



**THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE INSPECTOR GENERAL**

**A Study of Improper  
Motor Vehicle Registrations**

**Robert A. Cerasoli  
Inspector General  
March 1997**



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His Excellency the Governor

The Honorable President of the Senate

The Honorable Speaker of the House of Representatives

The Honorable Chairman of the Senate Ways and Means Committee

The Honorable Chairman of the House Ways and Means Committee

The Honorable Chairman of the Senate Post Audit and Oversight Committee

The Honorable Chairman of the House Post Audit and Oversight Committee

The Directors of the Legislative Post Audit and Oversight Bureaus

The Secretary for Administration and Finance

Members of the General Court

*Omnibus ad quos praesentes literae pervenerint, salutem.*

I am today releasing a report, mandated by Section 311 of Chapter 38 of the Acts of 1995, that addresses the problem of motor vehicles that are owned by Massachusetts residents who improperly register their motor vehicles in another state or another city or town to evade higher insurance premiums, registration and titling fees, and sales and local motor vehicle excise taxes.

During the course of this review, investigators from this Office were able to substantiate that most of the individuals whose motor vehicles were improperly registered out of state, or in another city or town, had made statements of fact that confirmed their residency in Massachusetts. The principal residence of individuals was verified using information contained in public documents in which assertions were made by the motor vehicle owner that established his principal residence in Massachusetts. Most of these documents contained statements that were signed under pains and penalties of perjury and are on-line and readily accessible by computer.

My Office has found indications that more extensive tax evasion or fraud can occur when individuals and businesses improperly register their motor vehicles out of state. An individual may disavow Massachusetts residency and register a motor vehicle out of state and at the same time receive a property tax exemption on property in Massachusetts that the owner claims as his principal residence in order to qualify for the abatement. Massachusetts businesses may short-change the State by underreporting business information on tax returns and forms. The Commissioner of Revenue warns income tax filers: "You cannot choose to make your home in one place for the purposes of life and in another for tax purposes." That is clearly the message of this report.

I have concluded that the common goal of achieving proper registration of motor vehicles in the Commonwealth cannot be accomplished using the tools for enforcement currently available to State and local police. Therefore, I have filed legislation that will provide for a level playing field and curtail the recurring opportunities for improper registration. This legislation will ensure that the Commonwealth and its cities and towns collect the millions of dollars in tax revenues due from these chronic cheaters. I urge you to support this legislation that will establish well defined rules that will govern motor vehicle registration requirements. These requirements to register a motor vehicle in Massachusetts will be directly linked to the owner's own declarations and statements in which Massachusetts residency is established. The bill also requires all motor vehicles operated on Massachusetts roadways to have proof of liability insurance and that leased motor vehicle registrations include the identity of the lessor and lessee. Those who are found guilty of tax fraud associated with improper motor vehicle registrations will be required to relinquish their professional licenses and certificates and pay stiff mandatory fines. To get this program off the ground, I have recommended that the Registrar of Motor Vehicles and the Commissioner of Revenue design and implement a three month amnesty program to allow the scofflaws a brief period of time to comply with the motor vehicle registration and tax laws of the Commonwealth.

The State Police units, the North Shore police departments, the Registry of Motor Vehicles, the Department of Revenue, the local assessors in Massachusetts and New Hampshire and the New Hampshire Department of Public Safety provided much insight, cooperation and assistance in this investigative study and all were exceptionally responsive to the needs of my staff.

I would like to thank Fran Brown, First Assistant Inspector General and Nancy Gordon, Deputy Chief for Legislative and Public Policy; and Noreen Hazelton, Chief of the Asset Management Division for conducting this investigative study, providing recommendations, and writing this report.

Sincerely,

Robert A. Cerasoli  
Inspector General

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## EXECUTIVE SUMMARY

In this report, the Office of the State Inspector General recommends implementation of a sweeping high-technology crack-down on motor vehicle-registration fraud committed by Massachusetts citizens and businesses. The report recommends the implementation of tough new measures to detect and penalize motor vehicle owners who cheat their fellow motorists by dodging the payment of taxes, fees and insurance premiums by illegally registering their vehicles out of state or out of town. Vehicle registration fraud costs the state and its cities and towns millions of dollars each year.

For many years, tens of thousands of Massachusetts motor vehicle owners have gotten away with this illegal activity despite the conscientious efforts of law enforcement officials to stem the tide. In some cases, violators simply do so by lying to law enforcement officials and the Registry of Motor Vehicles about their principal residence. In most cases, however, these same violators have already told other agencies of government that their principal residency is located in Massachusetts. Apparently with little or no fear of detection, these violators tell two different stories to different government agencies, and generally get away with it.

The Inspector General's report demonstrates that currently available powerful computer record-matching technology, coupled with a broad array of government data sources, is capable of catching those violators who have left a record -trail demonstrating Massachusetts residency. Passage of provisions in House 147 of 1997 will provide for tighter motor vehicle registration and insurance requirements.

The report recommends an unprecedented program utilizing state -of-the-art computer technology to allow law -enforcement agencies to implement a system-wide crackdown. The new high-technology initiative is aimed at identifying

violators by crossmatching all available local, state, and federal data sources with motor vehicle registration records.



I was investigating a car that was registered in New Hampshire and suspected of being owned by a Massachusetts resident. As it turned out, the owner lived in Massachusetts subsidized housing...and paid in-state tuition rates at a Massachusetts college. When I questioned her, she kept insisting she was a resident of New Hampshire.  
- Haverhill Police Officer

## **BACKGROUND**

Section 311 of Chapter 38 of the Acts of 1995 mandates that the:

inspector general shall conduct a study of improper registration of motor vehicles which are actually garaged in the commonwealth but are registered and insured in another state or are registered in a city or town, but actually garaged in another city or town...and an analysis...of the economic impact...on the sales and excise tax revenues and insurance coverage costs...and submit the findings and recommendations to the...committees on ways and means

Massachusetts residents are required to register their motor vehicles with the Massachusetts Registry of Motor Vehicles and carry a minimum amount of compulsory liability vehicle insurance. Compulsory insurance consists of four parts: bodily injury to others, personal injury protection, bodily injury caused by an uninsured auto, and damage to someone else's property at a minimum of \$20,000 per person and up to \$40,000 per accident (M.G.L. c.90 §§ 3,9,34A). A motor vehicle that is owned by a non-resident of Massachusetts and is in the possession or control of a Massachusetts resident for more than 30 days in the aggregate within a calendar year (such as a leased or borrowed vehicle) must be registered in Massachusetts also (M.G.L. c.90 §3). The owner of the motor vehicle or trailer is required to pay the sales tax on the vehicle directly to the Registrar of Motor Vehicles [M.G.L. c.64H] when the motor vehicle is titled and registered in Massachusetts. Massachusetts motor vehicle owners are also required to pay a motor vehicle excise tax on an annual basis to their city or town tax collectors. The amount of motor vehicle excise tax due each year is based upon the manufacturer's suggested list price for that vehicle when new. As the vehicle ages, the motor vehicle excise tax is

calculated by applying \$25 per thousand to the depreciated value of the vehicle [M.G.L.c.60A].

For decades the problem of Massachusetts residents who improperly register their motor vehicles in other states has vexed law enforcement and tax enforcement officials. These motor vehicles, which are customarily garaged in the Commonwealth, are registered out of state to evade the high insurance premiums, registration and titling fees, state sales tax and local motor vehicle excises incurred by owners of motor vehicles registered in Massachusetts. A variety of crackdown initiatives have been pursued to eliminate improper out-of-state registrations, but success has been limited to one motor vehicle at a time. State and local police in cities and towns near the New Hampshire border have had considerable success in identifying scofflaws, but improper motor vehicle registration remains a time-consuming compliance quandary with no end in sight. This Office has reason to believe that proper registration of motor vehicles in the Commonwealth cannot be accomplished within the current statutory and regulatory structure.

According to tax collection figures for fiscal year 1996, the Commonwealth collected \$365,380,000 in taxes from the sale of motor vehicles (House 1, fiscal year 1998, projects \$399 million in motor vehicle sales tax collections). Locally, cities and towns collected \$381,495,196 in motor vehicle excise tax receipts for calendar year 1995. Projected motor vehicle excise tax revenue collections for calendar year 1996 are estimated to have dropped to \$339,991,000. Each of these taxes provides substantial revenues for the State and its municipalities. If the projected drop in motor vehicle excise tax collections proves to be true, it is even more important that motor vehicles be properly registered in the Commonwealth to insure optimum revenue collection in cities and towns.

A Department of Revenue analysis of a hypothetical automobile with a manufacturer's list price of \$12,800 would generate a total of \$720 in motor vehicle excise taxes over a five year period calculated on the depreciated value of the manufacturer's list price. The sales tax is assessed upon the sales price of the motor vehicle purchased, less any trade-in allowance. A \$640 sales tax payment would result. If the sales price was reduced by a \$4,000 trade-in allowance, the outcome would be a sales tax of \$440. The motor vehicle excise tax packs more of an economic punch because the excise is assessed and collected yearly on a depreciated value of the suggested list price and does not consider the original sale price or the condition of the motor vehicle.

This Office is unable to quantify precisely the loss in state and local tax revenues and foregone insurance premiums due to improper registration of motor vehicles. No comprehensive list presently exists of motor vehicles that are improperly registered at a location where the motor vehicle is not customarily garaged. Nonetheless, this Office concludes with confidence that the Commonwealth is losing hundreds of millions annually in tax revenues and insurance premiums based upon the background investigations conducted for this report. The situations and details provided in this report depict the far reaching ramifications of improper out-of-state registrations and their impact on the Commonwealth's citizens and businesses.

## INTRODUCTION

In many instances Massachusetts residents attempt to avoid the payment of auto related taxes and expenses by claiming to be out-of-state residents who customarily garage their motor vehicles in other states. Legal disputes about the requirement to register a specific motor vehicle in a particular state pivot on the interpretation of the words "resident," "nonresident," and "customarily garaged." In a typical case, a person often claims to have more than one abode or place of residence, including one in and one outside Massachusetts, while he asserts that his legal residence is not in the Commonwealth. This person may have acquired and indefinitely maintained a regular place of abode in the Commonwealth, but the owner claims that the motor vehicle in question is properly registered out of state. Massachusetts registration rules require Massachusetts residents to register their motor vehicles in Massachusetts. Also, state law requires motor vehicles that are not owned by a Massachusetts resident, but are in the control of a Massachusetts resident for more than thirty days, must be registered in the Commonwealth.

As part of this investigation, this Office tested the theory that readily available Massachusetts residency information could be used to identify many Massachusetts motor vehicle owners who evade motor vehicle taxes by wrongly claiming that their motor vehicles are customarily garaged out of state and that they are not residents of Massachusetts. This Office was able to verify instances where individuals registered their motor vehicles out of state while simultaneously asserting their Massachusetts residency on other forms and documents submitted, under pains and penalties of perjury, to state and local government agencies and lending institutions. In such instances, these citizens submitted applications and state tax returns to obtain a tax benefit or other advantage granted to eligible Massachusetts residents. Many citizens who have motor vehicles registered out of state also have residential home mortgages in which they pledged to the lending institutions that the mortgaged Massachusetts property would be occupied as their principal residence.

The requirement to occupy the mortgaged Massachusetts property as a principal residence is a standard provision in the homeowner's mandatory liability insurance policy. Additionally, when Massachusetts homeowners file their federal tax returns, these homeowners identify their Massachusetts address on their tax return and claim a deduction for their mortgage interest as well as state and local taxes paid on their principal residence in Massachusetts. Massachusetts municipalities provide statutory and local option property tax exemptions to residential property owners who have sworn on exemption applications that the Massachusetts dwelling is occupied as the owner/applicant's principal residence. Other taxpayers, who file Massachusetts resident personal income tax returns, routinely take the deduction on their Massachusetts tax obligation for a portion of their rent on the Massachusetts unit they claim as their principal residence.

Motor vehicle owners should not be permitted to identify a specific Massachusetts residence as the one they occupy as their principal residence to numerous taxing jurisdictions or other interested parties, and then turn around and maintain that their motor vehicle is not customarily garaged in Massachusetts where they live. Contradictory residency declarations call into serious question the likelihood that the motor vehicle registered in another state is customarily garaged at a location that is not the owner's principal residence. The Massachusetts Commissioner of Revenue warns income tax filers: "You cannot choose to make your home in one place for the purposes of life and in another for tax purposes." In other words, it is illegal for an individual to claim residency in Massachusetts in order to gain tax or other benefits, and disavow his Massachusetts residency in order to evade Massachusetts motor vehicle registration fees and taxes owed on a motor vehicle customarily garaged in the Commonwealth.

This Office also examined small businesses and certain domestic and foreign corporations with established businesses in the Commonwealth. Officials of some of the companies profiled in this report admitted that while most of their business is conducted in Massachusetts, the business' motor vehicle fleet is registered in another state. By this practice, these companies evaded the payment of state taxes and fees and may have gained an unwarranted competitive advantage over other Massachusetts businesses that complied with the requirements to register their company vehicles in Massachusetts. Some of these businesses located in Massachusetts may have also evaded a portion of their Massachusetts corporate excise tax and personal property tax obligations on motor vehicles and machinery used in their business. Some may have failed to pay use taxes on out-of-state purchases and leases of motor vehicles and equipment and some appear to have failed to submit sales taxes collected when merchandise was sold to their customers.

This Office began this investigation by conducting extensive interviews with state and local police departments on the North Shore. Cities and towns in Essex County are known to have large numbers of motor vehicles owned by local residents that are registered out of state. Details and identities concerning potentially improper registrations were obtained from law enforcement officers who assisted this Office, from complaints made to this Office, and information that was developed independently by this Office. Office investigators gathered facts and documents demonstrating that information and technology is currently available in the public domain to identify an individual's residency or business location and activity, as well as motor vehicle registration information. The irreconcilable differences and discrepancies surrounding an individual's statements of legal residency were examined in the context of the individual's motor vehicle registration.

This Office has observed that many motor vehicle owners have created a record-trail revealing apparent inconsistencies in residency declarations made by them concerning vehicles registered out of state or in a neighboring community. Upon review of these cases, this Office concludes that most of the motor vehicles in question were in fact customarily garaged in Massachusetts and, therefore, subject to Massachusetts motor vehicle registration requirements.

The law enforcement officers contacted by this Office have been diligent and creative in their initiatives and strategies to identify the motor vehicle registration violators within their jurisdiction. These officers have extensive experience in identifying and monitoring motor vehicles, determining ownership, and following the complicated procedures that under the law must be observed when stopping suspected violators. These officers are currently constrained by an enforcement structure that is inefficient, cumbersome, confusing, piecemeal, and discouraging. These officers shared with this Office their experiences and valuable insights about the chronic problems they face. Many officers provided this Office with recommendations about how the current system needed to be changed to make their jobs more efficacious, and they made numerous recommendations to reduce the incidents of improper registration of motor vehicles.

This Office believes that the question of where a motor vehicle is customarily garaged should be determined by the preponderance of evidence provided by individuals and businesses in sworn statements or applications where each has made declarations about residency or the operation of a business in Massachusetts. This report will illustrate the inventive methods by which businesses and individuals have shopped around for financial advantages in other states or a neighboring municipality when registering their motor vehicles. In almost all such cases, the individual or business did so in order to establish eligibility for a tax break, save on insurance payments, avoid the payment of fees, or reduce a tax obligation. In these cases, the cheater has worked the system to his or her advantage, typically with impunity. For

many citizens and businesses, the illegal practice of registering motor vehicles out of state or in a neighboring municipality is a gamble they are willing to take because of the relatively low-odds of being caught and prosecuted. As this report will show, detection of individuals who live in Massachusetts and register their motor vehicles elsewhere is greatly enhanced by technological advances and on-line computer access available to government agencies. This easily accessed information is often difficult to refute. The Commonwealth now has the capacity to cross-check motor vehicle registration information against other available public records and by doing so, electronically uncover motor vehicle registration fraud.



## FINDINGS

1. This Office discovered that many of the Massachusetts residents who improperly registered their motor vehicles out of state have signed documents on which they have sworn, under pains and penalties of perjury, that they are Massachusetts residents. There are extensive public records available to document claims of Massachusetts residency. These public records can be utilized to contradict claims of out-of-state residency made by Massachusetts residents who improperly register their motor vehicle outside Massachusetts. Many of these individuals signed State tax returns and home mortgage documents identifying Massachusetts addresses as their principal residence. Some individuals filed applications, under pains and penalties of perjury, in order to qualify for certain benefits or advantages granted to qualified Massachusetts residents. Public records gathered during background checks of suspected violators could serve as solid evidence that a motor vehicle is improperly registered in another state or another city or town. Or conversely, public records could be used to establish that a non-resident of Massachusetts illegally filed a State tax return, improperly signed a mortgage document stating that the Massachusetts property would be occupied as a principal residence, or applied for a tax exemption or other benefit that is only granted to eligible Massachusetts residents. Access to public information about Massachusetts residents is readily available due to the advances in computer technology. Law enforcement officers and Registry officials can easily obtain these public records to substantiate decisions about proper motor vehicle registration and where a motor vehicle is customarily garaged. This information should be permitted in enforcement proceedings to prove the residency of a suspected violator.

**2. This Office learned that many individuals who registered their motor vehicles out of state have residential home mortgages in Massachusetts recorded at the Registry of Deeds.** These Massachusetts residents promised the mortgage lending institution that the mortgaged property would be occupied as their principal residence. Additionally, this declaration to occupy the mortgaged property as a principal residence is made by homeowners on their homeowner's liability insurance policy. Most recorded mortgages state: "Borrower shall occupy, establish and use the property as borrower's principal residence within 60 days." Borrowers that acknowledge owner occupancy in Massachusetts with a mortgage lender cannot properly assert that their principal residence is in another state when registering their motor vehicles. The presumption is that the owner's motor vehicle is customarily garaged at the owner's principal residence.

If the Massachusetts property is not occupied as a principal residence by the borrower, the mortgage company may consider the property a second home or possibly an investment property, and require the owner to re-negotiate the loan. Failure to occupy the dwelling as a principal residence conflicts with the commitment made to the mortgage lender originally. If homeowners declare they are "non-residents" in Massachusetts, they would not be required to register their motor vehicle in Massachusetts. However, the non-resident's Massachusetts property could be considered a second home by the local assessor. As such, the house's furnishings would be subject to a personal property tax. This would be assessed in addition to the tax on the real property itself.

Cities and towns will be able to assess additional motor vehicle excise taxes once motor vehicles are properly registered in Massachusetts. In lieu of additional motor vehicle excise taxes, local assessors will be able to assess and tax the contents of these second homes owned by individuals who have established their principal residence elsewhere.

Some individuals, who are not homeowners in Massachusetts, have claimed non-resident status when they registered their motor vehicles out of state and have filed Massachusetts resident personal income tax returns. These individuals could have possibly taken advantage of the state's "renter's deduction" provided to tenants who occupy a rental unit in the Commonwealth as a principal residence. However, taking this renter's deduction would be inconsistent with their non-resident assertions.

**3. Some Massachusetts businesses that registered their business vehicles out of state may have evaded a portion of their Massachusetts corporate excise tax obligations and personal property tax assessments on vehicles and equipment used in their business located in the Commonwealth.** Some Massachusetts businesses may have purchased their business equipment out of state and later failed to submit the use tax on the goods when the items were used in their Massachusetts business activity. Other companies appear to have failed to submit sales taxes that they are required to collect from their customers for merchandise and replacement parts they sold or installed in the course of their Massachusetts business operation.

**4. This Office learned that tax evasion schemes are possible when individuals improperly register their motor vehicles.** Some have earned wages in Massachusetts, but failed to file state personal income tax returns. Others live and work in Massachusetts and claim residency in another state, but these individuals neglect to file state personal income tax returns where they claim residency, even though that state requires its residents to file state tax returns and report income earned elsewhere. Individuals scrutinized for failure to register their motor vehicles in the Commonwealth have proclaimed residency in Massachusetts to take advantage of tax breaks that are only granted eligible Massachusetts residents.

**5. Uninsured Massachusetts motorists fail to pay a minimum of \$210 to \$300 million in insurance premiums annually.** The Commonwealth should adopt the recommendation made by the State Police Troopers interviewed for this report that proposed adopting mandatory provisions, similar to the state of New York's statutory regulations, which would require motor vehicles that are registered outside Massachusetts to have proof of insurance liability coverage when operating on public roads in this state. This mandate would diminish one the reasons so many Massachusetts residents improperly register their motor vehicles in New Hampshire. Many devastating collisions involve uninsured motor vehicles according to police reports. It was the expressed opinion of a State Police officer that hit and run accidents frequently involved motorists who left the scene because they were operating their motor vehicles without insurance.

**6. The Registry's North Shore pilot motor vehicle registration enforcement program involving local police departments did not survive much past the June 1995 press conference and has resulted in just a handful of police referrals to the Registry.** The most success in registration compliance initiatives were experienced by local police officers who made direct contact with the suspected violators and resolved the registration problems in person.

**7. "Zero Tolerance", A State Police Unit charged with cleaning up M.G.L. c. 90 motor vehicle transgressions, has made a significant impact on motor vehicle crimes and improper motor vehicle registrations violations in Lawrence.** As of December 1, 1996 State Police arrested 1,923 individuals, cited 11,405 violations, issued 1943 warnings and towed 1,893 motor vehicles. Nine hundred (48%) of these towed motor vehicles have been crushed and permanently removed from the road.

