2023 Municipal Law Seminar
WORKSHOP D
Assessing Administration

DISCUSSION SUMMARY
(Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop D 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.

Electronic Billing & Abatement Applications and Abatement Returns

1. Mr. Geller is the new collector in Perkland, he is in his early 30s and is used to paying his bills online, he also deeply cares about the environment. He would like to implement an electronic billing or an 'e-billing system' to reduce the carbon footprint of the residents of Perkland. Is this something that is allowed, and how can it be implemented?

Property tax bills may be issued in an electronic form as set forth in G.L. c. 60, § 3A(b). The collector's use of e-billing must be approved by the mayor or selectboard. The scope and duration of that approval may be decided locally. Communities can also advertise the electronic billing option in tax bill inserts. The collector may insert property tax billing information. Property tax billing inserts are those advising taxpayers of tax billing and payment information such as (a) a new location for the collector's office, (b) collector's office hours, (c) payment options such as electronic payments, (d) different due dates because of later issuance of the tax bills than usual or (e) changes in tax payment systems (semi-annual to quarterly for example).

2. Mr. Geller is very excited about implementing this e-billing system. They publish the announcement in the local newspaper. Many of the younger residents, like Rachel Green and Joey Tribianni, are excited about this and will be utilizing this program. However, one resident, Mr. Heckles is in his 80s and does not use computers. He would like to continue to receive his paper bills in the mail. Does e-billing need to apply to the entire town?

No. Taxpayer participation is optional. Taxpayers must agree to receive their property tax bills in an electronic form. Participation must be completely voluntary. No taxpayer may be required to receive an electronic bill.

Each taxpayer who wants to participate in the e-billing program must be informed and agree, in a written form, to the terms and conditions of the program. At a minimum, the program must require the taxpayer to:
a. Provide the collector, in the manner and by the date prescribed by the collector, with an accurate e-mail address for e-billing purposes.
b. Notify the collector, in the manner and by the date prescribed by the collector, of any change in e-mail address to be used for subsequent e-billing purposes.
c. Accept electronic billing as the sole means by which the collector is legally required to give notice of the taxpayer's property tax obligations.
d. Acknowledge any electronic bill issued to the e-mail address provided to the collector is a valid and properly issued property tax bill and failure to receive it does not alter the taxpayer's legal obligation to make payments, or file abatement or exemption applications, on time.

So, Joey and Rachel can sign up for the e-billing system as long as they properly consent and acknowledge they would like to sign up only for electronic billing and they would no longer like to receive paper bills, while Mr. Heckles can continue to receive his paper bills in the mail.

3. One taxpayer, Phoebe Buffay in Perkland is hesitant to sign up for the program. Phoebe is a little bit spacey and often times does not check her emails, but she cares deeply about the environment and would like to try and use as little paper as possible. She wants to know if the content of the bills will be the same and how the bill comes in?

The form and content of e-bills must be the same as the mailed bills and must meet all requirements set forth in these guidelines for property tax bills. The bill may be issued in the e-mail message, as an attachment to the e-mail, or a link in the e-mail that allows the taxpayer to obtain it. So, Phoebe will see this email come through either with an attachment or with a link. Collector Ross Geller explains to her, she can actually set up alerts on her phone for Perkland's emails to ensure she does not miss them.

4. The assessor in Perkland, Mr. Chandler Bing, has a family contact him about a situation where the father and property owner, Gunther, is sick and in the hospital. Gunther's daughter, Janice is currently seeking Power of Attorney. Janice wants to know how she can submit an abatement application on behalf of her father?

Under G.L. c. 59, § 59 a personal representative may apply for an abatement on the taxpayer's behalf. Also, under G.L. 110G, an abatement application can be submitted electronically, with an e-signature. Electronic signatures are permitted pursuant to the Uniform Electronic Transactions Act (G.L. c. 110G) provided it can be verified that the signature was supplied or authorized by the person whose signature is required.

