2022 Municipal Law Seminar
WORKSHOP A
Assessing Administration

DISCUSSION SUMMARY
(Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop A 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.

Topics: exemption eligibility for property held in trust, G.L. c. 59, § 2B (LFO-2022-1) and Clause 45 application to solar facilities situated on municipal property, veteran exemptions and the senior means test.

1. Case Study Hypothetical:

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.

Questions and Answers:

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

This real property is government land and presumptively exempt from taxes. However, this property is leased to a private party which is making its own profit. G.L. c. 59, § 2B imposes a tax on the lessee where public land is leased for private profit. The lessee is taxed as if s/he were the owner in fee simple. When it comes to assessing property taxes the lessee is treated as owner.

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

The exemption at G.L. c. 59, § 5 Clause 45th imposes a ceiling on the capacity of the solar generating equipment in relation to the energy needs of the parcel of real property it is situated on. The exemption is aimed at residential owners of solar generating personal property who are producing electricity primarily for home use, or the use of other property owned by the owner of the personal property. When the scale of the facility exceeds 125% of the power usage of the parcel hosting the facility and other land in the city or town owned by the owner of the personal property; the exemption does not apply. The limit works out to a requirement that the subject and other owned parcels in the city or town consume 80% or more of the power supplied.

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?

No, for two separate and independent reasons. First, the electricity consumption of the school site and the additional town properties would amount to only 75% usage of generated electricity. So Sunshine and Roses is producing more power than would be eligible for the exemption given the energy needs of the parcels which are counted.

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?

This is a more fundamental problem in that the Town Hall complex site is not eligible to be counted toward the energy needs met for purposes of exemption eligibility. The 5 kwh used at the Town Hall complex occurs at a site remote from the site of the personal property, at a location not owned by the owner of the personal property.

The owner of the solar equipment does not own the Town Hall property.

e. Why or why not?

There has to be a common ownership interest in real property eligible to be counted and the solar generating personal property. Here a governmental entity owns the remote site and the host site, but the taxpayer has no ownership interest in the real estate. Just because Sunshine and Roses leases 2 acres of governmental property does not elevate it to the status of owner of any remote real property held by the city or town.

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

Having the solar equipment sited on a parcel separate from the high schoolyard would mean that the school use of the generated solar entity did not occur on the host site. No electricity consumption, except any incidental power used by the host site, from the school is eligible to be counted toward the required 80% used capacity.

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

Yes.

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

No.

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

No longer is a PILOT subject to the distortion effect of the Appellate Tax Board's KTT decision, whereby the PILOT agreement was the only way for the city or town to collect any revenue at all. Absent a PILOT the ATB would abate taxes in almost all cases under its KTT doctrine. However, the personal property subject to a PILOT would not count as new growth for purposes of setting the Proposition 2 ½ levy limit.

2. Case Study Hypothetical:

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 the solar exemption program for agricultural and horticultural land developed by the Department of Energy Resources ("DOER").

In 2022, they installed solar panels capable of generating an aggregate of 200kWh, which supplied the energy requirements of the 50 acres with some to spare. Roughly they used 160 of the 200kWh 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.

Questions and Answers:

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?

No, because the Myersons qualified for a solar system exemption offered through an incentive program from DOER. The new subsection (b) of G.L. c. 61A, § 2A grants an exemption from personal property taxes regardless of the scale of the solar generating plant. It would be governed by standards set by DOER and qualify for exemption from personal property taxes that way. However, it should be noted that the farm would use 80% of the energy generated by the solar plant, which is threshold for exemption under G.L. c. 61A, § 2A(a). So no rollback would apply because the solar use is eligible for classified status on a going forward basis.

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

Yes, because the solar power use is an eligible 61A use as long as farm agricultural or horticultural activities occur simultaneously. So DOER is incentivizing dual use of farm properties as part of its program to expand use of renewable energy.

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?

Yes. Such dual uses are already happening in Massachusetts. Information is available from DOER about the productive dual use of the farmland. Under G.L. c. 61A, § 2A(b) the energy generated is not required to be used only for farm purposes, so the idea is exporting power from the dual solar and horticultural use site to the grid generally.

