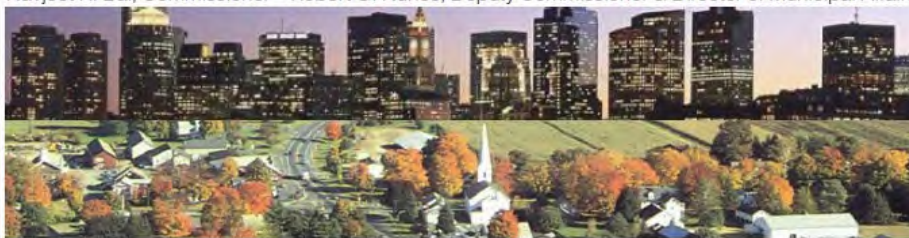


City and Town

Navjeet K. Bal, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



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

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'Tis the Season for Property Revals and Tax Rates!

While most New Englanders associate the onset of autumn with the falling of brightly colored leaves, for the [Division of Local Services](#), this is the season for certification of property valuations, tax rates, and free cash. These certifications are fundamental to the operation of city and town governments, and are largely done on a first-in, first-out basis.

So far this fiscal year, the [Bureau of Accounts](#) has reviewed 181 balance sheets, certified \$351,953,998 in free cash, and approved tax rates for 43 of the Commonwealth's 351 cities and towns. In the next two months the crunch will be on as BOA approves the vast majority of tax rates.

The [Bureau of Local Assessment](#) is equally busy this time of year, as 101 communities undergo their triennial property revaluation certification. BLA has issued 28 final certifications and an additional 47 preliminary certifications, and has noticed that communities have been presenting their data a little earlier than was the case last year.

Perhaps, the early arrival of BLA data is due to [DLS' Gateway system](#), which has expedited the flow of information. Gateway has given local officials a better view of how these processes are going for their city and town and immediate feedback on their progress. DLS anticipates that every city and town this year will be using Gateway.

Robert G. Nunes

[Deputy Commissioner & Director of Municipal Affairs](#)

Residence Built on Farmland Exempt from Penalty Tax

James Crowley, Esq., [Bureau of Municipal Finance Law](#)

In a decision that surprised some local officials and differed with written opinions from this Department, [the Appeals Court](#) ruled that taxpayers were not liable for penalty taxes when they built a personal residence on land classified as farmland under [M.G.L. Ch. 61A](#). The case is [Adams v. Assessors of Westport, 76 Mass. App. 180 \(2010\)](#).

Milton and Marilyn Adams purchased 13.41 acres of land in the [Town of Westport](#) in June 2005. Seeking to have the land classified as agricultural land which would result in reduced taxes, they filed a timely [Ch. 61A](#) application with the Westport assessors in October 2005 for fiscal year 2007. The taxpayers did not complete the entire application. The taxpayers wrote "13.41" on the line of the application indicating "total acres" but did not enter anything on the line "acres to be classified." Yet, on page two of the application the taxpayers wrote that all 13.41 acres of land were presently being used to cultivate alfalfa. The assessors approved the application and in a notice sent to the taxpayers dated December 14, 2005 the assessors wrote that their application for Ch. 61A status had been approved for all 13.41 acres for fiscal year 2007. The entire parcel was classified and taxed as agricultural land for FY2007.

In December 2006, the taxpayers applied for a building permit to construct a personal residence on a 1.4 acre portion of the 13.41 acre parcel. The Westport building inspector issued the permit in January 2007. Once the assessors learned of the proposed dwelling, they assessed a conveyance tax in May 2007 for \$61,709. The penalty tax was computed under [M.G.L. Ch. 61A Sec. 12](#) by applying a 9% tax rate (where the farmland was sold or converted within the second year of ownership) to a \$685,590 land value, i.e., \$61,703 plus a \$6 certificate fee under [M.G.L. Ch. 61A Sec. 19](#) for a total of \$61,709. It was not clear from the record whether the conveyance tax was assessed only on that portion of the land on which the use has changed.

Believing a tax as harsh as this should not have been imposed, the taxpayers filed an abatement application which the assessors denied. The owners then paid the tax with interest and filed an appeal with the [Appellate Tax Board \(ATB\)](#). Under M.G.L. Ch. 61A Sec. 19 timely payment is not a prerequisite for appeal of the conveyance tax to the ATB.

The ATB could have ruled that the taxpayers in their initial application to the assessors never intended to have all their land classified under M.G.L. Ch. 61A and thereby would have avoided the conveyance tax issue. Instead, the ATB held that construction of a residence for the owners themselves did not constitute a change in use under M.G.L. Ch. 61A Sec. 12. The ATB relied on its own earlier decision of [Ross v. Assessors of Ipswich, \(ATB docket #F239496, November 21, 2000\)](#). In Ross, the ATB held that roll-back taxes could not be assessed where farmland was conveyed to the owner's son for the construction of a house for the son and daughter-in-law. For these reasons, the Westport conveyance tax was void and the ATB abated all the penalty taxes.

