A Publication of the Massachusetts Department of Revenue's Division of Local Services

City&Town

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DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

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In this issue:

Important Dates & Information

New Optional Forms of List for FY2021 - Gas and Electric Companies Filing with Local Assessors (Property Use Code 504)

The Division of Local Services has released Bulletin 2019-5 - New Optional Forms of List for FY2021 – Gas and Electric Companies Filing with Local Assessors (Property Use Code 504). It can be found by clicking here.

This Bulletin explains the issuance and use of optional electronic forms of list (personal

By the Numbers

City & Town provides updates on the progress of the tax rate and certification season while also allowing you to follow the tax rate setting process in real time. Thanks to our Municipal Databank staff, this public information is available 24/7 by clicking here.

Prelim. Certifications Approved: 68

Final Certification: 65 (of 71 total)

LA4 Approved: 335 (343 submitted)

LA13/ New Growth Approved: 333 (341 submitted)

Tax Rates Approved: 191

Balance Sheets Approved: 242

Total Aggregate Free Cash Approved: $1,206,915,740

Ask DLS: Miscellaneous Recurring Questions

This month's *Ask DLS* features three recurring questions received by DLS: (1) what land can be included in solar PILOT agreements under G.L. c. 59, § 38H(b); (2) what are the requirements for such PILOT agreements; and (3) what are the tax implications when classified land is purchased by a municipality? Please let us know if you have other areas of interest or send a question to cityandtown@dor.state.ma.us. We would like to hear from you.

What property may be included in a payment in lieu of tax (PILOT) agreement under G.L. c. 59, § 38H(b) with the owner of a solar electric generating system?

Generally, cities and towns may only assess, abate, exempt and collect taxes as expressly authorized by state law. Therefore, they cannot enter into an agreement in lieu of assessing taxes unless such an agreement is

property returns) for electric and gas companies filing with local assessors. To give companies time to comply with the new electronic format, the new forms (STF 2-504-G and STF 2-504-E) are optional for FY 2021, but will be required in FY 2022. Companies not using the applicable optional form in 2021 will be required to file the STF 2 in FY 2021.

Community Preservation Act (CPA) Amounts Posted

The CPA statute, M.G.L. 44B, provides a state match to eligible communities from the CPA Trust Fund. The Division of Local Services (DLS) released the FY2020 CPA state match to the 173 communities that have adopted the CPA surcharge.

The CPA allows a community to adopt a local surcharge of up to three percent that is added to real estate property tax bills. The purpose of the CPA is to help communities preserve open space and historic sites create affordable housing and develop outdoor recreational facilities. State match amounts can be found here.

Please email databank@dor.state.ma.us with any questions.

DLS at MMA

We hope you'll visit the DLS booth (#715) at the 41st MMA Annual Meeting & Trade Show on January 24 & 25, 2020 at the Hynes Convention Center & Sheraton Boston Hotel! The MMA's annual Trade Show features more than 200 exhibitors offering the latest products and services of interest to the cities and towns of

authorized by state law. There is only one statute, G.L. c. 59, § 38H(b), that could authorize a property tax agreement in connection with solar systems or facilities. Agreements under that statute may only be with a generation company or wholesale generation company as defined in G.L. c. 164, § 1, which means the company must be in the business of producing, manufacturing or generating electricity for retail sale to the public or for sale at wholesale only.

If the taxpayer is an electric generating company, the municipality may enter into a PILOT agreement with it under G.L. c. 59, § 38H(b) in order to satisfy its property tax obligations. Section 38H(b) provides:

"[a] generation company or wholesale generation company which does not qualify for a manufacturing classification exemption pursuant to paragraph (3) of the clause Sixteenth of said section 5 may, in order to comply with its property tax liability obligation, execute an agreement for the payment in lieu of taxes with the municipality in which such generation facility is sited, and said company shall be exempt from property taxes, in whole or in part, as provided in any such agreements during the terms thereof." (Emphasis added.)