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

Yes.

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?

Theoretically DOER could authorize exemptions for solar property sited on 61A classified land regardless of production capacity. But absent the DOER authorization for the exemption, 1 mWh is much more power than the farm could consume on a property following the exemption standards of G.L. c. 61A, § 2A(a). Large-scale, commercial renewable energy production is not exempt.

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

Clause 45th like G.L. c. 61A, § 2A(a) limits the allowable scale of exempt solar energy personal property. 80% of the power output must be used by the host parcel and other eligible parcels to qualify for the exemption.

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?

With the dual use of the site there is a common ownership interest linking the host real estate and the solar personal property. So the law allows for a PILOT agreement covering the tax liability of both the real and the personal property.

3. Case Study Hypothetical:

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.

Questions and Answers:

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?

The host site is always eligible to have its power consumption counted toward exemption eligibility. Other properties owned directly or indirectly by the personal property taxpayer in the city or town are also counted towards the consumption requirement. Real properties owned by a closely held corporation can be under a common ownership interest with the personal property; that is what is intended by indirect ownership.

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?

Yes. Parcels under common ownership with the solar generating equipment have their power needs counted toward the 80% threshold for exemption.

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

Indirect ownership is sufficient. A closely held corporation can be a mechanism which allows for indirect ownership, since the principal is typically very engaged in the activities of a closely held corporation. A publicly held corporation cannot entail indirect ownership by any of its principals because ownership is widely shared among the general public.

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?

The host parcel and other parcels indirectly owned by Mr. Spears consume more than 95% of the power generated by the solar system. That exceeds the minimum consumption requirement of 80% of the total energy produced by the solar energy system.

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

No. The host parcel is counted regardless of whether the owner leases it or owns it in fee simple.

4. Case Study Hypothetical:

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.

Questions and Answers:

a. Ms. O'Donnell is eligible for a G.L. c. 59, § 5 Clause 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?

No. Ms. O'Donnell reserved a life estate for herself, which left the beneficiaries with a remainder interest in the property. A life estate counts as ownership for purposes of exemption eligibility. We can assume the taxpayer was well-counseled.

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 G.L. c. 59, § 5 Clause 22D exemption in this circumstance?

In this scenario it seems the taxpayer was not well-counseled. She falls into the teeth of the Kirby rule, ineligible for a personal exemption because she lacks legal title to the trust property.

c. Stung by the unexpected denial of her application for a G.L. c. 59, § 5 Clause 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?

Yes. By revoking the trust under which she was not a legal owner and creating a new trust with herself as trustee, she acquired legal ownership of the trust property. But she might have overdone it. If a person holds both the sole legal interest and sole beneficial interest in a trust, the trust goes through merger by operation of law.

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)?

The doctrine of merger of legal and beneficial ownership means that the trust is disregarded and the sole trustee/beneficiary owns the property outright. When one person is both beneficiary and trustee, legal and beneficial interests combine and fee simple ownership results.

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?

The first scenario we discussed—creating a trust with the children as beneficiaries, one of the 3 children as trustee, and reserving a life estate for herself so she continues to qualify for the G.L. c. 59, § 5 Clause 22D exemption. Tax planning is possible if the lawyer knows property tax law

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

The G.L. c. 59, § 5 Clause 22D exemption is available for the property when even one joint owner qualifies by having a spouse killed in the line of duty in military service. Other exemptions generally don't work like that: the joint owner gets a pro-rated exemption amount.

5. Case Study Hypothetical:

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 property 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.

Questions and Answers:

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?

Marcy's argument is legally sound as far as it goes: a combination of beneficial and legal ownership interests in a trust results in merger and fee simple ownership of the trust property.

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

Yes. Dash reaffirmed and updated the trust after buying out Bertha's interest. His intention was to continue the trust, not to take the properties into personal ownership.

c. What facts proved decisive on the appeal?

