DLS

DIVISION OF LOCAL SERVICES

MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

What's New In Municipal Law 2021

Workshop A Solar/Windpower Exemptions and PILOTS

Chapter 8 of the Acts of 2021, §§ 61, 62, 63, 97 & 98

Assessing Solar and Wind-Powered Facilities Before Chapter 8 of the Acts of 2021

- All solar & wind-powered generating plants ***regardless of size*** exempt from property taxes, unless they supplied all the electricity generated exclusively to tax-exempt entities**.** *See* ***KTT, LLC v. Swansea Assessors,*** Mass. ATB Findings of Fact and Report 2016-426 (10/13/16). *See also* ***United Salvage Corp. of America v. Framingham,*** Mass. ATB Findings of Fact and Report 2020-320 (5/29/20)
- Exemption applied equally to home solar panels like those feasible when the statute was passed in the 1970's and, *e.g.,* the largest solar power facility in the world: the Bhadla Solar Park in India, which occupies 14,000 acres and can produce 2245 MW of electricity.

Bhadla Solar Park, India

Overview: Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for MA Climate Policy

- G.L. c. 59, § 5, Clause Forty-fifth, as interpreted in the ***KTT*** decision, was repealed and replaced with a new exemption provision, also styled Clause Forty-fifth, effective June 24, 2021 (amended Clause Forty-fifth), for fiscal years beginning in 2023.
- Amended Clause Forty-fifth looks to the ***scale*** of the solar or wind-powered system in determining exemption eligibility.
- Solar and wind-powered systems, to qualify for the amended Clause Forty-fifth exemption, must produce no more than 125% of the electricity needed to supply the real property where the system is sited and contiguous and non-contiguous properties in the city or town under common ownership.

Overview: Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for MA Climate Policy

- Solar and wind-powered systems found to qualify for the old Clause Forty-fifth exemption (without a PILOT) will continue to qualify provided they are capable of producing not more than 150% of the energy consumed by the specific parcel on which situated.
- Because the system at issue in ***KTT*** produced more than 150% of the power requirements of the parcel on which it was situated, it is ineligible for the exemption grandfathering provisions or the amended Clause Forty-fifth.

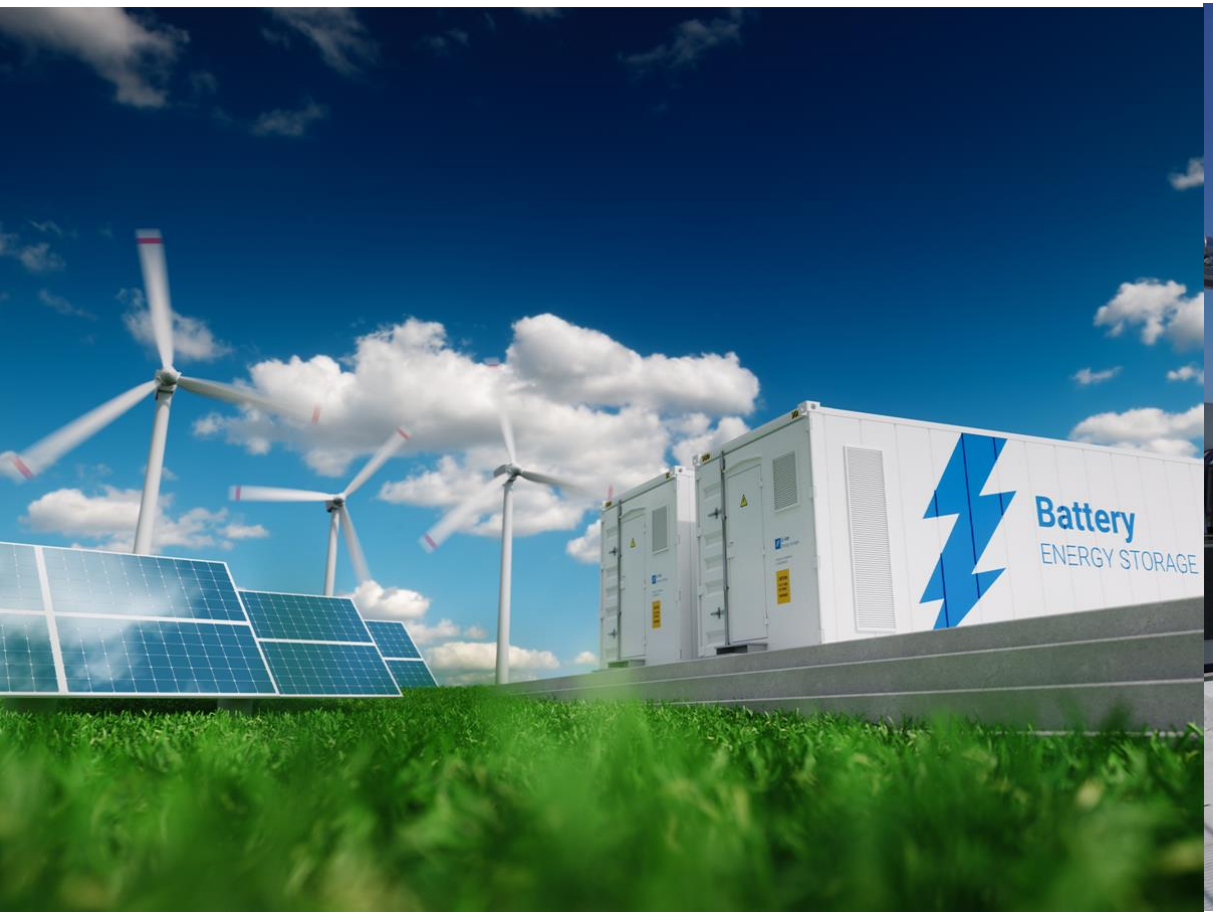
Overview: Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for MA Climate Policy, Cont'd.

