

DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

“What’s New in Municipal Law” Workshop F

Anti-Aid + Public Purpose

- **“It is a fundamental principle of constitutional law frequently declared that money raised by taxation can be used only for public purposes and not for the advantage of private individuals” Opinion of the Justices, 313 Mass. 779, 784 (1943).**
- **The authority for cities and towns to spend money arises under G.L. c. 40, § 5.**

Public Purpose Test

- **No universal test, whether the expenditure is required for the general good of the inhabitants of the city or town.**
- **Wages & Benefits- the right to compensate people for services rendered**
- **Merit Awards- The expenditure of public money in recognition of services rendered.**
- **Wine, Liquor & Cigars- Generally prohibited unless used for compliance testing**

Anti Aid

- **“No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth.”**

Anti Aid

- ***Caplan v. Town of Acton* Test:**
 - a) Whether the proposed grant is for the purpose of founding, maintaining or aiding [the institution, private organization, nonprofit, church, etc.]
 - b) Whether the effect of the grant is to substantially aid [the institution, private organization, nonprofit, church, etc.]; and
- c) Whether the grant avoids the political and economic abuses which prompted the passage of the Anti-aid Amendment?

Gifts & Grants

- **Under G.L. c. 44, § 53A, a municipality may accept a gift or grant of money for the purposes or functions the office or department carries out.**
- **These funds are being held in a fiduciary capacity.**
- **The terms of the gift or grant control the use of the funds in accordance with donor instruction and intent. a gift or grant should be designed to enable that department to carry out some aspect of the public mission it was established to pursue.**

FAQs

- **1. The Mayor of Everytown wants to use funds to buy department celebratory drinks after successful project? The Mayor then tells the Everytown Police Department they can't use funds to buy alcohol for underage stings. Is Alcohol purchased by a Municipal Police Department for compliance testing an allowable expenditure by a Town Department?**

FAQs

- **2. As we all know, there have been a great amount of retirements in recent years from municipal positions. The Mayor of Everytown wants to know if plaques and gifts awarded to persons retiring from municipal government or to current employees for outstanding performance during the year are allowed ? Along with the plaque, he would like to hold a pizza party for their division. Is this allowed?**

FAQs

- **3. Everytown has recently constructed a new High School. It took several years to complete, but finally it is open. To show this off to the residents of Everytown, the Mayor would like to host a ribbon cutting ceremony for the public to attend. Would it be appropriate to have Everytown's budget cover the costs of refreshments such as cookies, and waters for the event?**

FAQs

- **4. Everytown employees often have to attend training programs or meetings. Is the Everytown municipal budget able to cover any refreshments like coffee for these trainings. What about light refreshments provided to election workers or lunch served at an all-day training program or planning meeting?**

FAQs

- **5. Often times department heads in Everytown have to attend events such as trainings not sponsored by the municipality. Are reimbursements of a department-head for attending retirement or department dinners or parties or for attending other events not sponsored by the department or municipality allowable expenditures?**
- **6. What about reimbursements of purchases or expenses incurred during authorized travel or while engaged in authorized business?**

FAQs

- **7. What about expenses related to a global pandemic?**
- **8. Can cities and towns appropriate funds to their local housing authorities?**
- **9. Everytown would like to create an economic development funding program and special revenue fund to fund loans and grants to private individuals and businesses for use on private property. The purpose of the program would be to encourage and facilitate economic growth, including the creation of jobs, improvement of buildings and increasing the real estate and general tax base in Everytown. Is this type of program permissible?**

FAQs

- **10. A family in Everytown has recently lost their home in a flood and the family is now permanently displaced for the foreseeable future. Is the town able to start a go-fund-me page for the family to provide aid?**
- **11. What about to aid victims who have been displaced by a fire? Can Everytown allow them to reside rent free in a municipal owned building?**

