2024 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.

1. The Archdiocese of Boston determines that three (3) suburban parishes in three different towns will be consolidated in order to most effectively serve local parishioners and to adapt to changes and economic necessities. The largest parish church located in the City of Friartown is designated as the place of worship for parishioners and its use continues uninterrupted for regular services and other religious uses such as weddings and funerals. Another church located in the Town of Eagleton continues to be owned by the Archdiocese and is used in part as a temporary shelter for indigent migrant families and in part as a food pantry for local families in need operated by Catholic Charities. The third parish church located in Assumption is closed, deconsecrated and all religious or charitable use promptly ceases. The Archdiocese sells the property to ChildCo, an operator of for-profit daycare centers. Do any of these properties become taxable?

   Yes. The property in Assumption, MA becomes taxable. If ChildCo took title between July 1 and December 31, the assessor must issue a pro rata bill for the days remaining during the fiscal year of the sale. G.L. c. 59, s. 2C. If ChildCo takes title between January 1 and June 30, the assessor must issue a pro rata bill for the remaining days in the fiscal year of the sale and a pro forma bill for the following fiscal year, as the Archdiocese was title holder as of January 1 and was exempt. G.L. c. 59, s. 2C.

   If ChildCo leases any part of the premises or routinely uses the premises for something other than its regular business, it is normally assessed the same as the other parts of the property. See Evangelical Baptist Benevolent and Missionary Society v. City of Boston, 204 Mass. 28 (1910); All Saints Parish v. Brookline, 178 Mass. 404 (1901); Boston Society of Redemptorist Fathers v. City of Boston, 129 Mass. 178 (1880).

Because the Archdiocese is a corporation formed for both religious and charitable purposes, the Eagleton church continues in its exempt use based on its charitable purpose. G.L. c. 59, s. 5 *third*. Even if there is occasional or incidental use of the premises that are arguably a non-exempt purpose, so long as the dominant purpose of the property is an exempt use, the occasional or incidental use will not disrupt its exempt status. See Our Lady of La Sallette, Inc. v. Assessors of Attleboro, 476 Mass. 690 (2017).

G.L. c. 59, s. 2C
G.L. c. 59, s. 5 *third*

2. The United States Postal Service has a large Works Progress Administration era post office in Gentrifiville. The building is considered a rare example of Art Deco architecture in the Northeast United States and it contains widely-admired murals and relief sculptures. As part of a long-term plan to right-size its real estate portfolio and reduce its maintenance obligations, the USPS closes the branch and rents a smaller, lower-cost office nearby. What must the Assessors office do at that time?

So long as it continues to be owned by the Federal government, it remains exempt. G.L. c. 59, s. 5 first.

If the postal service sells the property to a private, non-exempt entity, it will be taxable as of the date title passes. G.L. c. 59, s. 2C. If title passes between July 1 and December 30, the assessors must assess a pro rata tax for the current fiscal year based on sale price of the property and applying the current fiscal year's tax rate. G.L. c. 59, s. 2C. If title passes between January 1 and June 30, both a pro rata tax for the current fiscal yeat and a pro forma tax for ensuing fiscal year must be assessed. G.L. c. 59, s. 2C.

In the event the sale price as reflected in the recorded deed doesn't seem to represent the fair market value of the property in an arm's length transaction, assessors should apply customary methods to calculate the fair market value of the property. G.L. c. 59, s. 2; G.L. c. 59, s. 2A; Town of Sudbury v. Commissioner of Corporations and Taxation, 366 Mass. 558 (1974) (establishing full and fair cash valuation as required standard for assessing). This may be a property sold for a nominal price (e.g., a one dollar sale price). In addition to considering comparable sales, an assessor may consider other factors that may affect the value of the property, such as historic preservation restrictions, zoning restrictions and/or extraordinary renovation and maintenance costs.

G.L. c. 59, s. 2
G.L. . 59, s. 2A
G.L. c. 59, s. 2C
G.L. c. 59, s. 5 *first*

3. The United States Army has for many years fenced off a 100-acre property in Neglectham previously used as an air strip – that use resulted in large volumes of jet fuel and radioactive shell casings contaminating the soil at the property. Before it can be used for any development purpose, a foot of soil will have to be removed from the entire surface and removed by qualified specialists and an impermeable membrane will have to be laid. Brownfield Hospitality and Gaming Corporation, a developer of luxury resorts and casinos,

takes title to the property from the Army for consideration of $1 cash-in-hand and subject to a restriction that requires Brownfield to perform specific remediation activities at its own cost before the Army will release a lien on the property.

What must the Neglectham assessors do?

The assessor should obtain any documentation or other reliable information relative to the project they believe affects the underlying value of the property, including any reports from inspectors or government agencies. G.L. c. 59, s. 2A. The assessors may want to ascertain the cost of remediation to the extent that may be a proxy for the fair market value for a property transferred for nominal value. Contractual penalties, forfeitures or other damages a developer faces for failure to act concerning a property should not be considered.