- Chapter 8 disallows ***new*** Payment In Lieu of Taxes (PILOT) agreements for solar or wind powered systems under authority of G.L. 59, § 38H(b), entered into ***after*** June 24, 2021.
- New PILOT agreements can be entered into under authority of amended Clause 45 beginning in FY 23

Overview: Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for MA Climate Policy, cont'd.

- Existing PILOT's in place under authority of § 38H(b) are ***grandfathered*** (*i.e.,* continue to be effective) provided they were entered into ***before*** June 24, 2021.
- Solar and wind-powered systems co-located with an energy storage system equal to or less than 25 kilowatts in capacity qualify for exemption
- "[Q]ualified fuel cell powered systems" are exempt under new Clause Forty-fifth B, if constructed after 1/1/20 and capable of producing ***no more than*** 125% of the energy needs of the parcel on which it is situated and contiguous and non-contiguous real estate under common ownership in the city or town.

Energy Storage Systems and Fuel Cell Technology



Qualifying for the Amended Clause Forty-fifth Exemption

- Exemption qualification date for the amended Clause Forty-fifth exemption is January 1.
- While the exemption qualification date for real property is July 1 at the start of the fiscal year, personal property is tested for exemption eligibility as of the preceding January 1. The statute varies the qualification date because "another meaning is clearly apparent [in] the [personal property] context." *See* G.L. c. 59, § 5 (1st paragraph).
- New PILOT's under amended Clause Forty-fifth can be entered into and are effective as of January 1, 2022 for FY 23.
- No new PILOT's can be entered into for FY 22.
- Existing PILOT agreements remain valid for the remaining years in their term if entered into before June 24, 2021.

Qualifying for the Amended Clause Forty-fifth Exemption, cont'd.

- Taxpayer must file an application with the assessors in the first year for which exemption is sought for qualifying solar and wind-powered generating facilities. The deadline is the last day for filing an abatement application for the fiscal year at issue. Once the exemption is granted, there is no need to reapply annually.
- Taxpayers denied by the assessors can appeal to the Appellate Tax Board (ATB) to establish their entitlement to the amended Clause Forty-fifth exemption (without the benefit of the ***KTT*** decision.)
- Petitions initiating ATB appeals must usually be filed within three months of the date of denial or deemed denial.

Qualifying for the Amended Clause Forty-fifth Exemption, cont'd.

- Amended Clause Forty-fifth exemption does not apply to solar-powered systems developed under G.L. c. 164, § 1A.
- Solar and wind-powered systems are generally ineligible for the exemption if the owner is in the business of distributing electricity or selling electricity at retail.
- The limit on electric generating capacity at 125% of total power needs is measured by reference to all real property the owner holds or has an ownership interest in the city or town, whether contiguous or non-contiguous
- A solar or wind-powered system co-located with an energy storage system which generates no more than 25 kilowatts must be verified by the Department of Energy Resources or an electric distribution company permission to operate.

Qualifying for the New Clause Forty-fifth B Exemption, cont'd.

- A "qualified fuel cell powered system" constructed after January 1, 2020 is eligible for exemption if capable of producing no more than 125% of the electricity needed for the parcel on which it is situated and other parcels within the city or town under common ownership, or in property in which the owner otherwise holds an interest.
- Exempted are "integrated system[s] comprised of a fuel cell stack assembly and associated components that convert[] fuel into electricity without combustion and is being utilized as the primary or auxiliary power system for … real property …"
- Clause Forty-fifth B does not require local acceptance. It takes effect for the January 1, 2022 assessment date for FY 23.

Forrestall Enterprises, Inc. v. Westborough Assessors, Mass. ATB Findings of Fact and Report 2014-1026

- In ***Forrestall,*** the ATB combined Mr. Forrestall's land held in his own name and land in which he held an interest within the Town of Westborough for purposes of exemption analysis.
- To compare the solar generating capacity, the Board looked to land directly and indirectly owned by Mr. Forrestall, *e.g.* through Forrestall Enterprises, Inc.
- "The Board found that Forrestall Westborough Properties effectively used the equivalent of 100 percent of the energy produced by the Solar PV System." ATB 2014-1029-30.
- While the ***KTT*** case is superseded as of FY 23, Mr. Forrestall would be entitled to the amended Clause 45th exemption on the facts as found by the ATB.

Agreements for Payments in Lieu of Taxes Under Amended Clause Forty-fifth

- To negotiate a PILOT agreement, a municipality must act through an “authorized officer” who was granted authority to negotiate with the taxpayer and/or conclude an agreement.
- Legislative body may authorize, *e.g.* CEO (Selectboard, Mayor, or Manager) or the assessors to act for the municipality. All should be involved in negotiations.
- Unless the legislative body has expressly given the authorized officer power to conclude an agreement, it must specifically approve the agreement reached.

Agreements for Payments in Lieu of Taxes Under Amended Clause Forty-fifth, cont'd.

- Assessors are the only local officials authorized to determine full and fair cash value; their involvement in developing compliant valuation and payment provisions is essential.
- Agreements should fix values or formulas for setting values, not only agreed payment amounts.
- Agreement should run a limited term, no longer than 20 years, unless extended by agreement of both the municipality and the taxpayer

Agreements for Payments in Lieu of Taxes Under Amended Clause Forty-fifth, cont'd.

- Agreed valuation must be approximately equal to fair cash value, over the entire period to be governed by a PILOT agreement.
- There is no requirement that the values be included in the agreement, but the municipality should have a record basis to support the agreed valuations.
- By contrast with §38H(b), there is no statutory language providing that the agreed values are to be included in the tax base to determine the levy limit and the levy ceiling.
- Because the agreed values are not included in the tax base, they do not count as new growth while the PILOT is in effect.