When Dash updated the trust in 2018, he named a new trustee and two separate beneficiaries, without any overlap. With the recital of the original trust recording reference, the settlor intended to revive the trust based on his new life circumstances. The Court ruled in favor of the son in a case similar to this fact pattern.

d. Assuming that Marcy owns the property, she applied for the G.L. c. 59, § 5 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?

Poisoning someone qualifies as killing someone. The scope of the Clause 42nd exemption is not entirely clear, but it is plausible to describe a death by poison by a perpetrator with a motive as being killed.

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

Yes, assuming that she emerges as the legal owner of the trust property, by dint of her late husband's bequest

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

Only if she has that power given to her in the trust instrument.

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?

If the trust is alive, then Marcy is a co-beneficiary of the trust with Hunter. As a co-owner of a beneficial interest without a legal title, she cannot qualify for the G.L. c. 59, § 5 Clause 42nd or any other exemption.

6. Case Study Hypothetical:

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.

Questions and Answers:

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

No. A trustee does not have the same rights to trust property as a fee simple owner. The trustee is under a fiduciary duty to manage the trust assets for the beneficiary's gain. A trustee is not free to do whatever she wants with trust property, unlike a fee simple owner.

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

It is very likely that the parcel's existence as of 1940 entails that it is grandfathered for development despite subsequent changes in zoning laws. That is the effect of G.L. c. 40A, § 6, which preserves buildable status for properties of at least 5000 s.f. with a minimum of 75 feet frontage.

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

No, unfortunately because she resigned as co-trustee and holds merely a beneficial interest in the trust property.

7. Case Study Hypothetical:

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.

Questions and Answers:

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

Yes, under G.L. c. 59, § 2B.

b. Does the personal property situated on the roof qualify for exemption under **G.L. c. 59, § 5 Clause 45th**?

Yes. More than 80% of its power capacity is consumed on site. It does not matter to whom the extra power over the 80% threshold is sold.

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

Of course it does. Only 2/3 of the generated power is used at the host site. That falls beneath the 80% consumption threshold on which the exemption determination depends.

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?

Again, only parcels in which the personal property taxpayer has a common ownership interest in the host city or town are eligible to have energy consumption counted toward exemption eligibility. It is irrelevant that the owner of the school site is also the owner of other parcels. It is the taxpayer whose common ownership interests determine whether a parcel of real estate is counted toward eligibility, not the lessor.

8. Case Study Hypothetical:

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.

Questions and Answers:

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

Yes, under G.L. c. 59, § 2B.

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

No. The host parcel consumes "negligible" energy to offset the 8 kWh generating capacity of the solar system. And LSS does not own other real properties in Trafford. Since its energy is to be exported from the host site to properties not under common ownership by LSS, this personal property is fully taxable.

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?

Under the old version of G.L. c. 59, § 5 Clause 45th the exemption did not apply to solar power producers who sold exclusively to exempt entities. So there was a disincentive to sell energy to public entities. Under the amended statute it is irrelevant who receives the generated solar power. That criterion does not affect eligibility for exemption.

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?

Yes indeed. Here we are looking at eligible parcels since they are under common ownership with the subject personal property. If parcels eligible to be counted consume the entire output of solar energy, the scale of the generating facility does not produce 125% or more of the relevant power needs.

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?

No. Real properties in common ownership with the personal property but not located in the same city or town are not eligible to have their power needs counted in determining the scale of the facility for purposes of exemption.

9. Case Study Hypothetical:

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.

Questions and Answers:

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

Yes, G.L. c. 59, § 2B applies to public land owned by the federal, state, or local government which is leased out for private profit.

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

The fact pattern does not indicate that SSP owned other sites in Mildenhall eligible with the host parcel to have energy needs counted toward the 80% minimum consumption. So the Mildenhall portion of the federal land which is under lease and the host site of the solar power generation produces far more power than it can consume on site. The Newbridge property is not counted toward exemption eligibility because it lacks the common ownership link between land and the solar generating personal property. It's also in a different town from the host site so its energy consumption wouldn't be counted even if there were a common ownership interest.

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?

