DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Christopher C. Harding
Commissioner of Revenue

Sean R. Cronin
Senior Deputy Commissioner

Tax Administration

Abatement and Appellate Tax Board Jurisdiction, 8 of 58 Case Studies and Update on Solar Facility Issues

Workshop A
2019

Supporting a Commonwealth of Communities
www.mass.gov/DLS P.O. Box 9569 Boston, MA 02114-9569 (617) 626-2300

TABLE OF CONTENTS
Workshop A

Case Study 1

A renewable energy company, "Sunshine Power Co.," is building a utility-scale solar facility in Little Hampton, MA on a 100-acre leased site, part of a 150 acre parcel presently classified for agricultural and horticultural use. The landowner is local farmer Wiley Coyote. The plant's generating capacity will be approximately 50 megawatts. Nearly all electricity produced will be sold to the power grid; yet a small portion of the energy will be used on-site and for the adjacent farm, which is continuing horticultural activities on the remaining 50 acres.

Sunshine Power Co. has drafted a tax payment agreement which it presents to the town manager. The agreement is threadbare but provides for quarterly payments at the constant amount of $500,000 per year for 20 years. The agreement covers the personal property and the real estate. The town manager is satisfied with the payment level and asks the Selectboard to approve the tax payment agreement. The Selectboard gives its approval. At no point in the process leading up to execution of the tax payment agreement are the assessors consulted. The assessors are informed once the agreement has been approved by the Selectboard.

After the agreement is in place, the assessors are told to start billing Sunshine Power Co. as they would any taxpayer, with quarterly payments of $125,000 to fall due on August 1, November 1, February 1, and May 1. The agreement makes no provision for billing and collection issues. For the first year, Sunshine Power Co. makes its payments under the agreement, but always after the due date for payment of quarterly bills. The assessors add statutory late payment interest to the quarterly installments received after the due date, which the generating company refuses to pay. As bills are being prepared for the second fiscal year in which the tax payment agreement applies, Sunshine Power Co. ceases to comply with the tax payment obligations altogether. The generating company says the town of Little Hampton failed to disclose a material fact, which is that the Appellate Tax Board has recognized a complete property tax exemption for solar generating equipment. *See* ***KTT, Inc. v. Assessors of Swansea***, Mass. ATB Findings of Fact and Report 2016-426. Sunshine Power Co. says the agreement is invalid for reasons of failure of consideration—the company has no property tax liability for which a tax payment agreement would be appropriate.

The town manager feels double-crossed and orders vigorous legal action. The collector pursues collection remedies, which might entail a contract action in the Trial Court under G.L. c. 60, § 35 for the amounts due under the agreement. Recognizing the risk that no money damages will be recovered in the Trial Court litigation, the assessors proceed to issue an omitted assessment for the amounts payable under the agreement for year two. Sunshine Power Co. pays the omitted assessment, applies for abatement, then appeals the abatement denial.

a. How solid is the tax payment agreement? Does it comply with G.L. c. 59, § 38H(b)? What about Informational Guideline Release 17-26?
b. Can Wiley Coyote be assessed for the land value of the solar farm?
c. Is the collector entitled to sue in District Court to collect on the agreement?
d. Does Sunshine Power Co. have a persuasive claim that the tax payment agreement is unenforceable?

e. What happens if the Superior Court decides that the tax payment agreement is invalid?
f. Do the assessors have authority to issue an omitted assessment after the annual commitment to assess the solar power facility under G.L. c. 59, § 75?
g. Does Sunshine Power Co. have a tenable claim to an exemption?
h. What happens if the Appellate Tax Board deems the omitted assessment invalid?

G.L. c. 59, § 5, Clause Forty-fifth; G.L. c. 59, § 38H; G.L. c. 60, § 35; G.L. c. 218, § 21.

Case Study 2

Ms. Jane Gray bought a small condo subject to an affordable housing restriction. The purchase was made from the Bromley, MA Housing Authority, which issued a deed recorded on January 15, 2015 in the Leicestershire Registry of Deeds. Unfortunately, the Housing Authority failed to record an affordable housing restriction on the deed itself. Nor was the restriction separately recorded. The Purchase and Sale agreement included a reference to an affordable housing restriction.