Agreements for Payments in Lieu of Taxes Under Amended Clause Forty-fifth, cont'd.

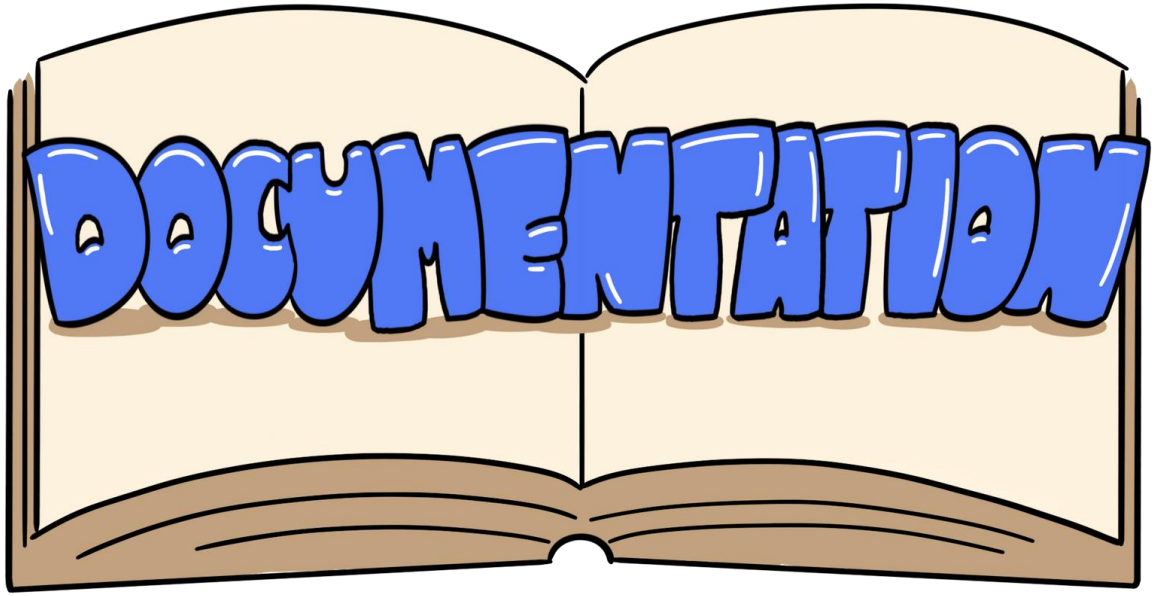
- The loss of new growth for solar and wind-powered property values is a disadvantage of entering into a new PILOT agreement.
- Without a PILOT, assessments of renewable energy systems count towards new growth.
- Agreements should establish the same billing and collection procedures for a negotiated amount including payment schedules, late payment consequences, and collection remedies.

Agreements for Payments in Lieu of Taxes Under Amended Clause Forty-fifth, cont'd.

- The City Solicitor or Town Counsel should consider, along with the statutory basics for the agreement, additional provisions to address issues including:
  - Severability: if one part of the agreement is invalid does that void the entire agreement?
  - Termination: Does the agreement allow one party to terminate for convenience; what are grounds for termination?
  - Notice requirements for each party
  - Assignability?
  - Adjustment of Value for *e.g.* new equipment installed at the facility?

Documentation to Support Agreements for Payments in Lieu of Taxes

- Assessors must maintain records of taxable renewable energy and energy storage personal property and update these records annually to show the assessed value or negotiated agreement value.



Documentation to Support Agreements for Payments in Lieu of Taxes, cont'd.

- Required documentation must include:
  - Copy of the executed PILOT agreement along with a certified copy of the legislative body vote authorizing, approving or ratifying it.
  - Appraisal documentation used to develop the projections of full and fair cash vale used for the agreement.
  - Copy of any executed amendment to the PILOT agreement.
- Supporting documentation must be presented to the Bureau of Local Assessment *no later than the year scheduled for certification review.*

Current PILOT Agreements and Exemptions Under § 38H(b)

- Current PILOT agreements are not required to be amended, modified, or renegotiated and run through the agreed term of years (*i.e.* no more than 20 years from the date of installation of the solar or wind-powered systems.)
- To remain in effect, current PILOT agreements must have been negotiated and concluded prior to June 24, 2021.
- Prior determinations of exemption under Clause Forty-fifth are ***grandfathered*** (*i.e.,* remain effective) only if the solar or wind-powered system is capable of producing no more than 150% of the energy needs of the particular parcel on which the personal property is situated.

New PILOT Agreements and Exemptions, cont'd.

- Taxpayers are entitled to exemptions going forward under amended Clause Forty-fifth only if the renewable energy system is capable of producing no more than 125% of the power needs of the parcel on which it is situated, including any contiguous or non-contiguous parcels within the city or town under common ownership, directly or indirectly.

Is a New PILOT In the City or Town's Best Interests?

- PILOT payments should be compared to assessors' projections of tax payments based on assessments at full and fair cash value.
- ***KTT, LLC v. Swansea Assessors,*** Mass. ATB Findings of Fact and Report 2016-426 (10/13/16) formerly exerted downward pressure on estimates of full and fair cash value in negotiating § 38H(b) PILOT's.
  - Owners of renewable power generating facilities had option to challenge assessment of their commercial properties and obtain an automatic exemption at the ATB.
  - Irrational for owners of renewable power generating facilities to agree to taxation based on full and fair cash value when, for the cost of a filing fee, they could take a pass on taxes altogether.
  - Repeal of the statutory basis for the ***KTT*** ruling deprives owners of large-scale solar and wind-powered personal property of leverage in seeking discounts on valuation. PILOTS should be a better deal for municipalities.

Is a New PILOT In the City or Town's Best Interests?

