



Informational Guideline Release

Bureau of Accounts
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Supersedes IGR 16-104 and Inconsistent Prior Written Statements

OVERLAY AND OVERLAY SURPLUS

**Chapter 47, § 31 of the Acts of 2017
(Amending [G.L. c. 59, § 25](#))**

This Informational Guideline Release (IGR) informs local officials about a change made by an outside section of the Fiscal Year 2018 State Budget that allows the overlay account to be charged for required interest paid on abatement refunds.

Topical Index Key:

Accounting Policies and Procedures
Special Funds

Distribution:

Assessors
Collectors
Treasurers
Accountants/Auditors
Selectboards/Mayors
City/Town Managers/Administrators
Finance Directors
Finance Committees
City/Town Councils

Supersedes IGR 16-104 and Inconsistent Prior Written Statements

OVERLAY AND OVERLAY SURPLUS

**Chapter 47, § 31 of the Acts of 2017
(Amending [G.L. c. 59, § 25](#))**

SUMMARY:

These guidelines explain a recent amendment made by an outside section of the Fiscal Year 2018 State Budget that allows the overlay account to be charged for interest due and payable on abatement refunds. St. 2017, c. 47, § 31. They also generally explain the statutory standard for maintaining an adequate overlay and the actions the Commissioner of Revenue (Commissioner) may take when approving a tax rate or determining available funds (free cash) to ensure compliance with that standard.

Overlay is a single account to fund abatements and exemptions of committed real and personal property taxes for any fiscal year. The overlay amount is determined by the board of assessors (assessors) and may be raised in the tax rate without appropriation. Excess overlay is determined, certified and transferred by vote of the assessors to a Fund Balance Reserved for Overlay Released by the Assessors for Expenditures (overlay surplus). Overlay surplus may then be appropriated by the legislative body for any lawful purpose until the end of the fiscal year, *i.e.*, June 30. Overlay surplus not appropriated by year-end is closed to the general fund undesignated fund balance. [G.L. c. 59, §§ 23](#) and [25](#).

Under the amendment, the overlay may now be charged for interest due taxpayers when abatements of paid taxes result in refunds. Previously, the interest was charged to an appropriation for that purpose, such as a short-term interest or treasurer's general expense appropriation. No municipal action is necessary to implement this change. It is effective for any abatement granted on or after July 1, 2017 that generates an overpayment refund and interest obligation.

These guidelines are in effect and supersede Informational Guideline Release (IGR) No. 16-104, *Overlay and Overlay Surplus*, and any inconsistent prior written statements or documents.

GUIDELINES:

I. BUDGETING OVERLAY

A. Assessors' Determination

Cities, towns and tax levying improvement districts must maintain an adequate balance in the overlay account to fund anticipated property tax abatement, exemption and receivable exposure for all fiscal years.

As part of the annual budget and tax rate process, the assessors must analyze the balance in the overlay account and determine whether it is adequate to fund anticipated property tax abatements, exemptions and receivables during the upcoming fiscal year in addition to existing abatement, exemption and receivable exposure for all previous fiscal years. If the account balance is not adequate, the assessors may raise any additional amount required in the municipal or district tax rate for the year without appropriation. [G.L. c. 59, § 25](#). Assessors should provide the amount they intend to raise to their local budget officials during the annual budget process.

Appropriation into the overlay account is not recommended except to fund an anticipated overlay deficit. See Sections II-B and III-G below.

B. Commissioner's Approval

In order to approve the annual tax rate, the Commissioner must determine that the overlay account balance is reasonable, *i.e.*, adequate to cover anticipated abatements and exemptions and property tax receivables for all fiscal years. [G.L. c. 59, § 25](#). The reasonableness of the account balance will be judged based on the following factors:

- The account balance as of June 30 of the previous fiscal year.
- Abatements and exemptions granted and payments made for prior fiscal years from July 1 to the date the tax rate is submitted.
- The average of granted abatements and exemptions and outstanding receivables for the five previous fiscal years.
- Whether local assessments are scheduled for review and certification by the Department of Revenue. [G.L. c. 40, § 56](#).
- The potential abatement liability in cases pending before, or on appeal from, the Appellate Tax Board (ATB).
- Other significant factors known to the Commissioner.