FAQs

- **12. A beloved teacher passes away suddenly. The teacher has worked for Everytown for 35 years, and was loved by all. Is the town able to spend town funds on a floral arrangement for the funeral?**
- **13. Can the Everytown School Department pay to print and mail a flyer by the Everytown Parent–Teachers Organization to promote a car wash it is holding to raise monies for the schools?**

FAQs

- **14. Can Everytown expend public funds to donate to a homeless shelter?**
- **15. Everytown Middle School has submitted a food reimbursement for Teacher's Appreciation Week. It includes breakfast, snacks and lunch for the entire staff during that week. It is not for the public. Some of it is to be charged to the School Lunch account and some is to be charged to the school operating (Principal's Office expense). Would this be considered a public purpose expense?**

FAQs

- **16. A resident donates \$2000 to the town to spend on sending the chief of police to a golf retreat and spa for a relaxing weekend. Is this permissible?**

Unique Receipts

- **17. In Everytown, Joey Tribiani is a famous actor and is on a soap opera called “days of our lives.” The film crew would like to shoot a scene on a wetland area in Everytown. How would Everytown account for the wetlands fee the Days of our Lives crew would be paying to Everytown?**
- **18. The Police Chief of Everytown is Chandler Bing. He is wondering whether he is able to spend from the town's state law enforcement trust fund, pursuant to G.L. c. 94C, § 47, a drug undercover vehicle?**

Unique Receipts

- **19. Everytown has applied for several state and federal grants. Some of these grants include the Bullet Proof Vest reimbursement as well as the Commonwealth's Municipal Road Safety (MRS). How would these grant reimbursements be treated?**
- **20. Everytown is considering a new cannabis Dispensary called "central perks" to open in the community. Central Perks has agreed to a community impact fee, but also, to build a new playground for the neighborhood. How would the funds for the playground be categorized?**

Unique Receipts

- **21. Everytown is anticipating an opioid settlement payment. How would they account for this receipt?**
- **22. Everytown is anticipating receiving an opioid settlement that only Everytown will be receiving. This receipt is so unique, they are the only community receiving such a receipt. What procedure should they follow?**

Unique Receipts

- **23. Everytown's new High school we mentioned earlier is a Net Zero project. As a result, Everytown has receive monetized credits under the federal Inflation Reduction Act (IRA) for this green energy project. How do they categorize this receipt?**

Commonwealth of Massachusetts



Supporting a Commonwealth of Communities

What's New in Municipal Law

2024

Workshop F – Appropriation Issues

Appropriation Issues

G.L. c. 41 § 15A

Section 15A: Certification of appropriations

Section 15A. City and town clerks and clerks of districts shall, as soon as an order or vote appropriating money becomes effective, certify, in a city to the treasurer, assessors and auditor or similar officer, and in a town to the assessors and the town accountant, if any, otherwise to the treasurer, and in a district to the assessors and the accounting officer, if any, otherwise to the treasurer, each appropriation in detail, and the provisions made for meeting the same, if specified in the appropriation order or vote.

G.L. c. 59 § 23

Section 23: Annual assessment; amount; deductions; approval

[First paragraph applicable as provided by 2016, 218, Sec. 249.]

Section 23. The assessors shall annually assess taxes to an amount not less than the aggregate of all amounts appropriated, granted or lawfully expended by their respective towns since the last preceding annual assessment and not provided for therein, of all amounts required by law to be raised by taxation by said towns during said year, of all debt and interest charges matured and maturing during the next fiscal year and not otherwise provided for, of all amounts necessary to satisfy final judgments against said towns, and of all abatements granted on account of the tax assessment of any year in excess of the overlay and not otherwise provided for or any such deficits resulting from section fifty-three E of chapter forty-four; but such assessment shall not include liabilities for the payment of which towns have lawfully voted to contract debts. Any estimate of interest charges attributable to variable interest rates on obligations issued pursuant to section twenty-two A of chapter forty-four shall be subject to the approval of the commissioner.

Appropriation Issues

Q: What is the starting point for recording appropriations on the tax rate recap?