**8. In Lawrence District Court the more serious criminal charges of operating an uninsured motor vehicle in Massachusetts were routinely dismissed and most of the same defendants who were found responsible for the lesser civil infractions did not**

**have a civil assessment imposed.**

- 91% of the criminal charges of operating an uninsured motor vehicle were dismissed, filed, or continued without a finding.
- 80% of the violators found responsible for operating an unregistered motor vehicle paid nothing in civil penalties.
- Guilty or responsible defendants paid over 3½ times more in court costs and victim witness fees (\$16,765) than they did in fines for their offenses (\$4,400).

**9. Some Massachusetts owners register their motor vehicles in another community to avoid higher insurance premiums.** This practice constitutes insurance fraud and will result in the owner being denied coverage, if the owner's vehicle is involved in an accident. Improper registrations in another city or town result in the loss of motor vehicle excise tax collections in the community where the car is customarily garaged.

**10. As of November 1996, the 1-800-I-PAY-TAX tip line logged in 1,665 complaints over a six year period.** The cases were resolved as follows:

- 559 (34%) of these motor vehicles had valid out-of-state motor vehicle registrations;
- only 450 (27%) complaints resulted in the owners registering their motor vehicles in Massachusetts;
- 440 (26%) complaints remain unresolved, undeliverable, or their status is unknown;
- 145 (09%) motor vehicle owners had their right to operate a motor vehicle in Massachusetts revoked; and,
- 71 (04%) complaints have hearings pending.

Registry of Motor Vehicle Compliance Hearings on questionable motor vehicle registrations scheduled between May 11, 1995 and February 14, 1996 involving 202

motor vehicle owners with questionable out-of-state registrations reveal that:

- 87 (43%) owners defaulted their RMV hearing, and their right to operate a motor vehicle in Massachusetts was revoked;
- 75 (37%) owners properly registered their motor vehicles in Massachusetts;
- 23 (11%) owners had valid out-of-state registrations; and,
- 17 (08%) owners had their right to operate a motor vehicle in MA suspended.

These Registry of Motor Vehicles hearings to address improper registration of motor vehicles reveal that 48% of the owners either registered in Massachusetts following a Registry hearing or were found to be properly registered elsewhere. More than 50% of the hearings resulted in suspension or revocation of a motor vehicle owner's right to operate a motor vehicle in Massachusetts. These suspensions and revocations of an owner's right to operate his motor vehicle in Massachusetts may not be much of a deterrent to those who choose to improperly register or allow insurance coverage to lapse in the first place.

**11. Motor vehicle registration violators can be found in affluent suburbs, as well as poorer urban communities.** Violators range from individuals to entire families and businesses that register their motor vehicles out of state to evade higher insurance premiums, registration and titling fees, sales and local motor vehicle excise taxes.

**12. RMV Hearings alleging repair plate abuse exceeded the number of 1-800-I-PAY-TAX Hearings alleging improper out-of-state registration during a 13-month period:**

According to Registry case files, 154 companies were called in for a Registry Hearing during a 13-month interval following reports of repair plate misuse. During this same time, registry files indicate that 129 hearings were held due to complaints alleging improper out-of-state registrations received on the 1-800-I-PAY-TAX tip line. There were only 8,330 repair plates issued to repairmen. Still, these repair plates required an excessive number of hearings and attention by law enforcement officials.

**13. Improper motor vehicle registration remains a time consuming compliance quandary with no end in sight.** It is the opinion of this Office that the principal goal of achieving proper registration of motor vehicles in the Commonwealth cannot be accomplished in the current structure. Enforcement of motor vehicle registration requirements is inefficient, cumbersome, confusing, and too piecemeal in its execution.

## LAW ENFORCEMENT AND PUBLIC INFORMATION RESOURCES UTILIZED FOR THIS REPORT

In the conduct of this investigation leading to the issuance of this report, this Office reviewed and analyzed data from state and local law enforcement agencies and departments and conducted interviews with law enforcement officials and insurance industry representatives familiar with aspects of this Office's investigation. More than 1,000 state and out-of-state registrations, vehicle identification numbers, owners and their driving histories were cross-referenced for this study.

- **Seven North Shore Police Departments** that participated in the Registry's pilot registration enforcement program provided this Office with informational interviews and comprehensive records of individuals and businesses in their communities suspected of having improperly registered their motor vehicles. Investigators from this Office accompanied police officers on routine patrols and observed many motor vehicles bearing out-of-state plates at the residence or business of the suspected violator.
  
- **Massachusetts State Police**, assigned to the **Registration Compliance Dealer/Repair Plates and Commercial Vehicle Enforcement**, provided this Office with accident and investigative reports, statistics, and an overview of their enforcement efforts. Special **State Police Strike Forces**, assigned to clean up problems associated with motor vehicles in Lawrence and Haverhill provided this Office with extensive records of citations and the corresponding case dispositions. Investigators from this Office obtained first-hand exposure when they accompanied troopers on their night details. This Office joined with State Police investigators and referred cases for Registry hearings. The outcomes of the Registry's proceedings contributed to major findings in this report. A **State Police Community Action Team** in Boston provided this Office with an overview of their efforts and arrest statistics.



- **The Massachusetts Registry of Motor Vehicles** provided this Office with background information on their own enforcement and hearing initiatives. Investigators from this Office monitored a number of administrative hearings and examined Registry hearing records pertaining to a 12 month period. The Registry provided this Office with its handbook, Law Enforcement Guidelines and Forms For Illegally Registered Out-of-state Vehicles, rules governing the Interstate Registration Plan for the multi-state registration of trucks, and M.G.L. c.90, §5 (special plate) sales tax compliance decals and excise tax bill histories for the 1995 calendar year.
- **The Massachusetts Department of Revenue and Maine's Bureau of Taxation** public information was utilized by this Office to determine whether a suspected violator was a taxpayer for state personal income or corporate tax purposes, and whether a business owner was registered as a sales tax vendor and filed tax returns with the State.
- The source book entitled **Massachusetts Domestic and Foreign Corporations Subject to an Excise**, published and updated by the Department of Revenue, provided ready access to for-profit corporations doing business in Massachusetts.
- **Massachusetts District Court** proceedings and documents involving motor vehicle infractions at the Lawrence and Woburn District Courts. Court documents were analyzed and the State Police prosecutor at each court was interviewed.
- The **New Hampshire Department of Public Safety** provided this Office with information on New Hampshire registration and license policies and specific information about alleged violators.
- Records at **Massachusetts Registries of Deeds** were reviewed to determine

property ownership.

- **Massachusetts Division of Insurance**, the **Massachusetts Insurance Fraud Bureau**, and the **Automobile Insurers Bureau** were consulted to determine the magnitude of the problem of improper automobile registrations and uninsured motor vehicles in Massachusetts. A Massachusetts insurance company provided a computerized software program to this Office that enabled this Office to conduct a statistical analysis of the insurance premiums that owners in our sample would have paid in Massachusetts had they properly registered their vehicles in the Commonwealth.

- **Professional Organizations and Boards of Registration**

This Office reviewed data from numerous professional registries. Many Massachusetts residents are members of professional associations that list their members residential and business addresses. The State Board of Registration, statewide professional associations, and local licensing boards maintain extensive information on members in good standing in professions and trades. The **State Board of Registration** maintains the records of persons holding professional, trade or business licenses. Each applicant for a license signs a tax compliance certificate in which that person swears, under pains and penalties of perjury, that all state taxes have been paid. This information is readily accessible for public examination.

- **Municipal Offices** in Massachusetts and New Hampshire provided information on voter lists, census data, property owners, tax payments, property tax classifications and exemptions. Offices that issue business and building permits to individuals and businesses were checked to determine whether the suspected violators complied with state laws and local ordinances. Local assessors provided this office with extensive tax information relative to motor vehicle excise assessments on individuals and businesses, motor vehicles operated with special

repair, dealer, or contractor registration plates, and real and personal property valuations, assessments, and tax payment histories on businesses reviewed for this report.

- The **Massachusetts and New Hampshire Secretaries of State's** corporate records divisions provided extensive information on Massachusetts corporations doing business in Massachusetts and New Hampshire.
- The **Massachusetts Department of Public Utilities** provided this Office with information pertaining to interstate and intrastate regulations applicable to transporters of individuals to and from Logan Airport and points outside and inside the Commonwealth's borders.
- **The Massachusetts Port Authority** provided this Office with information on passenger van services that transport individuals to and from Logan airport.
- **General information** was acquired from car dealerships, leasing companies, towing businesses, telephone company listings, and private citizens. Investigators from this Office made several site visits to Massachusetts and New Hampshire municipalities to conduct surveillance and collect public information on individuals and businesses that are profiled in this report.

## **VERIFYING INDIVIDUAL RESIDENCY AND BUSINESS LOCATIONS OF MOTOR VEHICLE OWNERS**

Extensive public information resources exist to verify a person's declarations of residency or place of business. Law enforcement officers, the Registry of Motor Vehicles, state tax officials, and individuals could potentially access these public records through computer linkups with various information technology systems. On-line computer assisted investigative searches and cross checks can be conducted to make a determination about the motor vehicle owner's principal residence or place of business. For example, "BOSNET" a public-access service containing on-line public information about residents and businesses in the city of Boston. Tax records, property listings, voter registrations, motor vehicle excise tax status, and other information can be accessed to locate a person's residence or place of business.

Computer link-up programs and information technology systems can assist as an investigational tool to sort out questions of proper registrations. These databases are accessible 24 hours a day. Most have simple menu driven formats allowing for efficient searches for data. Besides municipal data, voter lists and censuses, many Registries of Deeds, records maintained by the Secretary of State, U.S. Bankruptcy Court, boards of registration, and professional associations are computer accessible for general information. Telephone white pages and classified business listings are other sources of routine information. Once background information is obtained about an individual or business, it will be possible to maintain that the motor vehicle is customarily garaged in the jurisdiction in which an individual resides, or the business is located.

For example, public information and records accessible through computer technology will reveal whether a Massachusetts motor vehicle owner paid motor vehicle excise taxes on a motor vehicle registered in a city or town where he is not a resident, whether the Massachusetts resident registered his motor vehicle out of state and

evaded all registration and tax obligations, or whether a non-resident received a property tax exemption on property he owns in Massachusetts but does not occupy as his principal residence. Recorded mortgages at Registries of Deeds will document the borrower's intention to occupy property located in Massachusetts as a principal residence. These public records can be utilized by law enforcement officers to supplement the information they acquire on the automobile owner's motor vehicle registration history.

### **Disclosure of State Tax Filing Information**

Pursuant to M.G.L. c.62C, § 21(b)(7) and (8), this Office requested that the Department of Revenue (DOR) provide tax filing information on individuals and companies whose motor vehicle registration habits were reviewed for this report. By law, DOR is authorized to disclose a limited amount of tax filing information confirming whether a person or business has filed a tax return for any designated tax year. DOR provided Massachusetts personal income tax, corporate excise tax, and sales tax filing histories of individuals and businesses and the company owners that this Office submitted to DOR as part of this investigation. DOR also provided information on whether a vendor is registered in Massachusetts for state sales tax purposes. Sales tax vendor filing histories were provided by DOR on companies that sell or install systems, equipment, materials or component parts at retail sale or in conjunction with a service provided. Massachusetts state sales taxes are required to be collected by vendors when merchandise is sold to customers. Vendors must submit the sales taxes collected from their customers to DOR on a predetermined schedule. Most states have disclosure procedures that respond to inquiries from individuals or other tax jurisdictions concerning an individual or business' tax filing history. This information was utilized in this report to substantiate residency and tax filing activity in Massachusetts.

### **Tax Compliance Certificates for Licenses, Permits and Certificates, M.G.L. c.62C**

The **State Board of Registration** maintains the records of persons holding

professional, trade or business licenses in Massachusetts. State law requires many individuals who conduct a trade or business in Massachusetts to apply for and receive a professional license, certificate, or permit to do so. Recipients of professional licenses sign a CERTIFICATE AS TO PAYMENT OF STATE TAXES, which professes,

Pursuant to M.G.L. Ch 62C, sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

Likewise, tax compliance certificates must also be signed by individuals and companies who are awarded public contracts even if the recipient of the contract does not have a professional license or permit. By cross-referencing these tax compliance certificates against motor vehicle registration and titling records, the Commonwealth can detect individuals and companies that may have evaded sales tax and motor vehicle excise taxes by improperly registering their motor vehicles out of state, or another city or town. If these individuals skirted these state tax obligations, it calls into question the accuracy of their tax compliance certificate statements in which they claim that all state tax payment requirements have been met.

### **Personal Income Tax Filing as a Resident of a State**

Pursuant to M.G.L. c.62C, §5 all state tax returns contain a declaration that all information provided on a tax return is provided by the taxpayer under the pains and penalties of perjury. Taxpayers who file Massachusetts resident income tax returns are making a sworn declaration of residency for state income tax purposes. Massachusetts resident filers, who are not homeowners, may take the \$2,500 renter's deduction when filing their state tax return. In doing so, the filer proclaims on his resident State income tax return that a rental unit in the Commonwealth is occupied by the taxpayer as his principal residence. Filing a state income tax return as a resident of Massachusetts could serve as evidence that an out-of-state motor vehicle registration is invalid.

### **Residency Statements on Home Mortgage Loans**

Home mortgage lenders, as a condition for a mortgage approval, commonly require the loan applicant to agree that the mortgaged property will be occupied as the applicant's principal residence during the term of the loan. Home mortgage applicants sign documents, under pains and penalties of perjury, asserting that the loan is being sought for a dwelling that will be occupied as a principal residence. Some loan application packages require the applicant to waive confidentiality of his future 1040 tax filings, thereby allowing the lender to check on the federal tax filing address of the borrower. State tax officials could request this information during a taxpayer audit to corroborate residency claims.

### **Residency Claims for Federal Income Tax Deductions**

The Internal Revenue Code provides for itemized deductions of interest payments made on mortgaged primary residences. Once again, declarations are made, under the penalties of perjury, that the mortgaged property is occupied as a principal residence. The Department of Revenue has access to the same federal tax filing information through computer links with the Internal Revenue Service. Shared information between taxing jurisdictions allows interested parties to verify whether a taxpayer is reporting all of his taxable income from all sources and the address the taxpayer used when filing his tax returns.

### **Residency Declarations for Property Tax Abatements**

Property owners are listed and cross-referenced by name and street. Applications for property tax exemptions are open to the public as well as local property and motor vehicle excise tax payment histories. Statutory property tax exemptions in M.G.L. c.59, §5 require the owner/applicant to occupy the Massachusetts dwelling as a principal residence in order to qualify for a tax exemption on all or a portion of a local property tax bill. Additionally, some exemptions require that the applicant be a Massachusetts resident for at least five consecutive years as a prerequisite for the property tax exemption. Local assessors require the taxpayer to sign the application,

under pains and penalties of perjury, that the property upon which the tax exemption is sought is occupied by the owner/applicant as his principal residence. Supporting documentation to prove residency accompanies most applications. Cross-referencing these public records will reveal whether the individual who received the property tax exemption has registered his motor vehicle to an address that is different from the address he claims as his primary residence.

If the Massachusetts dwelling is not the owner's principal residence, different property tax rules apply. If the Massachusetts property is a second home, the dwelling's household furnishings and effects would be subject to a personal property tax, in addition to the tax on the real property itself. The owner would not be eligible for a local property tax exemption provided to owners who occupy the property as their principal residence (M.G.L. c.59, §5, Cl. 20). In order to verify a person's legal domicile, or primary residence, many assessors have stated that they check the voter registration lists, street listings, census, and motor vehicle registrations. Some assessors ask for a tax return to determine where a primary residency has been claimed. This information helps the assessor determine whether the property is a principal residence or a second home, and the owner's qualifications for a property tax exemption. For example, many elderly citizens are Massachusetts homeowners but claim Florida as their primary residence and file a homestead there for tax purposes. Many assessors call Florida or other states to independently verify the accuracy of the residency information.

### **Residency Disclosure for Employment Purposes**

There are employment situations where a person is required to file a certificate of residency, signed under pains and penalties of perjury, stating his or her name and place of residence in a city or town in the Commonwealth in compliance with a residency ordinance or mandate for employment with a governmental entity. Prospective and current employees supply supporting documentation in order to fulfill the residency standards associated with the terms of employment.



## **Residency Information for Educational Purposes**

Massachusetts state sponsored colleges, community colleges and universities have a two-tiered tuition scale. Out-of-state tuition costs are considerably higher than tuition charges paid by students that are Massachusetts residents. At Salem State College for example, tuition is \$5,542 for out-of-state students, but only \$1,408 for students who are Massachusetts residents.

Massachusetts residency is an issue for attendance at public elementary and secondary schools. Children and dependents are enrolled tuition free in local public schools in the Commonwealth based upon the expectation that the student lives in that municipality and is therefore eligible to attend its local public school for free. In Boston a public exam school student's residency is closely scrutinized and has been the subject of legal and administrative challenges. In cases involving eligibility for exam school enrollment, residency in a particular city or town is a high stakes issue.

## **Municipal Census, Listings of Voters, Property Owners, Motor Vehicle Owners, Local Business Permits and Local Tax Collection Records**

Massachusetts residents are listed on census reports and voter registration lists. Residents sign annual municipal census forms, under pains and penalties of perjury, declaring their residence at a certain street address in a city or town in the Commonwealth. Municipal permits list individuals and companies conducting a trade or business in the Commonwealth.

This Office utilized many of these data sources to determine whether a preponderance of the information in the public domain indicated that a person was most likely a resident of Massachusetts and that the out-of-state registration of this person's motor vehicle was improper and a violation of M.G.L. c.90 motor vehicle registration requirements. These resources were utilized in this report to dramatize the broader tax fraud ramifications when individuals and businesses improperly register their motor vehicles out of state.

## **IMPROPER OUT-of-STATE REGISTRATIONS**

A common misconception is that most motor vehicle registration violators are people who cannot afford to register and insure their mid-to low-priced motor vehicles in Massachusetts. However, these people represent just one portion of the violator population. This Office's research indicates that violators can be found in affluent suburbs as well as poorer urban communities. This Office found it easy to locate violators among the wealthier populations of Boxford, North Andover and Andover. Violators range from individuals to entire families and businesses that register their motor vehicles out of state. Many violators are Massachusetts homeowners and some have residences that are valued up to \$700,000. These homeowners claimed to be out-of-state residents when registering their motor vehicles, and claimed to be Massachusetts residents on applications for home mortgages and tax exemptions. Violators register their vehicles out of state using the out-of-state address of a relative, friend, a second home they own, or a fictitious address. This Office found circumstances where Massachusetts addresses were listed on New Hampshire automobile registrations with no New Hampshire affiliation or location listed.

## LOCAL NORTH SHORE INITIATIVES

This Office interviewed police officers in Andover, Boxford, Haverhill, Lawrence, Newburyport, North Andover, and Salisbury to discuss their activities to curb improper out-of-state registrations in their communities. They provided names of individuals and businesses in their communities that had motor vehicles improperly registered elsewhere. This Office accompanied state and local police on patrol. The motor vehicles bearing improper plates were easily located at the residence or business of the suspected violator. These officers have been diligent and creative in their initiatives and strategies to identify the violators within their jurisdiction. Exhibited in these officer's experiences is a myriad of creative means to identify and monitor the suspect motor vehicles and determine ownership. These officers have become very insightful about the chronic problems they face when attempting to prove that a motor vehicle is improperly registered. Many provided this Office with recommended changes to the current system to make their work practical and effective. The officers want to shift the burden and make it more difficult to improperly register out of state or another city or town. All law enforcement officers agreed that improperly registering a motor vehicle out of state is easy to do despite their efforts to curb the problem.

There was an attorney in town who owned a home and had kids in the school here. He had his Porche registered in New Hampshire. He would take the front plate off and back his car in his garage. He also placed a bag over the plate to conceal it. When I questioned him about the car, he asked to talk off the record. He said he was not going to register in Massachusetts. I told him his license to practice law could be in jeopardy. He changed his mind and decided to register in Massachusetts. - Andover Police Officer

According to local police officers, the estimated number of improperly registered and unregistered motor vehicles in four north shore communities range from 35 motor vehicles in Boxford, 165 motor vehicles in Newburyport, 2000 motor vehicles in Haverhill and 10,000 motor vehicles in Lawrence. Each police force attempts to combat improper out-of-state registrations. They use dedicated and determined night shift officers to identify, classify and investigate violators in their jurisdictions. To identify violators, officers target motor vehicles parked overnight at apartment complexes, on public housing authority property, and in specific neighborhoods. Registry of Deeds recordings of recent real estate transfers also serve as a source to identify new residents that may be operating with out-of-state plates. Some officers follow up on each home sale to scrutinize the motor vehicle registrations of the new homeowners. In some communities residents inadvertently turn themselves in when they apply for resident landfill permits and list their motor vehicle's out-of-state registration plates.

Investigators from this Office accompanied state and local police on patrol in Haverhill to identify questionable motor vehicles with out-of-state registrations. In less than 90 minutes on a recent Tuesday evening patrol with a State Police Trooper, this Office was able to document over 90 motor vehicles bearing out-of-state registrations parked on Haverhill streets or property. The bulk of the vehicles with out-of-state plates were from New Hampshire. Additionally, a half dozen vehicles had New Hampshire temporary plates attached and more than a dozen other motor vehicles had no plates attached, but did have New Hampshire inspection stickers on the center of the vehicle's windshield. A quick check of some of the New Hampshire motor vehicles located in Haverhill revealed that some owners had former ties to Haverhill such as having lived and voted at a Haverhill address, having had a motor vehicle registered at a Haverhill address, and having had motor vehicle excise tax bills in prior years. On this patrol, a Haverhill auto rental business had half a dozen motor vehicles on their lot with New Hampshire registration plates attached.