II. PROCESSING ABATEMENTS

A. Overlay Charges

The overlay account is charged for the following:

- Abatements of real and personal property taxes assessed and committed under [G.L. c. 59](#). Property taxes include omitted assessments under [G.L. c. 59, § 75](#), revised assessments under [G.L. c. 59, § 76](#), supplemental assessments under [G.L. c. 59, § 2D](#), pro rata pro forma assessments under [G.L. c. 59, § 2C](#) and annual taxes assessed on land classified under [G.L. c. 61](#) (forest), [c. 61A](#) (agricultural and horticultural) and [c. 61B](#) (recreational).

- Interest on abatements of paid real or personal property taxes refunded to taxpayers.
 - If the assessors' abatement of the paid tax results in the refund, interest is calculated from the due date or actual date of the payment that resulted in the tax, as abated, being paid, whichever is later, to the refund date. [G.L. c. 59, § 69](#). If the ATB orders the abatement that results in the refund, the interest is calculated from the actual payment date. [G.L. c. 58A, § 13](#) and [c. 59, § 64](#).
- Exemptions from real and personal property taxes assessed and committed under [G.L. c. 59](#).
- Municipal share of federal Social Security and Medicare taxes on real property tax abatements earned by seniors or veterans in a community that has adopted the senior work-off abatement program under [G.L. c. 59, § 5K](#), or the veteran work-off abatement program under [G.L. c. 59, § 5N](#), and has not budgeted those taxes.

Abatements or exemptions of other taxes, including motor vehicle, boat and farm animal excises, roll-back and conveyance taxes assessed under [G.L. c. 61, 61A](#) and [61B](#), community preservation surcharges, betterments and special assessments, are treated as adjustments to the revenue account. Revenue is also adjusted to account for any amount by which the real and personal property tax levy for the fiscal year exceeds the tax commitment.

B. Overlay Deficits

If at the end of any fiscal year, the total of all years' abatements and exemptions charged to the overlay account during that year exceed the account balance, the resulting deficit must be raised in the next annual tax rate unless otherwise funded by appropriation. See Section III-G below.

III. DETERMINING OVERLAY SURPLUS

The assessors may transfer excess amounts in the overlay account that are no longer needed to cover potential abatements, exemptions and uncollectible taxes to overlay surplus.

A. Calculation of Excess Overlay

1. Statutory Definition

Excess overlay is the amount of the overlay account that exceeds:

- a. Property Tax Receivables – The total real and personal property taxes, including omitted and revised assessments, (1) still outstanding against the collector's warrant (property tax receivables) for all prior fiscal years, and (2) anticipated to be outstanding against the collector's warrant for the current fiscal year. Outstanding real property taxes secured by a tax title need not be included, except for an amount, if any, the assessors estimate may be abated as uncollectible after tax title disclaimer.

PLUS

- b. Potential Abatements - The assessors' estimate of the amount of (1) potential abatements and exemptions of paid property taxes for all prior fiscal years and (2) anticipated abatements and exemptions of committed property taxes for the current fiscal year.

Example 1.

Facts:

- The overlay account balance June 30 at the end of FY1 is \$2,000,000.
- All outstanding real estate taxes for years before FY1 have been moved into tax title accounts.
- Outstanding real estate taxes for FY1 are \$900,000 and are not yet in tax title.
- Outstanding personal property taxes for FY1 and all prior years are \$300,000.
- All abatement and exemption applications for FY1 have been processed, but there are several appeals for FY1 and prior fiscal years pending at the ATB. The assessors estimate those cases could result in abatements of up to \$900,000 if the taxpayers prevail.
- Based on historical data, the assessors also expect to have to abate \$50,000 in real estate taxes secured by tax titles as uncollectible.

Conclusion:

No excess overlay exists on June 30 FY1 because the \$2,000,000 overlay account balance is less than property tax receivables (\$1,200,000) plus potential abatements (\$950,000).

Example 2.

Facts:

- The overlay account balance June 30 at the end of FY1 is \$2,000,000.
- As of August 1 of FY2, the outstanding FY1 real estate taxes have been moved into tax title accounts.
- In addition, due to payments made after the FY1 demands were issued, the outstanding personal property taxes for FY1 and all prior years are now \$250,000.
- Based on historical data, the assessors expect to abate or exempt \$550,000 in FY2 taxes and anticipate there will be about \$100,000 in FY2 personal property taxes that will be outstanding.
- There are several appeals for FY1 and prior fiscal years pending at the ATB. The assessors estimate those cases could result in abatements of up to \$900,000 if the taxpayers prevail.
- Based on historical data, the assessors also expect to abate \$50,000 in real estate taxes secured by tax titles as uncollectible.