A: Town meeting/council appropriation votes

An appropriation vote should clearly indicate the:

- Funding Source
- Amount
- Purpose

Appropriation Issues

Article 16: *Motion to raise and appropriate \$649,000 for the security improvements and upgrades for the DPW Main Street sidewalk project.*

Passed unanimously.

Appropriation Issues

Clerk [\(G.L. c.41§15\)](#) and the town accountant are responsible to correctly record municipal appropriations on tax rate recap, page 4.

APPROPRIATIONS									
Delete	City/Town Council or Town Meeting Dates	FY*	(a) Total Appropriations Of Each Meeting	(b) From Raise and Appropriate	(c) From Free Cash (See B-1)	(d) From Other Available Funds (See B-2)	(e) From Offset Receipts (See A-1)	(f) From Enterprise Funds (See A-2)	(g) From Community Preservation Funds (See A-4)
<input type="checkbox"/>	11/13/2023	2024	6,854,773.00	0.00	3,424,688.00	1,235,000.00	0.00	1,432,585.00	762,500.00
<input type="checkbox"/>	05/11/2024	2024	150,000.00	0.00	0.00	150,000.00	0.00	0.00	0.00
<input type="checkbox"/>	05/11/2024	2025	69,036,095.00	56,452,235.00	584,000.00	2,110,479.00	0.00	8,020,058.00	1,869,323.00
Total			76,040,868.00	56,452,235.00	4,008,688.00	3,495,479.00	0.00	9,452,643.00	2,631,823.00

* Enter the fiscal year to which the appropriation relates.
** Appropriations included in column (b) must not be reduced by local receipts or any other funding source.
Appropriations must be entered gross to avoid a duplication in the use of estimated or other sources of receipts.
*** Include only revolving funds pursuant to Chapter 44, Section 53 E 1/2.

Current Documents - [upload new documents](#)

Name	Action
No documents to display.	

Signatures

Clerk

I hereby certify that the appropriations correctly reflect the votes taken by City / Town / District Council.

☐ Check to add signature



Appropriation Issues

==>	22.	MISCELLANEOUS RECURRING	0.00	0.00	0.00
	23.	MISCELLANEOUS NON-RECURRING	199,589.45	0.00	-100.00
	24.	TOTALS	8,635,841.54	6,667,492.00	-22.79

* Do not include receipts in columns (a) or (b) that were voted by the City / Town / District Council or Town Meeting as offset receipts on Schedule A-1, enterprise funds on Schedule A-2, or departmental revolving funds per Chapter 44, Section 53E 1/2. The Recap Page 3 Support form must be submitted to support increases / decreases of estimated receipts to actual receipts.

==> The Recap Page 3 Support form must be submitted to support increases/ decreases of FY 2025 estimated receipts to FY 2024 estimated receipts to be used in calculating the Municipal Revenue Growth Factor (MRGF). The Recap Page 3 Support form must be submitted to list each receipt type included in rows 22 and 23, Miscellaneous Recurring and Non-Recurring.

Current Documents - [upload new documents](#)

Name	Action
No documents to display.	

Signatures

Accounting Officer

I hereby certify that the actual receipts as shown in column (a) are, to the best of my knowledge correct and complete, and I further certify that I have examined the entries made on page 4 of the above-indicated fiscal year tax rate recapitulation form by the City / Town / District Clerk and hereby acknowledge that such entries correctly reflect the appropriations made and the sources from which such appropriations are to be met.

☐ Check to add signature



Appropriation Issues

Three main appropriation issues we see on the tax rate recap:

1. Excess tax revenue raised versus appropriation
2. Insufficiency of tax revenue raised versus appropriation
3. Appropriation of unavailable funds
 - a) Appropriation of free cash/retained earnings after it expires and prior to its recertification,
 - b) Appropriation of free cash/retained earnings in excess of certification.
 - c) Appropriation from funds, not yet in hand or from a general fund revenue prior to certification as free cash.