See also IGR 17-26, Section III-A, which states:

"Host municipalities, acting by their legislative bodies, may enter into agreements with electric generation companies or wholesale electric generation companies in connection with their conventional power plants or solar or renewal energy systems or facilities. The agreement relates to the taxable property it owns, including the plant, facility, personal property or real estate that it owns. If the company does not own the land on which the plant or facility is located, the land may not be included in the tax agreement. The owner of the land will continue to be assessed real estate taxes."

Therefore, if otherwise qualified to enter into a solar PILOT agreement under section 38H(b), the following property may be included in the agreement:

Example 1 - If the taxpayer/owner of the solar electric generating plant (plant) also owns the real estate upon which the plant is located, the municipality may enter into a PILOT agreement under section 38(H)(b) with the owner of the plant regarding both the real property and personal property tax liability.

Example 2 - If the taxpayer/owner of the plant leases the land upon which the plant is located from a private party the municipality can only enter into a PILOT agreement with the owner of the plant regarding the owner of the plant's personal property tax liability. The tax liability for the real estate cannot be included in the PILOT because the real estate is not owned by the owner of the plant. The real estate must be separately assessed to the landowner. Even if there is a lease agreement or contract between the landowner and the owner of the plant that requires the owner of the plant to be responsible for the payment of the real property taxes, the taxes cannot be included in the PILOT agreement and must be assessed to the owner of the real estate. The lease agreement/contract is a private agreement between the parties.

Massachusetts. We look forward to seeing you!

2019 "What's New in Municipal Law" Materials Now Available Online

Recently, the Division of Local Services (DLS) legal staff presented its annual "What's New in Municipal Law" seminars. We want to thank all the local officials and interested individuals who took the time to join us in both Holyoke and Randolph. For those unable to attend, please click here to view the presentations. We hope you enjoyed the day.

Other DLS Links:

Local Officials Directory

Municipal Databank

Informational Guideline Releases (IGRs)

Bulletins

Publications & Training Center

Tools and Financial Calculators

Example 3 - If the taxpayer/owner of the plant leases the land upon which its plant is located from a municipality, the municipality may enter into a PILOT agreement with the owner of the plant for both the personal property taxes regarding the plant and the real estate taxes regarding the leased municipal land. This is because G.L. c. 59, § 2B requires that when municipal real estate is leased or used by a third party in connection with a business conducted for profit, the third party is subject to taxation for the premises leased or used as if it is the fee owner of the land.

It is also noted that the municipality, including its chief executive, assessors and legislative body, has no power or legal authority to waive or exempt property taxes. Under the Home Rule Amendment to the Massachusetts Constitution, the power to tax is reserved to the state legislature. Mass. Const. Amend. Article 89, sec. 7. As a result, cities and towns may only assess, abate, exempt and collect taxes as expressly authorized by state law. Therefore, the municipality has no power to waive real property taxes related to leased property upon which a plant is located, whether by agreement or otherwise.

For more information regarding solar PILOT agreements under G.L. c. 59, § 38H(b), see IGR 17-26 and the *June 1, 2017 edition of City & Town.*

What are the requirements for a payment in lieu of tax agreement under G.L. c. 59, § 38H(b) and IGR 17-26?

The checklist below summarizes requirements for G.L. c. 59, § 38H(b) PILOT agreements:

- Equivalent to assessing tax at full and fair cash value – “Any such agreement shall be the result of good faith negotiations and shall be the equivalent of the property tax obligation based on full and fair cash valuation.” G.L. c. 59, § 38H(b).

- The PILOT agreement was designed to be a tax stability measure that provides a way for the generating company to meet its annual property tax obligation in a predictable and stable manner over the life of the agreement. The purpose of the statute is not to provide “tax breaks” to the owner of the generating facility.

