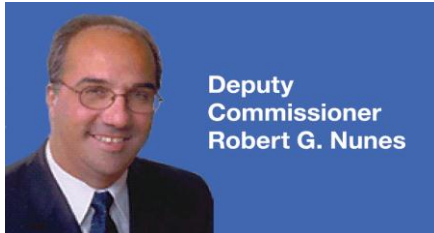


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Division of Local Services

City & Town

Amy Pitter, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



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DOR 360



City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

Dan Bertrand, Editor

Editorial Board: Robert Nunes, Robert Bliss, Zack Blake, Amy Handfield, Sandra Bruso and Patricia Hunt

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DLS Releases FY14 Strategic Plan and Performance Report on FY13 Strategic Plan

In the past 18 months, DLS has developed strategic plans for FY13 and FY14, and has just published a FY13 Strategic Plan Performance Report detailing the implementation of the [FY13 plan](#).

These strategic plans represent a pivot point, moving DLS toward becoming a more customer-focused organization and one that works to improve efficiencies for both internal and external stakeholders.

The development of these DLS strategic plans reflects the Patrick Administration's adoption of performance management, as articulated in Executive Order 540, and the direction that DOR Commissioner Amy Pitter has instilled through the DOR360 effort to build

stakeholder engagement into the fabric of DOR.

The FY13 and FY14 DLS strategic plans were each drafted after a series of meetings with DLS staff and external stakeholders across the commonwealth. The FY13 report states that DLS "met 14 of the 17 goals established at the beginning of FY13. Many of the goals and initiatives will be expanded upon in FY14."

Among the highlights of the FY13 Performance Report:

- Expanded professional development and internal training
- Expansion of user-defined web-based reporting tools
- Growth in the circulation of *City and Town* e-newsletter
- Development of a cloud-based municipal financial management system
- New and expanded interactions with external stakeholders, such as the widely attended workshops on Solar Photovoltaic Projects
- Revisions to Schedule A on Gateway
- Development of a Certification Tab on Gateway
- New Free Cash calculation worksheet
- Development of a searchable legal database

The [FY14 Strategic Plan](#) outlines a new series of initiatives, including the formalization of interaction with stakeholders through the creation of the Stakeholder Satisfaction Committee, which will publish both the results of surveys undertaken and report back to you on the actions DLS takes to act on those

results.

The plan details four measures in each of the following areas: performance and productivity; stakeholder satisfaction; internal capability; and quality. The plan also includes seven initiatives. There is a lot of work to be done in DLS to advance our aggressive agenda.

We would like to hear your thoughts on the plan. Please email your comments to me at nunesr@dor.state.ma.us.

Robert G. Nunes
Deputy Commissioner and Director of Municipal Affairs
nunesr@dor.state.ma.us

Ask DLS

City and Town Editorial Board

This month's *Ask DLS* features frequently asked questions about the procedures and deadlines for applying for preferential tax treatment of classified forest, farm and recreational land. We hope the answers will provide timely and helpful information. Please let us know if you have other areas of interest or send a question to cityandtown@dor.state.ma.us. We'd like to hear from you!

What is the procedure and deadline for applying for classification of forest land for local tax purposes under [G.L. c. 61](#)?

The application process begins more than a year before the start of the fiscal year for which taxation as classified forest land under [G.L. c. 61](#) is sought. However, once approved, classification of the land

continues for a full 10 year period.

A.) The landowner must file an application, including a forest management plan, with the State Forester (within the Department of Conservation and Recreation) on or before June 30 of the year before the beginning of the fiscal year for which classification is sought. [G.L. c. 61, sec. 2](#). The application must comply with all rules and regulations established by the State Forester.

For example, a landowner seeking classification of the land for the 10 years starting in fiscal year 2015, which begins on July 1, 2014, must submit an application to the State Forester on or before June 30, 2013.

B.) If the land qualifies for forest land classification, the State Forester will certify it and return the approved application certification and the forest management plan to the landowner. [G.L. c. 61, sec. 2](#).

C.) The landowner then must complete [Form CL-1, Application for Forest - Agricultural or Horticultural - Recreational Land Classification](#), and submit it, along with the State Forester's certificate and approved management plan, to the local board of assessors on or before September 30 of the year before the fiscal year in which taxation as classified forest land is to begin. [G.L. c. 61, sec. 2](#). If the application is timely and in order, the assessors must value and tax the land based on its forestry use as of the next January 1 assessment date for the following fiscal year.

For example, a landowner applying for classification of the land for the 10 years starting in fiscal year 2015, which begins on July 1, 2014, must submit [Form CL-1](#) with the State Forester's certificate and approved management plan, to the assessors on or before September 30, 2013. If timely and in order, the land will be classified as of January 1, 2014, the

assessment date for fiscal year 2015.