5. Chandler, the assessor, and Ross, the collector, are the best of friends and like Ross, Chandler is wondering if the town of Perkland can exclusively use electronic abatement applications and completely eliminate the paper applications in order to help save the environment?

DLS has advised that electronic abatement applications are permissible. There is no prohibition against filing an application by email, as long as it meets all the other requirements of G.L. c. 59, § 59. Any application received after the close of business hours on the last day and hour for filing means that the application was not timely filed. We have previously opined that G.L. c. 110G, the Uniform Electronic Signature Act, allows for signing of abatement applications via

electronic signature. The same abatement application rules apply to the dropping off of abatement applications in the drop box located outside town hall. Applications placed in the drop box and picked up by assessing staff before or at the time when the assessors' office closes, will be considered timely filed. Applications in the drop box picked up after the office closes on the date abatement applications are due would not be considered timely filed. The assessor will draft a written policy informing taxpayers of the abatement application procedures for taxpayers who file their applications online or drop them off in the drop box. However, we are unaware of any community exclusively requiring electronic applications and turning away paper applications. Particularly, this may violate G.L. c. 59, § 59, stating that postmarking with the USPS shall be deemed the date of delivery. Further, practical issues for folks who are unable to access or utilize electronic means should be considered.

6. Phoebe Buffay, a notoriously spacy taxpayer from a previous example, files an electronic abatement application at 11:59pm on February 1st. However, Chandler's office closed at 4:30pm on February 1st. Because Phoebe submitted the application electronically, was this a timely submitted application under G.L. c. 59, §59?

No. The assessor has no legal authority to accept an email abatement application received after the close of business on or after the due date. To be timely filed, an application must be (1) actually received in the assessors' office by the close of business on or before the application due date, or (2) postmarked by the United States Postal Service, as mailed first class postage prepaid to the proper address of the assessors on or before the application due date. G.L. c. 59, § 59. Applications may be made by FAX or e-mail. If the assessors have their own FAX number or e-mail address and direct applications to that number or address, the application must be received by the close of business on or before the application due date. If the application was FAXed to a general municipal fax number, or e-mailed to a general municipal e-mail address; instead, the application must be delivered to the assessors' office by the close of business on or before the application due date to be timely. Assessors should accept all applications submitted to them. To verify timely filing, assessors must date stamp all applications received in their office and note the delivery method, e.g., by hand, private delivery service, mail, FAX or e-mail. For applications delivered by mail after the application deadline, they must retain and attach to the applications, the envelopes in which they were mailed. If the assessors determine an application was not timely filed, they should notify the taxpayer no action can be taken due to the late filing.

7. A taxpayer in Perkland, Monica Geller, paid property taxes, but is now entitled to a refund because she qualifies for the 22D exemption for surviving spouses of veterans who died as a result of their service-connected disability. She filed for abatement of the erroneously paid taxes asserting her claim for exemption. Now the mortgage service company wants the refund. Who should the town of Perkland issue the check to?

In such circumstances, the better practice is to issue the refund to the person who filed the application. In this scenario, Perkland would issue the check to Monica Geller and then she can sort out what she owes her mortgage company from there.

8. A homeowner, Richard, owned his home in Perkland on 1/1/22. He sold the property in November 2022 to Jack and Judy. In January 2023, Richard filed for an abatement which was granted. Who receives the refund check? Richard? Or the new owners Jack and Judy?

The owner as of 1/1/22 was responsible for FY23 property taxes, notwithstanding the change of ownership during FY23. The "old owner" Richard who filed the application is due the abatement check.

Alternatively, the assessors may issue the abatement to both assessed owners and let the parties decide how to split the refund themselves. Or they may issue the abatement check to the applicant. In both events they will have complied with G.L. c. 59.

9. **What if Perkland has an abatement refund check for a deceased homeowner? Ross would like to issue the check in the name of the deceased owner's husband and not in the name of the assessed owner.**

An abatement refund should be issued in name of the assessed owner or estate of assessed owner; probate court decides who is entitled to assets of deceased persons, not the assessing and or collection offices.

