DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

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Assessing Administration

Property Held in Trust

Solar Facilities Situated on Municipal Property

Veteran Exemptions

and

Means Tested Senior Exemption

Workshop A
2022

Workshop A References

GENERAL LAWS

G.L. c. 4, § 7, Clause 43
G.L. c. 40A, § 6
G.L. c. 59, § 2B
G.L. c. 59, § 5, Clauses 22(a), 22(d), 22A, 22B, 22C, 22D, 22E, 22F & 22H
G.L. c. 59, § 5, Clauses 17D
G.L. c. 59, § 5, Clause 37A
G.L. c. 59, § 5, Clause 41C
G.L. c. 59, § 5, Clause 42
G.L. c. 59, § 5, Clause 45
G.L. c. 61A, § 2A
G.L. c. 188, § 1

REGULATIONS

130 CMR § 520.003(A)(1)(2019)

OTHER DEPT OF REVENUE MATERIALS

Local Finance Opinion 2022-1: Solar On Government Owned Property
Local Finance Opinion 2022-2: Exemptions When Property Held in Trust
Taxpayer Guide to Veteran Tax Exemptions
Course 101 Chapter 7: Property Tax Exemptions

CASES

Boyle v. Weiss, 461 Mass. 519 (2012)
Deveau v. Commissioner of Revenue, 51 Mass. App. Ct. 420, 423, n. 7 (2001)
Forrestall Enterprises, Inc. v. Westborough Assessors, Mass. ATB Findings of Fact and Report 2014-1025
Guilfoil v. Secretary of EOHSS, 486 Mass. 788 (2021)
Kirby v. Medford Assessors, 350 Mass. 386 (1966)
Moscatiello v. Boston Assessors, 36 Mass. App. Ct. 622 (1994)
Tretola v. Tretola, 61 Mass. App. Ct. 518 (2004)

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Supporting a Commonwealth of Communities

Municipal Law Seminar 2022
Workshop A

1

Taxing Solar Power Producers Who Lease Government Land

- All property owned by governmental entities is exempt from property taxes on the fee simple owner as explained in LFO 2022-1
- When governmental land is leased or otherwise used for private purposes, the leaseholder or other occupant is liable for the property taxes that would be owed by an owner. 59:2B
- The scale of the generating capacity of the solar system as compared to the electricity requirements of the host parcel (and other countable properties): criterion for eligibility for the Clause Forty-fifth exemption.

2

Eligibility for the Clause Forty-fifth Exemption

- Eligible solar power systems are capable of producing no more than 125% of the electricity needed to supply the energy needs of countable real estate.
- The exemption looks to the cumulative energy needs of the host parcel *and other parcels in the same town owned (directly or indirectly) by the owner of the personal property* constituting the power system.
- In the 59:2B context, determine which parcels are eligible to be counted toward on-site energy demand in the comparison to the solar generating capacity of the system.

3

Which Parcels Have Their Energy Requirements Counted?

- The energy demands of host parcels and parcels in the same municipality owned by the owner of the solar power personal property count in the formula that governs exemption eligibility.
- All parcels entitled to be counted must consume at least 80% of the renewable energy produced.
- If the owner of the solar power personal property is the fee owner of other parcels of real estate in the same municipality, the energy demands of those additional parcels are counted in the comparison.

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Which Parcels Count, Cont'd.

- The energy demands of other properties in the city or town owned by the lessor governmental entity are *not* counted in the eligibility formula.
- Lessees do not have legal title to or dominion over other governmentally-owned property in the community.
- Lessees have no "common ownership interest" in public property with the municipality.
- Any solar system capable of generating more than 125% of the energy needs of countable properties does not qualify for exemption under Clause Forty-fifth.

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Which Parcels Count, Cont'd.

- The lessee cannot bootstrap eligibility for the exemption intended for small producers of solar power by adding in the power demands of, *e.g.* the school, Town Hall, and the police station.
- Legislative intent behind the amended version of Clause forty-fifth effective last year was to rein in the tax preference enjoyed by industrial and commercial-scale generators under the now repealed exemption based on the ATB's broad *KTT, Inc. v. Swansea Assessors* (2016) doctrine.
- The electricity demands of the personal property owner's real properties in the municipality are given weight in determining the allowable scale of the solar power facility

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Which Parcels Count, Cont'd.

