

2026 Municipal Law Seminar

WORKSHOP C

Assessing Issues

DISCUSSION SUMMARY

(Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop C 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.

General Instructions: Questions 1-10 relate to an applicant's eligibility for various property tax exemptions where the real property is held in trust or in the LLC form. For these questions, assume that the applicant would otherwise satisfy the eligibility criteria for the exemption if they owned the real property in their own name.

Trusts and Estates Issues

- 1. Blackacre is held in trust. Thomas Townshend is the sole trustee. Beth Bond, Thomas's elderly mother, is the beneficiary. Beth applies for a Clause 41 exemption. Should the Board of Assessors grant it?**

No, the Board of assessors should not grant the exemption because the Supreme Judicial Court has held that, for property placed in trust, the ownership requirement for a personal exemption is satisfied only when the applicant possesses a record legal interest in the subject property. See *Kirby v. Bd. of Assessors of Medford*, 350 Mass. 386 (1966). In other words, a Board of Assessors must deny a senior exemption to an applicant who is not a trustee even if they are a beneficiary.

The legal principles needed to answer this question can be found in Question 1 of [LFO-2022-2](#).

- 2. Same facts as Q1 except Beth has applied for a residential exemption. Should the Board of Assessors grant it?**

No, the Board of Assessors should not grant the residential exemption because the beneficiary is not also a trustee. The Appeals Court held that if the trustee and beneficiary of a trust are not the same person the residential exemption is not available to the applicant/beneficiary. See *Moscattiello v. Board of Assessors of Boston*, 36 Mass.App.Ct. 622 (1994).

- 3. Same facts as Q1 except Beth applies for a veteran's exemption and the municipality has adopted Clause 22G. Should the Board of Assessors grant it?**

Yes, the Board of Assessors should grant the exemption because Clause 22G is a statutory exception to the *Kirby* rule. It provides that Clause 22A, 22B, 22C, 22D, 22E, and 22F may be granted to applicants for their domicile even if the real property "is owned by a trustee,

conservator or other fiduciary” for the veteran’s benefit. The veteran can receive an exemption even if they do not possess a legal interest in the property.

The legal principles needed to answer this question can be found in Question 13 of [LFO-2022-2](#).

- 4. Brownacre is organized as a cooperative corporation. Susie occupies a housing unit as a tenant and shareholder of the corporation. The cooperative corporation is the record owner. Susie applies for a residential exemption. Should the Board of Assessors grant it?**

It depends. The Legislature created a local option for tenant-shareholders of a housing cooperative to be eligible for the residential exemption. The reduction in property taxes is accomplished through an apportionment formula specified in G.L. c. 59, § 5C. This statutory change effectively provided municipalities with the option to opt out of a Supreme Judicial Court decision. See *Born v. Board of Assessors of Cambridge*, 427 Mass. 790 (1998).

- 5. Redacre is held in trust. Tanya Beal is the trustee and is also a named beneficiary in the trust document. Redacre is Tanya’s domicile. Tanya applies for a Clause 41 exemption. Should the Board of Assessors grant it?**

Yes, the Board of Assessors should grant the exemption based on DLS’s interpretation of the *Kirby* decision. *Kirby* spoke of ‘a sufficient beneficial interest’ in the trust property in dicta. The issue of beneficial ownership of the trust property was not litigated and decided in *Kirby*, 250 Mass. at 390. Nevertheless, DLS reads this language to reflect a requirement of ownership of both legal and beneficial interests in the trust property.

The legal principles needed to answer this question can be found in Question 1 of [LFO-2022-2](#).

- 6. Greenacre is held in trust. Theodore Batsum is the sole trustee. Theodore is NOT a named beneficiary in the trust document. But the real property is Theodore’s domicile. Theodore applies for a Clause 41 exemption. Should the Board of Assessors grant it?**

Yes, the Board of Assessors should grant the exemption because Massachusetts law no longer requires that the names of beneficiaries be recorded and the real property is the applicant’s domicile. See G.L. c. 184, § 35. The sufficiency of a beneficial interest can be judged by determining if an applicant in fact occupies the domicile and is therefore presumptively a beneficiary.