- Cities and towns can negotiate new PILOT's under amended Clause Forty-five without the value distortion effect of the now-repealed ***KTT*** exemption.
- Cities and towns should consider that values and payments under new PILOT's under amended Clause Forty-five do not constitute part of the tax base or give rise to new growth.
- Municipalities should contrast advantages and disadvantages of a new PILOT under amended Clause Forty-five to find a balance.

Commonwealth of Massachusetts

DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

Understanding the 8 of 58 Process

September 2021

Presentation for the
Municipal Law Seminar Workshop A

G.L. c. 58, § 8

Authority from Commissioner of Revenue to Abate

- Under G.L. c. 58, § 8, the Commissioner may authorize local assessing officers to abate local taxes or charges where their abatement authority has expired (discretionary authority – no right of appeal from Commissioner's decision)
  - Commissioner's guidelines IGR 2020-10 state the requirements and procedures for obtaining abatement authority
- Assessing officers (assessors, water and sewer commissioners, etc.) apply to the Commissioner for authority to abate a tax, interest, cost or charge after abatement jurisdiction has expired
  - This is not a taxpayer application or procedure; taxpayer's remedy is to timely file application for abatement

G.L. c. 58, § 8

8 of 58 process

Extraordinary Relief

Not a substitute for the ordinary abatement process

of G.L. c. 59, § 59.

G.L. c. 58, § 8

Three Factors Needed for Approval of G.L. c. 58, § 8 Applications

All three of the below factors must be present for Commissioner to grant authority to abate

1. The taxpayer was precluded by ***extraordinary or mitigating circumstances*** from filing an abatement under the standard process of G.L. c. 59, § 59
2. Abatement of the tax or charge is ***supported by the facts*** *(i.e., property assessment was excessive, or tax is invalid)*; and
3. The granting of abatement authority will ***correct a substantial inequity, cure a grievous hardship or provide a public benefit***

G.L. c. 58, § 8

#1 - Extraordinary or Mitigating Circumstances Prevented Taxpayer from Filing Abatement Application

Examples of when extraordinary or mitigating circumstances prevent taxpayer from filing abatement application

- Taxpayer failed to file abatement application because of a medical condition such as dementia
- Taxpayer failed to file because s/he was in the hospital when abatement application due
- A charitable organization failed to file its required Form 3ABC and was assessed a tax for otherwise exempt property. Non-filing was attributable to turnover in volunteer staff

G.L. c. 58, § 8

#1 - Extraordinary or Mitigating Circumstances Prevented Taxpayer from Filing Abatement Application

Extraordinary or mitigating circumstances were **not** found to have prevented taxpayer from timely filing an abatement application when

- No reason given by assessor why taxpayer did not file application for abatement
- Taxpayer is first-time home buyer and states s/he did not know to file an abatement application
- Taxpayer claims s/he was unaware of an overassessment because “the mortgage company pays my property taxes”

G.L. c. 58, § 8

#1 - Extraordinary or Mitigating Circumstances Prevented Taxpayer from Filing Abatement Application

Commissioner may waive extraordinary or mitigating circumstances preventing taxpayer from filing an abatement application when there is an invalid tax or egregious assessing error. In other cases, it is unlikely that abatement authority will be granted.

- Invalid Tax
  - Developer is assessed for land that is part of a condominium common area
  - Tax bill is sent to the owner of a solar facility that is the subject of a PILOT (payment in lieu of taxes) agreement under G.L. 59, § 38H(b)
- Egregious error – Instead of entering a 16 x 28 patio into the database, assessors entered a 16 X 2810 shed. The error increased the assessed value of the patio from $1100 to $264,600

G.L. c. 58, § 8

#2 – Abatement of Tax Must be Warranted by the Facts

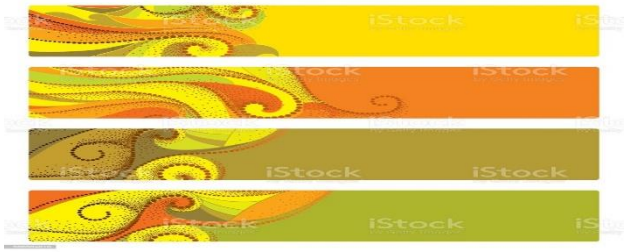
- Property was overassessed because it was subject to a recorded affordable housing restriction as of the January 1 assessment date which was not considered by the assessors in the valuation
- Property was overassessed due to mold and water damage caused by a broken water pipe as of the January 1 assessment date
- Property was assessed for an amount greater than its fair cash value on January 1 for any reason

G.L. c. 58, § 8

#2 – Abatement of Tax Must be Warranted by the Facts

In the following cases, it was **not** shown that abatement of the tax is warranted by the facts

- Assessors request authority to abate unpaid tax because the town does not want to do a tax taking because it does not wish to take responsibility for or ownership of the property
- Assessors request authority to abate because it will be a hardship for taxpayer to pay the tax (taxpayer not entitled to any exemptions)



G.L. c. 58, § 8

#3 – Abatement Will Cure a Substantial Inequity, Grievous Hardship or Public Benefit

- Authority will not be granted if the abatement amount is insubstantial
- Authority will not be granted if someone other than the taxpayer is benefitted by the abatement
  - Taxpayer with dementia failed to pay taxes or apply for abatement for several years. Taxpayer dies and children now own property and seek abatement

G.L. c. 58, § 8

Abatement of Paid Taxes and Charges

Application for authority to abate a paid tax must meet the three requirements previously discussed for abating an unpaid tax **plus** the below two additional requirements

1. Tax assessed not more than three fiscal years prior to the year an application is filed
2. Assessment involved an “obvious clerical error”