The Westport assessors promptly appealed to the Appeals Court. The assessors contended that where the 1.4 acre portion was classified land, the construction of a house on the land would constitute a conversion in use and would trigger the assessment of a roll-back or conveyance tax since the land would no longer be actively devoted to farming. The assessors agreed that the town could not acquire the land under [M.G.L. Ch. 61A Sec. 14](#) which provides a right of first refusal when classified farmland is sold for, or converted to a residential, commercial or industrial use. Sec. 14 expressly provides that a sale or conversion to a residential use for the owners themselves or certain family members is not a conversion, "for purposes of this section." The assessors argued, however, that this exemption from the right of first refusal exemption did not apply to conveyance taxes assessed under Sec. 12. In fact, [M.G.L. Ch. 61A Sec. 16](#) by its terms would seem to require the imposition of penalty taxes since the land was no longer actively devoted to agricultural use.

The Appeals Court disagreed. The Court reviewed the legislative history and the purpose for which M.G.L. Ch. 61A was enacted, namely, to reverse the trend of the decreasing number of farms in the

Commonwealth. According to the Court, the [Legislature](#) recognized that real estate taxes were significantly contributing to the demise of farms. At the same time, the Legislature realized that speculators and developers might acquire farmland and pay taxes at a reduced rate of taxation with hopes of developing the land at some point in the future. The Court believed this concern about development prompted the Legislature to enact roll-back tax, conveyance tax and right of first refusal provisions.

In the Court's view, the conveyance tax provisions of M.G.L. Ch. 61A Sec. 12 applied only to commercial or residential subdivision development. According to the Court, it was the intent of the Legislature to promote family farming and for this reason the construction of a house for the owners themselves would not trigger the assessment of conveyance taxes under M.G.L. Ch. 61A Sec. 12. The Court admitted that the Legislature in enacting M.G.L. Ch. 61A Sec. 12 did not expressly exempt family members from the conveyance tax as it did in M.G.L. Ch. 61A sec. 14 with regard to the first refusal option. Nevertheless, the Appeals Court agreed with the ATB's statutory interpretation that building a personal residence would not constitute a change in use. Consequently, the entire conveyance tax was abated.

When the assessors learned of this decision, they sought to appeal to the [Supreme Judicial Court](#). Further review was denied. 456 Mass. 1106 (2010).

Revised Forms of List

Please note that we have revised the forms of list and posted them to the web. DLS sent the following email to assessors:

The Department of Revenue has revised all personal and charitable property returns to reflect the 2010 Municipal Relief Act provisions that give assessors the power to audit personal property returns and makes the last date for the assessors to grant an extension to file returns the same as the due date for abatement applications. The revised forms ([State Tax Forms 2](#), [2HF](#), [2MT](#) and [3ABC](#)) and [Bulletin 2010-08B](#) explaining the revisions have been posted to the DLS website.

A note from DOR: Mark your calendars for two tax filing dates this coming April

Federal and state income taxes each will be due a little later than normal this year, but not on the same days.

Back in 2005, the District of Columbia chose to make Emancipation Day a district holiday, which meant it became a day off for federal workers (including those in the Internal Revenue Service) in Washington D.C.

This year, April 15 (a Friday), which is the normal filing due date for both state and federal taxes, is also the date of the celebration of Emancipation Day. If the IRS is closed in Washington D.C., federal taxes are not due on that date.

As a result, federal income taxes will not be due until Monday, April 18.

But, in Massachusetts, Monday, April 18, is Patriot's Day, a state holiday, so state income taxes will not be due until April 19.

The business of not filing taxes on April 15 is not that unusual. Last year, due to extensive flooding, taxpayers from the Cape west to Worcester County had until May 11 to file state and federal taxes. In 2007, taxpayers in flooded areas had until April 26 to file. And there have been many years when, due to Patriot's Day, state income taxes were not due until April 18.

So this coming tax year, pending any last minute weather events, federal income tax will be due on April 18, and state income tax on April 19.

To read more from DOR about revenues and tax news in the Commonwealth, check out the DOR Blog, **OpenDOR**, by clicking [here](#) or copying and pasting the following link into your browser: <http://revenue.blog.state.ma.us/blog>.

Editor's Note:

On occasion that the President of the United States or the Governor of Massachusetts orders a lowering of all flags in the Commonwealth, DLS has been asked by the Governor's Office and the Bureau of State Office Buildings to notify our constituency via a blast email to the appropriate personnel at the municipal level. If you would like to know more about the rules and regulations surrounding "Flag Status" in the Commonwealth, please click [here](#) for the Bureau of State Office Buildings website containing all relevant information. To simply subscribe to the Flag Status notification list, please email halfstafflist@bsb.state.ma.us. If you have further questions, you're welcome to email me at portsj@dor.state.ma.us. Thank you.