The legal principles needed to answer this question can be found in Question 4 of [LFO-2022-2](#).

- 7. Purpleacre is held in trust. Thomas Townshend is a trustee. Timothy Bennington is Thomas Townshend’s elderly uncle. Timothy is also a trustee and he is a named beneficiary in the trust document. Purpleacre is Timothy’s domicile. Timothy applies for a Clause 18 exemption. Should the Board of Assessors grant it?**

Yes, the Board of Assessors should grant the exemption because Timothy is both a trustee and beneficiary. A person who is a co-trustee holds sufficient legal interest no matter how many other persons, family members or not, are also co-trustees.

The legal principles needed to answer this question can be found in Question 7 of [LFO-2022-2](#). Note, however, that special rules are applicable for the Clause 41, 41B, and 41C exemptions.

- 8. Pinkacre is held in trust. Thomas Townshend is the sole trustee. Thomas's elderly aunt, Beatrice Bennington, is the beneficiary. (Timothy and Beatrice are divorced and live apart.) Pinkacre is Beatrice's domicile. Beatrice contends that she is entitled to the residential exemption because she has recorded a homestead exemption for the property. Should the Board of Assessors grant it?**

No, the Board of Assessors should not grant the residential exemption even if the beneficiary of a trust that holds real property has recorded a homestead declaration. The Board should consider the proceedings in *Toutounjian et. al. v. Board of Assessors of City of Boston*, Appellate Tax Board Docket F-355813. In the case, a trust was structured with a different person as trustee and beneficiary. Under the *Moscatiello* rule, this compels the board to deny the exemption. In *Toutounjian*, the Boston Board of Assessors denied the residential exemption. At the Appellate Tax Board, the applicant contended, however, that the beneficiary's homestead declaration qualified her for the residential exemption. The case did not result in a precedential opinion.

The recording of a homestead declaration does not alter the result in *Moscatiello*, which requires an applicant to possess a sufficient legal interest in the property to be eligible for an exemption for two reasons. First, although the homestead law defines "owner" to include the beneficiary of a trust, this provision does not have any bearing on the applicant's qualification for a property tax exemption. See G.L. c. 188, § 1. The homestead exemption expressly excludes local taxes from its protections. See G.L. c. 188, § 3(b)(1). Thus, it has no relevance to property taxes.

The second reason that a homestead declaration does not affect eligibility for property tax exemptions is based on principles of statutory interpretation. The Legislature has created property tax exemptions with "specificity." See *Benjamin Mandelbraut*, No. F346785, 2025 WL 1633748, at *5 (May 29, 2025) (Metzer, dissenting); see also *Phillips v. Equity Residential Mgmt., L.L.C.*, 478 Mass. 251, 259 (2017) ("A statutory expression of one thing is an implied exclusion of other things omitted from the statute") (internal quotations omitted). When the Legislature intended to make a person other than the person with a legal interest in the property it did so explicitly. It did so with the Clause 22G exemption. That exemption permits a veteran to qualify for specified veterans' exemption even if they do not possess a legal interest in the property. See G.L. c. 59, § 5, Cl. 22G. No language granting eligibility for the residential exemption to those without a legal interest in the property is present in that statute. See G.L. c. 59, § 5C.

LLC Issues

- 9. House LLC is the owner of real property. The real property has been Matt Member's domicile for 40 years. Matt Member is the sole member of the LLC. An LLC is a Limited Liability Corporation. Its owners are called members. In a so-called "single-member LLC," there is only one owner. Matt Member applies for the residential exemption. Should the Board of Assessors grant it?**

No, the Board of Assessors should not grant the residential exemption because Matt Member is not the “taxpayer” eligible for the residential exemption. See G.L. c. 59, § 5C. The “taxpayer” is the corporate entity, House LLC. This result is required by the *Mandelbraut* case, which was decided in July 2026. See *Mandelbraut v. Board of Assessors of Boston*, No. 25-P-859.