Assessors generally agree every property has some value, but there may be some circumstances where the residual value of real or personal property is severely limited. G.L. c. 59, s. 2; G.L. c. 59, s. 2A.

G.L. c. 59, s. 2
G.L. c. 59, s. 2A

4. The Town of Exurbia purchases a mostly abandoned shopping mall from Shea D. Reit, a real estate investment trust specializing in purchasing severely distressed commercial properties with extremely low-quality debt. Exurbia plans to use the land as open space until such time as another municipal use or worthy private development opportunity arises. In the meantime, it will be exempt municipal land. Assume they weren't collecting much in taxes based on rental income from the mall being negligible – the town was spending more on police, fire and EMS being called to the largely abandoned mall than they were getting in revenue and they bought it to dispose of a nuisance.

After the sale, Shea demands that they should have their taxes for the fiscal year abated because it changed to an exempt use. What is the answer to Shea?

> **Shea is due nothing. G.L. c. 59, s. 2; G.L. c. 59, s. 2A. The owner as of Jan. 1 is responsible for taxes in the subsequent fiscal year. G.L. c. 59, s. 2A. When the property is sold to a public entity that is exempt, unpaid taxes as of the date of the sale shall be abated. G.L. c. 59, s. 72A. So, the private non-exempt owner remains liable for taxes attributable to the time they were title holder, and after title passes, the public entity that is responsible for the property asks the assessor to abate the unpaid bill from the time they took title, and the assessor is obligated to do so. G.L. c. 59, s. 2A; G.L. c. 59, s. 72A.**
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> **G.L. c. 59, s. 2**
> **G.L. c. 59, s. 2A**
> **G.L. c. 59, s. 72A**

5. Beautiful Harvestdale, MA is a classic college town in a rural part of the state. Despite receiving PILOT payments, a lot of Harvestdale's properties are exempt and that affects their revenues. Additionally, most other properties in Hartvestdale are agricultural, so a lot of land that isn't exempt educational is taxed as chapterland. Accordingly, Harvestdale has not opted out of supplemental assessment, in order to capture additional revenue where it can.

In July, a farm property in Harvestdale is struck with a massive fire. Two barns on the property are totally destroyed, and the roof of the only residential structure on the property will have to be completely replaced.

What should the Harvestdale assessors do?

Per G.L. c. 59, s. 2D, the assessor must ascertain the proportion of the property's value lost, exclusive of the value of the land. Generally, under G.L. c. 59, s. 2A, a barn is sufficiently permanent and fixed that it is a structure or building subject to assessment as real property. If the lost value of taxable real property, without considering the value of the underlying land, is fifty-percent (50%) or more, the assessor must abate the property tax bill if the loss is due to fire or natural disaster (generally including hurricane, tornado, earthquake and similar uncontrolled and unforeseen disaster).

G.L. c. 59, s. 2D also applies to increased value of property due to construction or other improvement, exclusive of the value of the land. If there is a fifty-percent (50%) or greater increase in the value of the property, without considering the value of the underlying land, the assessors must issue a pro-rata bill from the time an occupancy permit issues. G.L. c. 59, s. 2D does not concern or apply to changes in value due to market conditions. In the event the title holder is able to repair damage and obtain a certificate of occupancy within the same fiscal year of underlying damage, supplemental assessment for loss and construction may be offsetting. G.L. c. 59, s. 2D.

G.L. c. 59, s. 2A
G.L. c. 59, s. 2D

6. 123 Example Street in Pickatown, MA is vacant land zoned for single family residential use. The subdivision where it is located is comprised of 2 acre lots. A developer owns the lots and builds very large homes one or two at a time, which they typically sell before they are complete, so the buyers can select custom finishes.

On or about August 1, 2023, construction commences on a 4,000 square foot, 5 bedroom, 5 bath single family home. The property sells on February 28, 2024 for $2M and a certificate of occupancy issues on March 31, 2024. Pickatown has not opted out of supplemental assessment.

How should an assessor address this property?

The assessor must issue a pro rata bill representing the increased value from the date of the certificate of occupancy through June 30, and must issue a pro forma bill for the subsequent fiscal year as the January 1 assessment date has passed. G.L. c. 59, s. 2D.

Note that in a municipality that has accepted the third sentence of G.L. c. 59, s. 2A(a) - so-called Chapter 653 communities - the value of construction between January 2 and June 30 will be captured in the January 1 assessment, retroactively, regardless of a certificate of occupancy or a sale, so a post-January 1 pro forma for taxes for the subsequent fiscal year is unnecessary. This is discussed in Part B.2 of IGR-2021-12.