10. Chandler Bing is excited to have the taxpayers of Perkland utilize the online abatement application option. If taxpayers in Perkland decide to email their abatement applications, how will this impact how they are discoverable under the Public Records law? The offices of Perkland are very cluttered and in desperate need of cleaning. Chandler is wondering if the office legally has to maintain physical copies of assessment and exemption records? Or is his office able to keep an electronic database?

Pursuant to G.L. c. 59, § 60, exemption and abatement applications are not open to the general public. While the applications cannot be disclosed, what can be disclosed are the abatement and exemption record books. Please note that the subject of Public Records is a not a matter that DLS handles. The state Supervisor of Public Records may be contacted at 617-727-2832 for inquiries on public records matters.

Pursuant to G.L. c. 59, § 60, boards of assessors are required to maintain records of abatements and exemptions. The records need not be maintained in a paper format and may be saved in an electronic version that conforms to the format required by DOR provided that the public is able to inspect.

11. Chandler also would like to know if exemption applications can also be submitted electronically?

Yes. In our opinion, an electronically filed application does constitute a valid and sufficient application if received at the site designated by the assessors by the close of business on the application due date. The applicant need not also send the assessors a printed application with his handwritten signature. Since the fundamental purpose of an abatement application is simply to give the assessors notice of the taxpayer's claim, we think an electronically filed exemption application should adequately inform the assessors as to the identity of the applicant and satisfy the requirements of G.L. c. 59, § 60.

Present Interest Assessment

Question #1. There is a partially completed construction improvement in the common area of a phased unit condominium development in Town. Can the partial improvement be assessed taxes?

Yes. Phased condominium development rights that have not been exercised may not be assessed because they are considered future interests, not present interests. *First Main Street Development Corp. v. Assessors of Acton*, 49 Mass. App. Ct. 25, 28-29 (2000), and *Spinnaker Island and Yacht Club Holding Trust v. Assessors of Hull*, 49 Mass. App. Ct. 20 (2000). However, to the extent that construction or site preparation had begun for any undeclared units as of January 1 of the fiscal year, the future interests in those portions of the property have become present interests. Therefore, an assessment of the value of those improvements can be made to the holder of the present interest as of January 1 of the fiscal year. G.L. c. 59, § 11.

Under M.G.L. c. 183A, § 14, each condominium unit and its interest in the common area is a separate parcel of real estate. A condominium is created by the recording of a master deed declaring the units and common area. The master deed describes the land included in the condominium, the condominium units, the common area and the percentage interest that each condominium unit holds in the common area. Often a condominium is developed in phases, however, and the developer creating the condominium will, in the master deed, reserve rights to build additional units on the common area. If the developer is simply holding a right to build additional phases of a condominium, the value of that right cannot be separately taxed. *First Main St. Corp. v. Assessors of Acton*, 49 Mass. App. Ct. 25, 28 (2000). However, if the developer takes possession of a portion of the common area and initiates development activity, i.e., site preparation and construction of buildings or improvements, the assessors can make a separate assessment to the developer. This is because the developer has exercised his future development rights and has become the holder of a present possessory interest. *RI Seekonk Holdings, LLC v. Board of Assessors of Seekonk*, 91 Mass. App. Ct. 1104, Rule 1.28 Unpublished Decision (February 3, 2017). The assessment would be based on the value of any fully or partially completed buildings or improvements, based on their percentage of completion as of the January 1 assessment date, or completed as of June 30 and deemed to exist on January 1 in a community that has accepted the last sentence of the first paragraph of M.G.L. c. 59, § 2A(a), which was added by Chapter 653 of the Acts of 1989. The assessment may be made even though the condominium Master Deed has not been amended to include the new phase of the condominium.

IGR-2021-19.

Question #2. November 1986, Condominium Complex was established pursuant to G. L. c. 183A by the recording of a master deed. The following year, taxpayer paid the developer of the condominium for a perpetual and exclusive easement in gross to use parking space 41 and is perpetual, and is freely assignable, divisible, and alienable. Taxpayer's parking easement is her only interest at the condominium, as she is not a unit owner. Thirty-one years later, in fiscal year 2019, the city assessed the easement as a present interest in real estate for the first time and issued a tax bill. Taxpayer appealed. Will the taxpayer's appeal be successful?