D.) If the land is being classified by the applicant for the first time, the assessors must also record a statement at the Registry of Deeds that includes the name of the landowner and a description of the land ([Form CL-3, Classified Forest - Agricultural or Horticultural - Recreational Land Tax Lien](#)). The statement constitutes a lien on the land for all taxes due under [G.L. c. 61](#). The landowner must pay all applicable recording fees. [G.L. c. 61, sec. 2](#).

E.) The certified management plan and forest land classification are effective for 10 years without further action. Unless the State Forester decertifies the land for non-compliance, classified status expires on December 31 of the tenth year.

In order to continue to have the land classified and taxed under [G.L. c. 61](#), the landowner must have applied to the State Forester for recertification with an updated forest management plan and submitted [Form CL-1](#) with the recertified plan by the deadlines explained above. Otherwise the land must be removed from [G.L. c. 61](#) classification upon expiration of the certification and taxed thereafter at fair cash value under [G.L. c. 59](#).

For example, the certification for land classified as of January 1, 2014 for the 10 years beginning in fiscal year 2015 expires on December 31, 2023. The land will be assessed at fair cash value as of January 1, 2024 for fiscal year 2025 unless the landowner applies to the State Forester for recertification on or before June 30, 2023 and if obtained, applies to the assessors for classification on or before September 30, 2023.

What is the procedure and deadline for applying for classification of agricultural or horticultural land for local tax purposes under [G.L. c. 61A](#)?

Recreational land under [G.L. c. 61B](#)?

Application for taxation of land as classified agricultural or horticultural land under [G.L. c. 61A](#) or classified recreational land under [G.L. c. 61B](#) must be made annually. The landowner must complete [Form CL-1, Application for Forest - Agricultural or Horticultural - Recreational Land Classification](#) and should submit it to the assessors on or before October 1 of the year before the beginning of the fiscal year for which classification is sought. [G.L. c. 61A, sec. 6](#); [G.L. c. 61B, sec. 3](#). Upon approval, the assessors will value and tax the land based on its farm or recreational use as of the next January 1 assessment date for the following fiscal year. If the land is being classified by the applicant for the first time, the assessors must also record a statement at the Registry of Deeds that includes the name of the landowner and a description of the land ([Form CL-3, Classified Forest - Agricultural or Horticultural - Recreational Land Tax Lien](#)). The statement constitutes a lien on the land for all taxes due under [G.L. c. 61A](#) or [c. 61B](#). The landowner must pay all applicable recording fees. [G.L. c. 61A, sec. 9](#); [G.L. c. 61B, sec. 6](#).

For example, a landowner applying for classification of the land for fiscal year 2015, which begins on July 1, 2014, should submit [Form CL-1](#) to the assessors on or before October 1, 2013 in order to receive a fiscal year 2015 tax bill based on the reduced current use valuation of the land.

However, a landowner who misses the October 1 deadline has up to 30 days after the actual tax bills are mailed for the fiscal year to file the application. The application deadline is extended until that time in a revaluation year. [G.L. c. 61A, sec. 8](#); [G.L. c. 61B, sec. 5](#). Because all boards of assessors must review their valuations and consider interim year adjustments in the years between triennial certification years, every

year is a revaluation year for purposes of the statutory deadline extension.

For example, in a community that mails its fiscal year 2015 tax bills on December 31, 2014, a landowner applying for classification of the land for that year may submit [Form CL-1](#) to the assessors on or before January 30, 2015.

What happens if a landowner obtains timely certification of a forest management plan from the State Forester, but does not file [Form CL-1](#) with the assessors by September 30? Can that deadline be extended in a revaluation year?

No. The extended application deadline for revaluation years is not available to applicants for classified forest land under [G.L. c. 61](#). However, a landowner who misses the September 30 deadline can apply on or before the following September 30 and obtain the preferential taxation of the land for the remaining nine years of the certification period.

Register Now for "What's New in Municipal Law"

The Division of Local Services Legal Staff will offer its annual seminar "What's New in Municipal Law" for local officials on Friday, September 27, 2013 at The Log Cabin Banquet & Meeting House in Holyoke and Friday, October 4, 2013 at The Lantana in Randolph.

The general session in the morning will begin with a 30 minute presentation on stakeholder engagement initiatives at DLS by Deputy Commissioner and Director of Local Affairs Robert Nunes and include a review new legislation and recent court decisions pertaining to local government.

The morning session will also include a panel

discussion on local tax and payment in lieu of tax agreements, such as those related to economic development, energy generation and exempt institutions. If you have a question for the panel discussion, please submit it to us by September 9, 2013, as explained in the registration form. Those questions along with others we have received in the past about these subjects will be used to structure the discussion.

The afternoon session will consist of three concurrent workshops on the following topics: (1) assessment and collection of betterments and municipal fees and charges, (2) new and recurring enterprise, community preservation and other special funds, and (3) municipal personnel and workforce issues.