G.L. c. 58, § 8

Abatement of Paid Taxes and Charges

Assessors must show an "obvious *clerical* error" in the assessment

- "Clerical" pertains to a clerk, copyist or writer, so a clerical error is a mistake in copying, writing, recording, and processing information
- Clerical error occurs when a person intends to enter some fact or detail, but unintentionally records some other circumstance
- Immaterial which municipal official or agent committed the error provided the error was made in a clerical function and affected the valuation, assessment or collection process

G.L. c. 58, § 8

Examples of Obvious Clerical Errors

- Taxpayer is substantially overassessed due to an unintentional coding error, transposition of numbers or processing error in an assessment that results in
  - Overassessment
  - Assessment of non-existent structure
  - Issuance of duplicate bills
  - Addition of a water charge to the wrong tax bill
- Assessor believes the home is heated by forced hot water, but mistakenly marks forced hot air on the property record card

G.L. c. 58, § 8

Examples Where Not Obvious Clerical Error

- Assessor calculates the impact on value of an affordable housing restriction using the wrong formula – this is not a clerical error; it is an error in judgment
- Assessor assesses the third-floor attic in a dwelling as finished living area because s/he views curtains on the windows, but the attic is not finished – this is not a clerical error; it is an error in judgment
- Assessor incorrectly believes the home is heated by forced hot water and assesses it as such, but it is heated by forced hot air – this is not a clerical error; it is an error in judgment

G.L. c. 58, § 8

The Commissioner Will Not Grant Abatement Authority When Another Remedy is Available

- *Acquisition of taxable parcel by city or town:* Assessors already have authority to abate back taxes as of the point of sale under G.L. c. 59, § 72A
- *Foreclosure of tax titles:* Taxes assessed after a tax title foreclosure decree enters should not be abated. Instead, taxes should be certified to tax title or tax possession account
- *Assessment to incorrect person or entity:* Properties assessed to the wrong person should be reassessed to the correct owner under G.L. c. 59, § 77. There is no time limit on reassessment, but multiple conveyances of the property after the invalid assessment could mean loss of the lien

G.L. c. 58, § 8

Another Remedy Instead of Abatement (continued)

- *Uncollectible Personal Property Tax* - Under G.L. c. 59, § 71, the collector and assessor have authority to abate personal property taxes they deem uncollectible.
  - Death, absence, poverty, insolvency, bankruptcy or other inability of the person to pay

Other Situations Supporting the Commissioner's Grant of Authority to Abate

- *Uncollectible Property Tax* - Authority is justified when, *e.g.,* the lien has expired on real property and other collection methods will not be successful
- *Abatement of Interest on Unpaid Tax* - Authority to abate interest only may be appropriate if a tax was not paid due to the disability of the taxpayer or similar compelling reason, but abatement of the tax itself is not warranted by the facts

G.L. c. 58, § 8

Required Submission of Applications by Email

- See DLS webpage - https://www.mass.gov/service-details/8-of-58-applications for form and instructions
- Assessing board submits cover letter requesting authority from the Commissioner to abate – must provide all facts to demonstrate eligible for relief as described in IGR 20-10
- Submit completed schedule 58.8 (excel spreadsheet)
  - Please do not alter form
- Send cover letter, completed 58.8 and all supporting materials to DLSLaw@dor.state.ma.us
  - Paper filings are no longer accepted

G.L. c. 58, § 8

QUESTIONS

Case Study Hypothetical A

Brad and Elise Berry own two properties in the Town of Wandsworth, Massachusetts. One parcel is 1 acre in size and improved with a house lot. The second parcel, 5 acres in size was vacant until the summer of 2021, when the Berrys began installing a large solar power generating plant. Completed by early fall, the solar-power system was capable of producing 400kW of electricity on average. 5kW was needed to supply the Berrys' two parcels. For the remaining 395 kW generated, the Berrys entered into a Power Purchase Agreement (PPA) with the East Coast Mall in Clovelly, MA in December of 2021. A quarterly payment to the Berrys would cover the cost of the net power generated for the mall.

1. On what date would the eligibility of the solar-power system for exemption be tested?
2. Does the Berry's power-generating facility qualify for exemption?
3. Assume the power generating system was in place as of January 1, 2021 and the assessors had determined that it qualified for exemption under the ATB precedent in the ***KTT*** decision for FY 22. Is that determination still effective for FY 23?
4. What is the first fiscal year for which the Berrys could enter into a payment in lieu of taxes (PILOT) agreement with the town?
5. What steps must the assessors take to determine whether a PILOT agreement is in the town's best interests?
6. The town manager negotiates a PILOT to take effect for FY 24 but does not consult the assessors. He ballparks a payment amount of $6000 each quarter but lacks appraisal information to support that payment amount. He presents the agreement to town meeting for approval. A town meeting member inquires of the assessors present at town meeting if the agreement is in the town's financial interest.
    a. Assume the assessors say they can't supply an answer to the question about the town's financial interest, but town meeting adopts the agreement anyway. Is the PILOT agreement valid?
    b. In what ways is the agreement infirm?
7. Ten taxpayers contend that the payments do not correspond to what would be due in property taxes and amount to an illegal tax expenditure. They take a deposition of the principal assessor who is asked for her opinion as to whether the payments reflect full and fair cash value. The assessors, after the fact, develop an estimate of full and fair cash value and compare the payment amounts agreed to in the PILOT. They determine that the PILOT payments represent a fraction of the amount that would be due if the facility had been assessed at full and fair cash value. The assessors are then questioned about the accuracy of the agreed valuation in connection with their quinquennial certification process by their representative from the Bureau of Local Assessment.

Case Study Hypothetical B, Part 1

Jim and Barb Carlisle of Saltburn, MA read the ATB's opinion in the ***KTT*** decision and were deeply moved by the taxpayer-owner's vision of land use, foregoing commercial development and instead dedicating the land to benefit the environment. In late 2020 they decided that they would not start construction on the six-acre parcel they acquired about a year earlier. They followed the path laid out in the ***KTT*** decision. They formed a new corporation, ***KTT Two,*** deeded 5 acres of the parcel to the corporation, and contributed the capital needed to install a solar power generating facility. One acre was placed under conservation restriction.) The plant was fully complete and operational before the December 2021 holidays.