G.L. c. 59, s. 2A(a)
G.L. c. 59, s. 2D
IGR-2021-12

7. The Town of Revenue, MA assessors are aggressive about their receipts. Previous boards were arguably lazy and relied on tax title liens to collect long overdue taxes, rather than securing revenues when due. The new board is motivated to collect revenues due. They learn from the inspectional services department that an occupancy permit issued for a newly built house in a remote part of town. Previously, the town was forced to reimburse that owner a significant portion of property taxes when the house that was there burned down under suspicious circumstances and the Assessors failed to abate despite the town having never voted to reject supplemental assessment.

A new house is built, and after receiving a pro rata assessment for the remainder of the fiscal year, the owner files an abatement application, saying the new house in the same remote location is worth no more than the previous one and the valuation shouldn't have changed from what it was with the previous residential structure

What evidence should the assessors present at the appellate tax board?

The assessors should be prepared to demonstrate that they visited the property and performed a thorough inspection, including any required measurements, observing any separate structures or outbuildings and reviewing the permits for the newly built structure. In addition, evidence of any comparable properties and their full and fair cash valuations, and any other information on which the assessors relied should be presented.

8. A parcel is discovered that was always part of your town, but was either deleted from your database, excluded due to an error with the maps or was otherwise just forgotten. The parcel was never assessed, or not assessed in recent memory, not even to owner unknown.

It is treated as an omitted assessment under G.L. c. 59, s. 75, not a reassessment. It was never assessed to an owner in the first place. Omitted assessments do not go back further than the current fiscal year. G.L. c. 59, s. 75. A new parcel can also arise when the assessor thought the parcel was located in an adjoining town, but it later comes to light it belongs to your town (or vice versa), or a court determines a parcel belongs in a different town from where it had previously been assessed. In such a case, assess it for the first time on January 1 just like any other parcel; the prior assessments by the adjoining town were presumptively valid if it was genuinely believed the parcel belonged to another town. G.L. c. 59, s. 2; G.L. c. 59, s. 2A.

G.L. c. 59, s. 2
G.L. c. 59, s. 2A
G.L. c. 59, s. 75

9. Five assessors from different municipalities meeting during coffee at the 2024 DLS Municipal Law Update realized that they each had pending exemption applications filed by widows and widowers with their boards of assessors pertaining to applications for heroic line of duty deaths by local public safety personnel, pursuant to G.L. c. 59, s. 5, clause 42. Clause

43 allows for real estate exemptions for surviving minor children of public safety personnel killed in the line of duty. The individual circumstances varied.

In one municipality, a firefighter died as the result of a motor vehicle collision while driving the town's ambulance on the way to a call for medical assistance. Is his wife entitled to a Clause 42 exemption?

Yes. In this case, the firefighter driving the ambulance died of injuries suffered while in the course of his duties. He was driving a fire department ambulance on a call as part of his duties.

Another application involved an off-duty local police officer, who, while on vacation, intervened in the rescue of a boy who was caught by a rip-current at an out of state beach. She was successful in saving the boy, but tragically lost her life. Is her wife entitled to a Clause 42 exemption?

No. In this case, the police officer did not die "in the line of duty." She was away from her position in another state and unfortunately her heroic rescue attempts resulted in her death.

In another community, the local harbor master, a city official vested with police powers, was injured in a boating accident while patrolling the local harbor; she later died from her injuries. Is her husband entitled to a Clause 42 exemption?

Yes. Because the local harbor master was vested with the powers of arrest, she has police powers. Therefore, the boating accident occurred while she was acting "in the line of duty." Her husband is entitled to the Clause 42 exemption.

In one city, a 30-year veteran firefighter suffered a heart attack at the station and, after a long struggle, eventually passed away. Is his wife entitled to a Clause 42 exemption?

No. The DLS interpretation of died in the line of duty "means death as a result of some violent act, or occurrence of violent external physical force to the body, while in the line of duty." A heart condition does not result from a violent force, it is said to be an illness that manifests over time.

Another situation discussed by the assessors concerned an unfortunate situation where a local police detective, while working in an undercover role, had infiltrated a local motorcycle gang that ran an extensive narcotics operation. The undercover operation resulted in the conviction and incarceration of all the members of the motorcycle gang. His widow provided evidence that the detective's undercover infiltration later caused him nightmares and other issues, for which his doctor diagnosed a case of Post-Traumatic Stress Disorder (PTSD). His widow claimed that the detective's death was as a direct result of the PTSD diagnosis.

No. Unfortunately, according to the DLS interpretation, PTSD does not arise as the result of a violent act or occurrence of violent external physical force to the body. Therefore, the widow is not entitled to a Clause 42 exemption.

A final issue discussed by the assessors concerned the application of Clause 43, which provides a full exemption for minor children of police and firefighters killed in the line of duty. In this case, Mary Allen, a police officer who was a single mother of a fourteen-year-old son, lost her life while directing traffic in the downtown area. She had planned her estate by transferring her property to a trust, giving her son a beneficial interest in the property. May the son receive the real estate exemption, and, if so, for how long?