The Bromley assessors reviewed records at the registry of deeds and found the deed received by Ms. Gray. They were not on notice of the affordable housing restriction. The condo neighborhood is an area of high-value homes with a few affordable properties available to lower income purchasers. The assessors proceed to value the property in their mass appraisal system.
A value of $400,000 was set for Ms. Gray's property for FY 2017-18, though the unrecorded affordable housing covenant prohibited the sale of the house for greater than $275,000. At the town's tax rate for FY 17 the condo assessment entailed a tax of $1000. The house would have been valued at $250,000, and the assessment would have been $375 less had the affordable housing stipulation restriction been considered.

Ms. Gray paid the tax for FY's 17 and 18 without question, but when she received her tax bill for FY 19 she balked at the increased assessed value of $425,000. She paid the tax as billed in full but contacted the assessors after the deadline for abatement filings to complain that her condo was overvalued because of the affordable housing provision.

The assessors filed an 8 of 58 application with the Commissioner requesting authority to abate the paid taxes so as to bring the tax in line with the affordable housing stipulation and its impact on value.

a. What are the standards for abating a paid tax?
b. How far can the assessors go in requesting authority to abate a paid tax?
c. Was there an "obvious clerical error"?
d. Who's responsible for the error?
e. Did Ms. Gray pursue the statutory abatement process established under G.L. c. 59, § 59?
f. Should that factor bear on whether the 8 of 58 abatement is warranted?

g. If Ms. Gray had timely filed for an abatement for FY 19, should she have been granted one?
h. What should Ms. Gray do now?

G.L. c. 58, §8; G.L. c. 59, § 38.

Case Study 3

The local nonprofit Youth-Grow in Painswick, MA applied to the assessors for exempt status under G.L. c. 59, § 5, Clause Third. Their programs and activities included access to a large gym facility. Membership fees were modest, and the salaries of staff were generally in line with non-profit organizations' pay scales in the region. However, Youth-Grow splurged on the salary of its new Fitness Director, a YouTube fitness celebrity with a large following of subscribers. The salary was so large that the assessors considered the argument that the Fitness Director's salary operated to distribute profits illegally to employees. The assessors nevertheless granted the exemption on a vote of 3-2.

The Painswick Youth-Grow operated a few blocks away from a for-profit gym, Swole Fitness, which charged higher fees. Upon bringing in its celebrity Fitness Director, Youth-Grow launched a marketing campaign which Swole Fitness believed was responsible for a loss of customers for Swole Fitness. As a result of the competition from Youth-Grow, Swole Fitness's revenues declined by 20% on a going-forward basis.

a. What recourse does Swole Fitness have to test the eligibility of Youth-Grow for the charitable exemption?
b. What if Swole Fitness filed its appeal in the Appellate Tax Board 120 days after the assessors' determination of exempt status?
c. How are salaries restricted in a tax-exempt non-profit entity?

Healthtrax International Inc. v. Assessors of Hanover & So. Shore YMCA, Mass. ATB Findings of Fact and Report 2001-366 (5/14/01); G.L. c. 59, § 5B

Case Study 4

Mr. Juan Juarez owns an old home in Margate, MA that he's neglected to maintain for the three years he has been unemployed after losing his job at the Pilgrim Nuclear Plant. The residence is structurally sound but battered after an intense series of Nor'easters: windows need replacing, the exterior needs a new paint job, and the master bathroom toilet overflows from time to time. Yet the valuation of Mr. Juarez's property actually increased for FY 20. Mr. Juarez paid his taxes on time.

Mr. Juarez complained about his property valuation in a conversation with the Town Collector, insisting he was overassessed. He followed up the conversation with a letter to the Collector in which he asked for tax relief. However, he filed no abatement application by the FY 20 deadline

for filing. He assumed his correspondence with the Collector would serve to contest his assessment.

Mr. Juarez did some research on his property and found that he was being assessed for a fireplace that had been closed and cemented up years before. He figured he had been assessed for the fireplace for the past 10 years. When the Collector informed him that abatement applications are accepted only by the assessors, he contacted the assessors. In a belligerent phone call with an assistant assessor, he demanded that his letter to the collector be considered as an abatement application.