In short, no. This hypothetical is modeled off the case of Murrow v. Board of Assessors of Boston. There, the Court held that the owner of an in gross parking easement reserved by a condominium developer in the condominium's master deed, which was freely transferable and not appurtenant to any condominium unit, may be directly taxed on the value of that interest pursuant to G. L. c. 59, § 11. As the only individual that derives value from and exercises control over parking space number forty, Murrow's interest closely resembles that of ownership. Her use of the space is exclusive, perpetual in duration, and is freely transferable to anyone she chooses. It is thus logical that she be liable to pay taxes on such an interest.

The Court also added that they found no support in the record for Murrow's claim that a decision in favor of the assessors here results in improper double taxation. Section 14 of G. L. c. 183A subjects condominium unit owners to taxation on their possessory interest in their respective units, including their proportional share of the condominium common area as set forth in the master deed, while G. L. c. 59, § 11 subjects the parking easement owners to taxation on their nonpossessory easement interest in their respective parking spaces. This is not double taxation, it is the lawful taxation of two separate interests in real property.

Murrow v. Board of Assessors of Boston, 102 Mass. App. Ct. 278 (2/6/23).

Question #3. A deed was recorded in the Suffolk County Registry of Deeds whereby Eleanor was granted a life estate in property and Leonard was granted a vested remainder. Based on their various interests in the property, who should be assessed property taxes?

In short, Eleanor. The Massachusetts Supreme Judicial Court has held in numerous decisions that if a life estate has been created, real estate taxes should be assessed to the life tenant. Under G. L. c. 59, § 11, real estate taxes are assessed to the owner of record as of January 1 as appearing in the records of the county where the land is located. As such, the subject parcel was properly assessed to Eleanor. As the life tenant, she has the present possessory interest in the property and is the assessed owner with personal liability for the taxes. The Massachusetts Supreme Judicial Court has also ruled that a life tenant has a sufficient interest in property to qualify for a personal exemption. A life tenant, if eligible, can also defer or postpone the payment of all or a portion of the real estate taxes.

Question #4. The City would like to assess taxes on a parcel to Luke. The City received a decree foreclosing a tax title on the parcel. David, trustee, was named as owner in the land court action. When the City tried to sell the parcel, Luke, who is suing David, and another person, claiming they defrauded him of the property, got an injunction prohibiting the sale. Can the City assess to Luke?

It does not seem that the granting of the preliminary injunction to Luke to prohibit the sale of the property is sufficient to establish that he has a present interest in the property within the meaning of G. L. c. 59, § 11. Therefore, an assessment to him would not be proper.

Manufacturer Classification

Massachusetts tax law provides special rules for entities that are "manufacturing corporations." Generally, a corporation that is classified as a manufacturing corporation by the Commissioner of Revenue is entitled to an exemption from local personal property taxation (other than poles and underground conduits, wires and pipes) pursuant to G.L. c. 59, § 5, cl. 16(3).

"Manufacturing" as defined for manufacturing classification purposes is "the process of substantially transforming raw or finished materials by hand or machinery, and through human knowledge, into a product possessing a new name, nature, and adopted to a new use." 830 CMR 58.2.1(6)(b).

In order to apply for manufacturing corporation classification, a **new** corporation must send a completed Form 355Q to the Massachusetts Department of Revenue on or before January 31st of the calendar year for which it seeks manufacturing corporation classification (postmark rule applies), which, if granted, is effective January 1 of the calendar year. However, a manufacturing corporation must reapply for manufacturing classification if it 1) changes its name, 2) undergoes a merger or consolidation, 3) is revived as a corporation after dissolution, 4) reregisters with the Secretary of State after withdrawing from Massachusetts, or 5) undergoes a material change in its activities (see AP 303: Manufacturing Corporations).

