to local charter. G.L. c. 4, § 4. Tax collectors then provide their licensing and permitting boards and departments annually, or on a more frequent period as established in the implementation by-law or ordinance, with the names of delinquent taxpayers. A taxpayer has a right to a hearing with the licensing or permitting authority and opportunity to enter into a payment agreement in order to obtain the license or permit. The Municipal Modernization Act, St. 2016, § 218 amended G.L. c. 40, § 57 to remove a 12-month outstanding tax or charge accrual period before action could be taken against a license or permit. Municipal by-laws and ordinances must be amended to reflect the change in the statute relative to the time limit accrual period. With respect to Somertown, the local licensing authority may take action on the outstanding police detail charges and State Sanitary Code fines by initiating the appropriate procedure outlined in its by-law.

14. Cody Grant is the former manager of a hedge fund for a New York investment bank. Grant owned a motor vehicle located in Doverborn, MA and he was assessed a motor vehicle excise and sent a bill for excise. Before Cody's timely payment of the motor vehicle bill, federal authorities arrested him for charges of embezzlement, insider trading and securities fraud. Eventually, a judge sentenced Cody to serve 10 years in federal prison, with no possibility of parole. Upon Cody's arrest, federal authorities impounded his motor vehicle and eventually returned the motor vehicle to his family without license plates. Doverborn continued assessing the excise and sending excise bills to Cody, issuing demands for each of the years after nonpayment of the bills. Two years later, Cody's brother registered the motor vehicle under his name. What is the remedy, if any, for the town's collection of the outstanding motor vehicle excise taxes owed by Cody?

    G.L. c. 60, § 35; G.L. c. 60A, §§ 2 and 2A

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G.L. c. 60A, § 1 provides for an abatement procedure for a motor vehicle excise tax. Abatements may be given in certain circumstances: disparities in the value of the vehicle manufacturer's list price for the vehicle; where the owner transfers of ownership of the vehicle, moves from the state, re-registers the vehicle, or reports the theft of the vehicle. Based upon the facts in this case study, Cody Grant has taken no action to apply for an abatement or otherwise notified Doverborn of his change of circumstances or of any change of ownership. Cody cannot file a police report for a stolen vehicle, as the vehicle was impounded by federal authorities, not stolen. Therefore, it appears that Cody Grant is still liable for payment of the motor vehicle excise. Even though Grant failed to apply for an abatement, G.L. c. 60A, § 7 provides that a board of assessors may abate the motor vehicle excise in whole or in part, including interest and costs, "[i]f a collector is satisfied that an excise that has been committed … is uncollectible by reason of the death, absence, poverty, insolvency, bankruptcy, or other inability of the person assessed to pay." In such a case, "… if the collector feels that said reasons apply to Grant, the collector may notify the assessors thereof in writing on oath, stating why the excise cannot be collected. The assessors shall act upon such notification within thirty days, and after due inquiry, may abate such excise in whole or in part … and discharge the collector from further obligation to collect the excise so abated." Therefore, it is up to the Doverborn collector to determine whether to maintain Grant's motor vehicle excise tax on her rolls, or seek authority from the board of assessors for abatement of the excise.

15. Mary Shelton became disenchanted with the Greenham Selectboard's denial of a kennel license for her property in order to pursue her dream of raising and breeding show dogs for national dog championship shows. In demonstrating her dismay with the town, she began appearing in person in the tax collector's office to pay her tax and water bills using coins, eventually burdening the office staff by paying all of her bills with pennies. The collector, wearying of the long lines that resulted from Ms. Shelton's payment method as well as the physical demands placed upon her staff in carrying the coins, is seeking to establish a policy to prevent taxpayers from making any payment to the towns using coins. May she do so?

    31 USC § 5103

Arguably no. 31 U.S. Code § 5103 states as follows: "United states <u>coins</u> and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) <u>are</u> <u>legal</u> <u>tender</u> for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts." [Emphasis supplied] Non-governmental entities can generally set payment policies. However, in a dispute over whether payment was tendered, a court might find that a governmental entity had to accept coins even if a reasonable payment policy was posted.

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