10. **House LLC is the owner of real property. The real property has been Matt Member’s domicile for 20 years. Matt Member is the sole member of the LLC. Matt Member applies for a Clause 41 exemption. Should the Board of Assessors grant it?**

No, the Board of Assessor should not grant the exemption because the record owner, an LLC, is not eligible for a Clause 41 exemption. Matt Member is not the “record owner.”

HERO Act

11. **Enacted as part of the 2024 HERO Act, Clause 22J permits municipalities by local option to provide an additional exemption for Clause 22, Clause 22A, Clause 22B, Clause 22C, Clause 22E, Clause 22F. Smallville is considering adopting Clause 22J. A town meeting member proposes increasing the Clause 22 exemption amount by 10%. Is that permitted?**

Yes, it is permitted because the statute allows the additional exemption to be up to 100%.

12. **Accepting the Select Board member’s proposal, Smallville decides to increase the exemption amounts by 10%. Enacted as part of the 2024 HERO Act, Clause 22I permits municipalities by local option to increase Clause 22, Clause 22A, Clause 22B, Clause 22C, Clause 22E, Clause 22F annually by a cost-of-living adjustment. In the next fiscal year, Smallville is considering Clause 22I. The same town meeting member proposes applying the increase to only the statutory amount instead of the statutory amount plus the Clause 22J additional exemption. For example, the COLA for Clause 22 would be increased only on the \$400 and then the \$40 additional exemption would be added without a COLA adjustment. Is that permitted?**

No, that is not permitted because the COLA must be applied to the base exemption amount and the additional Clause 22J exemption in municipalities that have adopted both Clause 22J and Clause 22I.

The legal principles needed to answer this question can be found in Question 7 of [Bulletin 2024-5](#).

Unique Assessment issues – solar arrays - churches and parsonages

Case Study 1:

Sarah Baker, the assessor of Bondville, while conducting her cyclical inspections, recently came across a parsonage owned by a local church where the roof was covered with solar arrays. She contacted Pastor Diane Stuart and learned that the church entered into an agreement with a solar energy provider to reduce its energy reliance on more expensive fossil fuel sources. The solar arrays cover the entire roof of the parsonage and produce 125% of the energy used by the church, meaning that it sends excess electricity back to the power grid. Ms. Baker questions whether the locating of the arrays on the roof of the parsonage should result in the elimination of the religious exemption for the parsonage, pursuant to G.L. c. 59, § 5, Clause 11.

Q1. Does fact that solar arrays cover the entire roof of the church parsonage and produce 125% of the energy needs of the church mean that the parsonage no longer qualifies for a Clause 11 exemption?

A1. DLS advises that, for questions on whether a religious organization is using its property consistently with a religious use, determining the eligibility of a religious organization is a question of fact to be determined by the board of assessors, based upon the legal analysis for determining eligibility for the exemption. DLS issued in October 2020 an FAQ on organizational exemptions. In that guidance, we specify the factors to be considered in determining whether the religious entity is using its property in furtherance of its dominant religious mission.

In particular, she should look at the answer to Question 19, on page 8:

What is a house of worship?

A house of worship is a building or structure which is owned by, or held in trust for, a religious organization, which uses and occupies it for purposes of religious services or instruction. It includes the land under the building, land accessory to the use of the building, such as parking lots, and halls used for religious classes and other religious activities. Incidental or occasional use of the property for other purposes does not affect the exemption, as long as the dominant purpose is connected with religious worship or instruction, i.e., it accompanies and supplements the religious work of the organization. See *Our Lady of La Sallette, Inc. v. Assessors of Attleboro*, 476 Mass. 690 (2017).

However, any part of the property regularly leased or occupied for other purposes is taxable. 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).

Sarah and her board should review the parsonage and determine whether the solar arrays are the dominant use of the property, or whether they are incidental to the use of the parsonage as a ministerial residence. While the solar arrays are taxable, the church does not lose its religious exemption.