Since the taxpayers in ***KTT*** had gotten a tax exemption for dedicating their commercial/industrial property to a solar power use, the Carlisles opted for a solar facility capable of producing 800 kW of electricity, more than they needed for property they directly and indirectly owned. They only used about 3 kW for their real estate in Saltburn.

1. Once the project was underway, Jim and Barb consulted an experienced tax lawyer, briefed her on their plans and sought her help in getting a tax exemption as in ***KTT.*** Assuming the lawyer is ethical, what would we expect her to tell the Carlisles about a tax exemption for a commercial/industrial scale solar-powered system?
2. Make no assumption as to the lawyer's ethics. The tax lawyer suggested that a payment in lieu of taxes (PILOT) agreement might be a more advantageous option for taxable personal property. The tax lawyer, who has represented solar power developers before, knows that shrewd entrepreneurs have sometimes gotten a discount in the payments intended to replace property taxes (usually by by-passing the assessors). Given this intention of shorting the municipality on revenue, the strategic path lay in approaching the Saltburn Town Manager and offering a quarterly payment in an eye-popping number nevertheless lower than what would be due in property taxes. What steps can assessors take to protect municipal revenue in these circumstances?
3. The Assessors found out that the Town Manager was negotiating with solar power producers when an item appeared in the ***Saltburn Crier.*** They had not been consulted, but quickly stepped forward. What information is most important for the Town Manager to receive?
4. The Town Manager asks the assessors about Proposition 2 1/2 and new growth, given that Saltburn has brushed close to its levy limit in the past. What information should the assessors provide?

Case Study Hypothetical B, Part 2

5. The following information applies to questions a, b, and c below. The Saltburn assessors prepare an estimate of the fair cash value of the solar power system and find that the proposed PILOT payments are not consistent with fair cash value. They distribute their valuation estimates and proposed payment amounts in a memo to the Town Manager and the SelectBoard. At a subsequent SelectBoard meeting, the assessors are challenged on their valuation estimates by a friend of the Carlisles, who is an assessor but not an appraiser in nearby Poppingham. He argues for net book value.
    a. Is net book value the automatic right answer to questions about full and fair cash value for solar power generating personal property?
    b. What valuation methodology should be used to develop the town's estimates of full and fair cash value?
    c. How much latitude does the town have to negotiate above and below the amount of tax payments which are roughly approximate to the projected payment stream consistent with fair cash value?

Case Study Hypothetical C

Clarissa Myer and Jane Tate are co-owners of a small cranberry farm in Locksley, MA. They own a total of 30 acres, 29 of which are classified as agricultural and horticultural land under Chapter 61A. A house lot comprises 1 acre. They became interested in environmental issues, particularly climate change, and wondered whether they could make the farm more eco-friendly by powering it with solar energy generated on-site. They hit on the idea of installing solar power-generating panels alongside and across cranberry bogs. In 2021, they installed solar panels capable of generating an aggregate of 200kW, which supplied the energy requirements of the 30 acres with some to spare. Roughly they used 160 of the 200kW generated for their property in Locksley. The rest of the power, to the extent they exceeded their own power needs, was sold to the grid through a net metering agreement.

1. Clarissa and Jane wanted to know the tax consequences of their proposed solar power installation and called up the local assessors in Locksley. Was the solar generating equipment they intended to install going to subject them to a rollback tax?
2. Would their solar panels be taxed under Chapter 61A as the farm (29 acres less structures) had been taxed as before?
3. Is it physically possible to combine two land uses—solar power generation and growing cranberries such that both uses are productive at the same time?
4. Does the solar personal property qualify for exemption under amended Clause 45?
5. Clarissa and Jane decided that the horticultural and energy generation uses could not proceed side by side. They carved out from the 29 acres devoted to horticultural use 5 acres on which to site the solar generating property. Is a rollback tax owed on the acreage they removed from classified horticultural use?
6. Are the taxpayers eligible to classify the remaining farm acreage for horticultural use and continue the preferential taxation under Chapter 61A?
7. Clarissa and Jane decide to increase the capacity of their solar generating equipment to 1 mW. Would they qualify for the amended Clause 45th exemption in these circumstances?
8. The taxpayers propose a PILOT agreement to town officials for the acreage devoted to solar power generation. Are they eligible to include in the agreement personal property only or real property in addition to the personal property?

Case Study Hypothetical D

How do the five fact patterns below square with the criteria of G.L. c. 58, § 8 and Informational Guideline Release 2020-10?

1. Assistant Assessor included in his calculations a lump sum amount for the personal property holdings of a restaurant and then separately input each specific piece of personal property in arriving at an assessment. Restaurant timely paid the tax but failed to file an abatement application contesting the overassessment.
2. A new homeowner did not review her property tax bill until after the abatement deadline had passed. Her property tax payments are escrowed by her mortgagee. It took an increase in the amount of escrow required to cover her property tax to get her attention. Reviewing the property record card, she saw that she was charged for a finished attic that the subject property did not have. An 8 of 58 request is made, and the explanation given for her failure to file for abatement on a timely basis is that her mortgage company paid her property taxes.
3. A taxpayer always paid his actual tax bill well ahead of the February 1st deadline. He did not file for abatement. An assistant assessor later discovered that the square footage of his real property improvement was overstated. The $5200 property tax bill was $200 too high. The owner insists that the assessors file an application for authority to abate under G.L. c. 58, § 8.
4. An assistant assessor inspected a property including a 500 sq. ft. patio behind the house. She erroneously added a zero to the correct sq. footage and the taxpayer ended up being assessed for a 5000 sq. ft. patio. Her tax obligation was overstated by a factor of 50%. However, she paid in full. If we assume that the taxpayer failed to file a timely abatement application, does she qualify for relief under G.L. c. 58, § 8?
5. A taxpayer was away from her condo while she was pursuing graduate studies in New York. Her mother lived in the property but did not speak English. An error on the actual tax bill assessed her for the next door condominium in a two-family property which she did not own. Taxpayer did not file for abatement but explained her omission by the fact she was out-of-state in graduate school while her mother spoke no English received the bill.