- Direct or indirect ownership of parcels other than the leased host site, by the owner of the personal property, is sufficient to count the energy demands toward the capacity limit of Clause Forty-fifth.
- Indirect ownership can be through a partnership entity of which the exemption claimant is a general partner .
- A controlling interest in a closely-held corporation has been treated as tantamount to ownership.
- An interest in a publicly traded corporation does not count as ownership of real estate toward the capacity limit

7

Agreements for Payments in Lieu of Taxes Under Clause Forty-fifth

- Municipality Is not required to enter into a PILOT agreement. Solar or wind-powered systems or energy storage systems can be assessed in the same manner as assessing taxes on other taxable property.
- To negotiate a PILOT agreement, a municipality must act through an "authorized officer" who was granted authority by the legislative body to negotiate with the taxpayer and/or conclude an agreement.

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Agreements for Payments in Lieu of Taxes Under Clause Forty-fifth

- Only if the owner of the solar-generating personal property also owns the real estate host site is a PILOT covering both land and personal property possible.
- Where the site is leased from a governmental entity, PILOT's are allowable only for the subject personal property.

9

Agreements for Payments in Lieu of Taxes Under Clause Forty-fifth, cont'd.

- Legislative body may authorize, *e.g.* CEO (Selectboard, Mayor, or Manager) or the assessors to act for the municipality. All should be involved in negotiations.

10

Agreements for Payments in Lieu of Taxes Under Clause Forty-fifth, cont'd.

- Assessors are the only local officials authorized to determine full and fair cash value; their involvement in developing compliant valuation and payment provisions is critical.

11

Agreements for Payments in Lieu of Taxes Under Clause Forty-fifth, cont'd.

- Unless the legislative body has expressly given the authorized officer power to conclude an agreement, it must specifically approve the agreement reached.
- Agreements should fix values or formulas for setting values, not only agreed payment amounts.
- Agreement should run a limited term, no longer than 20 years, unless extended by agreement of both the municipality and the taxpayer.

12

Agreements for Payments in Lieu of Taxes Under Clause Forty-fifth, cont'd.

- Agreed valuation must be approximately equal to fair cash value, over the entire period to be governed by a PILOT agreement.
- There is no requirement that the values be included in the agreement, but the municipality should have a record basis to support the agreed valuations.

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Agreements for Payments in Lieu of Taxes Under Clause Forty-fifth, cont'd.

- Because the agreed values are not included in the tax base, they do not count as new growth while the PILOT is in effect.
- The loss of new growth for solar and wind-powered property values is a disadvantage of entering into a new PILOT agreement.
- Without a PILOT, assessments of renewable energy systems count towards new growth.
- Agreements should establish the same billing and collection procedures for a negotiated amount including payment schedules, late payment consequences, and collection

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Is a New PILOT In the City or Town's Best Interests?

- Cities and towns can negotiate new PILOT's under amended Clause Forty-fifth without the value distortion effect of the now-repealed *KTT* exemption.
- Cities and towns should consider that values and payments under new PILOT's under Clause Forty-fifth do not constitute part of the tax base or give rise to new growth.
- Municipalities should contrast advantages and disadvantages of a new PILOT under Clause Forty-fifth to find a balance.

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Kirby v. Medford Assessors, 350 Mass. 386 (1966)

- Exemptions require property ownership
- In trusts, legal and beneficial ownership are separated
- Legal title is held by the trustee(s)
- Beneficial ownership is held by a beneficiary
- Exemption eligibility for purposes of trust property requires both a legal and beneficial interest in the trust property.
- Exemption claimant must be a trustee and also have a "sufficient beneficial interest" in trust assets.

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Kirby, cont'd.

- The taxpayer, who met the age and income requirements for the Clause Forty-first exemption, had put his house in a revocable trust.
- Mr. Kirby was the beneficiary of the trust, but not the trustee.
- A revocable trust transfers "legal title to the property, subject to the terms of the trust instrument." 350 Mass. at 389.
- Court differentiated personal exemptions based on the individual circumstances of the claimant from charitable exemptions; the former are strictly construed

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Kirby, cont'd.

- The Court noted that the taxpayer had "voluntarily chosen to hold his property in a form which separates the legal title and the beneficial ownership." 350 Mass. at 390
- Clause Forty-first "makes no reference to property held in trust for the designated class of elderly taxpayers." *Id. Cf.* Clause Third.
- The statute requires "not only ownership of a sufficient beneficial interest, but also ownership of a record legal interest, as a condition of obtaining the exemption." *Id.*

18

Kirby, cont'd.

- The law of exemption eligibility for trust property elevates form over substance.
- Though Mr. Kirby was owner in substance of the trust property, given his control of the trust, the exemption required that claimants hold formal legal title to trust property—as a trustee.
- The Court in *Cambridge Assessors v. Bellissimo,* 357 Mass. 198 (1970) held that exemption eligibility did not require that the claimant be the sole trustee. Co-trustees can be eligible.
- *Kirby* was followed in the residential exemption context by the Appeals Court in *Moscatiello v. Boston Assessors,* 36 Mass. App. Ct. 622 (1994).