Unfortunately, the son would not qualify for the exemption, as he has only a beneficial interest in the domicile. Mary Allen could not have known that her estate planning would have rendered such a harsh result. Currently, however, there is pending legislation in the Municipal Empowerment Act that would provide the exemption to the minor son. If he does ultimately receive the exemption, he would get the exemption until he reaches his 18th birthday.

10. Town Meeting in the Town of Oakbury voted to accept at its most recent meeting G.L. c. 59, § 5, clause 56, which allows the town to offer an exemption to certain members of the National Guard or reserve branch of the US armed forces, who has not been discharged. Valerie Delasala, the assessor for the Town of Oakbury, has received five applications for a Clause 56 exemption. She has not yet established eligibility criteria. The applications are as follows:

Terry Smith is a Coast Guard reservist who resides in the town. Terry has been activated to Coast Guard active service in order to teach Coast Guard midshipmen at the Coast Guard Academy in Groton, CT how to rig and pilot the Academy's tall ship Barque Eagle, a 295-foot sailing vessel. The Barque Eagle is scheduled to make ports of call along the Eastern Seaboard, while the midshipmen learn the ropes, before sailing to the Caribbean Sea to appear in numerous Tall Sail ships in ports in numerous countries. Terry will be activated in Groton on July 1, 2024, before heading to sea on July 15. He will be returning to reserve duty in Oakbury on January 1, 2025. He is seeking to have the Clause 56 exemption applied 100% to his FY24 tax bill. Does he qualify for a Clause 56 exemption?

No, he does not. In order for Terry to qualify for a Clause 56 exemption, he would have had to be on active duty in foreign countries for the entire fiscal year in which he performed his active-duty service, subject, of course, to eligibility criteria to be established by the board of assessors. The fact that Terry will be piloting the Barque Eagle and training midshipmen from July 15 starting from Groton, CT and traveling along the Eastern US seaboard before heading for port of call in the Caribbean and beyond mean that his service will not take place entirely in a foreign country. Also, his return to reserve duty on January 1, 2025, means that he would not be serving the entire fiscal year overseas. Of course, if Terry could provide sufficient evidence to the board of assessors that his six-month active-duty service commitment would provide a significant financial burden to paying his tax bill, he could always apply for a Clause 18 hardship exemption.

Liz Leyne is a lieutenant commander in a Navy Reserve fleet rapid response intelligence unit. Her unit was called to active duty to address interruptions to world commercial shipping off the coast of Yemen. She will be based in the Middle East at least during the entire fiscal year. She has approached assessor Delasala about her chances of qualifying for a Clause 56 exemption. Does she qualify?

Yes. Lt. Commander Leyne is a reservist who will be activated to active duty to serve at least during the next fiscal year. Of course, the board of assessors may adopt eligibility criteria, but she at least qualifies for the exemption.

Lauren Aquino, a National Guard sergeant whose focus is on anti-terrorism, has received her desired assignment of an active-duty position in the Pentagon. She will be required to temporarily relocate to Washington, DC for this assignment for a two-year duration. Is she eligible for a Clause 56 exemption.

No, she is not. She does not qualify for a Clause 56 exemption as her active-duty position is not located in a foreign country for the fiscal year. She will be relocating temporarily to another part of the United States.

Is it advisable for Assessor Delasala and her board to develop eligibility criteria for the granting of Clause 56 exemptions?

It is important for the board of assessors to adopt eligibility criteria in order to demonstrate uniformity in the granting of Clause 56 exemptions. As with Clause 18 hardship exemptions, Clause 56 exemptions are discretionary on the part of the assessors. While awarding the exemption is discretionary, the board of assessors may not grant the exemptions with unfettered discretion to choose among similarly situated applicants. Criteria must be established to assure that similarly situated individuals are treated equally. Eligibility criteria may include such limitations as establishing a maximum number of exemptions, income limitations and requiring that the exemption shall be awarded for one fiscal year per applicant. It should also be noted by the board of assessors that G.L. c. 59, § 5, clause 56 provides that the authority to grant Clause 56 abatements shall expire after two years of acceptance unless extended by vote of the municipality.

11. Dennis Rafferty is the town assessor for the Town of Chiltown. Seeking to encourage the development of affordable housing for senior citizens in the resort town, Chiltown Town Meeting voted to accept the local option Clause 50 to allow for a property tax exemption for improvements to residential property in order to upgrade the property to provide housing for a person at least 60 years old. Mr. Rafferty did not realize how popular the property tax exemption would be for the town. He has a number of applicants seeking the tax exemption, which is capped at no more than $500. He seeks advice with respect to the following applicants.