Under this scenario SPP is generating a total of 24 kWh of renewable energy at the leased site and the farm. Note that the energy consumption at the two sites totals 18 kWh.

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

With 75% of the total generating output of the solar equipment consumed on the host site and farm site owned by SSP, it falls short of the required level of consumption to trigger the G.L. c. 59, § 5 Clause 45th exemption.

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?

In these circumstances 20 kWh of energy are being generated by the solar equipment at the leased federal site. The host site and the improved land owned by the personal property owner consume a total of 16 kWh. That is exactly 80%. SSP is not generating more than 125% of the power needs of the host site and the other eligible property.

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?

There is no common ownership interest between the personal property and the host real estate so other federal property in Mildenhall is irrelevant to exemption eligibility. The power needs of separate federal property are not counted in the total power consumed, so as to offset the level of energy production

10. Case Study Hypothetical:

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.

Questions and Answers:

a. What defines a "true trust"?

A trust separates management of the trust property from the right to enjoy the benefits of ownership. The trustee is independent in the exercise of his/her powers over the property and owes a fiduciary duty to the beneficiaries to manage the property for their benefit.

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

It may be a true trust, but ordinarily a nominee trust creates a principal/agent relationship between beneficiary and trustee. Where the trustee's powers over the property are limited in material ways, this nominee trust is not a true trust.

However, in the exemption eligibility context, a nominee trust has been found to be a "true trust" such that a beneficiary lacks legal title for qualification purposes. The case of Moscatiello v. Boston Assessors denied a residential exemption to the beneficiary of a nominee trust, rejecting arguments that the nominee trust at issue wasn't a real trust.

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

That was the holding of the Appeals Court in the Moscatiello case, so there is precedent for treating a beneficiary of such a trust as lacking legal ownership interests. But a principal-agent relationship does not confer legal title on the agent, so it's plausible that a nominee trust will be disregarded if the trustee's powers over the property are sharply limited.

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

If the beneficiary retains powers over the property that impair legal ownership in the trustee, then the beneficiary is effectively the owner of the trust property in fee simple.

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

Yes, because she reserved a life estate for herself, she qualifies as an owner.

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

No. As long as the applicant has established domicile, the principal residence is not counted in the whole estate.

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

There is no common ownership interest between the personal property and the host real estate so other federal property in Mildenhall is irrelevant to exemption eligibility. The power needs of separate federal property are not counted in the total power consumed, so as to offset the level of energy production A property owned via a life estate is not countable toward Medicaid eligibility. So the rule is different in the Medicaid vs. the tax context.

11. Case Study Hypothetical:

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.

Questions and Answers:

a. Does Ms. Scott qualify for a veteran's exemption on her new residence under G.L. c. 59, § 5 Clause 22(a)?

No because she is merely a beneficiary of the trust. She lacks the requisite legal ownership interest to qualify for the exemption.

b. How could that be cured?

If there is a reserved power to add an additional co-trustee, Ms. Scott could be made a co-trustee and qualify for the exemption that way.

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 G.L. c. 59, § 5 Clause 22 exemption?

No, because she lacks a sufficient legal ownership interest in the residence.

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?

She's now a co-trustee but there are multiple trusts involved. Assessors can deny exemption where multiple trusts confuse ownership rights to the relevant property. Analysis of multiple trust instruments is too administratively burdensome for the assessors to be responsible for figuring out an opaque ownership structure.

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

A presumption arises, which the assessors can apply at their discretion, that residence in the subject property reflects a beneficial ownership interest. The benefit of a residential property, if not to rent it out, is to occupy the dwelling as a home.

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

That depends on whether the multiple trust structure makes the ownership determination unwieldy; or whether the assessor considers occupancy of the subject property as sufficient evidence of a beneficial interest.

12. Case Study Hypothetical:

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…"

Questions and Answers:

a. Mr. James 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 G.L. c. 59, § 5 Clause 37A Clause 37A. Does he qualify as an owner of real property?

No. He has merely a beneficial interest in the trust property.

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

No. Legal title to this property lies with the brother. Occupancy doesn't equate to ownership.