- A PILOT agreement may only cover the property tax liability of the owner of the electric generating facility. Therefore, if the electric generating facility owner owns both the facility and the real estate upon which it is located, the PILOT may include both the personal property tax liability and the real property tax liability of the owner. If the real estate is owned by a third party, the PILOT cannot cover the real property tax liability of the third party – a separate real estate tax must be assessed to the third party. However, if the leased land is owned by the municipality, under G.L. c. 59, § 2B, the owner of the electric generating facility is assessed real estate taxes for the leased property as if it were owner of the real estate and those taxes may be included in the PILOT agreement.

- Appraisal - A formal appraisal by an outside consultant is not required. However, the assessors should be involved in the development of the PILOT agreement by developing projections of the fair cash valuations and tax payments of the solar or renewable energy system for each year of the agreement. If the agreement is covering both the personal property tax liability and the real estate tax liability of the taxpayer, then projections of valuation should be developed for both the personal property and the real estate. The purpose of this documentation is to assist the municipality in arriving at valuations for the agreement and making a determination whether to enter into a PILOT agreement with the electric generation company.

- Valuation - Agreements should fix values, or provide formulas for determining the values, of the property to be subject to the PILOT agreement for each fiscal year over the life of the agreement. If instead of fixing values, an agreement specifies a dollar amount to be paid for each fiscal year, the agreement must include a conversion formula because the payment must be converted to a value for purposes of calculating: (i) new growth increase in the levy limit, (ii) the minimum residential factor under property tax classification, and (iii) the tax rate.

- Term of the Agreement - There is no maximum term established by G.L. c. 59, § 38H(b) for a PILOT agreement with an electric generation company. The municipality should consider the useful life of the solar or renewal energy system or facility in negotiating a reasonable term for the agreement.

- Agreement approval - The municipality's legislative body must approve the agreement, or have voted to authorize the chief executive to negotiate and execute the agreement on behalf of the municipality.

- Copy of Agreement and Legislative Body Vote – A copy of the PILOT agreement, legislative body's approval vote and any initial appraisal documentation must be provided to the Bureau of Local Assessment.

- Record-keeping - For the five-year certification review, the assessors must provide the updated property record cards to reflect the agreement values (or converted values) of the property subject to the agreement. If the values (or converted values) change during an interim year, the property record cards must be updated accordingly as well.

- LA-4 Reporting - Assessors must report the agreement "value" for the year on Form LA-4 "Assessment/Classification Report" in the assessed valuation of Class 4, Industrial, real property (Class Code 452), or Personal Property (Class Code 552), as applicable, so that it is reflected in the fair cash value levy percentage for that class of real property or of personal property.

If the agreement covers both the personal property and real estate tax liability of the owner of the facility, the valuation must be reported, as appropriate, on the LA-4 in both Class 4, Industrial, real property (Class Code 452) and Personal Property (Class Code 552).

- New growth - The PILOT agreement "value" of any new real or personal property being "assessed" as part of the tax levy for the first fiscal year of the tax or PILOT agreement is the basis for new growth in that year. In any subsequent fiscal year, only the agreement "value" of any additional new real property built or new personal property items installed by the company since the prior fiscal year and included in the year's PILOT payment would be growth.

    - Municipalities should consider new growth when structuring PILOT valuations. Agreements that provide for smaller valuation in the first year of the agreement and larger valuations in later years may provide the company with greater flexibility in financing the installation. However, they may also limit new growth to less than the amount that would have been added to the municipality's levy limit if the company was assessed a regular property tax.

- Tax Rate Recap Reporting - Assessors must report the agreement value in the total assessed valuation of Class 4, Industrial, real property, or Personal Property, or both, as applicable, on page 1 of the tax rate recapitulation so that the PILOT is part of the tax levy. G.L. c. 59, § 38H(b). The PILOT payment cannot be reported on page 3 of the tax rate recap (or pro forma recap) as general fund estimated receipts.

- Other Payment Reporting – Any other revenue received by the municipality from a lease of municipal property, sale of power or any other contractual arrangement that is in addition to the payment in lieu of tax under the PILOT agreement must be reported on page 3 as general fund estimated receipts under Miscellaneous Recurring.