Chiltown accepted the statute on March 6, 2024. The Town issued FY25 tax bills on January 1, 2025. Local developer Christine Eldridge took advantage of the exemption to modify an apartment in her three-family home to provide a safe space for her friend Louise Santoya. The apartment will now comply with handicapped accessibility standards compliant with the Americans with Disabilities Act to allow Santoya to remain in the apartment for the near future. Ms. Eldridge applied for a $1,000 Clause 50 exemption for FY25 for alterations and improvements made during March and April 2024. Should Mr. Rafferty urge his board to grant the exemption?

No, these improvements do not qualify because they were not in existence on January 1, 2024, and, therefore, were not valued and assessed for FY25. Furthermore, Ms. Eldridge cannot claim an exemption amount of $1,000, as the exemption is capped at $500.00.

For FY26, Assessor Rafferty received a Clause 50 exemption application. In accordance with Clause 50, the applicant owner of the property Rafferty researched the elderly occupant of the apartment for which the developer is seeking the exemption. The person in the in-law apartment is a Florida resident who is receiving the homestead exemption in Florida and is not on the census or a registered voter in Chiltown. The owner of the property states they have received the exemption for many years, and they do provide housing to him when he comes up from Florida.

Clause 50 does not directly address this issue, but it does require that the owner of the property seeking the Clause 50 exemption must also occupy the property as her domicile. Does Clause 50 also require that the 60-plus person occupying the in-law apartment must also occupy the property as her domicile? This issue is not entirely clear. DLS issue IGR-1990-212 to help interpret Clause 50 issues. The IGR seems to indicate that the elderly person must "live' there, which likely would mean they would have to be domiciled there. The IGR says they must live there on July 1.

Paolo Perriera is seeking a Clause 50 exemption for the modifications he made to an apartment in his three-unit apartment building. Paolo just became eligible for a Clause 41 senior citizen exemption and, in addition to the Clause 50 exemption application, he has filed a Clause 41 senior citizen exemption application. Assessor Rafferty is now starting to worry that these new exemption applicants will be a burden on his overlay. He now questions whether the state will provide reimbursement for the new Clause 50 applications. How would you advise him on the two issues?

With respect to whether Paolo may apply for both a Clause 50 exemption and a Clause 41 senior citizen exemption, the first paragraph of G.L. c. 59, § 5 provides us with guidance. It states that an applicant for a Clause 41 exemption shall not receive an exemption on the same property pursuant to any other provisions of G.L. c. 59, § 5. Therefore, Paolo may only apply for one exemption. With respect to the issue of whether there is state reimbursement for the extra costs incurred by the town in accepting Clause 50, there is no state reimbursement for local option exemptions. Local option acceptances are exempt from the provisions of the State Mandate Law, which requires that any new law imposing a cost obligation on a municipality must be funded by the state in order for municipalities to implement them.

Assessor Rafferty has received two additional applications for Clause 50 exemptions. In one case, the owner applicant converted a home office into a bedroom to provide housing for an elderly aunt. In another case, the owner applicant reconfigured a free-standing garage to create an apartment that had no kitchen facilities. Assessor Rafferty seeks your advice on whether to grant both Clause 50 exemption applications.

Clause 50 exempts from local property taxation "the increased value of residential real property as a result of alterations or improvements thereto, not to exceed five hundred dollars of taxes due; provided, however, that said alterations or improvements are made to provide housing for a person who is at least sixty - years - old and who is not the owner of the premises; and provided further, that any such alterations or improvements must be made to a house, consisting of no more than three units prior to such alterations or improvements..."

In our view, the words "to provide housing" in the statute simply means that the construction activity must result in living accommodations for the older person. DLS does not think the alterations or improvements must create an additional housing unit, complete with kitchen facilities. It would be sufficient for the improvements to consist of a new bedroom for the older person's use. The alterations or improvements must be made to the house, however, so that any construction or conversion of a detached garage would not be eligible. However, any addition to the house or conversion of existing space within or attached to the house, such as the basement, -attic, or garage, might qualify for the exemption. DLS thinks this interpretation is consistent with the legislative purpose of this exemption, which is to encourage people to shelter and care

for older relatives and individuals. So, in this case, both applicants would be eligible for the exemption.

12. The city council of Edgerton became concerned that the resort community had become difficult for people of limited means to live and work in the community. The city council adopted a two-part plan to incentivize homeowners to build units that were affordable for renters who needed housing that was affordable. The first part of the plan was to amend its zoning bylaw to allow homeowners to build accessory dwelling units in their existing homes in order to increase the city's housing stock. Also, the city council voted to adopt G.L. c. 59, § 5O to provide a tax exemption for homeowners who rented apartments to low-income tenants whose income met the affordable housing standards in accordance with the United States Department of Housing and Urban Development guidance and regulations. In accepting the statute, the city council did not set a cap on the amount of the exemption. The two programs succeeded generating an additional 100 new units of affordable housing. City assessor George Flanagan has had to hire additional staff to process and investigate the applications from qualifying homeowners. He has a few questions.