Complete November 2010 Edition

Municipal Calendar

November 1: Taxpayer Semi-Annual Tax Bill — Deadline for First Payment According to M.G.L. Ch. 59, Sec. 57, this is the deadline for receipt of the first half semi-annual tax bills or the optional preliminary tax bills without interest, unless bills were mailed after October 1, in which case they are due 30 days after mailing.

November 1: Taxpayer Semi-Annual Tax Bills — Application Deadline for Property Tax Abatement According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on the same date as the first actual tax installment for the year.

November 1: Taxpayer Quarterly Tax Bills — Deadline for Paying 2nd Quarterly Tax Bill Without Interest

November 1: Treasurer Deadline for Payment of First Half of County Tax

November 15: Treasurer First Quarter Reconciliation of Cash

November 15: DESE Notify Communities/Districts of Any Prior Year School Spending Deficiencies By this date, or within 30 days of a complete End of Year Report (see September 30), ESE notifies communities/districts in writing of any additional school spending requirements.

November 30: Selectmen Review Budgets Submitted by Department Heads This date will vary depending on dates of town meeting.

December 15: Taxpayer Deadline for Applying for Property Tax Exemptions for Persons If tax bills are mailed after September 15, taxpayers have 3 months from the mailing date to file applications for exemptions.

December 15: Accountant/Superintendent/School Committee Submit Amendments to End of School Year Report to DESE Last filing date to impact next year's Chapter 70 State Aid.

December 31: State Treasurer Notification of Quarterly Local Aid Payments on or Before December 31

December 31: Water/Sewer Commissioners Deadline for Betterments to be Included on Next Year's Tax Bill (M.G.L. Ch. 80, Sec. 13; Ch. 40, Sec. 42I and Ch. 83, Sec. 27)

December 31: Selectmen Begin to Finalize Budget Recommendation for Review by Finance Committee

December 31: Assessors Mail 3-ABC Forms to All Eligible Non-Profit Organizations

December 31: Collector Deadline for Mailing Actual Tax Bills For communities using the annual preliminary billing system on a quarterly or semi-annual basis, the actual tax bills should be mailed by this date.

January 1: Assessors Property Tax Assessment Date This is the effective date (not for exemption purposes) for statewide assessed value for all property for the following fiscal year.

January 31: DESE Notify Communities/Districts of Estimated Net School Spending Requirements for the Next Year As soon as the Governor releases the ensuing year's budget, ESE notifies communities/districts of the estimated NSS requirements. These figures are subject to change based on the final approved state budget.

February 1: Taxpayer Deadline for Payment of 3rd Quarterly Tax Bill Without Interest According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the 3rd Quarter actual tax payment without interest, unless the actual tax bills were mailed after December 31. If mailed after December 31, the actual tax is due as a single installment on May 1, or 30 days after the bills were mailed, whichever is later.

February 1: Taxpayer Quarterly Tax Bills — Application Deadline for Property Tax Abatement According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on Feb. 1 unless actual tax bills were mailed after December 31. In that case they are due May 1, or 30 days after mailing, whichever is later.

February 15: Treasurer 2nd Quarter Reconciliation of Cash

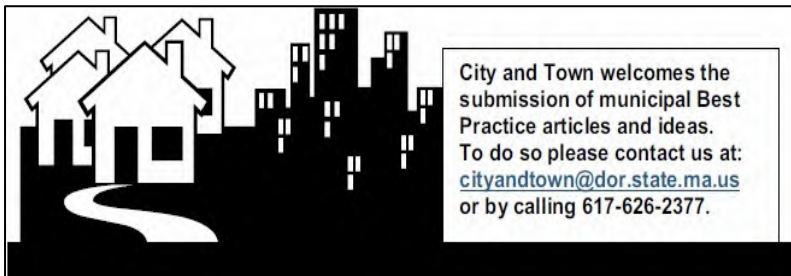
February 28: Finance Committee Continue Budget Review and Develop Recommendations This date will vary depending on dates of town meeting.

Mark Your Calendar

Spring 2011 Course 101 will be held in the Metrowest area, just outside of Boston. Specific location TBD shortly. This basic assessor training course is mandatory for all newly elected or appointed assessors. For more information regarding this training opportunity please contact Donna Quinn, Training Coordinator at 617-626-3838 or quinnd@dor.state.ma.us.



Please remember to update the online Local Officials Directory so that both municipal and state officials have accurate contact information.



City and Town welcomes the submission of municipal Best Practice articles and ideas. To do so please contact us at: cityandtown@dor.state.ma.us or by calling 617-626-2377.



City & Town

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