After Mr. Juarez approached his neighbor on the SelectBoard, the assessors were asked by the Town Administrator to file an 8 of 58 request seeking refunds on the extra amount added to his taxes by the mistakes on the Property Record Card; and an allowance for impairment of value due to the deferred maintenance. The assessors grumbled but filed the request with DOR as instructed.

a. Did Mr. Juarez have a satisfactory reason for not invoking the abatement process of G.L. c. 59, § 59?
b. Is overvaluation a persuasive ground on which to seek 8 of 58 abatement authority?
c. Is a taxpayer's claim of overvaluation due to deferred maintenance a valid reason for the commissioner to grant authority to assessors to abate under 8 of 58?
d. What is the balance of equities?
e. Imagine that mistakes on the property record card inflated the assessed valuation by 75%. Does the case for 8 of 58 authority get stronger in that circumstance?

G.L. c. 58, §8; G.L. c. 59, § 59

Case Study 5

Lollipops and Sunshine, Inc. is a small, local non-profit organization in Bingley, MA that provides fun experiences for children under 12 with chronic illnesses. Only a small number of the town's children present chronic illnesses at any given time, but the group has served over 35 children during its ten years of existence. It has been continuously recognized as a charitable organization by the Bingley Assessors.

There was a rift among Board members in the winter of 2018-19 that led to the departure of the group's treasurer and clerk. It took several months for Lollipops and Sunshine to replace these volunteer officers on a permanent basis. In the interim, three different board members rotated as acting Treasurer, with responsibility for tax returns and other governmental filing requirements. In February of 2019, two Board members held the position of acting Treasurer.

Unfamiliar with property tax compliance, the acting Treasurer as of 3/1/19 failed to file the Form 3ABC reflecting the group's real and personal property assets as of 1/1/19. No extension was requested to allow filing after the due date. In the fall, without a Form 3ABC on file for Lollipops and Sunshine, the assessor treated the real and personal property as subject to tax. The

group was assessed for approximately $3000 in property tax for FY 20. The tax debt remained unpaid.

The new permanent treasurer received the first of two semi-annual tax bills by October 1. She soon contacted the tax assessor to inquire about the group's charitable status for tax exemption purposes. She learned that the Form 3ABC had not been timely filed. Because no extension was requested in advance of the prescribed filing date, the assessor indicated that it was too late to reclaim tax exempt status for FY 20. The treasurer was advised to be sure that the FY 21 Form 3ABC was ready and filed by 3/1/20.

After the assessors made clear that the group's property was taxable for FY 20, sentiment grew among townspeople that the group should be allowed to late-file for continuation of charitable status. SelectBoard members received calls from citizens objecting to the taxation of a group that benefited sick children, and the assessors reconsidered their position.

Let's look at the assessors' options:

a. What if the assessor relented and allowed the filing of the Form 3ABC before November 1st?
b. What if November 1 passes and the group still had not filed its Form 3ABC?
c. Assuming the tax was unpaid, would the assessors have a viable application for authority to abate under G.L. c. 58, s 8?
d. What if the tax due had been paid?

G.L. c. 58, § 8; G.L. c. 59, § 29; G.L. c. 59, § 5, Clause Third

Case Study 6

Dan Eagan owns two adjoining parcels of real estate in Saltonstall, MA at 19 and 21 Pacific Road. The taxes on the properties for FY 2018 were $8,454 and $8,675 respectively. Dan balked at the values for which the properties were assessed.

The taxes were based on a city-wide revaluation of property done in 2018 by a firm of appraisers hired for that purpose. Coincidentally the appraisers selected by the town were denied qualification as valuation experts in two contemporaneous, but unrelated ATB cases.
Dan did not file for abatement by the February 2018 deadline. On June 6, 2018, Dan sent a letter to the assessors asserting that the assessments were determined by disqualified appraisers and insisting that a qualified appraiser determine his property valuations instead. The assessors demurred. Infuriated, Dan filed a complaint in Superior Court seeking to invalidate the assessments because the appraisers were held unqualified in (unrelated) Findings of Fact made by the ATB.

a. What is the remedy for overassessment?
b. Are there any exceptions to this rule? Would those exceptions apply here?
c. What would be considered seriously inadequate abatement procedures?

d. How is the Superior Court likely to rule on Dan's complaint?