Case Study Hypothetical E

After she had paid her tax bill, Glenda Kraft discovered in FY 21 that she was being charged for a roof deck and two fireplaces the subject property did not have. Review of the property record card revealed that the error had persisted uncorrected for five fiscal years, since FY 16. The matter having been brought to their attention; the assessors discovered that a since-dismissed assistant had confused the subject property with a similar property that had sold in calendar 2015. Ms. Kraft is demanding a partial abatement of the excess taxes charged since FY 16 and will complain to the Governor if necessary.

1. Is there any way for the assessors to grant the requested abatements?
2. How far back could the assessors go in processing an abatement request?
3. If Ms. Kraft failed to file an abatement application before the FY 21 deadline, is she out of luck?
4. What are the main hurdles to the availability of reinstated abatement authority under G.L. c. 58, § 8?
5. Assume Ms. Kraft had not paid her FY 21 tax before February 1st but did timely file her abatement application for FY 21 in late January of 2021. She simultaneously filed for all fiscal years since FY 16, which were paid up. What are her prospects for abatement?
6. Let's say the assessors granted the abatement for FY 21 but denied the late-filed abatement applications for FY16-FY20. Is there any room for 8 of 58 authority from the Commissioner?
7. Was there an "obvious clerical error"?
8. An abatement application under G.L. chapter 59, § 59 was filed for FY 21 but no earlier years. How far back can the assessors request abatement authority under 8 of 58, assuming that the taxes were timely paid during the FY 16-FY 20 period?

Creating A Clean, Affordable, Equitable and Resilient Energy Future For the Commonwealth

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF ENERGY RESOURCES
Patrick Woodcock, Commissioner

Massachusetts Solar Updates

DLS Law Conference

September 23, 2021

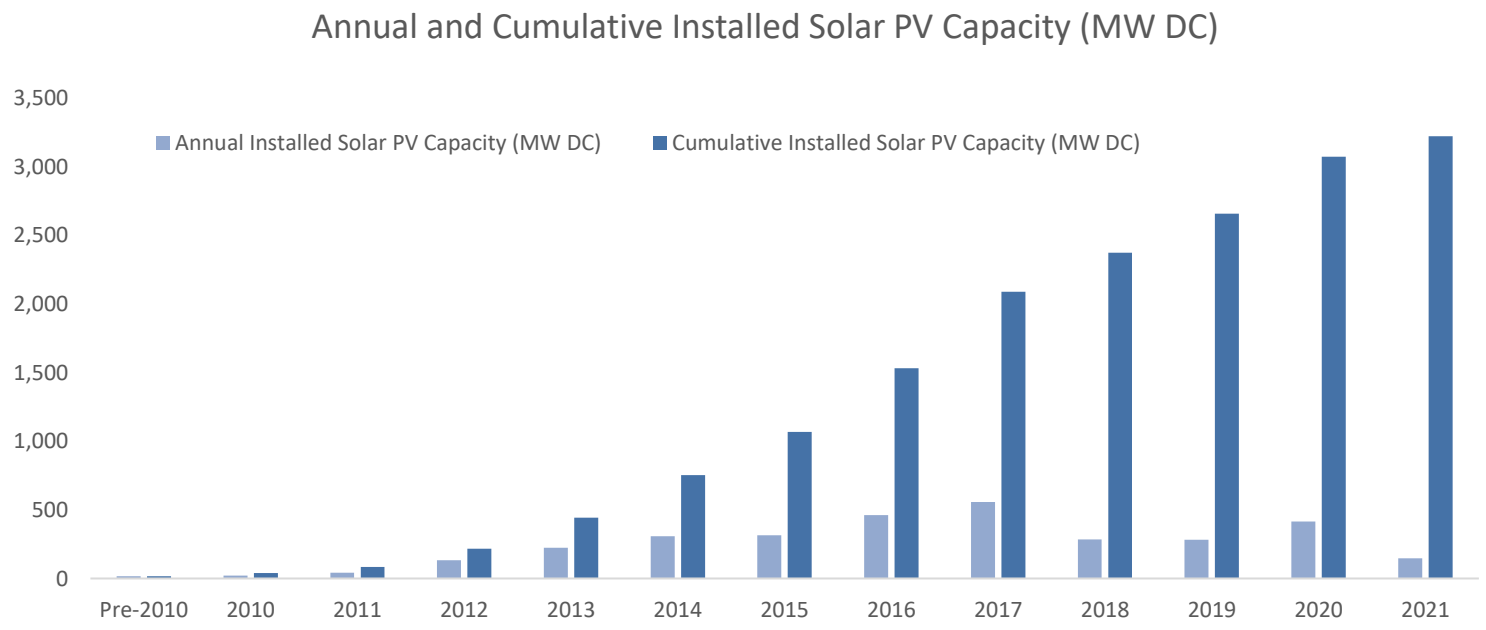
What is the SMART program?