Examples of these happened multiple times on the tax rate recap for FY2024

Appropriation Issues – Over/Under Raising Funds from Taxation

At their annual town meeting, the Town of Gotham voted the following:

Article 16: *Motion to raise and appropriate \$649,000 for the security improvements and upgrades for the DPW Main Street sidewalk project.*

Question:

The town clerk completed tax rate recap page 4 and, in error, entered in the raise and appropriate column \$946,000 on the tax rate recap. The accountant, busy with getting the free cash submission ready, glanced at tax rate recap page 4 and determined that the clerk's entries were correct. Neither individual recognized this error. What is the ramification to the Town of Gotham?

Answer:

This creates an additional \$297,000 free cash, because there is no offsetting appropriation. The taxpayers were taxed in excess of the appropriation.

Appropriation Issues – Over/Under Raising Funds from Taxation

Question:

What if the entry on tax rate recap page 4 was \$469,000?

Answer:

Insufficient tax revenue would be raised to fund the appropriation in the amount of \$180,000.

As there is a legal appropriation to spend the funds, but an insufficient funding source, free cash will be lower than it could be if the entire appropriation is expended. This is because tax revenue will be below budget by \$180,000.

Appropriation Issues – Over/Under Raising Funds from Taxation

Feeling particularly generous this fiscal year, town meeting attendees in Gotham appropriated \$40,000 for a raise for Robin. Further, these generous residents went to the ballot and passed a corresponding Proposition 2 ½ override vote. As the clerk noted the \$40,000 was already noted on the Levy Limit form in the tax rate recap, he omitted it from the raise and appropriate column on the tax rate recap, page 4.

Question:

What would be the result if the clerk did not enter \$40,000 from the raise and appropriate column on the tax rate recap, page 4, and this error was not discovered by the accountant?

Answer:

Insufficient tax revenue would be raised to fund the appropriation in the amount of \$40,000.

As there is a legal appropriation to spend the funds, but an insufficient funding source, free cash will be lower than it could be if the entire appropriation is expended. This is because tax revenue will be below budget by \$40,000.

Additionally, this error **MIGHT** cause excess capacity to be higher than it should be by \$40,000.

Appropriation Issues – Over/Under Raising Funds from Taxation

Overrides:

The amount showing on the levy limit form is simply to show the increase in the calculation of the levy limit due to the passage of the override vote.

I. TO CALCULATE THE FY 2023 LEVY LIMIT

A. FY 2022 Levy Limit

16,013,293

A1. Amended FY 2022 Growth

0

B. ADD (IA + IA1)*2.5%

400,332

C. ADD FY 2023 New Growth

220,838

C1. ADD FY2023 New Growth Adjustment

0

D. ADD FY 2023 Override

0

E. FY 2023 Subtotal

16,634,463

F. FY 2023 Levy Ceiling

37,863,012

I. 16,634,463

FY 2023 Levy Limit

II. TO CALCULATE THE FY 2024 LEVY LIMIT

A. FY 2023 Levy Limit from I.

16,634,463

A1. Amended FY 2023 Growth

0

B. ADD (IIA + IIA1)*2.5%

415,862

C. ADD FY 2024 New Growth

132,539

C1. ADD FY 2024 New Growth Adjustment

0

D. ADD FY 2024 Override

40,000

E. ADD FY 2024 Subtotal

17,222,864

F. FY 2024 Levy Ceiling

41,728,668

II. 17,222,864

FY 2024 Levy Limit

III. TO CALCULATE THE FY 2024 MAXIMUM ALLOWABLE LEVY

A. FY 2024 Levy Limit from II.

17,222,864

B. FY 2024 Debt Exclusion(s)

1,875,480

C. FY 2024 Capital Expenditure Exclusion(s)

0

D. FY 2024 Stabilization Fund Override

0

E. FY 2024 Other Adjustment

0

F. FY 2024 Water/Sewer

0

G. FY 2024 Maximum Allowable Levy

\$ 19,098,344

Appropriation Issues – Over/Under Raising Funds from Taxation

Remedies?