- Billing - Since G.L. c. 59, § 38H(b) does not specifically address billing and collection, the best practice would be to establish in the agreement how the PILOT will be billed, when payments are due and the consequences of late payments, including collection remedies. Unless provided otherwise in the tax or PILOT agreement, the PILOT should be billed and collected in the same manner as property taxes.

Is a penalty tax (conveyance or roll-back) triggered when a municipality enters into an agreement with a landowner to purchase classified land located within the municipality (forest land under Chapter 61, farm land under Chapter 61A or recreational land under Chapter 61B)? Is a penalty tax triggered by the transfer of such land

to the municipality? Is a penalty tax triggered by the construction by the municipality of a new school complex on such property after the acquisition?

The answer is no to all three questions.

As a general rule, with some statutory exceptions, a landowner must pay one of two "penalty" taxes, a roll-back or conveyance tax, when the use of classified land is changed to a non-qualifying use.

A. A roll-back tax is assessed when classified land is changed to a non-qualifying use. A non-qualifying use means (1) land retained as open space as mitigation of a development or (2) any other use or condition that does not qualify for classification as forest land under Chapter 61, agricultural or horticultural land under Chapter 61A or recreational land under Chapter 61B. The tax is assessed to the owner of the land when the change to the non-qualifying use occurs. G.L. c. 61, § 7; G.L. c. 61A, § 13; G.L. c. 61B, § 14. The roll-back tax is assessed only on that portion of the land on which the use has changed to the non-qualifying use.

B. A conveyance tax is assessed as an alternative to a roll-back tax when classified land is sold for or converted to a use or condition that does not qualify for classification under any of the three chapters within a certain time period, but only if greater than the roll-back tax. G.L. c. 61, § 6; G.L. c. 61A, § 12; G.L. c. 61B, § 7. The conveyance tax is assessed only on that portion of the land on which the use has changed to the non-qualifying use.

Regarding the first two questions, there is a statutory exception to the conveyance tax for "deeds to or by the city or town in which the land is located." G.L. c. 61, § 6; G.L. c. 61A, § 12; G.L. c. 61B, § 7. As a result, the conveyance tax is not triggered by either the agreement to sell to the city or town or the conveyance. And because a roll-back tax is triggered only by an actual change in use to a non-qualifying use, the roll-back tax is likewise not triggered by the agreement to sell to the city or town or the conveyance. G.L. c. 61, § 7; G.L. c. 61A, § 13; G.L. c. 61B, § 14.

Regarding the third question – whether the construction of a new school complex by the municipality on the acquired classified land triggers a penalty tax – ordinarily, such construction would constitute a change in use to a non-qualifying use that would trigger a penalty tax (conveyance or roll-back). However, because real and personal property owned by a municipality are exempt from local property tax, assessors cannot assess either a conveyance tax or a roll-back tax or any other tax against the municipality. *Tax Collector of North Reading v. Reading*, 366 Mass. 438, 440-441 (1974); *City of Somerville v. City of Waltham*, 170 Mass. 160 (1898).

For more information on classified lands, please see the DLS FAQs regarding Classified Forest, Agricultural/Horticultural and Recreational and G.L. c. 61, 61A and 61B.

December Municipal Calendar

31	Water/Sewer Commissioners	**Deadline for Betterments to be included on Next Year's Tax Bill (**M.G.L. c. 80, § 13**;** c. 40, § 42I **and** c. 83, § 27**)**
31	Assessors	**Mail 3ABC Forms to Charitable Organizations and Forms of List to Personal Property Owners**
31	Collector	**Deadline for Mailing Actual Tax Bills** Quarterly and semiannual communities issuing annual preliminary tax bills mail actual tax bills by this date. Quarterly communities can include actual bills for the 3rd and 4th quarters in a single mailing.

To view the municipal calendar in its entirety, please click here.

Contact *City & Town* with questions, comments and feedback by emailing us at cityandtown@dor.state.ma.us.

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