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Local Finance Opinion No. 2022-2

- The *Kirby* rule appeared in an Informational Guideline Release No. 91-209, which addressed the impact of trust ownership on qualification for the personal exemptions broadly.
- The IGR was supplemented by a local finance opinion issued in April 2022.
- LFO 2022-2 closely follows the rule of *Kirby* but also incorporates DLS guidance subsequent to IGR 91-209.
- LFO 2022-2 endorses a "rule of thumb" that occupancy of a trust property suffices for a presumption of beneficial ownership.

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Local Finance Opinion No. 2022-2

- Alternatively beneficial ownership can be gauged by analyzing the language of the trust instrument, which may give a stated individual use of or other powers over the trust property.
- The approach of LFO 2022-2 allows an additional way of showing a sufficient beneficial interest based on the operative facts of occupancy rather than only careful reading of the language of the trust instrument.
- Given the difficulty of tracing beneficial ownership through multiple layers of trusts, assessors are entitled to deny exemption where the property ownership structure is muddled by multiple trusts.

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Discussion Questions

PROPERTY HELD IN TRUST &

SOLAR FACILITIES SITUATED ON MUNICIPAL PROPERTY

1. Sunshine and Roses, Inc. ("the corporation") entered into a lease of approximately 2 acres of vacant town real estate which is part of the high school site in Penrith, MA. Their intention was to put solar panels capable of generating 20 kilowatt hours (kWh) of electricity there, more than supplying the energy needs of the high school at 10 kWh. The school board and the corporation entered into a Power Purchase Agreement in which the school got a discount on its electricity which counted toward the lease payment obligation.

    a. Is the solar-generating personal property owned by the corporation taxable?

    b. Does the corporation qualify for the Clause 45th exemption?

    c. Town Hall and its surrounding parkland are relatively close to the high school and solar energy facility. If power was also supplied from the solar array to the town government center, bringing the total power consumption to 15 kWh at two separate sites. Does that change exemption eligibility?

    d. Is the additional 5 kWh used by the Town Hall complex counted toward to the on site consumption of electricity which enters into the calculation determining exemption eligibility?

    e. Why or why not?

    f. What if the 5-acre solar site constituted a separate parcel from the high school? How would that affect exemption eligibility?

    g. Is the corporation eligible to enter into a PILOT with the town?

    h. Can the corporation require the town to enter into a PILOT agreement?

    i. How would the 2021 amendment of Clause 45th affect possible PILOT provisions?

G.L. c. 59, § 2B; G.L. c. 59, § 5, Clause 45

2. Richard and Jane Myerson co-own a small cranberry farm in Kingsbridge, MA. They own a total of 50 acres, 49 of which are classified as agricultural and horticultural land under Chapter 61A. A house lot comprises 1 acre. They became interested in environmental issues and hit on the idea of installing solar power-generating panels alongside and across cranberry bogs. They qualified for a solar exemption program for agricultural and horticultural land developed by the Department of Energy Resources. In 2022, they installed solar panels capable of generating an aggregate of 200kW, which supplied the energy requirements of the 50 acres with some to spare. Roughly they used 160 of the 200kW generated for their property in Kingsbridge. The rest of the power, to the extent they exceeded their own power needs, was sold to the grid through a net metering agreement.

    a. Richard and Jane wanted to know the tax consequences of their proposed solar power installation and called up the local assessors in Kingsbridge. Was the solar generating equipment they intended to install going to subject them to a rollback tax?

    b. Would their solar panels be taxed under Chapter 61A as the farm (49 acres less structures) had been taxed as before?

    c. Is it physically possible to combine 2 land uses—solar power generation and growing cranberries such that both uses are productive at the same time?

    d. Are the taxpayers eligible to classify the remaining farm acreage for horticultural use and continue the preferential taxation under Chapter 61A?

    e. The Myersons decide to increase the capacity of their solar generating equipment to 1 mWh. Would they qualify for the personal property tax exemption in these circumstances?

    f. Does the solar personal property qualify for exemption under Clause 45th?

    g. The taxpayers propose a PILOT agreement to town officials for the acreage devoted to solar power generation. Are they eligible to include in the agreement personal property only or real property in addition to the personal property?