There was a woman that lived here and rented her New Hampshire home. She knew that we were logging her vehicle and placed a cardboard plate over her New Hampshire plate that said "FU"  
- Newburyport Police Officer

Complaints and tips from citizens about their neighbors supply the police departments with a ready list of possible violators. This Office reviewed tips on 33 suspected violators and found seven owners had expired out-of-state registrations, some had revoked driver's licenses, and others had histories of serious driving offenses. These cases are under investigation locally.

Once a vehicle has been identified, most police departments leave a notice on the windshield with the Officer's name and telephone number. Often police officers attempt to speak to the owner in person to clear up the issue with a simple conversation. Direct contact allows the officer to make an early determination about whether the individual is violating the law. Officers said that most motor vehicle owners will call after a notice is received. OIG investigators reviewed the records of 43 Haverhill residents with 54 vehicles registered out of state. From this sample, 46 vehicles were converted to Massachusetts registrations, seven motor vehicles were taken off the road, and one motor vehicle was legally registered out of state.

When the vehicle's owner does not respond to a police notice, a citation is issued. For example, following 30 days of observation in Salisbury, a vehicle owner was given three oral warnings and one written warning that the motor vehicle was not registered in compliance with Massachusetts motor vehicle registration requirements. A citation that totaled \$1,350 was issued:

\$1,000	Failure to tax and title in MA, M.G.L. c.90D, §4
250	Registration Compliance Laws, M.G.L. c.90, §3
100	Operation of an unregistered MV, M.G.L. c.90, §9
<u>\$1,350</u>	

I stopped a young man for illegal auto registration and issued a citation for \$1,350. As a result of the citation, he confessed to arson of an abandoned building. - Salisbury Police Officer

In this case, the driver told the police officer that he did not think he was being stopped for charges that the automobile was improperly registered. The driver said that he thought the officer suspected he was involved in the arson of the building. The officer said that the driver's confession was a complete surprise to him.

### **RMV's North Shore Pilot Program**

In June of 1995, surrounded by representatives from over 30 police departments, the Registry kicked off its pilot registration enforcement program at a press conference in Lawrence. The program's goal was to address the number of Massachusetts residents who improperly register their motor vehicles out of state. The program planned to utilize a public information campaign through local police departments. In the handbook for the pilot program, Law Enforcement Guidelines and Forms For Illegally Registered Out-of-State Vehicles, the Registrar states:

Illegally registered vehicles, especially those from out-of-state, have been a constant problem for many law enforcement departments and municipalities. Not only are these vehicle owners ignoring the law, but the problem creates a negative effect on Massachusetts' insurance rates as well as local revenues. The current system of enforcement (issuing a citation through the courts) is extremely labor intensive and usually does not lead to the desired effect; getting the owner to register their vehicle in the Commonwealth.

Law enforcement officials were provided with RMV Handbooks that instructed the officers to keep a written record of each time the officer spotted a suspected motor vehicle. The officer was instructed to log-in his sighting of the motor vehicle for 30 days in a calendar year (not necessarily consecutive days), as proof that the vehicle was customarily garaged in Massachusetts. If the police notice placed on the vehicle's windshield is not responded to by the owner, the police department is told

to refer the violator to the Registry for a hearing. To request a Registry hearing the police department must observe and log the vehicle for 30 days. The Registry of Motor Vehicle's notice that is affixed to motor vehicles with out-of-state registrations states: "If you are a resident of Massachusetts, your vehicle must be registered in Massachusetts."

Most North Shore communities participated in the Registry's media event. The press conference got the program off to a great start, but the success of the pilot program was limited to appearances. Although the Registry promised the local communities public service announcements to promote awareness of the enforcement program, none were provided. Registry documents show that this pilot enforcement program did not survive much past the press conference.

This Office reviewed 167 Registry files on RMV Hearings that dealt with Motor Vehicle Registration Issues from January 1995 through January 1996. Of the 15 law enforcement referrals, only three included the required log documenting the motor vehicle's presence in Massachusetts for 30 days. Eleven hearings were the result of State Police referrals, twelve hearings followed citizen complaint letters sent to the Registry. 129 of these hearings were based upon calls to the 1-800-I-Pay-Tax line.

After a review of Registry records and interviews with police departments, this Office has concluded that few police departments requested hearings under this pilot program. One officer, who did request a Registry hearing, informed this Office that he was not told of the hearing date or its results. He learned of the hearing when the violator told him about it. The public service announcements were not provided as promised and public awareness of the problem of improper motor vehicle registrations did not increase, which is not to say that people in these north shore municipalities are not aware of the improper out-of-state motor vehicle registrations in their communities.

## **"ZERO TOLERANCE", A State Police Program**

The city of Lawrence has been plagued with numerous motor vehicle problems including motor vehicles that are improperly registered out of state, and motor vehicles that are unregistered, uninspected, uninsured and stolen. Since the summer of 1995, seven State Police Troopers are assigned to a special "Zero Tolerance" program to clean up these problems. State and Lawrence police estimate that there are 10,000 motor vehicles in Lawrence that are improperly registered out of state or illegally operating without compulsory insurance coverage.

This Office made several site visits to Lawrence and accompanied a State Trooper on a night shift patrol to witness the extent of the registration violations and enforcement efforts. According to the State Police, the typical Lawrence violator has an improper New Hampshire registration on his vehicle or the registration is expired. This Office found that in Lawrence many of the Massachusetts plates attached to a violator's motor vehicle are plates issued to a different motor vehicle. State Police remarked that often the vehicle is registered to a fictitious person and address. Usually, the vehicle is not insured.

All law enforcement officers must have a legitimate reason to stop motor vehicles. Most drivers realize that they are likely to get stopped if they do not have required registration or inspection stickers, or if their equipment is faulty. Some owners without proper registrations have devised ingenious methods to make their motor vehicle appear legitimate.

- Photocopied registration plates are wrapped in cellophan e.
- Lipstick is used to color registration plates.
- Current registration stickers are removed from other plates.
- Inspection stickers are altered once the month's number expires.



According to the State Police, about 98% of the vehicles stopped in Lawrence for violations are not owned by the person driving the motor vehicle. These drivers often claim an unidentifiable "friend" or "relative" owns the vehicle. The trooper informed this Office that many times when a motor vehicle with questionable plates is pulled over by a trooper, the driver and occupants jump out and abandon the motor vehicle.

Staff from this Office witnessed one of these incidents when on patrol with a State Trooper in Lawrence. Abandoned motor vehicles are towed and usually remain unclaimed.

The Zero Tolerance program has made a significant impact on motor vehicle violations in Lawrence. As of December 1, 1996 the State Police assigned to Lawrence have arrested 1,923 individuals, cited 11,405 violations, issued 1943 warnings and towed 1,893 motor vehicles. Most towed vehicles are early 1980's models, low in value of which 900 (48%) have been crushed.

Lawrence has a Destruction Order in effect that mandates the destruction of all unclaimed cars after 60 days. Police ordered towing is \$50 plus \$20 for each day of storage. The State Police unit orders the towing of illegally registered, unregistered, uninsured, stolen, and uninspected motor vehicles.

### **Crossing the Border to Save Money**

Many Massachusetts residents improperly register their vehicles in New Hampshire to save money. By doing so, they evade Massachusetts sales and motor vehicle excise taxes; registration, titling, and automobile inspection fees; the expense of insuring underage drivers; and higher insurance premiums. According to State Police Troopers familiar with the problem, the biggest motivator for the motor vehicle owner to register elsewhere is the high cost of compulsory automobile insurance in Massachusetts. The more affluent Massachusetts resident violators own vacation or investment property in another state and use that location as a base to register their

motor vehicles, even though their motor vehicles are customarily garaged in the Commonwealth.

Troopers have told this Office that many Massachusetts residents living in Haverhill and Lawrence and other communities adjacent to the New Hampshire border purchase a "throwaway automobile" for \$700-\$800 in New Hampshire and drive the vehicle with New Hampshire temporary paper plates until the owner is stopped by a Massachusetts law enforcement official. Once caught, the owner registers the motor vehicle in New Hampshire without insurance coverage and drives until the vehicle is stopped again, it breaks down, or is involved in an accident, whereupon the vehicle is junked. The same owner repeats the previous two steps with another cheap car. These Massachusetts owners save thousands on automobile insurance and other expenses related to properly registering and insuring the vehicle in Massachusetts.

#### **Massachusetts Public Assistance Recipients Concealing Assets**

Some recipients of public assistance in Massachusetts may have registered their motor vehicles out of state to conceal their motor vehicle as an asset and to avoid the expense of mandatory liability insurance and Massachusetts registration expenses and taxes. Public assistance applicants do not have to be residents of the Commonwealth but, applicants must intend to become a resident of Massachusetts in order to qualify for benefits in Massachusetts. A Registry of Motor Vehicles official informed this Office that the Registry is in the process of creating a system that will cross reference the owners of motor vehicles with out-of-state registrations and Office of Transitional Assistance clients. Police departments, often in conjunction with local housing authority managers, seek to identify residents of public housing who have out-of-state registrations. The possible reasons behind these out-of-state registrations include concealing assets to qualify for public assistance and saving money on the costs of registering and insuring their motor vehicles in Massachusetts.

- A Newburyport woman registered her motor vehicle in New Hampshire. Her Massachusetts driving history includes charges of driving while under the influence, speeding, two accidents, and driving with no inspection sticker. These motor vehicle violations would increase her insurance costs. Once her motor vehicle was properly registered in Massachusetts, she paid a minimum of \$1,159 for compulsory insurance coverage.
- A Haverhill family had three vehicles registered in New Hampshire. After being contacted by the police department, all three vehicles were registered in Massachusetts.
- A Haverhill woman who lived in public housing and attended a State community college registered her motor vehicle in New Hampshire. When told by a police officer that she must register in Massachusetts she refused and claimed that she was a resident of New Hampshire. DOR records indicate that this woman used a Haverhill address when she filed Massachusetts personal income tax returns for the 1992 and 1993 tax years. She did not file for 1994.

### **Students attending Public Institutions of Higher Education in Massachusetts**

There are students, who claim to be Massachusetts residents when seeking in-state tuition charges at public institutions of higher education, and non-residents when registering their vehicles out of state. Some non-resident students have received in-state tuition rates at state sponsored colleges and universities. Non-residents attending Massachusetts schools and colleges are exempt from registering their motor vehicles in Massachusetts according to Registry regulations. A police officer told this office that many Massachusetts students attending Massachusetts colleges are registering their vehicles out of state and taking advantage of the motor vehicle registration exemption. Some of these students have presented copies of paid tuition bills as "evidence" that they are students and, therefore eligible for the non-resident student exemption and sticker. However, when the police officer checked on some of these students at a state college, he discovered that they were Massachusetts residents and paid in-state tuition rates. The police officer brought the information he had uncovered to the attention of the college administrators, but found the administrators disinterested in the information.

## **INDIVIDUALS WITH QUESTIONABLE MOTOR VEHICLE REGISTRATIONS**

This Office gathered a sampling of individuals whose motor vehicles were registered outside of Massachusetts. Investigators conducted a background check to ascertain whether their out-of-state registration were proper. Below are outlines of these cases.

□ An individual appeared for a Registry hearing on two occasions following complaints that he had New Hampshire registration plates on his three motor vehicles that were garaged at his East Boston property. The individual succeeded in convincing the Registry hearing officer that he was a New Hampshire resident by showing the hearing officer that his federal taxes were filed using a New Hampshire post office box as the mailing address. However, contrary to his claims of New Hampshire resident status, this individual applied for both the Residential (M.G.L. c.59, § 5C) and the Veteran's (M.G.L. c.59, § 5, clauses 22-22E) property tax exemptions in the city of Boston for the last four tax years. This applicant signed each application by swearing, "I certify under pains and penalties of perjury that the information provided is true and correct." This individual received \$2,606.26 in property tax exemptions based upon his declared dual status as a veteran and the owner of residential property in Boston that he swore, in documents on file with the Assessor's Office, he occupied as his principal residence. He reversed himself before the Registry. To make his case that he does not live in Boston, this individual expounded in writing to the Registry of Motor Vehicles ,..."we made our residence in...New Hampshire in March 1993, we have owned the premises...E. Boston for 34 years...PS. We went through this a year ago." Review of the Registry's hearing records causes this Office to conclude that either this individual filed false claims to obtain substantial property tax breaks from the City of Boston or, he has misrepresented his New Hampshire residence before the Registry and improperly registered his motor vehicles out of state. According to Registry records, one of the

subject's New Hampshire motor vehicles was originally owned by this man's daughter, who was receiving public assistance in Massachusetts. Registry file notes revealed that tips on this case came in on the Registry's Hotline and from the State's welfare department. Perhaps the daughter transferred the motor vehicle's title to a family member to conceal the motor vehicle as an asset.

□ In June of 1989 a Massachusetts state trooper checked off the box indicating "I am a resident of the State of New Hampshire" on his New Hampshire driver's license application. A New Hampshire Registry official said that this person surrendered his Massachusetts driver's license when he received his New Hampshire driver's license. According to the Massachusetts State Police Personnel Office, troopers must be residents of Massachusetts throughout their State police careers. Six months after receiving his New Hampshire driver's license, this trooper renewed his Massachusetts driver's license but did not surrender his recently acquired New Hampshire driver's license. In August of 1990, the trooper purchased, titled, and registered his motor vehicle in New Hampshire. This State Police Officer was interviewed by this Office in his capacity as a State Police Prosecutor at the Lawrence District Court.

He was also one of the individuals featured in a TV news broadcast entitled "Crossing the Line" that focused on Massachusetts residents living in Newburyport and nearby communities, who illegally registered their motor vehicles in New Hampshire. The program aired in February 1992.

Ten days after the TV news story aired, the trooper registered and applied for a Massachusetts title for his motor vehicle that was registered in New Hampshire previously. The trooper's NH driver's license was turned in to the New Hampshire RMV in March of 1992.

The trooper's New Hampshire driver's license and the title/registration documents on

his motor vehicle indicated that he was a New Hampshire resident for more than six months prior to properly titling and registering the motor vehicle in Massachusetts. When he titled and registered the vehicle in Massachusetts, he was able to avoid paying any use tax on his motor vehicle because his earlier out-of-state motor vehicle registration and New Hampshire resident information allowed the trooper to qualify for a use tax exemption that was based upon DOR Directive (87-2 ) entitled Motor Vehicles Purchased by Non-Residents, that applies to motor vehicles purchased out of state by non-residents and brought into the Commonwealth more than six months after purchase. According to the Directive "Every motor vehicle brought into Massachusetts within six months after its purchase is presumed to have been purchased for storage, use or other consumption within the Commonwealth. G.L. c. 64I, §§8(f)." In this Directive, the taxpayer was "liable for the use tax on the automobile he brought into the Commonwealth...less than six months after its purchase in another state."

The trooper's Massachusetts application for a motor vehicle title indicates that he used form MVU-29, an Affidavit in Support of a Claim for Exemption from Sales or Use Tax for a Motor Vehicle Purchased Outside of Massachusetts to obtain his use tax exemption. The affidavit states:

Please note your statements are to be made under the pains and penalties of perjury and that a statement which is made willfully and is false as to a material matter may be punished as a felony under [MGL].

Although this trooper's motor vehicle was improperly registered in New Hampshire prior to its registration in Massachusetts, his New Hampshire motor vehicle documents and New Hampshire resident driver's license provided him with the opportunity to take advantage of a use tax exemption granted to "non-residents" of Massachusetts when he titled and registered the vehicle in the Commonwealth. Even though he complied with requirements to register his motor vehicle in Massachusetts he was able to escape paying any use tax assessment on the book value of the motor vehicle.

Further information obtained from the Department of Revenue indicates that this individual filed his Massachusetts personal income tax returns as a Massachusetts resident using a Massachusetts post office box for tax years 1991, 1992, 1993, and 1994.

□ A man who works in Haverhill and has been a long term tenant in a rental apartment in Haverhill, had a Maine driver's license and registered his motor vehicle in Maine claiming that he was a resident of Maine. According to information obtained from the Massachusetts DOR, this individual filed his State personal income tax returns using his Massachusetts residential address for tax years 1992 - 1994. He did not file in Massachusetts using a Maine residential address. The Maine Division of Taxation told this Office it does not have any record of this individual filing Maine resident personal income tax returns for tax years 1989 to the present. Although this man claims to be a resident of Maine he has not filed his Maine tax returns as required by Maine law. Maine provides the opportunity for its taxpayers to make adjustments to their tax obligations to Maine by considering income taxes paid to another jurisdiction. This individual could possibly have taken advantage of the Massachusetts "Renter's Deduction." This \$2,500 State income tax deduction is provided to taxpayers, who certify under pains and penalties of perjury, that the taxpayer's principal residence is a rental unit in Massachusetts. The Renter's Deduction is worth a maximum of \$125 in tax savings to an individual taxpayer. This individual filed state tax returns in only one state [Massachusetts]. Since he claims to be a resident of Maine but works in Massachusetts he would be required to file in both states. Based upon this man's tax filing history for the past six years, it appears evident that his motor vehicle should be registered in Massachusetts. The state of Maine may have some interest in the failure of this "Maine resident" to file state tax returns in Maine.

□ A woman who lived in Boxford for at least three years refused to register a motor vehicle and custom built horse trailer in Massachusetts despite the fact that



local police and the Registry documented that she and her husband resided in Boxford and are required to register their vehicles in the Commonwealth. The vehicles remain registered in New Jersey to the woman's father. M.G.L. c.90, §3 requires "a motor vehicle or trailer, owned by a non-resident, that is in the possession or under the control of a resident of this commonwealth for a period greater than thirty days... and such vehicle is registered in another state...shall not be operated on the ways of this Commonwealth, unless registered under this chapter." This woman has a North Carolina driver's license. Public records indicate that this woman has a State vendor number and was paid for work she performed as a stenographer for a State court in 1994. This Office was told that this woman did transcribing for clients in the Beverly area also. DOR records indicate that this woman has not filed Massachusetts personal income tax returns for the 1992, 1993 or 1994 tax years, despite the fact that she earned income as a State Court stenographer during the 1994 tax year. Her husband has filed Massachusetts resident personal income tax returns (not joint returns) using their Massachusetts address for tax years 1993, 1994 and 1995. Massachusetts state contract standards require contractors to sign tax compliance certificates in conjunction with the state contract they receive. It appears that this woman could have possibly claimed to be in compliance with state tax requirements on the certificate she purportedly signed.

□ A Yarmouth couple, with several Massachusetts businesses and substantial real estate holdings in Massachusetts, drive two expensive motor vehicles registered to the address of a New Hampshire inn. Barnstable Registry of Deeds records this couple as the borrowers on a standard home mortgage loan in which they agree to occupy the dwelling (assessed \$500,000 approximately) as their principal residence. In Massachusetts, according to M.G.L. c.59, a property owner is subject to personal property tax on the contents of a residential property, except for property he claims as his domicile, or primary residence. According to DOR records, these homeowners have filed State personal income tax returns using their Yarmouth Massachusetts address for tax years 1992, 1993, and 1994. The couple is also registered to vote

in Yarmouth.

□ A Swampscott homeowner with medical practices in Boston and New Hampshire registered his three vehicles (1991 and 1992 Mercedes, 1995 Volvo) in New Hampshire. His child attends a Swampscott public school. This doctor's Massachusetts driver's license was suspended in 1983 for nonpayment of his motor vehicle excise taxes. In October 1995, after a Registry hearing, he registered the Volvo in Massachusetts and paid his delinquent motor vehicle excise tax bill. Subsequently, his right to operate was suspended for failure to pay his 1996 excise tax of \$540.02. He currently has an active New Hampshire driver's license.

□ A psychologist operates a counseling service out of her home in Newburyport. She owns three motor vehicles that are registered in Vermont. A review of local zoning regulations reveals that her counseling service is being conducted in a strictly residential neighborhood that is not zoned for business activity. She claimed to local police that she travels to Vermont every other week to attend to her Vermont property and miniature horse farm. She was cited several times by the Newburyport police department for failure to register her motor vehicles in Massachusetts. After a court hearing, she agreed to register one motor vehicle here, while the two vehicles with Vermont registrations continue to be seen in Newburyport. The owner has displayed political bumper stickers supporting Newburyport candidates for local office on the motor vehicles with Vermont plates. According to DOR, this individual filed her State personal income tax returns using her residential Newburyport, MA address. This individual could have possibly taken advantage of the Renter's Deduction when she filed her MA resident return. Vermont has a state personal income tax, but it is not possible to determine whether this woman also filed Vermont resident personal income tax returns. Vermont's Department of Taxes is not subject to a public disclosure law that responds to public inquiries about a Vermont taxpayer's tax filing habits. Only tax officials from another tax jurisdiction can request and obtain a taxpayer's filing history.

## **BUSINESS RELATED STATE TAX ISSUES**

Massachusetts businesses that comply with M.G.L. 90 motor vehicle registration requirements may be operating their companies at a competitive disadvantage because other Massachusetts business owners improperly register their business cars, trucks and equipment out of state. Our investigation located violators with fleets of motor vehicles, trucks, trailers and construction equipment used in their Massachusetts businesses registered out of state. We observed company vehicles advertising their Massachusetts business addresses and area code '508' telephone numbers while operating with out-of-state plates. Some businesses had their motor vehicles and construction equipment registered to the company owner's out-of-state residential address.

These businesses with established businesses in the Commonwealth, registered their motor vehicles out of state even though the fleet was customarily garaged in Massachusetts, the jurisdiction where the place of business was located. Some of these businesses may have evaded a portion of their Massachusetts personal income or corporate excise tax obligations, sales or use tax collection responsibilities, or excluded machinery and equipment subject to the local personal property from the inventory they submitted to the local assessor. The business related tax issues include:

### **Corporate Excise Tax, M.G.L. c.63**

Some Massachusetts businesses may have reduced their corporate tax by excluding their motor vehicles, off-road equipment, and trailers as assets within Massachusetts in the property factor (M.G.L. c.63, § 38(d)) used to measure a portion of the State corporate excise tax:

The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this commonwealth during the taxable year and the

denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the taxable year.