A manufacturing corporation seeking to be included on the Annual List of Corporations Subject to Taxation in Massachusetts for purposes of determining local property tax benefits does not need to resubmit a new Form 355Q annually in order to be included on the Annual List. To be included, a manufacturing corporation must file an annual corporate tax return and be a registered corporation in Massachusetts, and it should file an Annual Certification of Entity Tax Status through MassTaxConnect by April 1st of the calendar year for which the inclusion on the List is sought. The latter filing is essential for entities elected to be treated as a corporation and/or a member of a consolidated corporate tax return.

A corporation classified as a "manufacturing corporation" is designated by the letter "M" to the left of the corporation name in the Corporations Book published annually by DLS. The Corporations Book is found in Gateway. Assessors may use the Corporations Book Search tool or download the entire general corporations, financial institutions, and insurance company lists.

On or after April 1st of each year, DOR publishes an Annual List of Corporations Subject to Taxation in Massachusetts containing the names and classifications of every corporation subject to the Massachusetts corporate excise. Corporations determined by DOR to be engaged in manufacturing in Massachusetts on January 1st of that calendar year are classified on the Annual List as manufacturing corporations. Notification that the Annual List has been published is emailed to all boards of assessors in Massachusetts in the form of a DLS Bulletin and should be used in assessing local property taxes. Based on the number of manufacturing applications, the Department of Revenue may not have handled all prior to the release of the Corporations Book, so there is a *Manufacturing, Revocation and Other Updates* list (found at the bottom of the search tool page) to post any decisions after publishing and applicable for the current edition (effective January 1 of the current calendar year).

Question #1. If a local company is not in the Corp Book, should you automatically assume they are subject to taxation on their local personal property?

No, assessors need to take another step. Assessors should contact DLS to inquire about the status of that entity. This is especially true when a manufacturer was previously in the Corp Book or previously received manufacturer classification status. Why might there be discrepancies? Corporations are in constant movement. They may withdraw and re-register with the Secretary of the Commonwealth, be brought back to life after a dissolution, be acquired by another corporation, or maybe something as simple as changing their address or changing their name. Sometimes there is a clerical error in the Corp Book. Or maybe a corporation reorganized. Companies come off of the list as manufacturers all the time each and every year.

When searching the Corp Book, assessors should be particularly mindful of misspelling, wrong locations, and punctuation as you search to see who is included.

Additionally, sometimes the classification is the result of a legal settlement, and maybe that settlement didn't come in until the fall. To that end, we also recommend local assessors and their teams do another search of the Corp Book and review the Updates list before setting your tax rate to ensure that there have been no changes since your first search.

Question #2. Can a new, local corporation appeal the denial of a manufacturer designation? Can the local assessors appeal a determination?

If DOR intends to deny a manufacturing classification request, the Business Income Tax Bureau will so notify the corporation. The corporation may then either request a conference at the Office of Appeals or, after the classification request is denied, file an appeal with the Appellate Tax Board. Furthermore, a corporation aggrieved by its classification for the current year may appeal the classification directly to the Appellate Tax Board under G.L. c. 58, § 2, regardless of whether it has applied to the Commissioner for manufacturing corporation classification or received notice from the Commissioner regarding any such application.

Such appeal must be received by the Board on or before April 30th of the year for which classification is sought or within 30 days after the date DOR sends its Annual List to the local boards of assessors, whichever is later.

Can the local assessors appeal a determination? Yes. The board of assessors is defined as a "person" within G.L. c. 58, § 2, which notes that "Any **person** aggrieved by any classification made by the commissioner under any provision of chapters fifty-nine and sixty-three or by any action taken by the commissioner under this section may, on or before April thirtieth of said year or the thirtieth day after such list is sent out by the commissioner, whichever is later, file an application with the appellate tax board on a form approved by it, stating therein the classification claimed."

Question #3. Local manufacturing S-Corporation, ABC, has received the manufacturing classification for many years. A subsidiary of ABC has just moved into Town. Will the subsidiary also receive the manufacturer classification?