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

No. By no standard does Mr. Potter own this property. His beneficial interest, however, may be attached such that income flows to the trustee in bankruptcy rather than Mr. Potter himself.

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?

Mr. Potter has no say in the management of the trust property by the trustee. This is a true trust. Mr. Potter is entitled to a 50% share of the income but doesn't have the right to inhabit the property against the wishes of the trustee.

13. Case Study Hypothetical:

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 veterans exemptions. The persons who asked such questions include the following:
A. An individual who was a member of the National Guard for 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; and

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;
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.

Answer:

Veterans exemptions may be given to those who qualify as "veterans," under G.L. c. 4, § 7, Clause Forty-third, and who are able to prove that they qualify for the respective veterans exemptions under G.L. c. 59, § 5. Under the statute, "Veteran" shall mean (1) any person, (a) whose last discharge or release from his wartime service as defined herein, was under honorable conditions and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States, or on full time national guard duty under Titles 10 or 32 of the United States Code or under sections 38, 40 and 41 of chapter 33 for not less than 90 days active service, at least 1 day of which was for wartime service; provided, however, than any person who so served in wartime and was awarded a service-connected disability or a Purple Heart, or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 90 days of active service; (2) a member of the American Merchant Marine who served in armed conflict between December 7, 1941 and December 31, 1946, and who has received honorable discharges from the United States Coast Guard, Army, or Navy; (3) any person (a) whose last discharge from active service was under honorable conditions, and who (b) served in the army, navy, marine corps, coast guard, or air force of the United States for not less than 180 days active service; provided, however, that any person who so served and was awarded a service-connected disability or who died in such service under conditions other than dishonorable, shall be deemed to be a veteran notwithstanding his failure to complete 180 days of active service.

With respect to A, "An individual who was a member of the National Guard for served during peacetime, and who drilled once a month at the Grove City National Guard Armory," this person does not qualify under the definition of "veteran" in Clause Forty-third as this person did not serve in wartime service. Also, at the end of Clause Forty-third, there is specific language stating that a person who fits in this category shall not be deemed a "veteran."

With respect to the situation in B, that person would likewise not qualify as a veteran. At the end of Clause Forty-third, there is specific language stating that a person who fits this category shall not be deemed a "veteran."

With respect to the situation in C, with the Merchant Marine veteran, Clause Forty-third specifically recognizes their veteran status: "(2) a member of the American Merchant Marine who served in armed conflict between December 7, 1941 and December 31, 1946, and who has received honorable discharges from the United States Coast Guard, Army, or Navy;

Likewise, with respect to member of the WAAC, Clause Forty-third recognizes that these women are veterans.

14. Case Study Hypothetical:

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 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 coroner, their son died of complication from an opioid overdose. 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?

Answer:

The answer first depends upon whether the legislative body of Amity adopted Clause 22H, in accordance G.L. c. 59, § 5 Clause 22H. As Amity is a town, a town meeting vote accepting Clause 22H would be needed in order for the Board of Assessors to consider the parents' question. Also, Clause 22H requires that the parents of the deceased servicemember have been domiciled in the commonwealth for the 5 consecutive years immediately before the date of filing for the Clause 22H exemption. Clause 22H states as follows: "Twenty-second H. Real estate to the full amount of the taxable valuation of real property of the surviving parents or guardians of soldiers and sailors, members of the National Guard and veterans who: (i) during active duty service, suffered an injury or illness documented by the United States Department of Veterans Affairs or a branch of the armed forces that was a proximate cause of their death." Ultimately, it is up to the Board of Assessors to determine whether the parents qualify for the Clause 22H exemption, in accordance with the parameters of Clause 22H.

To receive an exemption under G.L. c. 59, § 5 Clause 22D, 22A, 22B, 22C or 22E, a surviving spouse must have been married to the veteran, and the veteran must have qualified for exemption, at the time the veteran died. If the veteran did not meet the requirements for the exemption at that time, his or her surviving spouse cannot qualify for it either. Among the requirements for all of the exemptions are that the veteran or his or her spouse own the property and that the veteran occupy it as his or her domicile.