A Massachusetts business could potentially evade a substantial percentage of its Massachusetts corporate tax obligation by not listing motor vehicles and trailers on its state corporate tax returns. Circumstances such as leasing motor vehicles from a company in another state could allow the taxpayer to exclude the motor vehicles from the property factor. Underreporting or excluding motor vehicles and trailers on Massachusetts corporate tax returns allows the filer to calculate his tax obligations in his favor. Some domestic corporations with places of business in the Commonwealth and motor vehicles registered to out-of-state addresses have not filed Massachusetts corporate excise taxes for the last three tax years. Under Massachusetts law, if a corporation has income derived from activity in Massachusetts and it has an office in the state, it must file a Massachusetts corporate tax return.

#### **Sales/Use Taxes, M.G.L. c.64H and c.64I**

Some of the Massachusetts businesses investigated by this Office sell and install systems, equipment, materials or component parts that are subject to the Massachusetts sales tax. According to the Department of Revenue, some of these companies are not registered as vendors for sales tax purposes, or the businesses have spotty sales tax filing schedules and have not submitted sales tax receipts to DOR on a consistent basis. It is reasonable to speculate that these companies may be charging their customers the sales tax on the materials or parts sold. The businesses may pocket this money instead of turning it over to DOR. Regardless of whether the sales tax was included with the sale, the Massachusetts business owner is always responsible for the tax. If audited, the owner would owe the Commonwealth the sales tax due, even if he failed to collect it from his customers. Massachusetts companies may have purchased their business equipment, motor vehicles, and trailers out of state and thereby the business owner may have failed to

submit the 5% use tax due to DOR. Other Massachusetts businesses may lease and register their motor vehicles through an out of state leasing company and because the motor vehicles are registered elsewhere, the use tax on the monthly rental would not be imposed and collected in Massachusetts. In a preliminary report, THE MASSACHUSETTS TAX GAP, released in 1995 by the House Post Audit and Oversight Bureau (HPOA) states,

More significantly, unlike the federal tax scheme which is predominately an income tax, Massachusetts relies on a number of other special excise taxes... all of which create additional opportunities for tax evasion. These taxes are computed, based on gross receipts and are collected and remitted by private vendors on behalf of the Commonwealth. These taxes are derived in large part from cash transactions. It is well established that there is significant potential for tax evasion in cash businesses where others collect the tax on behalf of the government. Because Massachusetts receives over \$2.3 billion in sales taxes collected by trustees, the potential for substantial evasion is financially significant.

### **Personal Property Tax, M.G.L. c.59**

Non-manufacturing business corporations in Massachusetts are subject to local taxation on "machinery used in the conduct of the business", and motor vehicles which are not subject to or exempt from the motor vehicle excise are subject to taxation as personal property under the provisions of M.G.L. c.59, §18. Massachusetts businesses that improperly register their motor vehicles out of state may also evade a portion of the personal property tax assessed in cities and towns on business machinery, equipment and motor vehicles. A company may provide the local assessor with an incomplete or inaccurate list of its machinery, business equipment and vehicles. By submitting an incomplete or inaccurate inventory on the Form of List to the local assessor, the business can reduce its annual personal property tax assessment. This type of tax evasion scheme would be difficult to detect, unless the company was audited. Without examining a paper trail, a Massachusetts business can easily conceal the machinery, equipment and motor vehicles used in the business located in the state.

### **Motor Vehicle Excise Tax, M.G.L. c.60A**

Massachusetts businesses that improperly register their motor vehicles out of state escape paying motor vehicle excise taxes to the city or town where their business is located. In a business that involves fleets of expensive motor vehicles, the loss to a municipality in annual motor vehicle excise taxes could be substantial. State and local police have reported that many business owners lease their vehicles from out-of-state companies which complicates their efforts to determine ownership and garaging of the motor vehicles. An auto dealership in Massachusetts told an investigator from this Office that, motor vehicle excise taxes are paid on leased vehicles to the municipality where the dealership is located, and not the municipality where the individual or business that leased the motor vehicle is located.

Some major businesses that operate fleets of motor vehicles in Massachusetts no longer register their motor vehicles here. These motor vehicles are now operated with *apportioned* license plates issued in another state jurisdiction. As an example, a major soft drink company with a distribution center in Massachusetts now operates its large fleet of delivery trucks with out-of-state apportioned plates. Prior to the use of apportioned plates, these company vehicles were registered in Massachusetts and the company paid substantial local motor vehicle excise taxes. The distribution center continues to function in Massachusetts but, the municipality no longer receives motor vehicle excise taxes because the company vehicles are registered in another state jurisdiction.

### **Personal Income Tax, M.G.L. c.62**

Some Massachusetts businesses are operated as sole proprietorships and do not file State corporate tax returns, but would be responsible for filing state personal income tax returns as a means of reporting income derived from business conducted in Massachusetts. HPAO's report states,

According to the GAO report in fiscal year 1992, \$30.1 billion of the

federal tax gap was attributed to sole proprietors. Here again the impact for Massachusetts is significant. Sole proprietors, i.e. self-employed individuals who either are underreporting income or not reporting at all are most likely evading both the state and federal tax system.

### **Tax Compliance Certificate, M.G.L. c.62C**

It is necessary for most Massachusetts business owners to have a professional license or permit to conduct a business or trade in Massachusetts. Recipients of these professional licenses sign a CERTIFICATE AS TO PAYMENT OF STATE TAXES, which professes,

Pursuant to M.G.L. Ch 62C, sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

Some individuals and businesses in Massachusetts have dodged motor vehicle registration and titling requirements and evaded sales and motor vehicle excise taxes. Some appear to have underreported or excluded the machinery, equipment and motor vehicles used in their business in order to escape a portion of their personal property tax or corporate tax liability. Some of these companies have questionable sales tax submission histories also. If these individuals and business operators skirted these state tax obligations, they cannot be considered in compliance with signed statements that all state tax payment requirements have been met.

As the brief tax descriptions show, Massachusetts businesses are subject to a number of taxes that are related directly to whether the motor vehicles and other equipment are properly registered in the Commonwealth. Tax evasion schemes are possible when business assets are not reported properly to state and local tax jurisdictions. When tax evasion schemes transpire, the cheaters have a substantial advantage over the Massachusetts companies that honestly comply with state tax filing and motor vehicle registration requirements.

**BUSINESSES in ESSEX COUNTY with  
QUESTIONABLE MOTOR VEHICLE REGISTRATIONS**

□ This Office and state and local police investigated a Massachusetts plumbing company whose owner had registered 14 motor vehicles used in his business to his New Hampshire residence. After an investigation by a Massachusetts State Trooper in 1996, the owner agreed to register all 14 motor vehicles in Haverhill where he conducted his plumbing business. According to the Assessor's Office this business owner was assessed \$1,016.98 in motor vehicle excise taxes for the last 7 months of 1996. This Office assumes that the plumbing parts installed by this company for their customers are subject to a sales tax, but the company has a spotty sales tax filing history with the DOR. The Massachusetts Department of Revenue disclosed:

Corporate Excise (M.G.L. c.63) - "... records indicate that a corporate excise return was filed for 1992," but DOR has "no record of filing corporate excise return for 1993 -1995 yrs ..."

Sales & Use Tax (M.G.L. c.64H & 64I) - "Records indicate that returns were filed 1/92 - 7/92. No record of filing 8/92 - 12/95."

Personal Income (M.G.L. c.62) - (for the owner) records indicate, "Personal income tax - DOR returns were filed for 1992-1994."

□ This Office and local police investigated a Massachusetts ice cream peddler who registered his 12 ice cream trucks to his New Hampshire home. Local tax records reveal that the owner had been delinquent on his motor vehicle excise taxes and switched to New Hampshire registrations rather than pay the delinquent tax assessments. The owner leased some of his ice cream trucks to others in Massachusetts, although he did not have a local license to lease motor vehicles. The ice cream trucks were registered in New Hampshire but leased in Massachusetts and the sales or use tax on the rental charges could have possibly been evaded. This novelty ice cream dealer recently registered all his trucks to his Massachusetts place of business. He reportedly said he complied with Massachusetts registration



requirements because he was sick of the hassles. The Massachusetts Department of Revenue disclosed:

Corporate Excise (M.G.L. c.63) - " DOR records indicate a corporate excise return was filed for 1992. No record of filing for 1993-1995..."

Sales & Use Tax (M.G.L. c.64H & 64I) - "no record of filing , 4th quarter of 1992, 1st, 3rd & 4th quarters of 1993, all of 1994 & 1995..."

Personal Income (M.G.L. c.62) - (for the owner) "No record of filing for 1992-1994."

□ This office and state and local police investigated a Massachusetts auto repair business specializing in automobile transmission work. The company had two courtesy motor vehicles that it loaned to customers. These two courtesy motor vehicles were registered to individuals in New Hampshire that may have some affiliation with the company. The Amesbury transmission company registered these two business vehicles in Massachusetts after an investigation was conducted by a Massachusetts State Trooper. The auto replacement parts this company sells for installation in its customer's motor vehicles are subject to a sales tax, but the company appears to have a blank sales tax filing history with the DOR. If the company has sold taxable parts to its customers, the business is responsible for the sales tax, regardless of whether the customer was charged the sales tax. A DOR audit could determine whether state sales taxes are owed. The Massachusetts Department of Revenue disclosed:

Corporate Excise Tax (M.G.L. c.63) - "No record of filing corporate excise return for 1992-1995 of a taxpayer with this name and address."

Sales & Use Tax (M.G.L. c.64H & 64I) - ... "1992-1995 no record of filing by a taxpayer with this name & address."

Personal Income Tax (M.G.L. c.62) - (for the owner) "No record of filing personal income tax 1992-1993. DOR records indicate a personal income tax return was filed for 1994."

□ This office and local and state police investigated a construction company

(foreign corporation) whose business was located in Massachusetts. The construction company had approximately 50 motor vehicles and construction equipment registered to the owner's private residence in New Hampshire. According to a State Police report, the business had three vehicles registered in Massachusetts. One had commercial plates and two vehicles had apportioned registrations which are used on motor vehicles weighing more than 26,000 and are usually long-distance carriers that travel through different states. This company owner controls a minimum of 18+ acres of adjacent parcels classified for industrial use in Haverhill with an assessed value of close to \$5 million according to local assessing records. Portions of these parcels are leased to other businesses. The company stores its construction vehicles and equipment at various locations on its industrial complex. The Trooper who investigated found no evidence to support the company's claim of having any place of business in New Hampshire. Two months after the Trooper's report was sent to the Registry's Registration Compliance Division, the company's general manager appeared before a Registry hearing officer. This Office appeared at the Registry Office to attend the 2 p.m. hearing, but was informed by the hearing officer that the case had been taken before its scheduled time, and the hearing was already over. The hearing officer said his decision was to have the company operate with three vehicles registered in Massachusetts and six vehicles registered in New Hampshire. All vehicles would be registered with apportioned plates.

OIG staff asked to question the company's general manager, since he had not left the Registry. The general manager, in response to questions from this Office, stated that the apportioned plates would be on pick-up trucks which certain employees would be using for commuting to and from work. This Office questioned the use of such plates on vehicles used for commuting to and from work that weighed much less than 26,000. The hearing officer said: " I don't know too much about the use of apportioned plates, but think it probably isn't okay." This Office asked what happened to the other vehicles registered to the owner's New Hampshire residence. The hearing officer volunteered that the company had sold vehicles at an auction

recently and provided a copy of the auction sheet which listed vehicles, machinery and equipment that had been sold. Only 15 motor vehicles were on the auction sheet. When questioned about the whereabouts of the other vehicles, the general manager stated that the vehicles were kept at a location in Salem, New Hampshire. This Office responded that the Trooper's written report detailing his investigation of this company said that the Trooper had already determined that the company did not keep the vehicles and construction equipment at that location. According to the Trooper investigating this company, the only evidence of this company at that location was their name on a mailbox.

Next, the general manager suggested that the vehicles might be at an "other location" the company owns in New Hampshire. During the course of additional questions and discussion, the general manager admitted that their construction company's garage is located in Massachusetts and that the vehicles are stored and repaired there and at other times, vehicles remain at a work site. The general manager said that most of their business was conducted in Massachusetts.

The RMV hearing officer said, "you never said that you had a garage in Massachusetts...that changes things." The RMV hearing officer altered his earlier ruling and told the general manager to register all the company vehicles in Massachusetts. The hearing officer said that he intended to call the New Hampshire Registrar to discuss these issues. The company was given until September 11, 1996 to register all company vehicles in Massachusetts. Following the hearing, on behalf of this office, a police officer went to the "other location" in New Hampshire and interviewed people there. The police officer was told that this company did own the property, but no one had ever encountered anyone from the company, and the company's vehicles and equipment had never been stored there.

Subsequent to the hearing, this office provided a copy of the company's auction list to the Haverhill Assessor's Office. An amended personal property tax assessment

was sent to this company based upon the inventory on the auction sheet. The company's total record of valuation of personal property increased from \$16,650 to \$209,570. The company's Form of List for January 1, 1996 did not include much of the company's machinery and equipment (approximately \$194,600 in value) that was detailed on the auction inventory list. This additional assessment levied over \$5,000 in additional personal property taxes.

On September 24, 1996, this Office asked the RMV hearing officer how many vehicles were registered in Massachusetts in response to the September 11, 1996 deadline. He said, "I've given them another extension..to Thursday [September 26, 1996]," but did not explain why. Although the Hearing Officer said that he had made a determination in this case, his written record of the decision states "taken under advisement". According to the company owner, he has never received any written disposition notice from the Registry instructing him to register a certain number of motor vehicles in Massachusetts, although he said that he intends to register 75% of his company vehicles in Massachusetts and 25% in New Hampshire. Because some company motor vehicles were auctioned off, or taken off the road, an exact number is difficult to determine. Still, it appears that 18 of this construction company's motor vehicles are now registered in Massachusetts.

The Massachusetts Department of Revenue disclosed:

Corporate Excise (M.G.L. c.63) - "DOR has a record of corporate excise returns having been filed for 1992-1995."

Sales & Use Tax (M.G.L. c.64H & 64I) - "DOR has a record of sales tax returns having been filed annually, 1992-1994."

Personal Income (M.G.L. c.62) - (for the owner) "DOR records indicate returns were filed for 1992-1994."

□ This office and state and local police investigated a Massachusetts domestic corporation providing transportation to and from Boston's Logan Airport from the Andover/Haverhill area and locations in southern New Hampshire. This domestic

corporation's entire fleet of 39 leased vans is registered in New Hampshire. According to the Department of Public Utilities (DPU), this company had seven DPU 1996 permits for intrastate operation of their transport vans that expired on September 30, 1996. The company renewed the DPU permits on December 11, 1996. A company representative described the company's hub of operation as Andover, Massachusetts. This representative volunteered that, on a recent day, the company had transported 565 customers from the Andover area to Logan Airport. Records on file at the Secretary of State's Corporate Division and the Department of Commerce indicate that this business has been in operation since April 1981. The company's business advertisements highlight scheduled transportation to and from Logan Airport and Salem, Nashua and Manchester New Hampshire; and Lowell, Andover, Haverhill, and Lawrence Massachusetts, as well as door to door pick up and drop off conveyance. A major portion of this company's business originates in Massachusetts and many customers begin their trip upon arrival at Logan and are transported from the airport to their destination in Massachusetts. Rough estimates of road miles in Massachusetts and New Hampshire indicate that this company covers considerably more miles in Massachusetts than it does in New Hampshire. This transport company is listed in DOR's publication of For-profit Corporations Subject to an Excise. The RMV has scheduled a hearing on the company's exclusive use of out-of-state registrations.

The Massachusetts Department of Revenue disclosed:

Corporate Excise (M.G.L. c.63) "DOR has no record of a company with this name and address."

Sales & Use Tax (M.G.L. c.64H & 64I) "DOR has no record of a company with this name and address."

Personal Income (M.G.L. c.62) (for the owner) DOR's records indicates "no record of filing for 1992-1994"

A similar company that encourages van pooling as a transportation mode to and from Boston has a fleet of vehicles leased out of Michigan and others that are

registered and leased to drivers using New Hampshire registrations. OIG staff spotted one of these car pool vans in Dedham, MA on a Saturday. The van was registered in New Hampshire to an address in Woburn, MA. According to a company representative, some of these vans are leased directly to their drivers. Van drivers are allowed to take the vans home and have unlimited personal use of the vans, when not providing transportation for their customers. Since these vans are in the control of a Massachusetts resident for more than thirty days, it appears that the vans should be registered in Massachusetts, regardless of the fact that the owners may be located in another state.

□ Following complaints about a Massachusetts construction company's motor vehicle registration practices, this Office joined forces with the state police to investigate the extent of improper out-of-state registration by this Haverhill business. This Massachusetts domestic corporation had at least 79 motor vehicles and trailers used in its construction business registered in New Hampshire. An additional 75 vehicles were registered in Massachusetts. The company also had five Massachusetts repair plates and eight Massachusetts owner/construction plates. Registry hearings were held on September 24, 1996 and October 16, 1996.

According to one State Police report, this company lists two addresses in New Hampshire and one in Massachusetts. The company's "main office and garage are located ...in Bradford [Haverhill]." The report notes, "This site consists of an office, a number of large garages, a repair facility and a large yard in the rear where approximately 50 to 100 trucks and equipment are stored." At one of the New Hampshire locations the Trooper observed a sign for a used car business listing the area code "508" phone number of the construction company in Haverhill. The site consisted of "a large open field...In the middle of the field was a chain link fence enclosing four pieces of construction equipment...for sale..." Sales information on the construction equipment lists the company's Massachusetts phone number. At the second location, the officer's inspection found that there was a "sign next to the

street...with the name of a different construction company. "There was no activity...and the building appeared somewhat neglected. There were approximately a half dozen or so junked trucks and equipment in the rear." The Trooper concluded:

It is my opinion and, and the evidence will show, that [ ] is a Massachusetts Corporation. Their used car dealership in Kingston should not be considered a place of business used in direct connection with a place of business in Massachusetts...nearly one hundred percent of their business is conducted out of...Bradford.

On three different occasions investigators from this Office had similar experiences and observations at each of the three locations. A RMV hearing officer said that he had called the company using its "603" New Hampshire area code phone number. The woman answering the phone told the officer that she was answering the call at the company's location in Bradford, Massachusetts.

A different State Trooper conducted a routine spot check at this construction company's Bradford location to determine whether this company was complying with regulations that govern the use of repair and owner/contractor plates (M.G.L. c.90, §5). This Trooper noted in his report, "No compliance decals on anything." (The owner of motor vehicles that are operated with repair or contractor plates must obtain titles and sales tax compliance decals for each vehicle as proof that sales taxes have been paid to the state) The Trooper found that the company had purchased motor vehicles operated with owner/contractor or repair plates as recently as March of 1996 and as long ago as 1975 without titling these motor vehicles in Massachusetts. Because the owner did not title these motor vehicles in Massachusetts, the owner never paid state sales taxes on them, as required by law.

Registry hearings were conducted jointly by a Registry Hearing Officer and the Registry's General Counsel in September and October of 1996.

One of the business officers, who lives and works in Haverhill, drove a Lincoln with the company's repair plate attached, but the Lincoln did not have a sales tax compliance decal. The Lincoln was registered to the owner's wife previously. When questioned by the Registry hearing officer the owner said, "I never had 5840 [repair plate] on it" The hearing officer asked again, "so you never ran the silver Lincoln with repair plates?" "No, I haven't." After the owner repeated his testimony, the OIG produced a photograph of the Lincoln with the repair plate attached parked behind the Haverhill City Hall.

This construction company was before the Registry earlier in the spring of 1996 for an incident involving misuse of a repair plate attached "to an old Telephone Co. truck," labeled with the construction company's name at a construction project on a Massachusetts Turnpike bridge. In March 1996, a State Trooper observed the incident and cited the company for misuse of repair plates.

Many of the company's vehicles were operated with owner/contractor plates. The owner testified at both RMV hearings that he "puts contractor plates on his New Hampshire construction vehicles when he uses them for public jobs in Haverhill or for the state."

The RMV Hearing Officer asked the company owner to provide him with copies of the company's tax returns. This tax information was used to supplement the testimony given during the two hearings. The RMV hearing officer reviewed the company's tax returns to determine the percentage of the company's business that was conducted in Massachusetts and the appropriate number of company vehicles that should be registered in Massachusetts based upon their business activity. The RMV Hearing Officer's decision (10/29/96) notified the company to register 76 of the 79 New Hampshire registered vehicles in Massachusetts by November 12, 1996. The company was notified that three of their five repair plates were suspended for



sixty days for repair plate misuse and failure to title the vehicles and use compliance decals. Additionally, four of their five owner/contractor plates were suspended for 30 days for contractor plate misuse and failure to title the vehicles and obtain compliance decals. These repair and owner/contractor plates had to be surrendered at the Registry by November 12, 1996.

Several days after the deadline for compliance with the hearing officer's notice had passed, this company sought an extension of the registration requirement to January 1, 1997. The hearing officer refused to grant the waiver. Subsequently, the company's representative informed the Registry officer that it would immediately register a total of 90 motor vehicles in Massachusetts (14 more than the hearing officer's total).

More recently, a Haverhill official told this Office that the owner claimed that his company registered 110 motor vehicles in Massachusetts at a cost of \$55,000. Motor vehicle excise tax bills will be sent to the company on these recently registered motor vehicles and equipment.