Conclusion:

There is now excess overlay of \$150,000 [\$2,000,000 overlay account balance (FY1) – \$1,850,000 (\$350,000 in prior year and estimated FY2 personal property tax receivables) + \$1,500,000 (\$900,000 in potential ATB abatements and \$600,000 in potential prior year and estimated FY2 abatements and exemptions).

Example 3.

Facts:

- The overlay account balance June 30 at the end of FY1 is \$2,000,000.
- As of August 1 of FY2, the outstanding FY1 real estate taxes have been moved into tax title accounts. All prior year outstanding real estate taxes are now secured by tax titles.
- Outstanding personal property taxes for FY1 and all prior years still equal \$250,000.
- In October of FY2, the ATB orders an abatement of \$10,000 in one pending case with no further appeal taken.
- In November of FY2, the assessors settled several years of cases involving the same taxpayer for a total abatement of \$250,000. The abatements for the settled cases were less than the amount estimated and reserved to fund them. The assessors now expect the amount needed to cover remaining ATB cases is \$400,000.
- Based on historical data, the assessors expect to abate or exempt \$550,000 in FY2 taxes and anticipate there will be about \$100,000 in FY2 personal property taxes that will be outstanding.
- In recent years, the assessors raised between \$500,000 - \$600,000 for overlay in the tax rate, but no additional amount was raised when the FY2 tax rate was set in December.
- Based on historical data, the assessors also expect to abate \$50,000 in real estate taxes secured by tax titles as uncollectible.

Conclusion:

As of January 1 of FY2, there is now excess overlay of \$390,000 [\$1,740,000 overlay account balance – \$1,350,000 (\$350,000 in prior year and estimated FY2 personal property receivables + \$1,000,000 in potential prior year and estimated FY2 abatements and exemptions)].

2. Use of Records

In making their determination, the assessors must use the overlay account balance and property tax receivables that appear in the accounting officer's records. The accounting officer is the city auditor, town accountant or other officer having similar duties in the city, town or district.

- a. Overlay Account Balance - If there is a variance in the overlay account balance between the assessors' and accounting officer's records, the assessors must use the lesser of the two amounts.
- b. Property Tax Receivables - If there is a variance in the property tax receivables between the collector's and accounting officer's records, the assessors must use the greater of the two amounts.

B. Timing of Determination

The amount of excess overlay, if any, may be determined by the assessors on their own motion at any time and must be determined by them within 10 days of a written request by the community's chief executive officer. The chief executive officer is the manager in any city having a manager and in a town having a city form of government, the mayor in any other city, the selectboard in any other town and the district commissioners, prudential committee or other officer or body designated to perform the function in a district.

C. Transfer to Overlay Surplus

Whenever the assessors determine there is excess overlay, they must vote to certify the amount to be transferred to overlay surplus and must notify the accounting officer in writing of their vote. If the determination is made after the chief executive officer's written request, the assessors must also take the vote within 10 days of the request and so notify the chief executive in writing.

D. Verification of Transferred Amount

Before recording any voted transfer, the accounting officer must verify that the amount voted by the assessors is excess overlay under [G.L. c. 59, § 25](#). See Section III-A-1 and 2 above. If the accounting officer determines that the amount voted is greater than excess overlay, the assessors' action is not effective to the extent of that portion of the amount voted that is greater. The accounting officer may not record a transfer of the ineffective amount to overlay surplus and must so notify the assessors and chief executive officer if the assessors' vote was made after a written request of the officer, in writing immediately.

E. Sanctions for Excessive Transfers

The Commissioner may take any of the following actions where the assessors certify and the accounting officer records a transfer from overlay to overlay surplus greater than excess overlay under [G.L. c. 59, § 25](#):

- Reduce certified free cash by the excessive transfer.
- Treat any appropriation from overlay surplus as an appropriation from free cash.
- Require local action to remedy the excessive transfer before approving the tax rate.

F. Use of Overlay Surplus

A city, town, or district may appropriate overlay surplus for any lawful purpose. Any amount not appropriated by June 30 closes to undesignated fund balance in the general fund. In the normal course of events, this will increase certified free cash.

G. Management of Overlay Account

Excess overlay may be declared whenever the statutory standard explained in Section III-A-1 and 2 above is met. However, communities are encouraged to manage the overlay account in a prudent manner in order to reduce the additional amounts budgeted and raised for overlay, or to avoid raising overlay deficits, in future years' tax levies. They might consider, for example, a general policy of maintaining excess overlay to eliminate or reduce amounts that would otherwise have to be budgeted and raised for overlay in future fiscal years, including covering potential deficits.