The first application for a § 5O exemption states that the new affordable housing unit is 1,000 square feet, and the home in which the new unit was added is 2,000 square feet. The real estate taxes for the home are $15,000. What is the amount of the exemption?

Pursuant to G.L. c. 59, § 5O, in the absence of an exemption amount determined by the city, George will have to utilize the formula contained in the statute. That formula states as follows:

"…the amount shall not be more than the tax otherwise due on the parcel based on the full and fair assessed value multiplied by the square footage of the housing units rented and occupied by a person or persons whose household income is not more than the income limit set pursuant to clause (iii), divided by the total square footage of a structure located on the parcel."

Therefore, where the combined square footage of the owner's home and the affordable housing combined totals 3,000 square feet, and the affordable unit is one-third the size of the combined housing, the exemption amount will be one-third the amount of the total real estate taxes on the property ($15,000), meaning the exemption amount for the affordable unit is $5,000.

Assessor Flanagan is concerned that a number of the homeowner applicants for the affordable unit exemption also receive G.L.c. 59, § 5 exemptions including senior citizen and veterans' exemptions. He is concerned that the amount of the overlay he determined would be sufficient for the fiscal year is now projecting a deficit. He wants to know if he can inform the homeowner applicants that they must choose either their G.L. c. 59, § 5 exemptions or their G.L. c. 59, § 5O affordable housing exemption. May he do so?

No. G.L. c. 59, § 5 provides that a person seeking an exemption under § 5 may receive only one § 5 exemption, with certain exemptions. G.L. c. 59, § 5O creates an exemption that is not referenced in the limitations provision of G.L. c. 59, § 5. Therefore, a qualifying homeowner may receive an exemption from both G.L. c. 59, § 5O and G.L. c. 59, § 5.

Assessor Flanagan's investigation of homeowners seeking the exemption revealed that five homeowners seeking the G.L. c. 59, § 5O affordable unit exemption have rented to college students at the local technical college whose income fits within the guidelines qualifying for

affordable housing. The investigation revealed in each instance, however, that the lease agreements for the college students were for a term of nine months, and the homeowners rented out weeks during the summer to the many tourists who flock to Edgerton in the warm weather. Do these issues impact the qualifications of the homeowner for the exemption?

Yes. G.L. c. 59, § 5O requires that the leases for the affordable housing units must be for a term of twelve months. Leases that are for a shorter duration do not qualify the owner to receive the exemption.

13. Donna Cortez, the assessor for the Town of Rockingham has a question about determining a location for a property owner's domicile and the potential assessment of second home furnishings as personal property. A property owner in the town owns at least two homes in Massachusetts, one in Rockingham and one in Redwood. The owner is registered to vote in Rockingham and lists his mailing address at his home there, but his last voting record is from 2019. For the past two years, there has not seemed to be any activity (cars in the driveway, visitors, snow clearing, etc.) at the Rockingham property. According to Redwood officials, the property owner has been successfully receiving mail and paying bills received in that town. In Rockingham, the property owner has approximately $14,000 in unpaid tax bills because he claims he has not received the bills at the mailing address that was on file. Donna believes that the homeowner's primary residential activities take place in Redwood, but she is concerned that if she makes a personal property tax assessment for the Rockingham property, the homeowner may contest the assessment, given that paper records indicate domiciliary status is Rockingham. She would like to know how to proceed.

Personal property at the domicile is exempt, in accordance with G.L. c. 59, § 5, Clause 20. A taxpayer may choose only one domicile for purposes of the exemption. The determination of domicile involves a determination of legal and factual considerations, ultimately determined by a demonstration of where the homeowner seeks to two communities and a question was raised about the domicile.

Domicile is a question of fact to be determined by the Board of Assessors from all evidence and circumstances about where the applicant's family, social, civic and economic life is centered. Ultimately, Ms. Cortez and her board must review the totality of the circumstances and decide whether the taxpayer is domiciled in Rockingham or Redwood. Also, under G.L. c. 59, § 31A, the assessors may conduct a personal property audit at the Rockingham home. The assessors begin the audit by issuing a summons to the taxpayer for production of books, papers, records and other data detailing personal property at the home. Any person or entity required to file a form of list is subject to an audit. If the assessors tax the personal property in Rockingham, the taxpayer can always appeal to the Appellate Tax Board. For further information on personal property audits, please see IGR 2022-10.