    G.L. c. 61A, § 2A(b); G.L. c. 59, § 5, Clause 45

3. Dillon Spears leased a 5-acre parcel of municipal real estate in Wokingham, MA on which he intended to operate a large solar power generating facility. When completed, the facility would generate 30 kWh of electricity. A portion of that electricity, roughly 5 kWh would be sold to Wokingham town government to power an adjacent municipal office building including Town Hall and the library. The rest of the electricity was supplied to several manufacturing properties owned by the Spears Corporation elsewhere in Wokingham. The leased parcel and the other properties owned by the Spears Corporation all together consumed 29 kWh of the power produced at the leased municipal site.

    a. What real estate is counted toward the energy requirements to be supplied by the new solar facility, for purposes of the Clause 45th exemption eligibility?

    b. Assume that the Spears Corporation is based in Wokingham and owns numerous manufacturing properties in the community. Do these parcels count toward exemption eligibility?

    c. Does it matter that the Spears Corporation and not Mr. Speers personally owns the other sites used to determine Mr. Spears' exemption eligibility?

    d. Based on the power usage of the host parcel and the Spears Corporation properties does the solar power system qualify for the Clause 45th exemption?

    e. Would exemption eligibility change if Mr. Spears owned the 5-acre host parcel in fee, rather than leasing it from Wokingham?

    See ***Forrestall Enterprises, Inc. v. Westborough Assessors,*** Mass. ATB Findings of Fact and Report 2014-1025. *See also* G.L. c. 59, § 5, Clause 45th.

4. Erica O'Donnell owns a condominium property in the Seaport District of Boston. She decides, for estate planning purposes, to put the property in trust. She creates a trust with a recorded trust instrument, naming her elder daughter Ruth as trustee and all 3 of her children as beneficiaries. She reserves a life estate for herself.

    a. Ms. O'Donnell is eligible for a 59:5[22D] exemption because her spouse was killed in the line of duty in military service in Vietnam. She assumes she will continue receiving this complete exemption into perpetuity. However, the assessing clerk, having reviewed the trust instrument on record, tells her that because the property proposed for exemption is in trust ownership and she is not a trustee, she is ineligible for the 22D exemption for lack of ownership. Is the assessing clerk correct?

    b. Assume instead that Ms. O'Donnell did not reserve a life estate in the property deeded to the trust. She made herself a beneficiary but not a trustee of the trust,

which took ownership as she created the trust. Is she eligible for the 22D exemption in this circumstance?

c. Stung by the unexpected denial of her application for a 22D exemption, Ms. O'Donnell revokes the trust pursuant to a reserved power and deeds the property to a new trust with herself as sole trustee and beneficiary. Is she entitled to the exemption?

d. Who owns the property in Ms. O'Donnell's second trust? Is that trust valid? What happens if the same individual is trustee and beneficiary of a trust? *See generally* ***Deveau v. Commissioner of Revenue,*** 51 Mass. App. Ct. 420, 423, n. 7 (2001).

e. Exasperated by her lawyer's lack of knowledge about the exemption eligibility of trust property, she fires her counsel and goes to an attorney with expertise in trusts and estates. Since the attorney understands Ms. O'Donnell's intentions, what trust arrangements would work to make her eligible for the exemption, and to allow the property to pass to her children without probating a will?

f. What if Ms. O'Donnell decided to put the property into joint ownership with her three children? How would that affect exemption eligibility?

G.L. c. 59, § 5, Clause 22D. *See also* ***Kirby v. Medford Assessors****,* 350 Mass. 386 (1966).

5. Dash Berlin, a full-time police officer, owned an acre of real estate in Pugsley, MA, improved with a 2— family residential property. He also owned a vacant 5-acre lot in nearby Bloomsbury, MA. He decided to create a trust in 2010 to hold both property interests, naming himself trustee, and naming his spouse Bertha and himself as joint beneficiaries. However, Dash divorced Bertha in 2015, and shortly thereafter she assigned her beneficial interest back to Dash in exchange for a payment of $100,000. In 2018, Dash amended the declaration of trust to name his second wife Marcy and his son Hunter as co-beneficiaries, and provide for a successor trustee, the Bloomsbury Savings Bank. The amendment was recorded with a book and page reference to the older trust instrument. In 2019, Dash changed his will to make his second wife Marcy the sole devisee of the residual interest in his estate. His son Hunter was removed from any interest in the residue of the estate but continued to be a co-beneficiary of the trust with Marcy. In 2020, Dash passed away after being poisoned by a parolee he had sent to prison. Fortunately, the culprit was quickly caught and convicted. Marcy challenged the trust alleging that when Dash bought out Bertha as a beneficiary in 2015, the legal and beneficial interests in the trust res merged and Dash became a fee simple owner of the Pugsley and Bloomsbury properties. She claimed that the trust was invalid, and the properties passed through the will.