The Massachusetts Department of Revenue disclosed:

Corporate Excise (M.G.L. c.63) - "filed corporate tax for 12/92 - 12/94 (Annually)"

Sales & Use Tax (M.G.L. c.64H & 64I) - "filed sales & use tax 01/92 - 04/94 (Monthly), 06/94 - 12/94 (Monthly), Didn't file for 05/94"

Personal Income (M.G.L. c.62) - (for the owner) "Filed Personal Income Tax for Tax Years 1992-1994."

□ This Office, State and local police and the RMV investigated a "for-hire" (motor freight) refrigerated trucking company with an established place of business in Salisbury, Massachusetts. This domestic corporation's entire inventory of eleven tractors were registered to the home address of the company's retired bookkeeper's in Seabrook, New Hampshire.

At the RMV hearing, the company owner stated that all of his motor vehicles were registered in New Hampshire on their date of purchase and no sales tax was ever paid in Massachusetts. The owner testified that all the vehicles with apportioned plates are base-plated in New Hampshire after admitting that his business is primarily conducted at his Salisbury Massachusetts business location. The owner admitted to having 12 trailers registered through an agent in Maine. The Hearing Officer said he was familiar with this "leasing company" used by many others to circumvent Massachusetts registration requirements:

I know the place, it's a ranch house with about 30 mail boxes out front.  
If all the trailers that are registered in Maine were there at the same time, they wouldn't fit. The trailer registrations are illegal.

At the conclusion of the hearing, the hearing officer ordered this company to comply with Massachusetts' Chapter 90 and register all vehicles and trailers in Massachusetts by December 1, 1996. Registry officials have informed this Office that the company complied with its registration schedule.

The Massachusetts Department of Revenue disclosed:

Corporate Excise (M.G.L. c.63) "DOR has no record of a corporate excise return for 1992-1995 re: a taxpayer with this name and address."

Sales & Use Tax (M.G.L. c.64H & 64I) ..."DOR has no record of a sales tax return for 1992-1995 re: a taxpayer with this name and address."

Personal Income (M.G.L. c.62) (for the owner) "DOR's records indicate returns were filed for 1992-1994"

Although the cases above are located in Essex County the situations exist in other Massachusetts municipalities. Staff from this Office observed Utah plates on a delivery van in Boston. This company van advertised the name, address and phone number of the company located on Centre Street in Jamaica Plain. Similarly, a bakery delivery truck with a company owner/operator permit number for Boston is being operated with New Hampshire plates.

### **Motor Vehicle Registrations at Public Construction Projects**

This Office made several visits to Central Artery construction sites where vehicles and equipment with out-of-state registrations were observed. MassHighway includes the following registration provision in all its construction contracts, including those for the Central Artery/Third Harbor Tunnel (CA/T) Project <sup>1</sup>:

All motor vehicles [except vehicles used solely for transporting employee(s) to and from the site of the Work] used wholly or in part within the Commonwealth by the Contractor or any Subcontractor, or by any person directly or indirectly employed by them in the execution of the Work shall be registered in the Commonwealth of Massachusetts and bear Massachusetts registration plates except as stipulated in Subsection 7.03.

Subsection 7.03, Permits and Licenses, directs the contractors attention to M.G.L. c.90, §9 which allows a registration exemption for earthmoving motor vehicles that may be driven over roadways and meet certain conditions and restrictions. If a contractor wants this exemption a permit from MassHighway must be obtained. The contractor must present a liability policy or bond at the time of the permit application and the vehicle can only be operated if directed by a police officer. A MassHighway official noted that earthmoving equipment permits have not been issued in recent years.

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<sup>1</sup> *Division I - General Requirements and Covenants of Construction Contracts*, Section 7.04

This Office asked CA/T Project officials what procedures were in place to ensure compliance with this contract provision. An internal Project document dated May 20, 1996 stated:

. . .there are no specific written Project Procedures which address the motor vehicle registration provisions of Project contracts...procedures do...make the Resident Engineer responsible for monitoring...compliance with Contract requirements...if a vehicle is observed without proper registration the Contractor is instructed to remedy that deficiency...We will prepare a reminder to circulate to the Resident Engineers which directs [them] to review the motor vehicle registration requirements with the Contractors during the Pre-Construction Conference.

The reminder has not been written, but a Project official told this Office that the issue had been discussed in a routine Resident Engineer's meeting.

## The REGISTRY of MOTOR VEHICLES' CURRENT EFFORTS

### Administrative Hearings

Registry hearings stem from law enforcement referrals, written citizen's complaints or tips to a 1-800-I-PAY-TAX line. The Registry begins its investigation with an inquiry letter to the suspected violator requiring immediate Massachusetts registration or an explanation for the motor vehicles out-of-state registration with a warning that states: **"Failure to comply with this request will result in a hearing on your right to operate in Massachusetts."** (emphasis theirs)

In response to the Registry's letter, the owner may state that the car was recently registered in Massachusetts or describe "other circumstances" that the Registry should consider relative to the proper registration of the motor vehicle. If this response includes sufficient information, the file is closed. If the response is inadequate, the Registry schedules a hearing.

RMV hearing officers examine the driver's license, motor vehicle registration, and driving history of the suspected violator. In addition, unpaid motor vehicle excise tax and parking ticket information is utilized. The suspected violators are not sworn to tell the truth, although the term "testify" is used while the hearings are being conducted. Simple questions such as "Do your children attend school in Massachusetts? Where do you vote? Do you own a house here?" resolve the issue of residency. If the person produces enough proof of out-of-state residency to satisfy the Registry hearing officer, the automobile registration is considered valid. If the person fails to prove out-of-state residency, he must register in Massachusetts within 20 days of the hearing, or his right to operate in Massachusetts will be revoked.

A sample of some Registry hearings follow.

- A contractor from Abington registered his business vehicle in New Hampshire. Prior to this February 14, 1996 hearing, the Registry had suspended his registration because of years of delinquent motor vehicle excise tax bills totaling \$3,000. Rather than pay, he registered his vehicle in New Hampshire. At the hearing, he admitted living in Massachusetts and was given 20 days to register his vehicle. He was told that if he failed to register, his right to operate would be revoked. As of mid September 1996 his outstanding excise tax bills have not been paid. His right to operate in Massachusetts is now revoked.

- A woman who has lived in Boxford for at least three years has repeatedly refused to register a motor vehicle and custom built horse trailer in Massachusetts. The first RMV hearing was requested in June 1995 where Boxford Police provided a series of motor vehicle citations in lieu of a log, a written report and letter, and the woman's driving history. Her motor vehicle citations went back to 1991. She defaulted the September 1995 hearing and her right to operate in Massachusetts was revoked. According to a Registry official, on an unknown date, an unknown person met with an unknown RMV official and, this woman's right to operate was reinstated effective October 4, 1995. Subsequently, the Boxford Police requested another hearing. The Department sent in its entire case file, police reports from other communities, a 30 day sighting log, and a statement from the woman's landlord who said the suspect had been living in Boxford since November 1993. A second hearing was scheduled in February 1996. The woman called the Registry hearing officer a few minutes before her hearing and claimed to be in the hospital and asked to reschedule. However, a Boxford police officer, reported that he observed the woman in her vehicle around the same time she made her call to the Registry. A third hearing was scheduled and she defaulted. Her right to operate was revoked and she was subsequently arrested for driving after revocation of her right to operate. These charges were dismissed in Haverhill District Court. However, her right to operate in Massachusetts remains revoked.

- According to a State Trooper assigned to the Commercial Vehicle Enforcement Section of the Registry, a company in Franklin Massachusetts bought 30 new trailers (approximately \$30,000 each) and registered them and other trailers they owned in New Jersey at a private residence. State Police cited and towed them for failure to register these vehicles in Massachusetts. The company got an injunction to stop the State Police from towing the trailers. The Registry determined that the company should register 40% of their fleet in Massachusetts. The company complied but, none of the new vehicles were registered, the company registered "old junks" instead, according to the State Trooper.

The Registry provided this Office with the outcomes of Compliance Hearings scheduled between May 11, 1995 and February 14, 1996 involving 202 motor vehicle owners with questionable out-of-state registrations:

87 (43%), Defendants Defaulted the Hearing - Right to operate in MA was revoked  
75 (37%), Defendants Registered their motor vehicle in MA  
23 (11%), Defendant's Out-of-state Registrations were valid  
17 (08%), Defendants had their Right to Operate in MA suspended

In this sample, 51% of the defendants had their right to operate their motor vehicle in Massachusetts suspended or revoked. This Office's review and information provided by State and local police strongly suggests that many of these motor vehicle owners continue to operate on the roads in Massachusetts. State and local police believe the Registry's decisions have not curtailed any operating activity, since these violators usually do not get stopped until they are involved in an accident or get pulled over by the police.

## 1-800-I-PAY-TAX

In late 1990 an anonymous tip line was set up by the Registry to encourage the public to report people who evade taxes by registering their motor vehicles out of state. Callers are asked to identify the registration plate number, state, violator's name (if possible) and the exact location of the suspected vehicle. The information reported is then checked through the Criminal Justice Information System and Registry's own data base to determine the likelihood that the vehicle is improperly registered out of state.

As of November 1996, the tip-line logged in 1,665 complaints over a six-year period. Two-thirds (1118) of the referrals were for questionable New Hampshire registrations. Only 24% or 264 motor vehicles with New Hampshire registrations converted to Massachusetts. There were 121 referrals for motor vehicles with Maine plates, 58 Florida registrations, 53 Rhode Island registrations, 49 Vermont registrations, 42 New York registrations, 39 Connecticut registrations, and 185 referrals involved registration plates in other states.

The aftermath of the 1,665 tips:

Valid Out-of-state Registrations:	559	34%	(391, 70% valid NH Registrations)
<b>Owners Complied w/ Ch. 90</b>	<b>450</b>	<b>27%</b>	<b>(264, 59% converted from NH )</b>
Referrals Unresolved:	323	19%	
Right to Operate in MA Revoked:	145	09%	
Undeliverable Inquiry Letter:	107	06%	
Registry Hearing to be Scheduled:	71	04%	
Status unknown	10	01%	



Registry files reveal many unresolved cases. In some, the suspect did not respond to the Registry inquiry letter. According to a Registry official, referrals are not pursued if the owner of a motor vehicle with out-of-state plates never had Massachusetts driver's license and a registered motor vehicle in Massachusetts previously. This Office was told that in order for an investigation of a suspected motor vehicle registration violator to be pursued, some indicia of a Massachusetts affiliation must be established in the Registry's data base, such as a previous driver's license or motor vehicle registration. This Office's search found that a Massachusetts resident may have never obtained a license or motor vehicle registration in this state. For example, some people move here from other parts of the country and continue to register their vehicles out of state. A similar situation occurs when students remain here after graduating from a Massachusetts college or university and continue to use their out of state plates even though their student exemption has expired.

This Office listened to tapes of the 1-800-I-Pay-Tax tip line. Callers provide extensive information about the vehicle, its location, and the identity of the suspected violator. Several irate callers remarked that they had called before with the same information, yet the owner was still operating with the same out-of-state plates. One series of calls identified vehicles in Lowell, Marblehead, Lawrence, Braintree, Westford and New Bedford with registrations from Florida, New Hampshire, and Vermont.

This Office has been told that the Registry does not have a system in place whereby information gathered through their 1-800 referrals is shared with tax enforcement officials at the Department of Revenue.

- A caller to the 1-800-I-Pay-Tax tip line referred a woman from Westwood with a New Jersey registration plates. On the Registry inquiry form the woman wrote: "I am in Massachusetts to attend school. I am a student and do not plan to become a resident of Massachusetts." At the hearing Registry officials established that she was a part-time student at the graduate level and was not exempt from registration

requirements in Massachusetts. She admitted that she had been living in Massachusetts for several years. She registered her vehicle in Massachusetts on the day of the hearing.

- A man from Amesbury and his girlfriend were reported by a caller to the 1-800-I-Pay-Tax tip line. The woman registered her car in New Hampshire and the Amesbury man drove it regularly. This Office learned that the girlfriend had a non-renewable Massachusetts driver's license because she had accumulated three years worth of delinquent motor vehicle excise taxes and an outstanding parking ticket. This Office also learned that the Registry had previously revoked the man's driver's license because of his driving record which included DWIs, insurance payment defaults, court defaults, speeding violations, and various accidents. The couple did not appear for their scheduled Registry hearing and now face indefinite revocation of their right to operate in Massachusetts.

## PROCESSING MOTOR VEHICLE OFFENSES IN THE COURTS

Motor vehicle offenses are categorized as either a Civil Motor Vehicle Infraction (CMVI) or a Criminal Offense. Most motor vehicle law violations, as defined in M.G.L. c.90C, §1, are CMVIs.

### **Civil Motor Vehicle Infractions, M.G.L.90C, § 3**

Examples of CMVIs include: a) operating a motor vehicle that is unregistered, b) operating a motor vehicle without an inspection sticker, c) operating a motor vehicle with defective equipment, d) operating without possession of a driver's license, and e) moving violations. If cited for a CMVI, the violator can either pay the fine recorded on the ticket or challenge the citation by requesting a hearing before the clerk magistrate.

Chapter M.G.L. c.90C, § 3 requires a finding of responsible or not responsible be entered at the conclusion of a CMVI hearing:

The magistrate or justice shall enter a finding of responsible if it was shown by a preponderance of the credible evidence that the violator committed the infraction alleged; otherwise the magistrate or justice shall enter a finding of not responsible. No other disposition shall be permitted and such matters shall not be continued without a finding, dismissed, or filed.

If found responsible, the violator must pay the assessment for the offense, or he can appeal the clerk magistrate's finding to the District Court judge and then to the Appellate Division of the District Court.

The Chief Justice's promulgated guidelines address the reduction of assessments for CMVIs:

. . . for infractions with a scheduled assessment of \$50.00 or more, the judge or magistrate may impose a reduced assessment which is not less

than one-half of the scheduled assessment, based upon the presence of exceptional circumstances in the particular case. . . These guidelines are based on the principle that the assessment imposed after hearing should ordinarily be the same as the pay-by-mail amount. . .a reduction should be made only for *exceptional circumstances unique to the individual case*, and not because the judge or magistrate personally favors a lower assessment generally for the particular offense. . . However, in some cases objective circumstances might support a decision to impose a lesser assessment: for example, where a driver prudently responded to a hazardous road situation, although the driver's response was, strictly speaking, itself a violation.

### **Motor Vehicle Criminal Offenses, M.G.L.90, §§ 23 & 24**

Criminal offenses include operating an uninsured motor vehicle, attaching plates, and operating a motor vehicle after suspension or revocation of a driver's license or registration. Criminal offenses require the violator to appear in court. The possible dispositions for criminal motor vehicle charges are guilty, not guilty, dismissed, continued without a finding, or filed.

A CMVI that is in conjunction with a criminal offense (combination case) requires a court appearance. In combination cases, the CMVI charge(s) remains civil, but must be resolved by a judge within the context of the related criminal offense. If the violator is being sentenced for the criminal charge, the judge may file the CMVI portion of the case without imposing an assessment.

In all other cases, if the violator admits responsibility or has been found responsible for the civil motor vehicle infraction, the justice shall require the violator to pay a civil assessment...

## LAWRENCE DISTRICT COURT

Several State Troopers and local police officers informed this Office that they believed motorists are able to break the laws relating to motor vehicle registration and insurance requirements with minimal consequences. As proof, they noted that motor vehicle offenses are routinely dismissed in Lawrence District Court. This Office interviewed the State Police Prosecutor (Prosecutor) assigned to the Lawrence District Court.

During the course of a taped interview with the Prosecutor, the Prosecutor described his responsibilities as making recommendations to the court on State Police cases, transporting prisoners, representing the State Police at arraignments, bail arguments, pre-trial conferences, hallway conferences, hearings, and public relations. The prosecutor's description of the way in which criminal and civil motor vehicle charges were handled at the Lawrence District Court was used for this Office's analysis of 92 case dispositions in which defendants were charged with operating an uninsured and unregistered motor vehicle. The Prosecutor said:

...that judges are mandated under case flow management to get through, I think it's 30% of all cases on arraignment or some ball park figure like that. I'm talking about my things, not murder or anything like that. They're mandated by Judge Zoll to dispose of as many cases as possible otherwise it ties up the system.

The Prosecutor said that he believed citations that are issued by a State Trooper are often deficient. He noted that violation cases are often impossible to prove in court, unless the officer already determines that he has observed the motor vehicle in Massachusetts for 30 days. By the time the court dates approach, some defendants have already registered and insured their motor vehicles in Massachusetts. In these cases, the defendant's charges are dismissed, or they are found responsible and only court costs are imposed. The Prosecutor stated that he makes realistic recommendations in Lawrence:

...unregistered...maybe responsible...\$100 dismissed, \$250 in court costs as opposed to fines...in Concord Court 90% can afford it. \$500 is in their back pocket. Whereas, down here [Lawrence] they have five dollars.

In cases involving a defendant with a probation record, and prior unregistered or uninsured charges, heavy fines and even a suspended sentence can be obtained. The Prosecutor stated that the State Troopers were not pleased with the dispositions of their cases.

### **Criminal and Civil Motor Vehicle Cases**

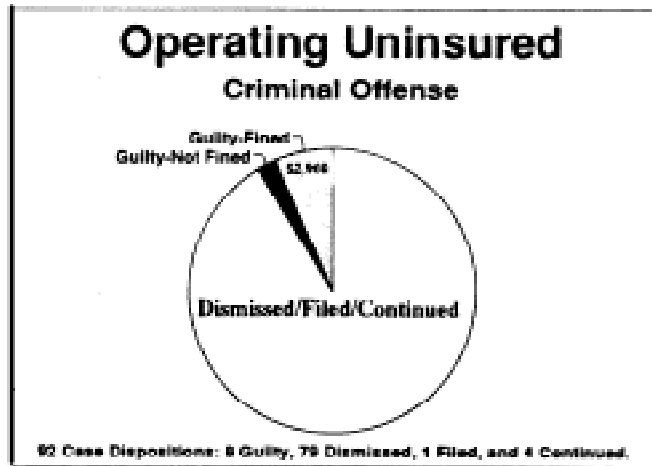
This Office reviewed the dispositions of Lawrence Court cases involving 205 defendants charged with a total of 590 criminal and civil motor vehicle offenses. These defendants were cited by the State Police assigned from June to December of 1995. This review was conducted to substantiate the State Police Prosecutor's depiction of the way cases involving charges of operating an uninsured and unregistered motor vehicle are managed at the Lawrence District Court.

92 of the 205 individuals were charged with both operating an uninsured motor vehicle (criminal) and operating an unregistered motor vehicle (civil).

60 of these 92 defendants were also charged with attaching plates (criminal).

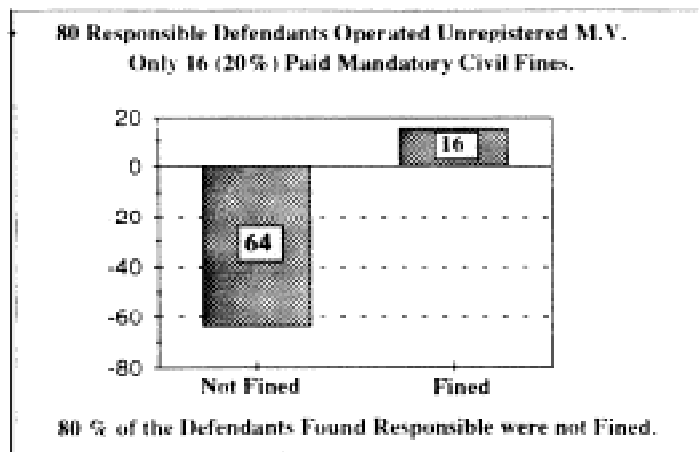
89 of the 92 court documents reviewed by this Office list the Prosecutor interviewed by this Office as the complainant.

The case dispositions revealed that only 8 of these 92 defendants were found guilty of the criminal charge of operating an uninsured motor vehicle, 79 of the remaining defendants had their criminal charges dismissed, 4 were continued without a finding, and one was filed without a finding.



In other words, 91% of the criminal charges of operating an uninsured motor vehicle were dismissed, filed, or continued without a finding, when citations for "operating an uninsured and unregistered motor vehicle" were issued by State Troopers and subsequently heard in the Lawrence District Court.

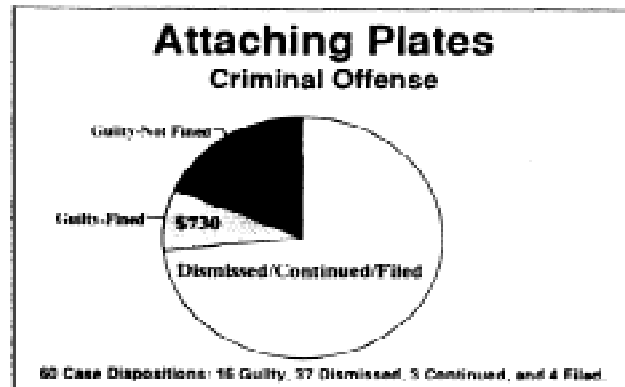
Of the civil infractions, 80 of these 92 defendants (87%) were found to be responsible for the CMVI charge of operating an unregistered motor vehicle. Still, only 20% paid fines (14 violators paid \$100 civil fines and 2 others paid \$50 each). In other words, 80% of the violators found responsible for operating an unregistered motor vehicle paid nothing in civil penalties, despite the fact that they were found responsible and were subject to a mandatory assessment.