Donna Cortez also came across an interesting scenario involving personal property. She noted that the Bailey family, descendants of the founders of Rockingham, has been loaning out pieces of their personal art collection and two elaborate pianos to a local museum. The art pieces and the pianos had previously been housed in the Bailey family mansion. She is quite familiar with the Bailey family, as family members routinely file real estate tax abatements contesting the value of the mansion. In order to save the cost of litigation, the assessors have often settled with the Baileys, and in Donna's eyes the valuation of the home is lower than it should be. Sensing an opportunity to tax the Baileys further, Donna wonders whether the loaning of the art pieces and the pianos mean that they are now taxable as

personal property, as they no longer benefit from the Clause 20 exemption, as they are no longer part of the domicile. How would you advise her?

The art pieces and the pianos are no longer a part of the Baileys' domicile, and they no longer benefit from the Clause 20 exemption. While personal property of an individual only temporarily off the premises may qualify for the exemption, a long-term relocation to another real estate location, other than a licensed public storage facility, does not meet the household furnishings exemption. While the result may seem harsh and would seem to disincentive the loaning or major pieces of art to museums, the statute still allows for personal taxation. There have been attempts to resolve this issue by legislation, but so far Clause 20 remains as is.

Donna Cortez was recently reading the Rockingham Gazzette and came across an advertisement for a local auto mechanic. The auto mechanic's business used to be listed under his own name, Jim Smith, proprietor. In the advertisement, she now noticed that Jim Smith's business name had changed to Jim Smith, LLC. Under Clause 20, the tools and machinery of a mechanic are exempt to any amount. Donna wonders whether, given the corporate name change to an LLC whether Jim Smith's expensive tools are now subject to personal property taxation. How would you advise her?

It really depends on whether the tools and machinery are owned by the Jim Smith as an individual or by the LLC. If owned by Jim Smith as an individual, they are exempt as the tools of trade of a mechanic under G.L. c 59, § 5, Clause 20. If the tools and machinery are owned by the LCC, Donna should consult the Department of Revenue Corporations Book to learn whether the LLC is listed as a business corporation. Limited liability companies (LLCs) treated as corporations for federal income tax purposes are treated as corporations for personal property tax purposes. Business corporations are taxable for machinery used in the conduct of business under G.L. c 59, § 5, Cl. 16.

14. Martin Brody is the new assessor of the seaside town of Jawsville, after having previously served for many years as the assessor in a large metropolitan city. Not only has he been learning about his predecessor's practices, but he has also been trying to adapt to his years of assessing experience to the peculiar circumstances of his new seaside community. Jawsville's town manager Larry Vaughn has been leaning on Assessor Brody to go parcel to parcel to utilize unique appraisal techniques and explore new revenue opportunities for the town. After three months in his new role, Brody thinks he may have found a few opportunities.

Brody noted that a private offshore wind energy producer has received permitting from the US Army Corps of Engineers and state Executive Office of Environmental Affairs to site underground electric cables from its offshore wind turbines to a local beach, where the power lines will connect the wind energy to the regional electricity grid. As an avid fisherman, he knows that the international waters boundary line is twelve miles from the coast of Jawsville. The lines were just connected to the Jawsville power lines last month. He would like to know if the town can impose a personal property tax on the underwater electrical cables in the sea within the territorial limits. Can he do so?

That possibility may exist. DLS' conclusion is that a legal basis may exist for imposing a personal property tax on underwater sea cables, but the issue is one of first impression and its resolution is uncertain. Massachusetts law sets city and town boundaries at the full reach of Massachusetts seaward borders, which are defined by

state law as covering the sea up to the 12-mile US international border. The federal Submerged Lands Act defines state borders as 3 miles offshore, but that limit applies for purposes of ownership of natural resources under the seabed. The Submerged Lands Act does not preclude exercise of the state's police and taxing powers at a greater distance than 3 miles offshore. Still, there is no solid prediction of the outcome of potential litigation challenging the personal property tax assessment.

Assessor Brody explored another possible revenue enhancement opportunity with the combination of two lower value parcels owned by the same owner. He noted that there are a few properties located along the Kimpton River where the parcel owners own low value land on both sides of Kimpton River. He researched deed descriptions for the parcels where the landowners each owned parcels on both sides of the Kimpton River. The deeds he researched each stated that each abutting owner owns the land UNDER the river. He thinks he can use his discretion as an assessor to combine the commonly owned individual riverfront parcels on both sides of the river to create buildable, higher value parcels in each circumstance. Can he do so?

Assessors have discretion to assess contiguous land parcels owned by the same person and used as a single estate as a unit, Franklin v. Metcalfe, 307 Mass. 386, 390 (1940), or separately, Boston v. Boston Port Development Co., 308 Mass. 72, 77 (1941). Massachusetts statutes do not generally define the "lot" or "parcel" of land that is the legal unit for real estate tax assessment purposes. Where an assessor is considering combining two contiguous lots for taxation purposes, court cases have held that the assessor must simply have a reasonable basis for their determination of what constitutes a parcel for tax purposes, and if they do, the assessment will be valid. DLS has advised assessors that "contiguous" means the lots have the same common boundary, meet at some point not separated by land in other ownership, or are separated only by a public way or private way or waterway. Typically, the separate assessments would be based on a deed description or a plan. Regardless of choice of taxable unit, however, the assessed valuation of the property cannot exceed its fair cash value as explained above, but there are certainly instances where combining two undersized lots would create a buildable, higher-value parcel.