It depends.....

- We often don't find this ourselves.
- It is most often reported to us as a result of the audit firm finding it during the audit.
- Sometimes, if it causes the free cash proof to be outside of the range, we do find it. It would have to be material enough.

Appropriation Issues – Appropriation from an Unavailable Fund

At their special town meeting on September 12, 2022, the Town of Gotham voted the following:

Article 16: *Motion to appropriate \$75,000 of retained earnings from the Batcave Parking Enterprise Fund retained earnings to purchase a new Batmobile security system.*

The Batcave Parking Enterprise Fund retained earnings, certified on 7/1/2021 expired on 7/1/2022 and have not yet been recertified.

Question:

What will the Bureau of Accounts require the Town of Gotham to do subsequent to noticing this on the tax rate recap?

Answer:

The Bureau of Accounts Director will write a letter to the Gotham accountant indicating that the \$75,000 vote be set up as fund balance reserved for expenditure in the enterprise fund, so that retained earnings at 6/30/2022 will not be overcertified. This is a vote effectively expending free cash without certification by the Director, in violation of G.L. c. 44§53.

Appropriation Issues – Appropriation from an Unavailable Fund

APPROPRIATIONS									
Delete	City/Town Council or Town Meeting Dates	FY*	(a) Total Appropriations Of Each Meeting	(b) ** From Raise and Appropriate	(c) From Free Cash (See B-1)	(d) From Other Available Funds (See B-2)	(e) From Offset Receipts (See A-1)	(f) From Enterprise Funds (See A-2)	(g) From Community Preservation Funds (See A-4)
<input type="checkbox"/>	09/13/2022	2023	160,000.00	0.00	0.00	0.00	0.00	75,000.00	85,000.00
<input type="checkbox"/>	05/09/2022	2023	114,526,988.00	102,677,109.00	0.00	466,311.00	0.00	6,471,729.00	4,911,839.00
<input type="checkbox"/>	05/09/2022	2022	55,000.00	0.00	0.00	0.00	0.00	0.00	55,000.00
Total			114,741,988.00	102,677,109.00	0.00	466,311.00	0.00	6,546,729.00	5,051,839.00

FREE CASH CERTIFICATION

UPDATE FREE CASH

Date Received	Date Submission Completed	Date Certified	Free Cash Amount	Advisor
03/07/2023	03/21/2023	03/21/2023	7,095,199	Andrew Nelson

Appropriation of retained earnings prior to certification

Appropriation Issues – Appropriation from an Unavailable Fund

At their annual town meeting on June 6, 2023, the Town of Gotham voted the following:

Article 16: *Motion to appropriate \$840,000 of free cash to purchase a new Batmobile.*

At the time of the vote, the balance in the free cash account was \$316,559. The Town **over-appropriated** free cash in the amount of \$523,441.

Question:

What will the Bureau of Accounts require the Town of Gotham to do subsequent to noticing this on the tax rate recap B-1 or the free cash submission, Balance Sheet Checklist?

Appropriation Issues – Appropriation from an Unavailable Fund

Answer:

The Bureau of Accounts Director will write a letter to the Gotham accountant, copying the town manager, selectboard chair, and town clerk indicating that:

1. This amounts to the use of free cash in advance of certification.
2. G.L. c.59 § 23 states that appropriations from available funds (free cash), “shall not exceed the sums certified to the assessors and the commissioner by the director of accounts...”
3. In the future the Town will not appropriate from free cash in advance of certification, or the Bureau may take actions, including:
 - a) nullifying the appropriation
 - b) requiring the Town to set up a deficit on the balance sheet, and
 - c) requiring the Town to raise on the next annual tax rate or otherwise provide for the appropriation.