92 DEFENDANT'S DISPOSITIONS	UNINSURED Criminal Fines	UNREGISTERED Civil Fines	VICTIM/WITNESS Court Fees
<u>Criminal/Civil</u>			
1st Defendant- <u>Guilty</u> /responsible	\$ 500	\$ 100	- 0 -
2nd Defendant- <u>Guilty</u> /resp. file	\$ 500	- 0 -	\$ 175
3rd Defendant- <u>Guilty</u> /responsible	\$ 500	- 0 -	- 0 -
4th Defendant- <u>Guilty</u> /responsible	\$ 500	\$ 100	\$ 30
5th Defendant- <u>Guilty</u> /resp. file	\$ 500	- 0 -	\$ 175
6th Defendant- <u>Guilty</u> /responsible	\$ 400	\$ 100	\$ 250
7th Defendant- <u>Guilty</u> /resp. file	- 0 -	- 0 -	\$ 125
8th Defendant- <u>Guilty</u> /responsible	- 0 -	\$ 100	\$ 100
<b>sub-total</b>	<b>\$ 2,900</b>	<b>\$ 400</b>	<b>\$ 855</b>
9th Defendant- <u>Cont. w/o find</u> /responsible	- 0 -	\$ 100	\$ 300
10th Defendant- <u>Cont.w/o find</u> /responsible	- 0 -	- 0 -	\$ 285
11th Defendant- <u>Cont w/o find</u> /resp. file	- 0 -	- 0 -	\$ 250
12th Defendant- <u>Cont w/o find</u> /resp. file	- 0 -	- 0 -	\$ 100
13th Defendant- <u>File w/o find</u> /resp. file	- 0 -	- 0 -	- 0 -
14th Defendant - <u>Dismissed</u> /file	n/a	- 0 -	- 0 -
15th to 26th Defendant- <u>Dismissed</u> /resp.	n/a	\$1,000	\$ 1,625
27th to 81st Defendant - <u>Dismissed</u> /resp. file	n/a	- 0 -	\$11,290
82nd to 89th Defendant - <u>Dismissed</u> /dismissed	n/a	n/a	\$ 1,830
90th to 92nd Defendant - <u>Dismissed</u> /not resp	n/a	n/a	\$ 230
<b>TOTALS</b>	<b>\$2,900</b>	<b>\$1,500</b>	<b>\$16,765</b>

60 of the same 92 defendants in the above combined cases were cited criminally for "attaching plates". The 60 criminal charges for illegally attaching plates resulted in 37 dismissals, 4 charges were filed without a finding, and 3 were continued without a finding. Only 5 guilty defendants received fines (3 defendants paid \$50 fines, one paid a \$500 fine, and one defendant paid an \$80 fine). Eleven guilty defendants were not fined (but 9 were placed on file according to court records). While 27% of the defendants were found guilty of attaching plates, only 31% paid a fine.





The bottom line is that the more serious criminal offenses carrying hefty fines are less likely to result in guilty verdicts with fines being imposed. Overall, only 27 fines were imposed on 22 defendants for the 104 guilty or responsible court dispositions. 76% of the violators who had decisions against them for operating an unregistered/uninsured motor vehicle or attaching plates did not pay any fine, although some paid court costs or victim witness fees. The consequences of violating registration and insurance laws are minimal for most of the defendants who appear in this district court.

Separate court costs and victim witness fees totaling \$16,765 were assessed upon 84 of the 92 defendants whose cases were reviewed for this report.

The two cases below were disposed of at the Lawrence District Court.

- An Everett man was stopped by the State Police because he did not have a registration sticker or a front license plate on his motor vehicle. He was subsequently charged with operating an unregistered and uninsured motor vehicle, attaching plates from another vehicle, failing to display a front plate, and operating without an

inspection sticker. He was found to be responsible for being unregistered (\$100), attaching a plate and not displaying a front plate (\$35). However, the charges of having no inspection sticker and operating an uninsured vehicle were dismissed. Lawrence District Court documents indicate that the uninsured charge was dismissed because he had insured his motor vehicle after being cited.

- A Lynn man stopped by the State Police because he did not have a front plate had a revoked plate that was issued to another vehicle attached to the rear of the vehicle. He was subsequently charged with operating with a revoked registration, operating an unregistered and uninsured vehicle, attaching a plate from another vehicle, and failing to display a front plate. Lawrence District Court documents indicate the uninsured charge was continued without a finding for 60 days. The owner was found responsible for the charges of unregistered and not displaying a front plate. However, the charges were placed on file without any fines. The charges of operating with a revoked registration and attaching a plate were filed without a finding.

The State Police Prosecutor whose court cases were reviewed by this Office has his own history of improper out-of-state motor vehicle registration. Because of possible bias, he does not seem to be the appropriate trooper to be assigned to prosecute motor vehicle registration violations.

The Administrative Justice of the District Courts should determine whether the Lawrence District Court's incomplete compliance with statutory mandates and its regulatory directives involving civil and criminal motor vehicle infractions needs further scrutiny.

## **IMPROPER REGISTRATIONS IN ANOTHER MASSACHUSETTS COMMUNITY**

Some Massachusetts residents live in one community and register in another city or town to save money on their insurance premiums. One result of this motor vehicle registration and automobile insurance fraud is that the community where the resident lives and the motor vehicle is customarily garaged is deprived of motor vehicle excise taxes it should collect.

When an individual registers a motor vehicle with the Registry, the owner must list the city or town where the vehicle is customarily garaged. Assessors have told this Office that people will often list a second home as the place of garaging instead. Some list an address in another city or town as their mailing address. The assessors receive the excise tax bills from the Registry which they mail to a forwarding address of the owner whose motor vehicle is not principally garaged in their town. Some people use post office boxes. While some communities may benefit from an undeserved increase in motor vehicle excise tax revenues, the motor vehicle owner risks rejection of any insurance claims if the insurer discovers the use of a false address.

Some assessors on Cape Cod and the South Shore stated that they have reason to believe that some property owners have registered their motor vehicles at their Cape Cod and South Shore addresses when they actually live elsewhere in cities and towns, like Boston, with higher insurance premiums. A Cape Cod assessor told this Office that he believes his town is receiving too much motor vehicle excise tax money based on the number of home owners in his town. Although assessors don't complain about this excess revenue, other cities and towns are deprived of these funds.

In Massachusetts, according to M.G.L. c.59, a property owner is subject to personal

property tax on the contents of a residential property, except for property occupied as a primary residence. The towns surveyed by this Office generate a personal property tax bill for all residential property owned by an individual who does not have a mailing address in that town. Some towns surveyed on the Cape explained that people use different "schemes" to try and get away with not paying a personal property tax. For instance, a married couple will list only one of them on the voter list, census and street listing, while the other spouse will be the only one listed on these same lists in another municipality. This gives the appearance of two domiciles, or two primary residences and provides an opportunity for registration of a motor vehicle to the address of the second home even when the motor vehicle is not customarily garaged at the second home.

- Other examples of this improper registration were highlighted in the Massachusetts Insurance Fraud Bureau's (IFB) April 1996 issue of *focus Fraud*:

Three subjects allegedly claimed their vehicles were garaged in different towns of the state from where the subjects lived in order to save on their insurance premiums. One woman, who owns two vehicles kept in Lawrence, claimed to Safety Insurance Company that automobiles were allegedly garaged in Methuen which saved her \$492 in premiums on each vehicle. A Lawrence couple, who own two vehicles, claimed to Liberty Mutual that their vehicles were allegedly garaged in Boxford and saved a total of \$954 in insurance premiums.

Three Lawrence residents were issued complaints in Lawrence District Court on March 20, 1996 on charges of insurance fraud and larceny.

According to the IFB Chief of Investigations, the woman was found guilty of insurance fraud and larceny, fined \$567, and ordered to pay an additional \$567 in restitution. The couple charged with insurance fraud and larceny have not had their case resolved. Usually insurance companies deny insurance claims and coverage for accidents involving individuals who have improperly registered their motor vehicle in another city or town. The standard application for Massachusetts Motor Vehicle Insurance contains a notice that reads:

If you or someone else on your behalf gives us false, deceptive, misleading or incomplete information...and if such false, deceptive, misleading or incomplete information increases our risk...we may refuse to pay your claim or cancel your policy. Such information includes the description of the place of garaging of the vehicle(s)...

In the following cases:

- A Lenox man with an expired Massachusetts license and an active New York license worked for the City of Pittsfield. His motor vehicle was registered in New York.
- A Dunstable homeowner with children in the Dunstable public school system registered her 1994 BMW convertible and 1994 Jeep Cherokee in New Hampshire. • A Lynnfield couple with Massachusetts driver's licenses registered their Mercedes in New Hampshire.

As a result of a Registry inquiry or hearing, these motor vehicles are now registered in Massachusetts.

In the following cases:

- A Northampton man with a Massachusetts commercial driver's license registered two vehicles out-of-state (Maine & New Hampshire).
- A Plymouth homeowner registered her vehicle in Vermont and was driving with an expired Massachusetts license. She also had several court defaults and accidents that resulted in points on her insurance.
- A Worcester man registered his two vehicles in North Carolina.

As a result of defaulting on a Registry hearing, these individuals have had their right to operate in Massachusetts revoked indefinitely.

**UNINSURED MASSACHUSETTS MOTORISTS  
FAIL TO PAY A MINIMUM OF \$210 to \$300 MILLION  
IN INSURANCE PREMIUMS ANNUALLY**

Representatives of the insurance industry approximated that there are 3.5 million insured private passenger vehicles in Massachusetts with an average motor vehicle value of \$12,500 to \$14,000, using available insurance data and some caveats. Industry analysts believe that "it might be plausible to assume that the uninsured fleet is older, and has a lower average cost new, than the insured fleet." (emphasis theirs) Motor vehicles of lesser value have compulsory coverage but oftentimes skip the optional coverage. Although many of the motor vehicles singled out in this report are worth less than this \$14,000 figure, many are worth more and some of those that have improperly registered out of state, are the owners of several motor vehicles.

Violators operate unregistered and uninsured motor vehicles in Massachusetts until they are stopped by law enforcement officials. Some register and insure their vehicles in Massachusetts initially, but default on the insurance payments. Massachusetts motor vehicle owners drive with lapsed insurance and revoked plates for the remainder of the two year registration period. These drivers appear to be legally registered and the only way they are caught is when they are involved in an accident or are stopped by the police for a traffic or equipment violation. Other violators attach expired out of state or Massachusetts registration plates issued to other motor vehicles and operate until caught. In a one month period in Boston, the State Police Community Action Team's evening shift arrested 150 violators for operating unregistered and uninsured motor vehicles. These troopers reported that they have reason to believe that many hit and run accidents involve a driver who leaves the scene of an accident to escape detection because the motor vehicle he is driving is not insured.

According to the Massachusetts Executive Office of Consumer Affairs, Division of Insurance, the average private passenger vehicle policy premium in 1995 was \$860.<sup>2</sup> In 1995 there were approximately 3.5 million private passenger vehicles registered in Massachusetts. The Division of Insurance and the Registry estimate that approximately 10 - 12% of these Massachusetts private passenger motor vehicles are uninsured at any given time, resulting in premium losses of approximately \$300 million. The Automobile Insurers Bureau estimates that 7% of the drivers on the road in Massachusetts are driving without insurance coverage. Using this lower percentage, the loss in insurance premiums would be about \$210 million.

- A Massachusetts insurance agency informed this Office that they were processing a claim from a Quincy client whose vehicle, a \$30,000 Nissan Pathfinder, was parked and hit by another vehicle that was uninsured. The Pathfinder was declared a total loss. The Pathfinder's owner's policy provided for coverage against the uninsured and consequently, his insurance company covered the replacement value of his motor vehicle. The motor vehicle registration of the at-fault driver's vehicle had been cancelled for nonpayment of the insurance premium.

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<sup>2</sup>This amount consists of both compulsory insurance required by M.G.L. c.90 §34A and the optional insurance that most Massachusetts motorists purchase for protection from liability. The portion of optional insurance consisting of collision and comprehensive is required by the lienholder if the vehicle is not owned by the policy holder.

## 208 IRRESPONSIBLE DRIVERS

Many motor vehicle owners with motor vehicles improperly registered out of state are motivated to violate M.G.L. c.90 because of their bad driving records, including convictions for speeding, driving while intoxicated, at-fault accident fatalities, driving to endanger, and operating an unregistered and uninsured motor vehicle. The most serious of these violators have suspended or revoked driving privileges in Massachusetts. These motor vehicle offenses would result in the drivers being assessed substantial points on their automobile liability insurance policy, if their motor vehicle were properly registered in Massachusetts.<sup>3</sup>

This Office reviewed records provided by law enforcement officers in Haverhill, Newburyport, North Andover and Salisbury concerning 208 motor vehicle owners cited for improper automobile registrations. This Office's investigation into their driving histories revealed that many of these owners had poor driving records. An analysis of 208 improperly registered motor vehicle reveals that these 208 owners should have paid at least \$153,933 for minimum compulsory insurance.

Based on 1995 automobile insurance rates, a Massachusetts driver with a poor driving record could pay up to \$3,700 annually for basic compulsory insurance regardless of the age, make and model of the car.<sup>4</sup> Rather than pay the price for their

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<sup>3</sup>The cost of compulsory insurance in Massachusetts is based on the number of years an individual has been driving, their driving record, and the community in which the vehicle is principally garaged. The Safe Driver Insurance Plan (SDIP) is a program mandated by state law that encourages safe driving by rewarding drivers who do not cause an accident, or incur a traffic law violation and by making sure that high-risk drivers pay a greater share of insurance costs. The SDIP ranges from Step 9 which provides for maximum savings of up to 42% off liability coverage and 30% off collision coverage to Step 35 which is for the worst drivers who can incur up to an additional 140% for certain premiums. Step 15 is the starting or neutral step. This is the starting step for all drivers and results in neither a credit nor surcharge. Each year of incident-free driving results in a credit and moves the individual closer to a Step 9.

<sup>4</sup>M.G.L. c.90 §34A requires Massachusetts operators to have a minimum amount of insurance to protect them from liability. The four parts of compulsory insurance consist of bodily injury to others, personal injury protection, bodily injury caused by an uninsured auto and damage to someone else's property. The \$3,700 figure is obtained based on 1995 rates for an inexperienced driver with a



behavior, these violators improperly register out of state and, where possible, sometimes opt for no insurance coverage. In addition to avoiding high insurance premiums, Massachusetts motor vehicle owners who improperly register their vehicles out of state can evade Massachusetts sales and motor vehicle excise taxes, registration, titling and inspection fees for the motor vehicle. This results in substantial cost-savings for these Massachusetts drivers with poor driving records.

Calculations of foregone taxes and fees are estimated at \$218,244 for the 208 motor vehicles in this sample. This estimate breaks down to \$60,039 in unpaid sales tax, \$132,860 in unpaid motor vehicle excise tax, and \$25,345 in unpaid registration and inspection fees from 1991-1995. New Hampshire has no sales or motor vehicle excise tax and the registration fees are significantly less than in Massachusetts. The Massachusetts motor vehicle excise tax law (M.G.L. c.60A, §1) establishes a formula for calculating the motor vehicle excise tax using the manufacturer's list price and year of manufacture. The excise tax is assessed and collected annually and ultimately results in revenue collections that exceed the one-time sales tax imposed when the motor vehicle is acquired and titled. Each of these violators in the sample have saved \$1,789 in taxes and fees on average by improperly registering their motor vehicle out of state.

The projected expense of proper registration and compulsory insurance that would be incurred by a few of the subjects from the sample are illustrated below.

- A man from Haverhill with a 1986 Honda Civic with a book value of \$3,100 has a driving history (Step 33) as a result of numerous traffic violations that include speeding, two accidents, failure to stop for the police, and driving an unregistered motor vehicle without an inspection sticker. When cited by police for improperly registering his motor vehicle in New Hampshire, he registered his vehicle in Massachusetts at a cost of \$95 for registration fees and \$2,500 for compulsory

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SDIP of 35 who registers their vehicle in Dorchester.

insurance only. His insurance has since been cancelled for non-payment of the premium and his Massachusetts motor vehicle registration has been revoked. His license plates have not been returned to the Registry, and the violator may be driving illegally on Massachusetts roads.

- A man with a 1984 Ford 350 Pickup with a book value of \$3,275 is a resident of Massachusetts and has been cited by the Haverhill police for operating his motor vehicle with New Hampshire plates. His driving history in Massachusetts (Step 30) includes three speeding violations, having no inspection sticker on three occasions, and improperly attaching equipment to the vehicle. The cost to insure his vehicle in Massachusetts would be a minimum of \$1,422 for compulsory insurance and \$95 in registration fees. His truck remains registered in New Hampshire.

- A woman from Haverhill cited for operating her motor vehicle with New Hampshire plates complied with Chapter 90 by registering her 1986 Pontiac Firebird currently valued at \$3,375 in Massachusetts at a minimum cost of \$1,186 for compulsory insurance and \$95 in registration fees. Her Massachusetts driving history (Step 25) includes operating unregistered, twice driving with no inspection sticker, twice improperly registering equipment attached to the vehicle, and failing to stop for police. Although she complied with Massachusetts registration requirements, her Massachusetts driver's license is currently suspended, and her right to operate in Massachusetts has been revoked for subsequent violations.

- A man from Andover has been cited seven times for failing to register his 1990 Jeep Cherokee and 1987 Oldsmobile Delta 88 in Massachusetts. The court dismissed the charges for failing to register his motor vehicles in Massachusetts. His child is enrolled in the Andover public school system. Although the man's motor vehicles are registered in New Hampshire he has a valid Massachusetts driver's license. According to New Hampshire law, this man should have a New Hampshire driver's license. In Massachusetts this man's driving record places him at Step 17

due to involvement in an accident, seven speeding violations, and failure to stop for police. Compulsory insurance only coverage on these vehicles would be \$952 (he would receive a \$162 discount per vehicle because he is over 65). Both vehicles are still registered in New Hampshire.

## **THE BOUNTY-LAW, so called**

M.G.L. c.90, §34P requires the Registrar to provide state law enforcement officials and local police jurisdictions with weekly notices of revoked registrations due to failure to maintain an insurance liability policy on the motor vehicle. Upon receipt of such notice, law enforcement officials are supposed to seize the registration plates in use on the uninsured motor vehicle. This law was amended in 1995 to allow for seizure of the plates when the motor vehicle is parked on private property, "when said registration plates are affixed to any vehicle or are in the possession or custody of any individual whether on a public way or private property." Police officers volunteered that they are reluctant to seize plates of uninsured/revoked registrations on private property due to what they perceive to be potential liability issues. Most officers stated that they will only seize plates when they observe the motor vehicle being operated on a public way.

M.G.L. c.90, §34J provides that:

whoever operates...a motor vehicle...and the motor vehicle liability policy...has not been provided and maintained...shall be punished by a fine of not less than [\$500]...nor more than [\$5,000], or by imprisonment,..or both...provided, however, that any municipality that enforces the provisions of this section shall retain such fine.

In proceedings under this section, written certification by the registrar...that the registry...has no record of a motor vehicle liability policy or bond or deposit in effect at the time of the alleged offense...for the motor vehicle alleged to have been operated in violation of this section, shall be admissible as evidence...and shall raise a rebuttable presumption that no such motor vehicle liability policy...was in effect for said vehicle at the time of the alleged offense. Such presumption may be rebutted or overcome by evidence that a motor vehicle liability policy...was in effect...at the time of the alleged offense.

Although this "bounty law" has been on the books of the Commonwealth for over ten years, it is not employed by local law enforcement departments as a source of

revenue enhancement. Insurance industry representatives said that they were disappointed that the law has not had much impact. The Registry list seized plates in their database as simply returned plates. The fact that the plates were seized is not part of the Registry's record.

State troopers expressed frustration over the court appearances of motor vehicle owners on charges of operating an uninsured motor vehicle. The troopers stated that the owners' lawyers asked for "certified proof that no insurance existed." Troopers said that it was impossible to prove that something does not exist [compulsory insurance], and that the defendants' lawyers "got them off."

A Massachusetts Appeal states:

...the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged....This constitutional requirement cannot be altered because of any difficulty the Commonwealth [384 Mass. 510] may have in proving the absence of insurance as compared to the relative ease with which the defendant could prove that his car is insured.<sup>5</sup>

Jury Instruction 5.11 (revised 1995) informs the jury that<sup>6</sup>:

In order to prove the defendant guilty ..., the Commonwealth must prove...beyond a reasonable doubt:

First: That the defendant operated a motor vehicle, or permitted a motor vehicle to be operated ;

Second: That the operation took place (on any public highway...private way laid out by statutory authority...on a way dedicated for public use...; and

Third: That the vehicle being operated was not (insured) (insured for the minimum coverage required by law) at the time.

Registry certificate of absence of record of insurance. states: Among the evidence before you is a certificate that indicates that it was signed by the Registrar...\_\_\_\_\_, certifying that the Registry...has no record that the vehicle involved in this case was insured on \_\_\_\_\_ (date) \_\_\_\_\_.

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<sup>5</sup> 384 Mass 503, 426 NE2d 1611

<sup>6</sup> Operating an Uninsured Motor Vehicle from the Model Jury Instructions for Criminal Offenses Tried in the District Courts,

If you find that this certificate is authentic, you are permitted to accept it as sufficient proof that ...was not insured on that date, if there is no evidence to the contrary ....If there is contradictory evidence on the issue of whether the vehicle was insured, you are to treat this certificate like any other piece of evidence, and you should weigh it along with all the rest of the evidence...

However, it is constitutionally impermissible to shift the burden of proof on any element of an offense by means of a rebuttable presumption,...and therefore the model instruction accords only prima facie effect to such certificate.