a. Marcy filed an action in Probate and Family Court seeking to establish her ownership of the Pugsley and Bloomsbury properties pursuant to the residual bequest in Dash's will. How will the Probate Court rule?

b. Assuming Marcy won in the Probate Court, does Hunter have grounds for appeal?

c. What facts proved decisive on the appeal?

d. Assuming that Marcy owns the property, she applied for the Clause 42nd exemption because Dash had been a public safety officer who died in the course of doing his job. Does she fit the terms of the exemption requiring that the police officer have been "killed" in the line of duty?

e. If she resides in one of the 2-family residences in Pugsley, is she entitled to claim the exemption on her property taxes?

f. Could she amend the trust instrument to make herself a co-trustee of the trust?

g. Assuming her stepson Hunter had sole power under the amended trust instrument to name any trustees in addition to the Bloomsbury Savings Bank, how would that circumstance affect Marcy's exemption claim?

G.L. c. 59, § 5, Clause 42; *See also* ***Tretola v. Tretola,*** 61 Mass. App. Ct. 518 (2004); ***Kirby***, 350 Mass. at 386.

6. In 2012, Nigel and Maria Kinkaid created a trust to which they contributed a few small, non-contiguous properties they owned in the South Park neighborhood of Ramsgate, MA. Their daughter Phoebe Jones and Mr. and Mrs. Kinkaid served as co-trustees. Mr. and Mrs. Kinkaid were co-beneficiaries of the trust, styled the Kinkaid South Park Trust. Among the South Park Trust holdings was a parcel which first appeared on a recorded plan in 1940: Parcel D was 8,000 sq. ft. in size and had frontage of 75 feet on a public way. Mr. Kinkaid died in 2018, making his surviving spouse Maria the sole beneficiary of the trust. Mrs. Kinkaid resigned as co-trustee, leaving Ms. Jones as sole trustee. To be closer to her elderly mother, Ms. Jones bought an existing house on an acre of land which bordered Parcel D. The plan was to develop Parcel D with a small residential improvement which Mrs. Kinkaid would occupy. They were denied a permit to build on Parcel D in 2021, due to its non-conformity with existing zoning minimums. The Zoning Board of Appeals also relied in part on the asserted merger of Parcel D and the larger contiguous property on which Ms. Jones lived, since she owned legal title to both parcels. Only one improvement was allowed on the merged lot. The merger depended on common ownership of the 2 parcels, Ms. Jones' house lot and Parcel D, assertedly both owned by Ms. Jones, given her control of the trust property as sole trustee. When she became sole trustee, the argument went, the non-conforming lot became part of the adjacent house lot she owned in her own name.

a. Is trustee status a "common ownership interest" with fee simple ownership?

b. What about the fact that Lot D did not meet zoning minimums?

c. Does Mrs. Kinkaid qualify for an elder exemption on Lot D?

G.L. c. c. 59, § 5, Clause 41C; G.L. c. 40A, § 6

7. The school committee in Cleesthorpe, MA leased out the roof of its school building to a solar power producer, Empowerment, Inc. who installed there solar panels capable of producing approximately 10 kWh of electricity. Under a PPP the developer supplied electricity for school operations in the quantity of 9 kWh, treated as a credit toward the rent obligation. The balance of the electricity went to the grid.

   a. Is the solar equipment on the roof subject to tax?

   b. Does the personal property situated on the roof qualify for exemption under Clause 45th?

   c. Assume instead that the school building with the solar panels used only 6 kWh of electricity. Does that variable change the exemption determination?

   d. Assume the remainder of the electricity produced from the solar panels is used by the town's police department, library, and fire department. Only 6 of the 10-kWh capacity go to the school property on which the panels are situated. Does this configuration of uses entitle the developer to the Clause 45th exemption?