Solar Massachusetts Renewable Target (SMART) program

- Chapter 75 of the Acts of 2016 directed DOER to create a new solar incentive program to replace the Solar Carve-out II Program (SREC II)
- SMART launched on November 26, 2018
  - Initial goal was to incentivize 1,600 MW AC of solar development
  - Program expanded to 3,200 MW AC in 2020
- Voluntary program that provides fixed incentive to participants. The incentive declines as participation increases
  - 10-year duration for small projects (less than or equal to 25 kW AC)
  - 20-year duration for large projects (25 kW AC to 5,000 kW AC)
- Program design steers projects towards optimal locations through higher incentives
  - For example, program provides incentives for solar over parking lots, building mounted systems, and arrays on landfills

DOER
Massachusetts Department of Energy Resources

MA Solar Trends- Capacity Installed



- Massachusetts has over 3,000 MW of solar installed
- Under the SMART program, there have been over 35,000 applications
  - Of this, over 33,000 applications have been small installations, typical of a residence.

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Trends in Renewable Energy

Energy Storage

- Goal of 1,000MWh by 2025
- Storage can be charged from renewable energy and discharge when grid needs it most, reducing emissions
- Storage provides resiliency, ensuring power is available when needed
- Storage is growing, and majority of storage was installed in 2019-2020

Utility	Installed (MWh)	Pipeline (MWh)
Eversource	25	147
National Grid	152	890
Unitil	<1	34
Total	177	1071

December 31, 2020

Trends in Renewable Energy

Dual Use Agricultural Solar Projects

- Solar projects that are designed to allow agricultural activity to be maintained under the solar array
- Dual Use Agriculture is encouraged underneath the SMART program
- Projects must undergo a rigorous review to be qualified
  - Designated 61A
  - Agriculture plan
  - Shading Assessment
  - Design Parameters
- DOER issues a predetermination letter, which can be used as documentation of meeting the programs requirements

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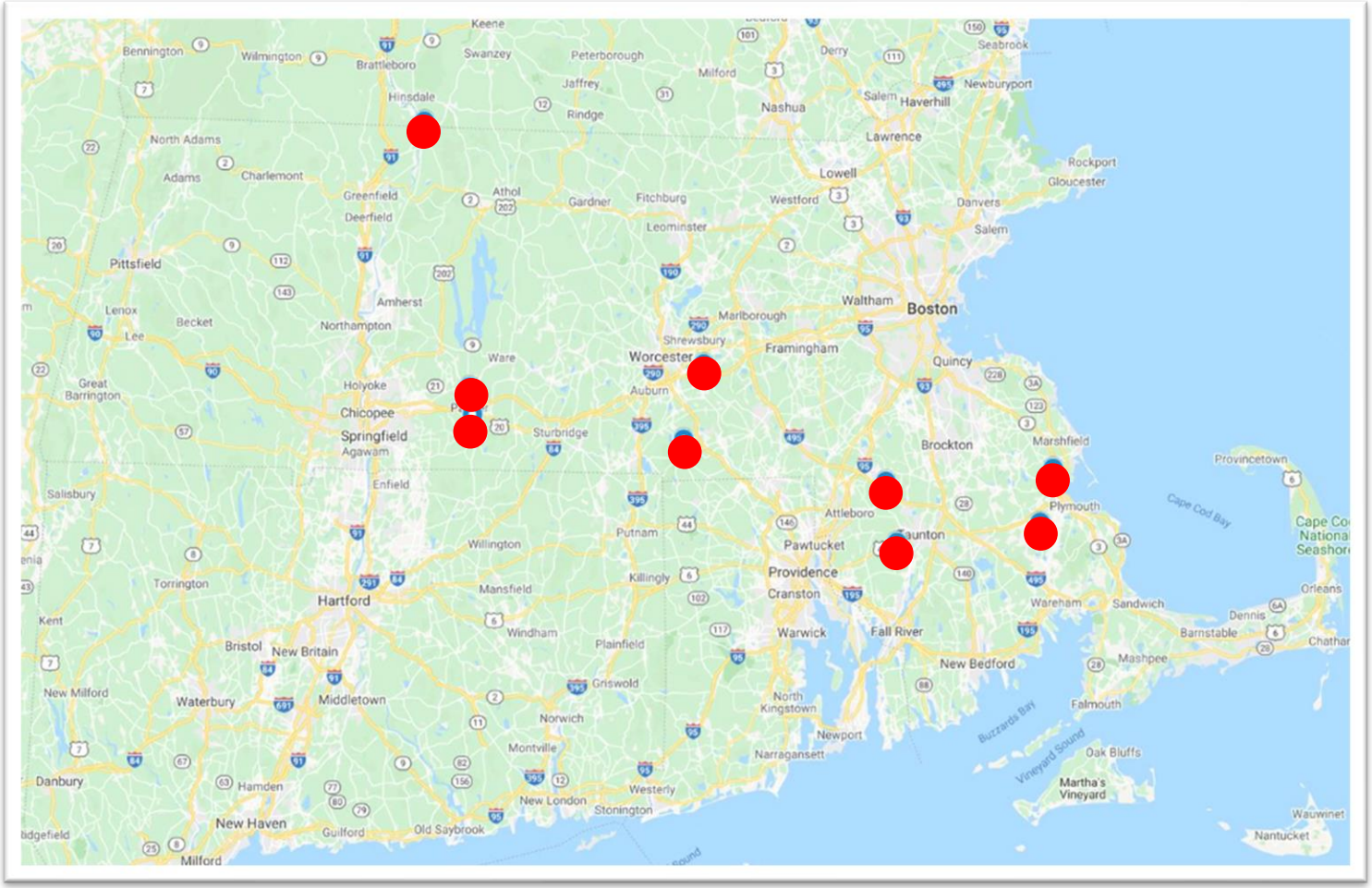
Trends in Renewable Energy

- Dual Use Agriculture Solar Projects- 11 projects, representing 23 MW AC of solar
- Agricultural activity includes livestock, cranberries, row crops and hay



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Solar Siting Analysis

Questions?