Appropriation Issues – Appropriation from an Unavailable Fund

12a. Report the dates and amounts voted from the free cash certified as of 7/1/2022 in section A or section B based on the fiscal year for which the amount was voted. In section C, enter the Funding Source for votes included in Fund Balance Reserved for Expenditure on the 6/30/2023 balance sheet. The section C total should match the total of section B; please explain any variance in the Comment section at the bottom of the form.

Free Cash Certified 7/1/2022 **4,960,698** Date Certified **01/24/2023**

(a) Less Votes for FY 2023

	Vote Amount	Vote Date
<input type="checkbox"/>	1,300,000	02/14/2023
<input type="checkbox"/>	1,071,959	02/28/2023
<input type="checkbox"/>	1,906,110	06/27/2023
<input type="checkbox"/>	366,070	02/14/2023

4,644,139

(b) Less Votes for FY 2024

	Vote Amount	Vote Date
<input type="checkbox"/>	840,000	06/06/2023
<input type="checkbox"/>	0	
<input type="checkbox"/>	0	

840,000

(c) Fund Reserved for Expenditures - Detail

Free Cash

840,000

Overlay Surplus

0

	Funding Sources Other Than Free Cash	Amount
<input type="checkbox"/>		0
<input type="checkbox"/>		0
<input type="checkbox"/>		0

0

Ending Balance **-523,441** 6/30/2023 Fund Balance Reserved for Expenditures **840,000**

Appropriation of free cash in excess of certification

Appropriation Issues – Appropriation from an Unavailable Fund

At their annual town meeting on April 21, 2024, the Town of Gotham voted the following:

Article 16: *Motion to appropriate \$600,000 from the Ambulance Receipts Reserved Account (RRA) to fund the FY2025 Ambulance budget*

The balance in the RRA at the time of the appropriation was \$228,057.

Question:

What will the Bureau of Accounts require the Town of Gotham to do subsequent to noticing this on the tax rate recap?


Answer:


The Bureau of Accounts field rep. will inquire of the Gotham accountant as to the total of the RRA receipts in the prior fiscal year. Should this amount equal or exceed the amount appropriated, the Bureau will allow the vote to stand. The Bureau of Accounts Director will write a letter to the Gotham accountant indicating that for FY2026, the town should appropriate no more than is in the RRA account at the time of the vote, then raise and appropriate the difference, offsetting the R&A vote by the amount that the Town expects to collect in FY2026.

Appropriation Issues – Appropriation from an Unavailable Fund

B-2

Other Funds

 **B2_001** | B-2 Date of Appropriation 04/01/2024 Source of Fund Ambulance Receipt Fund Col (b) Amount of Appropriation \$600,000.00 is greater than Col (a) Amount in Fund when appropriation was made \$228,056.58. Please upload supporting documentation.

 **Final Tax Rate set.**

Status: FORM APPROVED

Unlock for DLS

Unlock for Community

Jurisdiction Fiscal Year

Delete	Date of Appropriation	Source of Fund	Use of Fund	Col. A Amount in Fund When Approp. was Made	Col. B Amount of Appropriation
<input type="checkbox"/>	04/01/2024	Employee Benefits & Other Insu	Prior Year Bills	1,674,133.59	12,129.40
<input type="checkbox"/>	04/01/2024	Title V Revolving Fund	FY25 Operating Budget	54,420.98	30,000.00
<input type="checkbox"/>	04/01/2024	Ferry Embarkation Fund	FY25 Operating Budget	44,388.00	30,000.00
<input type="checkbox"/>	04/01/2024	Municipal Waterways	FY25 Operating Budget	210,816.47	96,000.00
<input type="checkbox"/>	04/01/2024	Ambulance Receipt Fund	FY25 Operating Budget	228,056.58	600,000.00

Appropriation of funds not in hand at the time
of appropriation

Appropriation Issues – Summary

- Be sure that town meeting/council votes are clear
- Review the entries on recap page 4 prior to submission of the tax rate recap
- Know what funds are available prior to votes of town meeting or city council