The Registrar's certificate can be presented in court as evidence on the issue of whether the vehicle was insured. The certificate may not be "proof" that "no insurance existed" but, as evidence it can be weighed along with other evidence presented.

The most frequent recommendation made by State Police troopers and local police officers was the need to have a law passed in Massachusetts that would require all motor vehicle operators to have proof of compulsory levels of insurance coverage when operating on public roads in Massachusetts. These officers noted that New York state law has the requirement that:

4. (a) The commissioner, upon receipt of evidence that the owner of a motor vehicle not registered in this state has operated ...upon the public highways of this state while proof of financial security was not in effect with respect to such vehicle, shall revoke such person's privilege to operate any motor vehicle in this state and the privilege of the operation within this state of any motor vehicle owned by him.

(b) Such non-resident privileges shall not be restored for a period of one year from the date of such revocation.

14. No registration and/or license, which has been revoked ...because the holder was convicted of driving without insurance...shall be restored until all civil penalties, required to be paid...have been paid.

These Officers believe that Massachusetts should adopt tough statutory provisions

that are similar to New York's legislation as a means of curtailing the number of Massachusetts residents that operate motor vehicles without insurance or register their motor vehicles elsewhere because of the high cost of automobile liability insurance coverage in Massachusetts.

The bounty law is not employed to much extent by local police departments. As noted earlier, the officers discussed the fact that the defendant's lawyers ask for "certified proof that no insurance existed" and officers said that it was impossible to prove that something [compulsory insurance] did not exist at the time of the alleged offense.

It appears that when cases are in court, the Registrar's Certificate of Absence of a Record of Insurance may not be presented as evidence that the motor vehicle was not insured at the time of the alleged offense, or the "Registry certificates" were not considered "sufficient proof" that the motor vehicle was operated without insurance coverage, and the charge was dismissed. Realistically, it is unknown whether substantial fines (\$500 minimum) would ever be imposed on the guilty defendants and returned to municipalities as "bounty."

## REGISTRATION OF MOTOR VEHICLES IN NEW HAMPSHIRE

Registering a motor vehicle in New Hampshire is conducted at the town clerk's office. Some Massachusetts violators uncovered by our investigation registered their motor vehicles in New Hampshire without providing a corresponding New Hampshire address. This Office's computer check of these suspected violator's automobile registration information confirmed this. Nothing in these registrations indicated any residential or business affiliation in New Hampshire.

According to New Hampshire public safety officials, it is not necessary for the owner of a motor vehicle to have a driver's license. However, if the New Hampshire owner has an out-of-state license, the driver's license must be surrendered to New Hampshire and a New Hampshire driver's license must be obtained within 60 days. Our research shows that some continue to use their Massachusetts' driver's license without applying for a New Hampshire license. Others turn in their Massachusetts' license to New Hampshire, only to turn around and apply for a duplicate license in Massachusetts. Some operate with both Massachusetts and New Hampshire driver's licenses in effect. The most irresponsible drivers continued to drive even though their driver's licenses are suspended, revoked or expired in one or more states.

New Hampshire officials informed this Office that a non-resident may register a vehicle in New Hampshire, if the motor vehicle will be operated 100% of the time in New Hampshire. For example, a motorcycle or car garaged and used 100% of the time at a vacation residence could be registered in New Hampshire by a Massachusetts resident. However, there is no indication on the New Hampshire registration that the vehicle is registered according to this rule. In addition, it is impossible to prove the motor vehicle is or is not in New Hampshire 100% of the time.

The following example illustrates problems an investigator may encounter when a



motor vehicle registration is being verified. Staff from this Office observed a new Lincoln being driven in Massachusetts with an expired New Hampshire temporary plate. Visible beneath the New Hampshire temporary plate were the words "Spirit of Massachusetts", the inscription on Massachusetts passenger plates. Through the New Hampshire Division of Public Safety, this Office was able to contact the New Hampshire leasing company that had issued the temporary plate. According to a company official, a Massachusetts man had located the Lincoln at a Massachusetts auto dealership. The man asked the New Hampshire leasing company to purchase that exact Lincoln that he had located in Massachusetts. The leasing company purchased the Lincoln in Massachusetts and leased it to the businessman. Although the leasing company provided this Office with the vehicle identification number and said that the vehicle was registered in Massachusetts, this Office could not locate a record of the motor vehicle in the RMV's database. This leasing company is registered with DOR for sales tax purposes and is required to collect sales taxes on the lease payments of any motor vehicle that is registered in Massachusetts. The company also claims that motor vehicle excise taxes are paid to the Massachusetts city or town where the motor vehicle is registered. Motor vehicles that are leased out of state are a source of considerable frustration for law enforcement officials.

It can be impossible to determine who has control and custody of the motor vehicle, especially when the vehicle is leased in another state for use here. - Haverhill Police Officer

Law enforcement officials said that it is essential that Massachusetts motor vehicle registrations have the name of the individual or business who leased the motor vehicle for use in Massachusetts and not just the name of the leasing company that owns the motor vehicle.

## **REPAIR PLATE ABUSE**

### **An Update on the OIG's 1992 Report**

#### **Repair Plates: Special-Interest Privileges at Public Expense**

In 1992, the Inspector General reviewed the status of the Registrar's decal program and found it was neither credible nor effective as a solution to the problem of repair plate fraud and abuse. Under the decal program, auto repairmen and tow truck operators obtain a one-time decal to place on the rear windshield of a vehicle after titling the vehicle and paying the required sales tax to the Registry. From that point on, the decaled motor vehicle is considered to be in compliance with Massachusetts sales tax and title requirements. A vehicle may be moved from one location to another or from one business to another. Because the decal need not be renewed, repair plate holders have ample opportunity to evade motor vehicle excise taxes in future years of the program.

The repair plate law encourages fraud and abuse by repair plate holders. The fact that a repair plate is not associated with a particular vehicle creates unlimited opportunities for repair plate holders to purchase and operate any number of business and private passenger vehicles without registering and titling them in Massachusetts. In addition to escaping registration and title fees, repair plate holders can easily evade payment of state sales or use taxes and local motor vehicle excise taxes.

According to Registry personnel, there are currently 5,164 repair plate owners, 8,330 repair plates in Massachusetts, and 13,483 motor vehicles that had compliance decals issued to them. There is no way to determine how many motor vehicles, that are owned or controlled by a repairman, are operated without compliance decals. Additionally, repairmen frequently loan their repair plates to others. Currently, there are 8,330 repair plates, but this number does not include the approximately 2,600 repair plates reported stolen or lost every year (50 per week). If a plate is lost or stolen, the owner must file a police report, notify the Registry, and pay a \$10 replacement fee. The plate owner is then issued a temporary paper plate. The replacement repair plate will have the same number but the letter will be the next one in the series. For example, if a repair shop has 4 plates, all have the same number

followed by a series of letters from "A" through "D." If plate "B" is reported lost or stolen, the plate owner is issued a temporary plate "E" to replace the lost repair plate. For some repair plate holders, reporting a repair plate as stolen or lost could possibly be a simple method of acquiring more plates. Some owners could possibly use the lost or stolen plate once it is found and continue to use the temporary plate, as well as the replacement repair plate.

When an officer sees a vehicle being operated with a repair plate, it is impossible to visually determine whether the plate is being misused. Officers have no direct on-line access to repair plate information at the Registry when they pull over a motor vehicle with repair plates. The Registry's computerized information makes it next to impossible to determine whether the repair plate had been revoked. Because the Registry's computerized database does not note when a repair plate has been revoked, the status of the plate remains "Active." Registry officials have confirmed this situation and claim it is not possible at this time to include a revocation alert in the status section of their computer printout information. The Registry is now manually entering the revocation alert on the address line in the computer but does not delete the "Active" status. Troopers have told this Office that, as long as the status is listed as "Active" they will not seize repair plates for fear that the seizure will be determined to be illegal and will not hold up in court. Officers must personally contact the Registry to determine whether the repair plate is lost, suspended, or revoked. This is a time consuming administrative task for law enforcement officers. Registry officials claim that plans are underway to provide law enforcement officials with direct access to this information.

Since 1992, the Registry has been sending municipal assessors motor vehicle excise tax commitments for all Section 5 plate holders including repair plate holders.<sup>7</sup> For

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<sup>7</sup>Section 5 plate holders include repair, dealer, manufacturer, farm, owner/contractor, and transporter plates.

repair plates, the list contains all decaled vehicles since the program began. Some of these vehicles have been sold, traded or taken off the road. According to local assessors who send motor vehicle excise tax bills for these vehicles, it becomes an administrative nightmare to collect and correct the listing.

A Haverhill police officer told this Office that he checked a local gas station's trucks that were operated with repair plates. He cross-referenced the vehicle identification numbers of the tow trucks and uncovered the fact that the owner did not title the vehicles and pay the required Massachusetts sales tax.

□ The same construction company, noted earlier in this report for repair plate abuse, involving the use of repair plates on a Lincoln, was before the Registry earlier in the spring of 1996 for another circumstance in which the company misused their repair plates. In March 1996, a State Trooper observed a repair plate attached "to an old Telephone Co. truck," labeled with the construction company's name. The vehicle was being used for construction work on a Massachusetts Turnpike bridge. The company was cited by a State Trooper for misuse of repair plates. The owner defaulted on an April 25, 1996 Registry hearing and was notified on April 30 that all repair plates were revoked. According to a Registry official the repair plates were never surrendered to the Registry. On May 29, 1996 a company representative (not the owner) appeared before the hearing officer that had signed the original Hearing Report revocation recommendation. This individual presented a letter that claimed one of their workers "who is not fluent in English... mistakenly placed this plate on the wrong vehicle." In the letter the company boasted:

...we have had them [repair plates] for approximately 30 years without any incident. This is the first time... that we have been called in for a hearing. . . [company] has maintained a perfect repore [sic] with the state for our repair plates and hopefully this can be reconciled.

As mentioned earlier, the hearing officer revoked all repair plate registrations after the company defaulted on the hearing. Subsequently, the company also failed to surrender their revoked repair plates as required. Regardless, this same hearing officer rescinded his original revocation of all 5 repair plates and, instead, suspended just one repair plate for 30 days.

□ On January 13, 1996, a Martha's Vineyard seasonal taxi van, whose taxi plates expired in November of 1995, was spotted driving south on Route 28 in Bourne, MA using repair plates borrowed from a Vineyard Haven auto body shop. The repair plate owner appeared before a RMV hearing officer whose file notes are sketchy on this case. From the notes, it appears that the taxi owner was shopping with his father in Foxboro when the taxi van broke down. The file contained a receipt dated January 13, 1996 for the purchase of a distributor cap for \$12.29 at a Vineyard Haven auto supply store, the same day the taxi van was sighted in Bourne. It is not clear whether the vehicle's new distributor cap was delivered to the taxi van in Foxboro or, the new cap was put on prior to the van traveling from the island to the mainland. The file also included an estimate of body work and a paint job on the taxi van by the auto body company that owned the repair plate in question. This estimate for body work, dated 11 days after the taxi van was sighted using the borrowed repair plate, does not seem relevant. In the hearing officer's vague report it says, "No hurry to repair as vehicle will not be registered until [sic] Memorial day." The RMV notes continue by stating that the taxi van owner "drove to Father's house, was shopping with father." "Father drove back to catch boat. was not in [sic] needed on island." The hearing officer's recommendation, "Suspend (1) plate 30 days." It seems reasonable to presume that the repairman allowed the taxi owner to borrow the repair plate and use it on the taxi in order for the taxi owner to travel to Foxboro, since the taxi had been taken off the road. It does not seem reasonable that the taxi owner was "test driving" the need for body work and a new paint job on his taxi that he did not plan to register for another six months.

### **Repair Plate Hearings Exceeded 1-800-I-PAY-TAX Hearings**

This Office reviewed Registry hearing files that covered a 13-month period from January 1995 to February 1996. The records indicate that there were 129 hearings generated through the 1-800-I-PAY-TAX line alleging improper registration of a motor vehicle and 154 hearings on allegations of repair plate abuse. In 1995 there were 5,164 repair plate owners who were issued 8,330 repair plates. Quantitatively, hearings on repair plate abuse take up a disproportionate amount of the Registry's time and resources. A State Trooper that performs spot checks of businesses for misuse of repair plates told this Office that he refers one out of every four businesses for a Registry hearing for non-compliance with repair plate laws and regulations.

It has been five years since the current reforms have been in place but the problems continue. These special-interest privileges should be abandoned and the issuance and use of repair plates should be confined to test driving unregistered motor vehicles. Business such as tow operators, auto glass installers and automobile reupholsters should be required to register the motor vehicles they use in their business. There is no public policy justification to provide this perk to a chosen few.

## **CONCLUSIONS and RECOMMENDATIONS**

This Office recommends that the Commonwealth should immediately implement an across-the-board high technology crack-down on illegally registered motor vehicles. Without too much effort, investigators from this Office were able to substantiate the fact that most of the individuals whose motor vehicles were improperly registered out of state had repeatedly made statements of fact, under pains and penalties of perjury, that corroborated their residency in Massachusetts. Once residency in Massachusetts is validated, law enforcement officers have the leverage they need to require these individuals to register their motor vehicles in the Commonwealth.

Until now there have been few repercussions when individuals and businesses ignore the state's motor vehicle registration requirements. The district courts are overburdened and the Registry does not have the capacity to enforce the laws and regulations it oversees. The bottom line is that it is easy to improperly register out of state and only a small portion of the offenders encounter law enforcement officials who challenge the use of out-of-state plates. In response to the information gathered in conjunction with this report, I have filed comprehensive legislation to address the problems highlighted herein.

Passage of House 147 of 1997, coupled with public awareness announcements of a new State Amnesty Program for those that have improperly registered their motor vehicles, should do much to curtail the problems depicted in this report. Simply described, the bill would mean that if an individual has sworn on legal documents that his principal residence is in Massachusetts, the presumption is that the motor vehicle he drives is customarily garaged at the address of his principal residence. It is ludicrous to have certain individuals evade their legitimate tax obligations when average taxpayers struggle to meet their tax burden.

This legislation is not a tax increase , it is simply a method to increase tax collections from those who have purposefully circumvented paying their fair share of state taxes and fees for years. As a means to improve compliance with Massachusetts registration requirements, this bill would enable law enforcement officials to use a person's residency declarations on a recorded mortgage, Massachusetts resident personal income tax return, or an application submitted to qualify for a tax exemption, educational advantage, or other benefit granted eligible Massachusetts residents as proof of principal place of residence. Documents containing sworn Massachusetts residency declarations can serve as strong evidence that the motor vehicle owned by the Massachusetts resident is customarily garaged where the resident lives.

Utilizing computer technology that is currently available, state law enforcement officials can quickly identify the unprincipled Massachusetts residents and businesses who ignore motor vehicle registration requirements and evade the payment of state and local taxes and insurance premiums. The bill provides for a 90-day amnesty period during which residents and businesses would be able to properly register their motor vehicles in Massachusetts. The Commonwealth should begin an aggressive campaign to promote the proper registration of motor vehicles once the amnesty program is over. The unscrupulous residents and businesses will have ninety days to straighten out their motor vehicle registration problems , otherwise the Commonwealth will do it for them. Once motor vehicle registration fraud is detected, public records at the Board of Registration should be check to determine whether these motor vehicle owners have professional licenses or public contracts and whether these individuals signed Tax Compliance Certificates on which they swore that all their state taxes have been paid.

Based upon the information revealed in this report, I have concluded that improper motor vehicle registration is a serious problem and a major source of substantial tax



revenue leakage. HPAO's THE MASSACHUSETTS TAX GAP report advised:

...there are tax evasion cases where a clear criminal motive can be proved and a criminal conviction can result. The Attorney General was recently successful in obtaining a criminal conviction for tax evasion against a former high ranking official...who had claimed New Hampshire as his domicile. The criminal conviction was initiated after a news account ...raised questions about the defendant's domicile...the state Attorney General'...uncovered an elaborate scheme to evade state taxes. DOR auditors did a full field audit...including utility bills, checking accounts and a number of other records which established his Massachusetts domicile.

As the brief case studies in this report demonstrate and House Post Audit and Oversight's report states, broader tax evasion schemes are possible when motor vehicles are improperly registered in another state or another city or town. Evidence gathered in these cases indicates that with a considerable degree of certainty, the motor vehicles in question are customarily garaged where the owners live. Two of the strongest indications of residency are found in a signed home mortgage loan on file at a Registry of Deeds in which the borrower declares that he will occupy the Massachusetts dwelling as his principal residence, or a resident state personal income tax return where the taxpayer is a renter and took advantage of the renter's deduction. Each of these documents is signed under pains and penalties of perjury. It is illogical to believe that the owner of a motor vehicle would not customarily garage his motor vehicle where he lives. Some individuals have knowingly received substantial tax breaks based upon Massachusetts residency declarations, yet they insist that they live out of state when their automobile registrations are scrutinized. Although these case studies focused primarily on problems in Essex County, improper out-of-state registration is a problem across the state. Motor vehicles with out-of-state plates are parked daily on neighborhood streets in metropolitan Boston area communities such as Watertown, West Roxbury or Quincy. If these registrations were checked it is highly probable that many of the motor vehicles are owned by residents of Massachusetts.

Tax fraud investigations that focus on domicile issues are labor intensive and time consuming for tax auditors and law enforcement officials. The legislatively mandated amnesty program that I have recommended should bring many of the scofflaws forward to avoid possible detection, prosecution, penalties or fines in the future. Still, the Department of Revenue should initiate tax audits of the most egregious tax evaders that appear to have "shopped around" for a wide range of unwarranted benefits that are supported by taxpayer dollars.

It is a grave injustice to Massachusetts businesses who abide by the rules to be in a disadvantaged position when competing with other business owners who have cut their operating expenses by registering their fleet out-of-state and thereby reducing their bottom line. Any individual or company found guilty of tax evasion should have its professional license or certificate suspended, and any request for a license renewal should be granted only after the individual or business had paid its tax obligations, or entered into a payment schedule with DOR or the local tax collector. It is time to put an end to the opportunities for individuals and businesses to have it both ways.

It goes without saying that State and local law enforcement officers are diligently investigating the tax evaders in their communities. Unfortunately, success is measured on a case by case basis and requires extensive time, documentation and commitment. Many of these cases are stymied by the bureaucracy once the defendants reach the court or are brought to the Registry's attention. The most frequent recommendation made by State Police troopers interviewed by this Office was the need for motor vehicle owners to carry proof of motor vehicle insurance coverage. Most mentioned New York state where, the troopers explained, police officers ticket motor vehicle operators from outside New York that cannot produce proof of liability insurance. The ticket requires an appearance in court. At court, if the owner is unable to show proof of insurance, his privilege to operate a motor

vehicle in New York state is suspended for a year. In order to reinstate driving privileges in New York, the offender must pay a \$500 penalty. I agree with these law enforcement officials that similar provisions should be adopted in Massachusetts. The examples of drivers with poor driving records, who improperly register out of state in order to carry little or no insurance coverage, illustrate the need for revisions in the compulsory automobile insurance policy. All operators on Massachusetts roads and highways, regardless of where the motor vehicle is registered, must be required to carry proof of minimum liability coverage.

The Registry must utilize other data sources such as those listed in the Verifying Residency and Business Locations section of this report to resolve proper motor vehicle registration issues. Once it has been determined that the registration is improper, referrals should be made to DOR, the Office of Transitional Assistance, municipal officials, and other appropriate government entities.

To make RMV hearings more effective, the Registry must take steps to correct the default and unresolved case rate. The Registry must insure that violators that do attend hearings produce enough pertinent evidence to support their non-resident assertions. Suspected violators that claim they are non-residents of Massachusetts should sign a statement, under pains and penalties of perjury, that their testimony is true and correct. Data available from the DOR, other tax jurisdictions, Registries of Deeds and local government offices should be considered when residency and motor vehicle garaging issues are being reconciled by the RMV.

Some of the records of one Registry hearing officer that this Office interacted with frequently were little more than sketchy hand written notes that failed to provide any relevant insight into the officer's decisions. Such sloppy hearing notes should not be allowed to stand as the Agency's official record of a hearing. The Registry should swear in all witnesses before the hearing begins. For example, a person disputing a

local parking ticket must take an oath to tell the truth and sign a statement, under pains and penalties of perjury, that the information provided to the local hearing officer is the truth. Many parking ticket hearings are also taped. It seems inconsistent that most parking ticket challenges are handled in a formal legal procedure but, some major disputes before a Registry hearing officer are so informal.

Considering the fact that the Registry appears to have spent more time on administrative hearings on repair plate abuse than it did on its highly touted 1-800-I-PAY-TAX tip line complaints, the Legislature should re-enact the repair plate reforms that it passed in 1991. These reforms were tabled in favor of the current system involving sales tax compliance decals on motor vehicles operated with repair plates. There is no public policy justification to continue to provide these special plates to repairmen, tow operators, replacement glass installers and automobile reupholstering businesses. They were meant to be used to test drive unregistered motor vehicles under repair, but have become an unjustifiable perk for certain special interests.

The problem of improper out-of-state registrations was readily apparent when OIG staff accompanied a State Trooper on a surveillance in Haverhill. In 90 minutes the trooper pointed out more than 90 vehicles with New Hampshire registrations parked on Haverhill streets on a wintery Tuesday night. Assuming that most of these New Hampshire vehicles are improperly registered and applying an average low value of \$8,000 as a guide, these vehicles would produce \$36,000 in sales tax for the State, if the vehicles were registered in Massachusetts. The city would realize an increase in its motor vehicle collections and additional registration fees and insurance premiums would be paid in Massachusetts.