Please click the following for the [agenda](#) and [registration form](#). Registrations must be received by September 18, 2013. Pre-registration is required.

If you have any questions about these seminars, please contact DLS Training Coordinator Donna Quinn at 617-626-3838 or by email at dlsregistration@dor.state.ma.us.

Save the Date! Regionalization Conference on September 16th

The Fifth Annual Regionalization Conference will be held on Monday, September 16th at Holy Cross in Worcester. Further details will be published in *City and Town* in future editions and updates can also be found in the [Training and Seminars](#) section of our website.

Sewer Connection Fees Upheld

James Crowley, Esq., Bureau of Municipal Finance Law

In Denver Street LLC v. Town of Saugus, 462 Mass.

651 (2012), the Supreme Judicial Court rendered an important decision on whether a charge imposed on new sewer users for access to the town's sewer system was a lawful fee or an impermissible tax. The Supreme Judicial Court reversed the decisions of the Superior Court and the Appeals Court which found the charge to be an unlawful tax.

For many years the Town of Saugus had experienced a deteriorating sewer system. There were inflow and infiltration problems due to rain storms which caused sanitary sewer overflow. There was also contamination of the wetlands which posed a health risk. In response to the threat to residential property, the town had installed a bypass pump which discharged raw sewage into the Saugus River. The Department of Environmental Protection (DEP) investigated, and in 2005 the town entered into an administrative consent order (ACO) with DEP. The town was fined \$25,000 and required to pay any fines that would be imposed for violation of the consent order. Under the terms of the consent order, the town was required to implement a strategic plan to identify and eliminate sources of inflow and infiltration. There was also a moratorium on new connections to the sewer system. Saugus then instituted a ten year, \$27 million plan to overhaul the sewer system.

There was not a total bar on development in the town. Under the consent order, the town was allowed to establish a "sewer bank" whereby, as repairs were made to the sewer system, the capacity generated by those repairs would be calculated, and this amount would become available for new connections. Hence, there was a formula under the consent order to determine the ratio of gallons of inflow and infiltration that had to be reduced to permit one gallon of new flow into the system. There was a trade-off, if you will, between gallons removed from the system and gallons allowed. The town initially agreed with DEP on a ten-to-one ratio on reduction and used a \$3 per

gallon charge.

When the developers in the case at hand sought to build new residences, they were told to pay a connection charge to allow them access to the sewer system. The developers had to pay \$670,460 under the formula to gain immediate access. Alternatively, they could wait until all repairs had been made and, at that time, connect to the sewer system. The wait could last years. Reluctantly, the developers paid the charge and filed suit in Superior Court in 2005 alleging the charge was an illegal tax. The town lost in the Superior Court and in the Appeals Court. Faced with the prospect of refunding over one million dollars (the initial \$670,460 charge together with 12% interest), the town decided to appeal to the Supreme Judicial Court.

In its analysis of the Saugus charge, the Supreme Judicial Court relied on the 1984 decision of Emerson College v. City of Boston, 391 Mass. 415 (1984). In Emerson, the Supreme Judicial Court had invalidated the City of Boston's augmented fire service fee for large buildings because the fire service fee constituted an illegal tax. In Emerson, the Supreme Judicial Court held that labeling the charge as a fee was not determinative and then established a three part test to distinguish a legitimate fee from an improper tax. The three Emerson tests are as follows:

First, a fee must be charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society.

Second, a fee must be voluntary. The party paying the fee must have the choice of not using the governmental service and thereby avoiding the charge.

Third, a fee is collected not to raise revenue but to

compensate the governmental entity providing the services for its expenses.

The Supreme Judicial Court disagreed with the lower courts on the first test, namely, the particularized benefit test. In the Court's view, the developers paying the charge had received a particularized benefit which was accelerated access to the sewer system. The Court emphasized the importance of the consent order and the strategic plan to repair the sewer system. Distinguishing the case at hand from an earlier Appeals Court decision which had invalidated a sewer connection fee, Berry v. Town of Danvers, 34 Mass. App. 507 (1993) which was discussed in the November 1993 issue of *City & Town*, the Court in the Saugus case rejected the notion that any particularized benefit received by a limited group must be weighed against any benefit to the general public. According to the Court, once it has been determined that a particularized benefit has been received, the first Emerson test has been satisfied.

The Court did not address the second Emerson test, the voluntariness test, since both parties agreed the payment was made by choice.

The Court then held that the third Emerson test had been satisfied since the amount paid by the developers was used to compensate the town for some of the money paid to repair the sewer system, and the ten-to-one gallons removed/gallons allowed ratio imposed on the developers was reasonable.

Consequently, the Town of Saugus prevailed and was allowed to keep the money received from the developers.