   G.L. c. 59, § 5, Clause 45; G.L. c. 59, § 2B

8. Let the Sun Shine, Inc. (LSS) entered into a lease of a town property in Trafford, MA long used as a landfill, but now capped and remediated. A solar-generating facility will be sited there. The property is about 2 acres in size, and the anticipated power generation capacity is 8 kWh. The electricity is to be supplied to various town properties in the vicinity. The value of the electricity supplied to the town will offset the developer's lease payment obligation.

   a. Is the personal property constituting the solar power system taxable?

   b. Is LSS entitled to the Clause 45th exemption? Assume that the capped landfill site has negligible power needs.

   c. An adjacent town property is improved as a park with a bandstand. A few hundred feet down the road from the park is the campus of the regional school building for the district of which Trafford is a part. These two parcels are

expected to consume all of the power generated by the LSS solar facility. Does the fact that all the power supplied goes to tax-exempt properties factor into the exemption calculus?

d. Assume that LSS owns several parcels in Trafford: These various parcels consume more power than the solar-generating facility produces—although the solar-generated electricity is sold to governmental users. Does that change the exemption calculus?

e. Assume that the solar-generating site is adjacent to a 5-acre property owned by LSS in the neighboring town of Pendle, MA, across the town line? The Pendle parcel is the site of a large mall and uses considerably more energy than the LSS solar facility can generate? Do this property's energy needs count in the determination of exemption eligibility?

G.L. c. 59, § 5, Clause 45; G.L. c. 59, § 2B

9. Stonehenge Solar Power, Inc. (SSP) leased 3 acres of a 20-acre parcel owned and used by the United States in Mildenhall, MA as part of the site for a veterans' hospital and service center. The larger portion of the federal land, at 30 acres for this site lay across the town line in a contiguous parcel in Newbridge, MA. SSP intended to construct on its federal leasehold site in Mildenhall a solar power plant capable of generating the 20 kWh of electricity needed to run the federal buildings. All the solar power produced by the SSP facility will be supplied to the United States; the Mildenhall portion of federal property consumed about 8 kWh of electricity, while the bulk of power capacity went to the Newbridge federal land at roughly 12 kWh.

a. Is the solar power plant on the 3 leased acres on the federal land in Mildenhall subject to tax?

b. Is the personal property owned by SSP entitled to the Clause 45th exemption?

c. Assume that SSP owns in addition a small farm (8 acres) in Mildenhall. Simultaneous agricultural and solar energy uses coexist on the farm site. The generating equipment on the farm produces 4 kWh of renewable energy, but the farm and a headquarters building consume 10 kWh of energy. How does that change the exemption eligibility math?

d. Would the solar generating equipment based on the farm be exempt from tax?

e. What if the farm use were replaced by a commercial parking lot and storage center built on the 8 acres owned by SSP? No solar energy is produced there. Let's say the commercial parking and storage operation need 8 kWh of electricity.

Does this result in an exemption for the solar generating personal property on the land leased from the federal government?

f. Assume another large federal property was situated in Mildenhall? Would the energy needs of this federal property be considering in determining whether the solar power facility at the SSP leased federal site qualifies for exemption?

G.L. c. 59, § 5, Clause 45; G.L. c. 59, § 2B

10. Vera Lynn of Tunbridge Wells, MA entered a long-term care facility near her home at age 79 in 2017. In 2012 she had created a nominee trust to which she had deeded her home. She reserved for herself a life estate in her residence. Her oldest son Walter was named trustee and her 5 children were beneficiaries. She shortly thereafter in 2019 applied for MassHealth long term care benefits. Apart from roughly $1000 in cash, the home was the only asset of value that was potentially countable toward her eligibility for MassHealth. She relied on the nominee trust to exclude her home from her countable assets governing eligibility. Many nominee trusts create a principal agent relationship between the settlor and the trustee. However, features of this nominee trust were unusual. The trustee was forbidden management of the trust property absent the consent of all beneficiaries acting in concert. Any single beneficiary could terminate the trust with a written notice. The beneficiaries could amend the trust collectively. More typically, in a true trust, the trustee has a fiduciary duty to manage trust assets on behalf of the beneficiaries, using his/her skill and discretion to make, *e.g.*, investment decisions. The beneficiaries would each acquire a joint interest in the house if they survived their mother. They would take remainder interests as owners in common in the event the trust was terminated; subject to Ms. Lynn's life estate. Ms. Lynn died in 2020 from a Covid infection she caught at her nursing home. Her personal representative, her oldest son, pursued the litigation which had arisen over Ms. Lynn's Medicaid eligibility.

a. What defines a "true trust"?

b. Is a nominee trust a "true trust"?

c. Can property held in a "nominee trust" confer ownership on the trustee for purposes of exemption eligibility?

d. What is the legal result if the trust is found not to be a "true trust"?

e. Is Ms. Lynn able to qualify for the Clause 41C exemption when she transferred her home into trust ownership.

f. Does the home qualify as part of Ms. Lynn's whole estate for purposes of determining her entitlement to the Clause 41C exemption?

g. Do you count the home among Ms. Lynn's assets for Medicaid eligibility purposes?