15. Case Study Hypothetical:

Rob Kay, the assessor for the City of Croninville received a question concerning a 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.

Answer:

The G.L. c. 59, § 5, Clause 22D exemption provides a full property tax exemption for a surviving spouse of a veteran who died as a proximate result of injuries or illnesses contracted during active-duty service. Clause 22D requires that the veteran be domiciled at the shared property on July 1, 2022 for an FY23 exemption. Assessor Rob May must determine whether the veteran was domiciled with his spouse at the property on that date, or whether he was domiciled someplace else. Domicile is determined by many factors, including addressed for voting registration, motor vehicle registration and utility bills, among other factors. Also, in order to file for a veteran's exemption for FY23, all eligibility requirements must be met by July 1, 2022. The fact that the veteran had passed away on July 23, 2022 means that, assuming all other qualifying details were met, the qualifying date of death occurred too late to file for FY23.

16. Case Study Hypothetical:

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?

Answer:

The Certificate of Release or Discharge from Active Duty, commonly referred to as the DD214, is a document issued by the United States Department of Defense upon a military member's retirement, separation, or discharge from active duty in the Armed Forces of the United States. The first DD 214's were issued in 1950, replacing an older form. The DD214 is the capstone documentation of completed military service, representing the complete, verified record of a service member's time in the military. Among the most important details is the character of service (Honorable,

Dishonorable, General Under Honorable Conditions, etc.), which greatly affects veterans benefits eligibility. Other important data includes the service member's awards and medals, highest rank/rate band pay grade held on active duty, lengths of service, job specialty and record of training.

With respect to whether a DD214 is required to show eligibility for a Massachusetts veterans exemption, there is nothing in state statute that requires submission of the DD214. State statute does require that veterans, as defined in G.L. c. 4, § 7, Clause 43, demonstrate that their last discharge or release from the armed forces was under other than dishonorable circumstances. The DD214 is usually submitted, as the form does contain discharge status.

Certain disabled exemptions under G.L. c. 59, § 5, Clauses 22A, 22B, 22C, 22E, and 22F require a certificate or benefit letter from the VA, or the branch of service from which the service member was discharged to establish status as a disabled veteran. Other information regarding military service that affects eligibility for a veteran exemption, such as residency before enlistment, service period, military decorations and honorable discharge, is typically obtained from the DD 214, or VA benefit letter. An applicant must provide certification of the veteran's service-connected disability from the VA or branch of service from which the person was discharged in the first year the exemption is sought. Veterans who qualify for a Clause 22E exemption must submit a current VA certification with each year's application.

Once any other exemption is granted, the veteran does not have to include a certification with future applications unless the disability status changes, or the active duty status changes (we have seen situations, for example, where a veteran receiving an exemption decides to re-enlist and go on active military duty status – they are able to retain their exemption). For applications by a surviving spouse of a disabled veteran, a certification of the veteran's disability at the time of death must be provided in the first year the exemption is sought only if the veteran was not receiving an exemption at that time. While not required, it is a best practice to request the DD214. Assessors make the decision whether the applicant has submitted sufficient info to demonstrate eligibility for the exemption. Ultimately, it is the assessors who make the decision whether the applicant has submitted sufficient information to demonstrate eligibility for the exemption.

One final point regarding the submission of evidence that a veteran, or family members or guardian, must provide to prove eligibility to the assessors is a recent statutory change to G.L. c. 59, § 5, clause 22(a). The change now forbids an assessor from requiring that a veteran, or family member or guardian submit additional proof of exemption eligibility after the first year of eligibility for the exemption.

17. Case Study Hypothetical:

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. Assuming veteran met all of the conditions to qualify for an exemption, veteran is not yet eligible for exemption where he did not live in town for two fiscal years, and town did not accept local option that would have allowed prior residence for only one fiscal year. Sent her copy of DLS Guide to Veterans Exemptions.

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.