Q2. How would you advise Sarah Baker in a different scenario? For example, what if, instead of locating solar arrays on the roof of the parsonage, the solar power company located solar arrays on the entire one-acre parking lot?

A2. As stated previously, incidental or occasional use of the property for other purposes does not affect the exemption, if the dominant purpose is connected with religious worship or instruction, i.e., it accompanies and supplements the religious work of the organization. See *Our Lady of La Sallette, Inc. v. Assessors of Attleboro*, 476 Mass. 690 (2017). However, any part of the property regularly leased or occupied for other purposes is taxable. 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).

If the use of the parking lot for church purposes is hindered by the presence of the solar arrays, Sarah Baker and her board would probably consider that the solar arrays are the dominant purpose, and hence, the parking lot cannot be considered as furthering the religious purpose.

The case of *Our Lady of La Sallette, Inc.* demonstrated that portions of a religious property may become taxable if the dominant religious purpose no longer exists.

Q3. How would you advise Sarah Baker if the solar arrays were part of a canopy, like we see at some parking lots, where cars may park underneath the solar arrays and churchgoers benefit from avoiding rain on their way to attend church services?

A3. In that scenario, Sarah Baker and her board members may determine that the presence of the solar arrays does not impact the dominant purpose of the parking lot's allowing churchgoers to park in the parking lot and attend religious services or other events in furtherance of the church's mission.

Q4. With regard the prior scenario, does the dollar value of the lease payments made by the solar company to the Pastor Diane's church have any bearing on whether the property nonetheless qualifies for a religious exemption?

A4. As stated previously, courts have determined that eligibility for religious exemptions is determined based upon the dominant use of the property.

Considerations where exemptions are created by special act

Case Study 1:

Statutory Exemption:

Jodie Riley, assistant assessor in the Town of Greenwood, received a first-year exemption application from Annette Jones, a married senior citizen homeowner who also owns a retail business. She rents a space in Greenwood. Her husband Gerry has a painting business with minimal assets. The family also received a check in the amount of \$26,000 from their homeowner's insurance policy to reimburse them for storm damage to their home resulting from a damaging snowstorm last January. Between their Social Security and gross income from their IRS Profit and Loss statement, Jodie calculated that Annette and Gerry make too much for a Clause 41C exemption.

Annette calculated that her and her husband's combined business income was the net amount after expenses. Also, the website for Annette's retail operation shows that her store has an impressive inventory, but Annette claims that she sells most of her retail items on a consignment basis, and she claims \$5,500 as inventory on the Form of List that Jodie asked her to fill out. On paper, Jodi figured that the couple qualified for a Clause 17D (what she presented to the assessor), but Jodie questioned Annette on what the business operation was worth. Annette could not calculate the worth of the business.

Jodie wonders if she should ignore the worth of the business focus her analysis based upon the numbers that Annette supplied.

She has three questions:

Q1. Should she use the gross amount of assets or the net amount after calculating losses?

A1. There is no gross receipts test for Clause 17D, but there is a whole estate test. The whole estate is defined as all assets to which the applicant has legal title and access as sole, joint owner or trustee that contributes to his or her total worth.

Q2. With regard to the store, Annette claims that the value of the inventory, which is \$5,500, should be used as the value of the asset. Is she correct?

A2. Regarding inventory on consignment and who has legal title to the inventory, it is up to the applicant to provide information sufficient for the Board of Assessors to determine the applicant's eligibility for an exemption. Jodie may request that Annette and Gerry provide any further information needed by the Board and perhaps in this case there is documentation with respect to the consignment agreement and documentation as to who has legal title of the inventory. What a business is worth is probably more than assets minus liabilities and is seemingly beyond how whole estate is presented in Course 101 Handbook, Chapter 7, subsection 3.2.7.2 on page 7-11. Ultimately, though, the Board must make their best determination as to eligibility.

Q3. How are the insurance proceeds treated?