G.L. c. 59, § 5, Clause 41C; 130 CMR § 520.003(A)(1)(2019). *See also* ***Guilfoil v. Secretary of EOHSS,*** 486 Mass. 788 (2021); ***Kirby,*** 350 Mass. at 386; ***Moscatiello v. Boston Assessors***, 36 Mass. App. Ct. 622 (1994).

11. Jean Scott was a lawyer who worked for ten years as an officer with the Judge Advocate General's office in the US Army. She had suffered an injury when she was hit by a jeep, leaving her partially disabled. Her parents created a trust, with her mother as trustee and Jean as sole beneficiary. The trust corpus was a newly constructed residential property in Hambleton, MA.

    a. Does Ms. Scott qualify for a veteran's exemption on her new residence under Clause 22(a)?

    b. How could that be cured?

    c. Ms. Scott's father exercised his reserved powers as trustee to dissolve the trust, with the Hambleton property being returned to his preexisting ownership, as provided in the trust instrument. Ms. Scott continues to live in the residence as her parents' guest. Is she eligible for the Clause 22nd exemption?

    d. The father and mother decide to incorporate the property into the existing family trust, which contains most of the family's real property holdings. A second trust, the Scott Family Trust was named as co-trustee of the new Jean Scott Family Trust along with Ms. Scott herself, and Ms. Scott became sole beneficiary. She now resided in the home as the holder of the beneficial interest in the Jean Scott trust property. Does she qualify as owner of the Hambleton residential property as co-trustee and sole beneficiary of the trust owning the asset?

    e. Is there any inference to be drawn from Ms. Scott's residency in the Hambleton property?

    f. The assessors must pass on exemption eligibility. How does that play out?

    G.L. c. 59, § 5, Clause 22(a).

12. James Potter of Congleton, MA owned a 50% beneficial interest in a trust holding title to the home he lived in. His older brother Algernon was sole trustee. James fell heavily into debt and was obliged to seek protection of the Bankruptcy Court. In addition to his beneficial interest, he lived in the house as a tenant at will. A few days before he acted to file a Bankruptcy Petition, he filed and recorded a homestead declaration. He relied on his occupancy and beneficial interest to satisfy the requirement of an interest in the subject property. The relevant statute allows homestead declarations based on either fee

simple ownership or alternatively being "one and all who rightfully possess the premises by lease or otherwise and who occupy …said home as a principal residence…"

a. Mr. Potter is legally blind. He holds proof attesting that his status is recognized by the Mass. Commission for the Blind. Congleton has accepted the exemption at Clause 37A. Does he qualify as an owner of real property?

b. Do his beneficial interest and occupancy of the subject property constitute a sufficient ownership stake to warrant a homestead declaration?

c. Will the subject property be treated as owned by him by the bankruptcy court?

d. His older brother Algernon decides to rent the property out to generate income. What are Mr. James Potter's rights as against his brother the trustee?

G.L. c. 59, § 5, Clause 37A; G.L. c. 188, § 1. *See also* ***Boyle v. Weiss,*** 461 Mass. 519 (2012); ***Kirby,*** 350 Mass. at 386.

VETERAN EXEMPTIONS

1. As part of his public outreach in educating the residents of Grove City of the exemptions for which they might qualify, Assessor Julio Guerrera spoke at a local fall town fair. The following week, he received requests from a number of individuals, each of whom asked whether they qualify for veteran exemptions. The persons who asked such questions include the following:

   a. An individual who was a member of the National Guard who served during peacetime, and who drilled once a month at the Grove City National Guard Armory;

   b. An individual who served as a temporary member of the Coast Guard reserve, and who later served as a member of the Coast Guard Auxiliary;

   c. A member of the American Merchant Marine who worked on merchant ships that transported cargo, escorted by naval convoys during World War II, and who received an honorable discharge from the Coast Guard; and

   d. A nurse who had served as a member of the Woman's Army Auxiliary Corps during World War II, working at the Grove City Hospital. Are these individuals a "veteran" for the purpose of local exemptions?

   G.L. c. 4, § 7, Clause 43

2. Cheryl Vega, Assessor of the Town of Amity, was asked to meet with the parents of a deceased servicemember who recently passed away while he was in active service while stationed at an Air Force base in Chanute, Montana. Their son spent all of his life in Amity, and, upon graduating from the local high school enlisted in the Air Force. They explained to her that, according to the Air Force, their son died when his aircraft malfunctioned and crashed. They question whether they are eligible for a full property tax exemption, pursuant to G.L. c. 59, s. 5, Clause 22H, the Gold Star exemption. Must the Board of Assessors grant the Gold Star exemption to the parents of the deceased servicemember?