While appreciating the volume of defendants that appear in the Lawrence District Court, it is counterproductive and a waste of taxpayer's money to expend funds for law enforcement efforts to clean up motor vehicle registration and insurance

problems, only to have most charges dismissed in court. It bolsters illegal behavior and encourages irreverence for law enforcement officials and the courts. Slaps on the wrist provide no incentive to comply with Massachusetts registration requirements. Illegal registrations in these cases is one of the best financial deals in town. The owner of a motor vehicle who ignores all registration and insurance requirements can illegally save hundreds of dollars in sales taxes and motor vehicle excise payments. Once caught, fines are minimal or non-existent.

## APPENDIX A

# AN ACT TO IMPROVE TAX COMPLIANCE ASSOCIATED WITH THE REGISTRATION OF MOTOR VEHICLES

**SECTION 1.** Section 18 of Chapter 59 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by inserting after line 95, the following clause: -

"Eighth, Motor vehicles, owned or leased by a domestic business or foreign corporation, and used in the conduct of the business, shall be assessed where such motor vehicle or trailer is situated to the owner or any person having possession of the same on January first, if the registrar did not provide the assessor pursuant to the provisions of Chapter 60A with calendar year information about the value of said motor vehicles and the name and address of the person, business, or corporation that owns or leases said motor vehicles.

Eighth A, For the purposes of this clause the following words shall have the following meanings :-

"Motor vehicles or trailers", used in this clause shall be applicable to motor vehicles or trailers which have not been assessed and taxed subject to the provisions of Chapter 60A and Chapter 63.

"Situated", repeated and regular use of a motor vehicle or trailer in a city or town in the conduct of a domestic business or foreign corporation. If a motor vehicle or trailer is regularly used in a city or town as of January first, said motor vehicle or trailer shall be deemed situated in that city or town regardless of its physical location on January first.

"Fair cash value", the motor vehicle or trailer's list price for motor vehicles or trailers of the same make, type, model, and year of manufacturer, or in the case of motor vehicles or trailers which are part of a larger fleet of substantially similar motor vehicles or trailers, the average fair cash value of the motor vehicles or trailers in the fleet.

"Fairly apportioned", allocated so as to reflect only the amount of time during which the motor vehicle or trailer was physically located in a city or town, according to records kept by the corporation in the regular course of its business.

**SECTION 2.** Section 49A of Chapter 62C of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by inserting after line 27, the following subsections :-

(d) Any person, who owns a motor vehicle or trailer that is customarily garaged in the commonwealth, and improperly registers said motor vehicle or trailer in another state or in another city or town, shall be considered in violation of laws of the commonwealth relating to taxes provided for in chapter 60A, and chapter 64H or chapter 64I, and provided further that such right, license, or contract provided for in paragraphs (a) and (b) shall not be issued or renewed, unless and until the person has properly registered said motor vehicles or trailers and paid all taxes due at the time of application for said right, license, or contract.

(e) Any person who, for the purposes of evading payment of a tax pursuant to Chapters 59 through 64J inclusive, willfully makes and subscribes any return, statement or other document under the provisions of paragraphs (a), (b) or (d) above, that contains or is verified by a written declaration that is made under the penalties of perjury, which he does not believe to be true and correct as to every material matter that he has complied with all laws of the commonwealth relating to taxes, shall be punished by a fine of not less five hundred dollars nor more than one thousand dollars.

(f) Fifty percent of the fines imposed pursuant to paragraph (e) above shall be paid over to the treasury of the city or town where the motor vehicle is customarily garaged and fifty percent shall be

paid over to the state treasurer of the commonwealth and credited to the highway fund.

**SECTION 3.** Section one of Chapter 90 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by inserting after line 52, the following definition :-

"Customarily garaged in this commonwealth", any motor vehicle or trailer, owned or leased by a person who obtained any benefit, exemption, deduction, entitlement, license, permit or privilege by claiming principal residence in the commonwealth, shall be considered customarily garaged in the commonwealth.

**SECTION 4.** Section one of Chapter 90 of the General Laws, as so appearing, is hereby amended by inserting after line 179, the following sentence :- Both the lessor and the lessee under a lease shall be identified on the registration of the motor vehicle or trailer.

**SECTION 5.** Chapter 90 of the General Laws, as so appearing, is hereby amended by inserting after Section 1D, the following section :-

Section 1E. A person's motor vehicle is customarily garaged in the commonwealth when:

- (a) Said person obtained an exemption pursuant to chapter 59, section 5, clauses 17, 17C, 17D, 18, 22, 22A, 22B, 22C, 22D, 22E, 37, 37A, 41, 41A, 41B, or 41C.
- (b) Said person obtained an exemption pursuant to chapter 59, section 5C.
- (c) Said person filed a Massachusetts resident income tax return pursuant to chapter 62.
- (d) Said person obtained the rental deduction pursuant to chapter 62, section 3, B, (a), (9).
- (e) Said person itemized deductions on Schedule A (Form 1040) for mortgage interest payments made on a principal residence located in the commonwealth.
- (f) Said person declared in a home mortgage settlement document that the mortgaged property on file at a registry of deeds in the commonwealth would be occupied as a principal residence.
- (g) Said person obtained homeowner's liability insurance coverage on property that was declared to be occupied as a principal residence.
- (h) Said person filed a certificate of residency, signed under the pains and penalties of perjury, stating his or her name and place of residence in a city or town in the commonwealth in order to comply with a residency ordinance as a prerequisite for employment with a governmental entity.
- (i) Said person or his or her child or dependent paid resident in-state tuition rates while attending a state sponsored college, community college, or university.
- (j) Said person applied for and received public assistance from the commonwealth or for his or her child or dependent.
- (k) Said person or his or her child or dependent is enrolled in a public school in a city or town in the commonwealth, provided, however, this shall not include circumstances where the cost of the education is paid for by said person or by another educational jurisdiction.

Any person, who improperly registers a motor vehicle in another state or another city or town and evades payment of motor vehicle excise, sales and use tax and insurance premiums and willfully makes and subscribes any return, statement or other document, that contains or is verified by a written declaration that is made under the penalties of perjury, which he does not believe to be true and correct as to every material matter that he obtained any benefit, exemption, deduction, entitlement, right, license, or privilege by claiming principal residence in the commonwealth, shall be punished by a fine of not less five hundred dollars nor more than one thousand dollars. Fifty percent of the fines imposed pursuant to this section shall be paid over to the treasury of the city or town in whose jurisdiction the motor vehicle is customarily garaged and fifty percent shall be paid over to the state treasurer of the commonwealth and credited to the highway fund.

**SECTION 6.** Chapter 90 of the General Laws, as so appearing, is hereby amended by inserting after Section 34A, the following section :-

Section 34A½. (a) Every motor vehicle or trailer not registered in this state which is propelled upon the roads of the commonwealth shall have a certificate of insurance equal to or greater than the compulsory motor vehicle liability insurance bond defined in section 34A, issued in the state where said motor vehicle or trailer is registered and insured.

(b) The registrar, upon receipt of evidence that a non-resident has operated a motor vehicle upon

the roads of the commonwealth that is not registered in this state and is unregistered or uninsured in another state, with knowledge that a certificate of insurance equal to or greater than the compulsory motor vehicle liability insurance bond required in this state is not in effect with respect to such vehicle, shall revoke the non-resident driving privileges of such person. Said unregistered or uninsured motor vehicle shall be impounded and stored and a duly authorized police officer shall take possession of the registration plates. The owner or non-resident driver must submit evidence satisfactory to the registrar, that said motor vehicle is registered and insured pursuant to this section before the registration plates are returned and the motor vehicle can be propelled upon the roads of the commonwealth.

**SECTION 7.** In order to encourage voluntarily the proper registration of motor vehicles and trailers in the commonwealth and the payment of taxes and fees owed under the provisions of chapter 60A, chapter 64H, chapter 64I, and chapter 90 to the Commonwealth, the registrar of motor vehicles and the commissioner of revenue are hereby authorized and directed during the fiscal year ending June thirtieth, nineteen hundred and ninety-eight to establish a three-month period during which all penalties imposed by chapter 60A, chapter 64H, chapter 64I and chapter 90 shall be waived if any owner voluntarily registers a motor vehicle or trailer that was unregistered, uninsured or improperly registered in another state or city or town. Such waiver shall apply to the nonpayment of taxes and fees that would have been assessed on a properly registered motor vehicle or trailer, and shall extend to penalties and interest attributable to the motor vehicle or trailer registered in compliance with the provisions of chapter 90 and the taxes assessed and paid during said three-month period. Other terms and conditions may be determined by the registrar and the commissioner.



## APPENDIX B

# SECTION by SECTION LEGISLATIVE SUMMARY REGISTRATION of MOTOR VEHICLES

**Section 1.** Chapter 59 § 18 provides for the assessment and taxation of personal property situated in a city or town in the Commonwealth on January first. In general, motor vehicles are subject to the motor vehicle excise tax (MVE) ( Ch. 60A) in lieu of a personal property tax. This change will allow local assessors to impose a personal property tax on motor vehicles that have not been tax and assessed a MVE because the assessor was not provided with adequate motor vehicle descriptions and values from the Registrar. This personal property tax would not apply to motor vehicles subject to the corporate tax ( Ch 63). Since a personal property tax would result in a more expensive bill, there would be an incentive to assess a personal property tax and conversely, there would be an incentive to provide adequate information for a motor vehicle excise tax bill to avoid paying a personal property tax bill.

**Section 2.** Chapter 62C § 49A requires that any person applying for a right or license to conduct a profession, trade or business obtain a tax compliance certificate verifying compliance with the tax laws of the Commonwealth as a prerequisite to obtaining the license or governmental contract. This change inserts new language stipulating that a person who improperly registers his motor vehicle(s) out of state or in another city or town, and thereby evades sales tax or motor vehicle excises that would have been due on the motor vehicle(s), shall not be issued the professional license or receive the government contract.

Fines are imposed for violations of the tax compliance certification requirements.

**Section 3.** Amends chapter 90 § 1 by inserting a definition of "customarily garaged in the Commonwealth". This provisions links the owner's acquisition of certain rights, privileges, or benefits based upon any declaration of residency in

Massachusetts to a presumption that the motor vehicle is customarily garaged in the commonwealth and a requirement to register the motor vehicle in the State.

**Section 4.** Amends Chapter 90 § 1 by inserting a requirement that automobile registrations include the identity of the lessor and the lessee. Currently the registration lists the leasing or finance company but does not include the name of the business or person who has possession of the leased motor vehicle. This recommendation came from State Troopers who pointed out difficulties in law enforcement that result when only the leasing or finance company's identity is on the registration.

**Section 5.** This recommendation inserts a new section 1E in Chapter 90 listing factors that will be used to determine whether a motor vehicle is "customarily garaged in the Commonwealth". If the owner has declared Massachusetts' residency in order to qualify for a benefit or privilege, the owner of a motor vehicle will be required to register his motor vehicle at his Massachusetts' residential address.

The list includes circumstances where the owner of the motor vehicle:

- (a) Declared a principal residence in a city or town in Massachusetts and obtained a Residential Property Tax Exemption;
- (b) Declared a principal residence in a city or town in Massachusetts and obtained a Property Tax Exemption as a veteran, senior citizen, surviving spouse, etc.;
- (c) Filed a Residential State Income Tax Return;
- (d) Filed for the Renter's Deduction on a Residential State Income Tax Return;
- (e) Itemized mortgage interest payments on a principal residence located in Massachusetts and obtained a Federal Income Tax Deduction;
- (f) Declared on a Home Mortgage Application that the property would be occupied as the borrower's principal residence within 60 days of the closing.
- (g) Declared on a Homeowner's Liability Policy Application that the property is occupied as a principal residence.
- (h) Filed a Residency Certificate as an employment prerequisite with a

governmental entity (i) Paid In-State Tuition at a State sponsored college, community college or university

(j) Received Public Assistance from the Commonwealth

(k) Enrolled child or dependent in a Public School in Massachusetts

Those that illegally register a motor vehicle out of state or in another city or town and declare residency in Massachusetts for other purposes shall be subject to a fine of at least \$500. Certain false claims may also have civil or criminal consequences for the individual.

**Section 6.** A new Chapter 90 §34A ½ requires out-of state motor vehicles and trailers propelled upon the roads in Massachusetts to have proof of liability insurance equal to or greater than the compulsory insurance required of Massachusetts motorists. Non-resident drivers who are found to be driving an out-of-state unregistered or uninsured motor vehicles shall have their driving privileges revoked for failing to carry minimum compulsory insurance. The uninsured or underinsured motor vehicle shall be impounded and the owner must provide proof of compulsory insurance coverage prior to retrieving the motor vehicle and the registration plates. This is modeled on a statutory requirement in the state of New York .

**Section 7.** In order to encourage compliance with statutory and regulatory registration requirements of the Registry of Motor Vehicles and payment of motor vehicle excise taxes and sales taxes on motor vehicles, a three month amnesty program will be implemented by the Registrar and the Commissioner of Revenue.

## APPENDIX C

# MASSACHUSETTS MOTOR VEHICLE REGISTRATION AND TAX REQUIREMENTS

**Registration of Passenger Vehicles** [M.G.L. c.90, §3]: All Massachusetts residents are required to register their motor vehicles with the Massachusetts Registry of Motor Vehicles. A motor vehicle that is owned by a non-resident of Massachusetts and is in the possession or control of a Massachusetts resident for more than 30 days in the aggregate within a calendar year (such as a leased or borrowed vehicle), must be registered in Massachusetts.

Applicants for registration are required to provide, among other information, a statement under penalties of perjury that there are no outstanding motor vehicle excise tax liabilities on the vehicle which have been incurred by the applicant, members of his immediate household, or his business partners. Applicants also must comply with the Commonwealth's certificate of title requirements, as summarized below. Upon meeting these requirements, the Registrar of Motor Vehicles issues a general distinguishing number or mark, a two-year certificate of registration, and license plates to the applicant. Upon registration, most motor vehicle owners are required to pay a sales or use tax at the Registry based upon five percent of the cost of the vehicle or five percent of the cost minus any trade-in allowance.

Non-residents qualify for an exemption to travel on our roadways without a Massachusetts registration, if they are in compliance with the registration and other laws of the state or country where their car is registered. They must also meet the terms of the reciprocity agreement between Massachusetts and the non-resident's state or country of legal registration.

**Compulsory Motor Vehicle Insurance** [M.G.L. c.90 §§ 3,9,34A] Massachusetts motorists must carry a minimum amount of compulsory liability vehicle insurance. Compulsory insurance consists of four parts: bodily injury to others, personal injury protection, bodily injury caused by an uninsured auto and damage to someone else's property at a minimum of \$20,000 per person and up to \$40,000 per accident.

Motor vehicle owners must present proof of insurance at the Registry as a prerequisite to register a motor vehicle in the Commonwealth.

**Certificate of Title** [M.G.L. c.90D]: With limited exceptions, a Massachusetts resident who acquires a motor vehicle or trailer after September 1, 1972, is required to apply for a certificate of title for the motor vehicle. The application must be made within ten days of acquisition of the vehicle or trailer. No new application for registration of a motor vehicle or trailer under the provisions outlined above may be accepted until the owner applies to the Registrar for a certificate of title.

**Registration of Commercial Vehicles** [M.G.L. c.90, §3]

Massachusetts business vehicles must be registered in Massachusetts and require commercial vehicle registrations. Out-of-state business owners are required to register their business vehicles in Massachusetts if the vehicles are used in direct connection with the place of business in Massachusetts. An out-of-state business owner who conducts business in Massachusetts and another state has two registration options. The owner may choose dual registration or Massachusetts registrations for a portion of his vehicles which equals the average number of motor vehicles regularly used in connection with his place of business in Massachusetts. <sup>8</sup> (M.G.L. c.90 § 2, 3)

**Apportioned Plates for the Registration of Interstate Vehicles**

The International Registration Plan is an interstate carrier registration reciprocity agreement among states and the provinces of Canada providing for payment of registration fees on the basis of fleet miles operated in various state jurisdictions. Prior to IRP, interstate carriers had to acquire "trip permits" from every state they planned to enter. Non-IRP registered carriers are still required to obtain permits for travel in various states and provinces. Massachusetts joined IRP on January 1, 1994 and was one of the last states to participate. IRP registered vehicles are issued "apportioned" license plates for commercial vehicles that travel in two or more IRP jurisdictions and have a gross weight in excess of 26,000 pounds; or three or more axles (regardless of weight); or are used in combination when the combined gross weight exceeds 26,000 pounds. The base jurisdiction is where qualified motor vehicles are situated for registration purposes. Under the IRP plan, registration fees are based on accumulated mileage in various jurisdictions and weight information provided by the interstate carrier. A Registry collects registration fees and divides the fees among other IRP jurisdictions.

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<sup>8</sup> The Registrar of Motor Vehicles may determine what vehicles and what portion of vehicles are to be registered.

**Sales Tax** [M.G.L. c.64H]: Massachusetts imposes a tax on sales in Massachusetts, by any vendor, of tangible personal property, or of services performed in Massachusetts. The sales tax is set at a rate of five percent of gross receipts, and is generally paid by vendors upon filing a sales tax return.

The sale of motor vehicles or trailers in Massachusetts is exempted from the general rule that sales tax obligations are imposed on the vendor. Instead, the purchaser of the vehicle or trailer is required to pay the sales tax directly to the Registrar of Motor Vehicles. The sales tax is assessed upon the sales price of the motor vehicle purchased, less any trade-in allowance. Accordingly, the auto dealer is prohibited from adding the tax to the sales price, and is required by law to furnish a sworn statement of sale to the purchaser, Registrar, and Commissioner of Revenue for tax-determination purposes.

Every transfer of motor vehicle or trailer registration is presumed to be a sale subject to the provisions described above. When a vehicle is transferred from one owner to another, the prior owner's registration expires and he is required to return the expired registration to the Registrar. Upon this return, the Registrar informs the Commissioner of Revenue of the date of the transfer and the names and addresses of the former and new owners. The Registrar is prohibited from issuing a certificate of registration to the new owner until the new owner provides evidence that all sales tax due has been paid.

A sales tax of 5% applies to the lease payment on motor vehicles that are leased rather than purchased. The leasing company is responsible for submitting this tax to DOR. Leasing companies that are located outside Massachusetts and lease motor vehicles to individuals or business in Massachusetts must submit the tax on the lease charges also.

Every person who fails to pay sales tax due is personally and individually liable to the Commissioner of Revenue for the full amount of the obligation.

**Use Tax** [M.G.L. c.64I]: Use tax is imposed on the storage, use or other consumption in Massachusetts of tangible personal property or services purchased for storage, use or other consumption within Massachusetts. The use tax is presently set at the rate of five percent (5%) of the sales price of the property or services. Sales upon which the purchaser has paid tax under the laws of any other state are exempt from Massachusetts use tax, provided that the tax already paid was legally due, without right of refund or credit, and that the other state allows a corresponding exemption with respect to sales and use taxes paid in Massachusetts. To the extent that the tax

paid in the other jurisdiction was lower than the amount due in Massachusetts, the purchaser must pay the difference to the Commonwealth.

Like sales tax, use tax for the storage, use or other consumption of motor vehicles or trailers is the purchaser's responsibility, to be paid to the Registrar directly. Motor vehicle dealers, therefore, may not allocate any use tax for motor vehicles to purchasers, and must provide a sworn statement of the sale to the purchaser, Registrar, and Commissioner of Revenue for tax-determination purposes. Similarly, registration provisions described above for sales tax on transfer of ownership apply for use tax.

**Motor Vehicle Excise Tax [M.G.L. c.60A]:** Motor vehicle excise tax is levied for the privilege of registration in Massachusetts. The excise tax is levied by cities and towns in Massachusetts. Motor vehicle owners are required to pay motor vehicle excise taxes on an annual basis to their city or town tax collectors. The collected revenue is available for local appropriation by the Town Meeting or City Council to fund municipal needs.

The value of the motor vehicle excise tax is an average state rate applied to the value of each motor vehicle or trailer, not to exceed a certain value. For each motor vehicle, the amount of motor vehicle excise tax due for each year is based upon the manufacturer's suggested list price for that vehicle when new. As the vehicle ages, the motor vehicle excise tax is calculated by applying a decreased percentage to the manufacturer's original suggested list price. The depreciated value is calculated by multiplying the manufacturer's original suggested list price by the motor vehicle excise tax percentages as follows:

In the year preceding the designated year of manufacture.	.	.	.	.	.	.	.	.	50%
In the year of manufacture.	.	.	.	.	.	.	.	.	90%
In the second year.	.	.	.	.	.	.	.	.	60%
In the third year.	.	.	.	.	.	.	.	.	40%
In the fourth year.	.	.	.	.	.	.	.	.	25%
In the fifth and succeeding years.	.	.	.	.	.	.	.	.	10%

The motor vehicle excise tax is calculated at the rate of \$25 per thousand of the depreciated value of the motor vehicle.

## APPENDIX D

### **SECTION 311 OF CHAPTER 38 OF THE ACTS OF 1995:**

The inspector general shall conduct a study of improper registration of motor vehicles which are actually garaged in the commonwealth but are registered and insured in another state or are registered in a city or town, but actually garaged in another city or town. Said study shall include, but not be limited to, an analysis and evaluation of the economic impact of the improper registration on sales tax revenues, excise tax revenues, and insurance coverage costs; the current practice and procedure, if any, for validating the proper place of registration; the number of motor vehicles that should be registered and insured in the commonwealth but are registered and insured in another state or should be registered and insured in a city or town but are registered and insured in another; and whether any procedures, practices, programs or measures may be employed or implemented to track, eliminate or reduce the number of vehicles improperly registered and insured. The inspector general shall submit the findings and recommendations of said study to the house and senate committees on ways and means on or before March thirty-first, nineteen hundred ninety-six.