In short, most likely. A qualified subchapter S subsidiary ("Q Sub") may be classified as a manufacturing corporation only if its S corporation parent has been so classified. In order to have a Q Sub classified as a manufacturing corporation, the S corporation parent must submit a Form 355Q referencing the name and federal identification number of each Q Sub and describing the combined activities and attributes of the S corporation and each of its Q Subs.

If manufacturing classification is granted to an S corporation, such S corporation and each of its Q Subs will be listed as manufacturing corporations on the Annual List and may therefore be eligible for local property tax exemptions available to manufacturing corporations. If manufacturing classification is not granted to the S corporation parent, then neither the S corporation nor any of its Q Subs will be identified as a manufacturing corporation on the Annual List. See DD 12-5; TIR 13-3. For more information on this you can view DOR Technical Information Release 13-3 and Directive 12-5. As a practical note, in this scenario DOR would likely ask the Q sub to submit an application as well.

Question #4. Local manufacturing company, ABC, is an unincorporated entity. Does their status as an unincorporated entity preclude them from receiving the manufacturer classification?

No, not automatically. A partnership, association, trust, limited liability company or other unincorporated legal entity that conducts a business that may be conducted by a manufacturer, if so classified by the commissioner, **AND** is treated as a corporation for federal income tax purposes, either under federal default rules or by election, is treated as manufacturing for purposes of local property taxation and exemption.

In these situations DOR will likely request federal form 8832 to confirm that an LLC has the proper treatment of its income tax.

Question #5. Local manufacturing Corporation, ABC, has received the manufacturing classification for many years. On March 15, 2023, the local assessor logs into Gateway and sees an updated entry that the manufacturer had their manufacturing classification revoked on January 15, 2023 as of January 1, 2023. Can the Corporation be taxed on its personal property this fiscal year (FY24)?

In short, yes. In this scenario, the assessor checking the manufacturer's status again was probably the result of receiving their Form of List. With the Form of List, you have a good idea of what is on the ground and from there you can do a revised assessment. A revised assessment is an additional tax assessed on a real estate parcel or personal property account that was underassessed and not assessed enough taxes for the year by an inadvertent mistake. G.L. c. 59, § 76. The only caveat here is that the assessor must commit a revised assessment for a fiscal year by June 20, or 90 days after the actual bills are mailed for that year if that date is later and report the amount each year to DOR. Should the company wish to dispute the assessment, the deadline for applying for abatement of a revised assessment is three months from the date the revised bill is mailed. The property would then qualify as new growth for the community as it is being taxed for the first time.

Question #6. Local assessors assessed personal property taxes to a new local manufacturing Corporation, ABC, that existed in the community as of January 1 of the applicable fiscal year. ABC applied for manufacturing classification but was denied. ABC appealed the decision and received exempt status to be applied as of the applicable January 1 assessment date for the current fiscal year. Assume this happened before the commitment was sent to the collector, what should the assessors do? What would happen if it happened after commitment was made?

If a qualifying manufacturer is billed for the fiscal year and is then found to be exempt, the community would hopefully have the chance to correct the error prior to the commitment being sent to the collector. However, if not, they would presumably still get a tax bill and then file for abatement, which would hit the overlay. New growth for the next year may also need to be amended.

What if they didn't file for abatement because the company assumed that having received the classification they are exempt and no further action was taken? Presumably this would be a good example of an 8 of 58 application or other appeal maybe. In the 8 of 58 context, we would likely note that the company should have been exempt, and though they did not follow the traditional abatement process, there is likely a good public policy argument for granting it.

Question #7. Which of the following activities are considered or not considered manufacturing?

Producing baked goods for off-site consumption (YES)
Breeding animals (No)
creating magazines, books and pamphlets out of paper (YES)
converting logs to lumber (YES)
constructing buildings (No)
Transmitting television, radio or telephone signals (No)

Question #8. Does the local personal property exemption only apply to the machinery used in the manufacturing process or everything the company owns?