A3. If the taxpayer is holding insurance funds in their checking or savings account on the qualification date of July 1, it is treated as an asset and counted toward the whole estate limit. Gerry and Annette must satisfy the test relating to assets, in addition to all other eligibility requirements and must meet all eligibility requirements as of July 1 of the tax year. Gerry and Annette would also need to spend the funds on repairs before the next qualifying date to reduce their assets.

Special Act:

Q4. Let's assume that Annette and her husband's total receipts and assets exceed the limits to qualify for a Clause 17D exemption or any other the local option provisions for increasing the whole estate and assets limits. The Town of Greenwood recognized the need for the wealthy seaside town to provide financial incentives for small business owners and contractors like Annette and Gerry to remain in the town. Can the town take any other measures to provide Annette and Gerry financial relief?

A4. Yes, the town may petition the state legislature for a Home Rule Petition increasing the whole estate and asset limits to allow Annette and Gerry to obtain senior exemption on their property. The Town can choose to tie the increased amounts to the senior citizen circuit breaker amount, shift the burden from other residential property owners or utilize the assessors overlay account.

Case Study 2:

Jesse Rodriguez is the assessor for the Town of Riverview. The Town has long been home to the Harrington School for the Horace Mann Learning Center for the Deaf and Hard of Hearing and the Daniel Howe School for the Blind. Graduates of both schools tend to remain living in Riverview as adults due to the town's many accommodations to its residents who are blind and hearing impaired. Jesse has handled many applications for G.L. c. 59, § 5, Clauses 37 and 37A property tax exemptions for legally blind persons who meet specific occupancy and ownership requirements. Clause 37 applies unless the legislative body of your city or town has voted, subject to local charter, to accept Clause 37A. The eligibility requirements are the same for both clauses, but Clause 37A provides a higher exemption benefit. The exemption applies to eligible

taxpayers' domiciles. Lately, Jesse has been getting questions as to whether there is a similar property tax exemption for residents who are deaf and hard of hearing.

Statutory Exemption:

Q1: Is there such an exemption available?

A1: Answer: No, Massachusetts General Laws presently provides no exemption for the domiciles of deaf and hard of hearing.

Special Legislation:

In the last year, as a result of advocacy from blind and deaf residents of Riverview, the town obtained special legislation through a Home Rule Petition to allow the town to provide an exemption for the deaf and hard of hearing. In this situation, the town was able to respond to a localized situations and petition the state legislature to adopt a new exemption that allowed for the creation of such an exemption. As a result, Jesse Rodriguez began creating application forms to allow eligible applicants to apply for the new exemption.

Case Study 3:

Assessor Ralph Stanley of the City of Eastbrook was faced with a question from the guardian of a minor adopted child, whose mother Gina Buckingham was killed in the line of duty as a City of Eastbrook police officer. The guardian is the trustee of the property of the deceased officer. The minor child had been the beneficiary of a trust which held ownership of the real estate of the deceased police officer. The guardian is seeking an opinion from Assessor Stanley as to whether the real property in held in trust for the minor child would qualify for a full exemption, pursuant to G.L. c. 59, § 5, Clause 43. Is the real estate held in trust on behalf of the minor child eligible for a full exemption under Clause 43?

Statutory Exemption:

Q1. Is the real estate held in trust on behalf of the minor child eligible for a full exemption under Clause 43?

A1. No, the real estate of the surviving minor child is not eligible for a full property tax exemption because the surviving minor child is not the owner of the subject property, because the child is only a beneficiary.

Special Legislation:

Q2. Due to the harsh result of denying the Clause 43 exemption for the real estate held in trust for the surviving minor child, the City of Eastbrook obtained special legislation to provide the real estate of the surviving minor child a full exemption under G.L. c. 59, § 5, Clause 43. The special legislation, and ones like it, are seemingly necessary in scenarios where the surviving minor child is not the owner of the subject property either because the deed has not been transferred to them directly or else because they are only beneficiaries, rather than trustees, of a surviving trust. This becomes an issue because ownership is a prerequisite for exemption from qualifications.