Answer:

a. Assuming the veteran met all of the conditions to qualify for an exemption, the veteran is not yet eligible for exemption where he did not live in town for two fiscal years, and town did not accept local option that would have allowed prior residence for only one fiscal year.

b. With respect to a late-filed application, a veteran must file an application for each fiscal year with the assessors in the city or town where her property is located. The application is due on April 1, or three months after the actual tax bills are mailed, whichever is later. Filing on time is required. By law, the assessors may not waive this filing application, nor act on a late application, for any reason.

c. In order for a veteran to qualify for a veterans exemption, that veteran must occupy the property as his domicile. Domicile is where one's principal and legal home is located, one's family, social, civic and economic life is centered and where one intends to return whenever they are away. One may have more than one residence, but only one domicile. Therefore, Clark Williams will have to obtain information from the veteran, including his addresses for drivers license registration, passport, voting location, and where Social Security and veterans benefits are sent.

18. Case Study Hypothetical:

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 during his lifetime, 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?

Answer:

Because the veteran needed to qualify for the G.L. c. 59, § 5 Clause 22E exemption during his lifetime to pass along the exemption to his surviving spouse, his surviving spouse here is not eligible for the exemption. A veteran's or spouse's possession of an ownership interest is a requirement to qualify for a veteran's exemption. That ownership interest need not be substantial – the ownership must be worth at least $6,000 for a Clause 22E exemption, as long as the property is the domiciliary home. Where the veteran did not claim the exemption during his lifetime, then there is no surviving spouse exemption.

19. Case Study Hypothetical:

Windham Assessor Claire Bolduc has a question concerning a taxpayer who is eligible for a Clause 22a exemption as a 10% disabled veteran. He also 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?

Answer:

DLS Course 101 Handbook, Chapter 7, Multiple Exemptions, Co-owners, states at section: 3.14.2 "If two or more co-owners of a property qualify for different exemptions, they may receive the exemption for which each co-owner qualifies," and at 3.4.3, Ownership and Domiciliary Requirements, "These requirements do not apply to minor children or surviving spouses." Although the first paragraph of G.L. c. 59, § 5 prohibits second exemptions with limited exceptions, this does not apply to multiple owners. As long as other qualification requirements are met, both of these exemptions may be granted to different owners. A minor child is waived from the ownership requirement.

20. Case Study Hypothetical:

Paul Leon, Assessor of the Town of Trowbridge seeks assistance with a **G.L. c. 59, § 5 Clause 22H** exemption – Trowbridge voted to accept the provisions of **G.L. c. 59, § 5 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 **G.L. c. 59, § 5 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 veterans are entitled to receive full exemptions for their three respective homes.

Answer:

The answer is yes. Both the parents and the surviving spouse are entitled to G.L. c. 59, § 5 Clause 22H and G.L. c. 59, § 5 Clause 22D exemptions, respectively. It should be noted that, because Trowbridge adopted G.L. c. 59, § 5 Clause 22H as a local option statute, Trowbridge is not entitled to state reimbursement for the G.L. c. 59, § 5 Clause 22H exemption for the parents' homes. Trowbridge is eligible for state reimbursement for the G.L. c. 59, § 5 Clause 22D surviving spouse exemption.

21. Case Study Hypothetical:

Fred Louis, Assessor for the City of Bainbridge has a question concerning a taxpayer receiving a **G.L. c. 59, § 5 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 residence and two houses that she rents out. Louis asks if the exemption should be pro-rated.

Answer:

The answer is no. Even if she shared ownership of the properties, she would not have to pro-rate the G.L. c. 59, § 5 Clause 22D exemption. G.L. c. 59, § 5 Clause 22D is a complete exemption and is reimbursed in full by the state.

22. Case Study Hypothetical:

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.

Answer:

The prohibition from receiving two exemptions on a property does not apply to the veteran work-off program, pursuant to G.L. c. 59, § 5K, which is a program allowing a veteran to work off a portion of his tax liability, up to the amount of $1,500, depending upon the policy or bylaw adopted by Riverton to implement its provisions. It is not a separate exemption. Therefore, it is possible for a veteran to receive the veteran exemption and perform the work allowed by G.L. c. 59, § 5K.