Manufacturing corporations are exempt from local taxation on **ALL** personal property, except certain electric generating machinery, poles, underground conduits, wires and pipes. All machinery, both manufacturing and non-manufacturing, and all other personal property a manufacturing corporation owns, is exempt, except electric generating machinery that is over 30 megawatts capacity or is not cogeneration machinery.

Question #9. A Massachusetts corporation has retail supermarket stores at thirty-three locations throughout southeastern Massachusetts. Each supermarket has a small bakery which makes pastry, bread, and other perishable baked products which are sold on the premises. Other bakery products with a "long shelf life," particularly cookies, are baked at a central bakery in Newton and then delivered to and sold at the individual stores. Gross supermarket sales were $96,195,915, of which 2.79% or $2,683,688 were bakery product sales. The total gross profit on the supermarket sales was $21,288,121, of which $1,594,484 represents the gross profit from the sale of bakery goods. The gross profit on the sale of bakery goods was 59.41%; the bakery profit accounted for 7.5% of the total gross profit. Two hundred eighty-four of 2,253 employees (12.6%) are engaged in "bakery activity." Should the corporation be classified as a manufacturer?

This prompt is drawn from one of the seminal cases on this topic, *Fernandes Supermarkets, Inc. v. State Tax Commission*, 371 Mass. 318 (1976).

The Court says in that case: “When a corporation conducts both manufacturing and nonmanufacturing activities, the applicable statutes, G. L. c. 58, Section 2, and G. L. c. 59, Section 5, Sixteenth (3), do not specify what degree of manufacturing activity is required to classify a corporation as a "manufacturing corporation." Because the Legislature did not intend to confer a windfall tax exemption on nonmanufacturing corporations that engage in manufacturing "which is merely trivial or only incidental to its principal business," *Commissioner of Corps. & Taxation v. Assessors of Boston*, 324 Mass. 32, 39 (1949), our cases have required that the degree of manufacturing must be "substantial," *Commissioner of Corps. & Taxation v. Assessors of Boston*, 321 Mass. 90, 97 (1947), or "important and material," *Assessors of Boston v. Commissioner of Corps. & Taxation*, 323 Mass. 730, 746 (1949), when measured against the entire operations of the corporation. While we have not required that a manufacturing corporation necessarily have manufacturing as its principal business, we have examined the entire operations of the corporation to determine whether manufacturing constitutes a substantial component. *Commissioner of Corps. & Taxation v. Assessors of Boston*, 324 Mass. 32, 39 (1949).”

The Court further adds that: “Some of the important factors involved in determining whether a corporation should be classified as a manufacturing corporation were mentioned in *Commissioner of Corps. & Taxation v. Assessors of Boston*, 321 Mass. 90, 97 (1947): "Corporations whose manufacturing operations are substantial, whether viewed with respect to the financial receipts they bring to the corporation, or the proportion of the entire corporate income that they comprise, or the percentage of the entire capital which is invested in them, or the number of persons employed in them as compared with the total number of employees of the corporations, or the ratio to the entire business activities of the corporation, must be regarded as manufacturing corporations within our statutory definitions specifying those that are exempted from local taxation of their machinery." In that case, as in the present case, the taxpayer conducted a chain of supermarkets and also conducted some manufacturing operations, but in that case the manufacturing operations were much more extensive and they consisted of the processing of a substantial portion of the food products which it sold.”

In essence, the manufacturing component of the business must be substantial for DOR to approve the manufacturing classification.

Question #10. Based on the prior question, how does DOR determine whether the manufacturing components of a company are “substantial”?

The Commissioner will ordinarily classify a corporation's manufacturing activities as substantial if any one of the following four tests is met:

1. The gross receipts fraction equals 25 percent or more; or
2. The employee fraction equals 25 percent or more and the gross receipts fraction equals 15 percent or more; or
3. The tangible property fraction equals 25 percent or more and the gross receipts fraction equals 15 percent or more; or
4. The tangible property fraction equals 35% or more.