   G.L. c. 59, § 5, Clauses 22(d), 22A, 22B, 22C, 22E, and 22H

3. Rob Kay, the assessor for the City of Croninville received a question concerning veteran exemption eligibility, where a veteran had died on July 23, 2022 and had never received a veteran exemption previously. Can the veteran's surviving spouse apply for FY 23 exemption? The surviving spouse had sent Rob Kay a letter from the United States Department of Veterans Affairs (VA) stating that she qualified for dependency compensation. Croninville's veterans service officer opined that the VA award is proof that death is service-connected and that she qualifies for a full surviving spouse exemption, pursuant to G.L. c. 59, § 5, Clause 22D for FY 23. Also, at the time of death, the veteran had moved out of the domicile, and the surviving spouse said they had separated. The veteran had moved to a neighboring town and had registered to vote in that community.

   G.L. c. 59, § 5, Clause 22D

4. Town of Woodland Assessor Stephania Martin was speaking with the town's veterans service officer about the documentation that is needed for veterans and their survivors seeking an exemption to convince the Board of Assessors of eligibility. He gave his viewpoint that a DD214 is not always necessary for first time applicants. Is this statement true, and what proof is needed for eligibility?

   G.L. c. 4, § 7, Clause 43

5. Edgarburg Assessor Clark Williams seeks advice relative to three pending veterans exemption applications:

   a. With respect to the first application, a veteran has submitted an application for a veterans exemption where the veteran lived out of state until he purchased a home in town in June 2021.

   b. A veteran who otherwise qualifies for an exemption has filed an application for an exemption on May 20, 2022. She stated that he was on vacation with her new spouse and neglected to file for the application before April 1. She seeks an extension of time to file the application.

c. A veteran has filed for a veterans exemption. He owns a summer home in Edgarburg, spending four months there, and otherwise lives out of state. He was informed that Massachusetts is more welcoming to veterans than his home state and is enthusiastic about receiving a veterans exemption.

G.L. c. 59, § 5, Clauses 22(a), 22A, 22B, 22C, 22E, and 22F

6. Greenbrook Assessor Vivian Ziang has a question about an application for a Clause 22E exemption from a surviving spouse. During her veteran spouse's lifetime, the couple never applied for, let alone qualified for, a Clause 22E exemption as neither he nor his spouse owned property. Years after the veteran's death, the surviving spouse recently purchased property and is seeking a Clause 22E exemption. How should she handle the application?

   G.L. c. 59, § 5, Clause 22

7. Windham Assessor Claire Bolduc has a question concerning a taxpayer who is eligible for a Clause 22a exemption as a 10% disabled veteran. The taxpayer owns the home with his wife. The couple have legal custody over their 3 minor grandchildren. Their daughter, who was the children's mother, died. The children's father has relinquished all parental rights. Could this parcel receive both the Clause 22 exemption and the Clause 17D exemption for the three minor children of a deceased parent?

   G.L. c. 59, § 5, Clause 22E

8. Paul Leon, Assessor of the Town of Trowbridge seeks assistance with a Clause 22H exemption – Trowbridge voted to accept the provisions of Clause 22H last year. The parents of a soldier killed in a training accident, who are divorced and own separate homes in Trowbridge, are seeking individual Clause 22H exemptions for a full exemption for their respective homes. The father and mother of the deceased veteran had been living in Trowbridge in their respective homes for the last twelve years. In addition, the spouse of the veteran is seeking a surviving spouse full exemption on her home in Trowbridge. She has likewise been a long-term resident of Trowbridge. Paul Leon is questioning whether both the father and mother, and the spouse of the veteran are entitled to receive full exemptions for their three respective homes.

   G.L. c. 59, § 5, Clauses 17D and 22(a)

9. Fred Louis, Assessor for the City of Bainbridge has a question concerning a taxpayer receiving a Clause 22D exemption, as she was the surviving spouse of a veteran who died in the course of his military service. She owns approximately 5 acres of land with three structures on it, including her multi-family residence with two extra units that she rents out. Louis asks if the exemption should be pro-rated.

   G.L. c. 59, § 5, Clauses 22D and 22H

10. Paolo Cruz, Assessor for the Town of Riverton seeks advice on whether a veteran receiving a Clause 22 exemption may also work to reduce his tax obligation by taking advantage of the veteran work-off program under G.L. c. 59, § 5K. He notes that the first paragraph of G.L. c. 59, §5 prevents a veteran receiving a Clause 22 exemption from receiving another exemption on his property, except Clause 18 and Clause 45.

    G.L. c. 59, § 5, Clause 22D