In this case, Assessor Brody wonders whether two separate parcels can be combined for assessment purposes where there is a river located between the parcels. The answer to Assessor Broady's question might also depend upon the ownership status of the river, so deeds should be reviewed to determine if the deed descriptions of the lots define whether each property has an ownership interest. With small bodies of water, for example, some deeds will state that each abutting owner owns up to the center line of the water body. If the river is navigable, then the US Army Corps of Engineers owns the river. Also, DCR has certain ownership rights of rivers for varying purposes. Because the deed descriptions state that each abutting owner owns the land UNDER the river, there is some ambiguity as to who owns the river. Therefore, follow-up research will be needed.

While Assessor Brody was seeking to find the possibility of maximizing revenue, a brutal January coastal wind event wrought havoc along ocean-front properties in Jawsville, especially along a barrier island, known as Thumb Island. The storm resulted in a breach in the barrier island, with surging floodwaters breaching a seawall and destroying several oceanside homes in its wake. The storm washed away over five acres of beachfront property. The residents of Thumb Island, descendants of generations of hardy homeowners who had taken pride in repairing their homes immediately after storms, decided to throw in the towel.

Of the original twelve homes on the island, there were now three, and the storm had eroded the typical beach by fifty feet, leaving homes now twenty feet away from the ocean. Jawsville's town manager Larry Vaughn reached out to Assessor Brody for a plan on how to address the assessments of properties owned by owners whose homes have been destroyed by the January storm. What would you advise him to do?

Since the storm occurred in January, Assessor Brody can grant an immediate abatement. G.L. c. 59, § 2D(e) provides as follows:

"Whenever in any fiscal year, the assessed value of real estate is decreased by over 50 per cent excluding the value of the land as the result of fire or natural disaster, the city or town shall abate or refund taxes received, as the case may be, in an amount to be calculated in the same manner as a real estate tax increase, based on the assessed value of an improvement, is calculated pursuant to the provisions of this section. A property owner aggrieved by the failure of the assessors to so abate may, within 1 year following the fire or natural disaster, apply to the assessors for the abatement."

A related question: since G.L. c. 59, § 2D(e) speaks only to an immediate abatement for the damage to the value of real estate excluding land, can Assessor Brody do more to provide an immediate abatement? The answer is probably no.

Also, for future tax bills, Assessor Brody is going to have to assess full and fair valuation for the diminished square footage of the remaining parcels. The result ultimately would be that the town realizes lower revenue from the parcels.

Assessor Brody has examined another opportunity to provide an upward valuation on a property. He observed that a manufacturer located alongside a dam on part of the Kimpton River draws water from the river for its manufacturing uses. He researched the deed and determined that the deed referenced not only title to the property, but it gave the landowner the right to draw water from the river. The Kimpton River is owned by the Commonwealth of Massachusetts. He noted that G.L. c. 59, § 2B provides that "real estate … owned by the … Commonwealth, if used in connection with a business conducted for profit or leased or occupied for other than public purposes, shall for the privilege of such use, lease or occupancy, be valued, classified, assessed and taxed annually as of January first to the user, lessee or occupant in the same manner and to the same extent as if such user, lessee or occupant were the owner thereof in fee…" He would like advice on whether he may start assessing the manufacturer for the water rights he is utilizing with respect to the Kimpton River.

DLS does not believe the town can assess the company for the land under the Kimpton River based on its water rights. The company is not using, occupying or leasing any particular land in the riverbed in the manner required by G.L. c. 59, §2B, - i.e, it does not have possession of the real estate in question. All it has is a right to draw water from the river and discharge it back. Any such right is appurtenant to the land on which the manufacturing plant is located. The value of those rights should already be reflected in the value of the benefited land since those rights run with the land and would be held by any subsequent owner. It is similar to a right of way a homeowner might have over an abutter's land. It increases the value of the homeowner's property because it creates access and allows development, but it is not separately assessed. However, we may assume the company has a license from the governmental owner to site the water drawing equipment in the river. That would give it a sufficient interest to assess the small portion of land on which the water drawing equipment is situated, pursuant to G.L. c. 59 § 2B. The water rights involved should be coded as class 400 utility land, as

this is a pump facility. The right to draw the water could not otherwise be exercised with such equipment. A similar issue has come up with respect to piers in ocean waters. Provincetown, in 1987, assessed a building built on a pier located on land in Provincetown harbor owned by the Commonwealth, where it was built under a license from the Commonwealth and was used to conduct a business.