DOR Offers Guidance for Local Officials to Help Small Business

Owners Understand the New Tax Law on Certain Computer Software Services

New legislation that took effect July 31, 2013, applies the Massachusetts sales and use tax to the sale or use of certain computer and software services. DOR released a [Technical Information Release](#) - TIR 13-10 -- to inform taxpayers and tax practitioners of the changes in this legislation, provide initial guidance and solicit input from affected taxpayers regarding the application of the sales and use tax to particular transactions or business practices.

We have received a large volume of questions, particularly from small business owners in many of your communities. In response, the Department has posted answers to Frequently Asked Questions on the DOR Website at www.mass.gov/dor/newtaxinfo. The FAQs will be updated as additional questions are received and reviewed.

Local officials can direct business constituents who have questions about how the application may affect their business to our special website www.mass.gov/dor/newtaxinfo or they can send comments and suggestions to rulesandregs@dor.state.ma.us. DOR will be issuing further guidance on the application of the sales and use tax and your input will play an important role in helping us develop that guidance.

August 1	Taxpayer	Quarterly Tax Bills: Deadline for Paying 1st Quarterly Tax Bill Without Interest According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the 1st Quarter preliminary tax payment without interest,
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		<p>unless the preliminary bills were mailed after July 1. If mailed by August 1, the 1st Quarterly payment is due August 1, or 30 days after the bills were mailed, whichever is later, and the 2nd Quarterly payment is due November 1. If mailed after August 1, the preliminary tax is due as a single installment on November 1, or 30 days after the bills were mailed, whichever is later.</p>
August 1	Taxpayer	Annual Boat Excise Return Due
August 1	Accountant	<p>Notification of Total Receipts of Preceding Year</p> <p>The total actual local receipts (e.g., motor vehicle excise, fines, fees, water/sewer charges) of the previous fiscal year must be included on Schedule A of the Tax Rate Recapitulation Sheet (Recap) which is submitted by the Assessors to DOR. On the Recap, the Accountant certifies the previous fiscal year's actual revenues, and the Assessors use this information to project the next fiscal year's revenues. Any estimates of local receipts on the Recap that differ significantly from the previous year's actual receipts must be accompanied by documentation justifying the</p>

		change in order to be approved by the Commissioner of Revenue.
August 10	Assessors	Deadline for Appealing EQVs to ATB (even numbered years only)
August 10	Assessors	Deadline for Appealing SOL Valuations to ATB (every 4th year after 2005)
August 15	Assessors	Deadline to Vote to Seek Approval for Authorization to Issue Optional Preliminary Tax Bills For semi-annual communities issuing optional preliminary property tax bills, the Assessors must vote to seek authorization to issue the bills from DOR by this date. After receiving approval, Assessors must submit a Pro-forma Tax Rate Recap Sheet to DOR for review and issue the tax bills by October 1.
August 31	DOR/BOA	Issue Instructions for Determining Local and District Tax Rates A copy of the Tax Rate Recap Sheet and its instructions are forwarded to the community.
August 31	Assessors	Begin Work on Tax Rate Recapitulation Sheet (to set tax rate for semi-annual bills) Until the Tax Rate Recap Sheet is completed and certified by the Commissioner of Revenue,

the community may not set a tax rate nor send out its property tax bills (unless it issues preliminary quarterly tax bills or requests from DOR the authority to send out preliminary tax notices if DOR requirements are met). Communities should begin gathering the information in enough time for the tax rate to be set and tax bills mailed by October 1. The Tax Rate Recap Sheet provides Mayors or Selectmen with a ready-made financial management tool because the town's most important financial management information is summarized on this form. The Mayor or Selectmen should review the Recap Sheet in preliminary form in order to understand the following financial information:

Page 1 (Tax Rate Summary)

The proposed tax levy should be compared to the levy limit. If a community does not levy to its limit, the remaining levy is referred to as excess levy capacity. Excess levy capacity is lost to the community for the current fiscal year although it will always remain in the levy limit calculation.

Page 2 (Amount To Be Raised)

This section includes appropriations and other

local expenditures not appropriated. These include overlay deficits, revenue deficits, state and county charges, Cherry Sheet offset items, and the allowance for abatements and exemptions. By comparing this information to the prior year(s), any significant changes can be determined.

Page 2 (Estimated Receipts & Revenues From Other Sources)

In particular, Section C shows the amount appropriated from free cash and other available funds. By comparing the amounts appropriated to the balances in these accounts (available from the Accountant/Auditor), the Mayor or Selectmen can get a sense of how their non-property tax revenues are being used.

Page 3, Schedule A (Local Receipts Not Allocated)

By comparing these figures to prior year(s), the Mayor or Selectmen can determine any changes in these revenues.

Page 4, Schedule B (Certification of Appropriations and Source of Funding)

This section includes financial votes of City/Town Council or Town Meeting not previously reported on last

year's recap.

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