830 CMR 58.2.1 online, published by DOR (but not DLS), indicates exactly how these fractions are calculated and what qualifies as being the numerator and denominator. It is also noted that these four tests are intended to establish general, prospective standards for corporations attempting to demonstrate that their manufacturing activities are substantial. A corporation whose activities satisfy none of the four tests for substantiality may nevertheless qualify for manufacturing corporation classification by establishing, through other relevant criteria, that its manufacturing activities are substantial.

Question #11. What other guidance is available to determine whether or not "manufacturing" is taking place?

Please see Section (6) of the below link for examples:

https://www.mass.gov/regulations/830-CMR-5821-manufacturing-corporations

Question #12: A local company has received all the state and local approvals to grow and sell cannabis and cannabis products in your community. Their operation breaks their building into several parts: one part grows the plant, another dries it, another removes the THC, another puts that THC into edibles and other like products and the final part is a storefront equivalent that sells the products to consumers (for off-site consumption). Are they a manufacturer and is the manufacturing component of their operation substantial?

DOR has already recently approved manufacturing classification in a like scenario. However, each situation is different and warrants its own inquiry and verification.

Question #13: Board of Assessors appeal from a decision of the Appellate Tax Board abating taxes on certain personal property owned by and assessed to Company. The taxed personal property consists principally of pipes that Company used to produce, store, and distribute steam. The board found that these networks, including the pipes at issue here, operate in concert as a single, integrated machine, and, as a result, concluded that the pipes constituted machinery exempt from local taxation in accordance with clause 16 (3). On appeal, the assessors argue that the board erroneously relied on the so-called "great integral machine" doctrine, stated for the first time by this court in *Commonwealth v. Lowell Gas Light Co.*, 12 Allen 75, 78 (1866), in concluding that the pipes constituted exempt machinery because such a conclusion is belied by the plain language of clause 16 (3), which explicitly excepts "pipes" from the exemption. How do you think the Court ruled?

The general rule is that manufacturing corporations are exempt from local taxation on all personal property, except certain electric generating machinery, poles, underground conduits, wires and pipes. However, here the Court said the pipes are not taxable where they are part of a "great integral machine" seamlessly engaged in manufacturing. This example of course pulls from the decision in *Veolia Energy Boston, Inc. v. Assessors of Boston*, 483 Mass. 108 (2019). The Court further concluded that the great integral machine doctrine remains an appropriate means by which to determine whether certain property constitutes machinery.

Question #14. Company makes and sells ready mixed concrete, crushed stone, and asphalt filler. The local assessors concede that almost all items are of Company are "machinery" except a fifty-ton silo, a bagging machine, a 300-ton sand bin and tracks and switches. Instead, these items were found to constitute part of the real estate, not personal property. Company alleges that all of this property constitutes machinery and should be exempt from local taxation. Who is correct?

This question is modeled off of the case of *Board of Assessors of Swampscott v. Lynn Sand & Stone Co.*, 360 Mass. 595 (1971). Essentially, the machinery exemption applies even if the machinery is built or integrated into a structure and might otherwise be considered part of the real estate. The Court holds that there is no indication in the legislative or decisional history of c. 59, Section 5, Sixteenth, of any intention to draw refined distinctions between (a) easily removable machinery and (b) more ponderous, bulky machinery items, which may have become real estate as a matter of property law, but which in a practical sense retain their characteristics as machinery. Even if machinery by reason of its bulk (or its peculiar methods of affixation to buildings themselves constituting real estate) could be regarded as having become a part of real estate for some purposes, its predominant aspect for the purposes of Section 5, Sixteenth (3), remains that of machinery rather than of real estate.

Question #15. What if a classified manufacturer leases their equipment for profit?

In theory, they would lose their M classification because they are no longer engaged in manufacturing for the purposes of Clause 16(3). However, a business corporation is exempt from local taxation on any machinery it owns that is its stock in trade. Stock in trade is the inventory carried for sale or lease in the ordinary course of the corporation's business. So, in that case they may be exempt under a different statute. G.L. c. 59, § 5, cl. 16(2).