Nearis v. Gloucester, 357 Mass 203 (1970)

Case Study 7

Meyer Chevrolet is a dealership for new and used cars in the town of Washington, MA. Meyer first began using town water service in 2010. Its water usage was consistent until 2015 when they received a bill for approximately 4.8 million gallons of water over a six-month period. Meyer's water meter was inspected, found to be deficient, and replaced. The Water Commissioners granted a substantial abatement. Meyer's water usage returned to normal levels.

In June 2018, Meyer received a water bill presently at issue in the amount of $15,083.45 showing over four million gallons of water used for a four-month period. On July 15, 2018 Meyer applied for an abatement. The town re-inspected the property and tested the meter. The testing company reported back that the meter was underreporting water use.

By letter to Meyer dated August 22, 2018 the town water superintendent gave notice to Meyer that on "August 2018, at a regularly scheduled meeting, the Board of Water Commissioners discussed the situation and unanimously voted to deny your application for an abatement due to the test results." There was nothing in the letter stating that "appeal from such decision may be taken as provided in sections 64 to 65B inclusive" as required by G.L. c 59, §63.

Meyer requested and was given a hearing by the Water Commissioners. By letter to Meyer dated September 24, 2018, the town water superintendent explained that the abatement request was denied due to the testing of the meter. This second letter again failed to include any information on appellate rights.

On December 17, 2018, more than three months after the August 22, 2018 letter of denial, Meyer commenced proceedings before the ATB.

a. Should the ATB hear this case?
b. How should the ATB rule?
c. What was wrong with the Water Commissioners August 22, 2018 notice? What should the notice have included?
d. Why is notice of the right to appeal to the ATB necessary to include?

Stagg Chevrolet, Inc. v. Board of Water Commissioners of Harwich, 68 Mass. App. Ct. 120 (2007); G.L. c. 59, § 63

Case Study 8

A hotel in Kenilworth, MA underwent a corporate restructuring, and emerged as an LLC after having previously been classified as a business corporation. The hotel has no corporate parent filing federally as a corporation. It filed its Form of List slightly late in April, 2019 declaring its taxable personal property, but failed to add property taxable to an LLC but not taxable to a business corporation, *e.g.* furniture and fixtures.

The assessors in Kenilworth are aware of the change in entity status and noted that the Form of List was basically the same as last year, suggesting significant underreporting. The assessors invoked G.L. c. 59, § 36, which authorized assessors to estimate the value of taxable personal property based on "best information and belief."

The taxpayer filed for abatement on grounds of overvaluation. The application was denied. As the hotel filed an appeal the assessors relied on G.L. c. 59, § 61 to argue that the taxpayer was required to prove a reasonable excuse and could only seek abatement of as much of the tax that corresponds to an overassessment of 150%. The Appellate Tax Board denied the assessors motion to dismiss, arguing that a delay of less than two months was inconsequential.

a. If the Appellate Tax Board makes a decision authorizing an abatement of tax, then what issues do the assessors have to take on appeal?
b. Since the hotel did not fully disclose its taxable personal property on its Form of List, what options do the assessors have to get a reliable picture of the whole of its personal property.
c. To what extent is personal property newly taxable for an LLC that used to be a business corporation?
d. What tools do the assessors have to explore the full extent of the personal property holdings of the LLC?

G.L. c. 59, § 5, Clause Sixteenth; G.L. c. 59, § 36; G.L. c. 59, § 61

Case Study 9

For fiscal year 2020, the Gillingham, MA assessors assessed a new laundry business in town, organized as an LLC. Although they used the list of personal property assets provided by the business, the assessors assigned values for these assets considerably in excess of the LLC's estimates. The taxpayer decided to seek abatement of the assessment it deemed excessive. But employees took more time than planned identifying asset prices, and the deadline of February 1 in this quarterly community fast approached. On February 1, the taxpayer used Federal Express to file its abatement application, with the package reaching the assessor's office on February 2.

The assessors concluded that they lacked jurisdiction over the claim and denied it on those grounds. The business filed an appeal with the Appellate Tax Board, within three months of the abatement denial. The assessors quickly moved to dismiss, citing the late-filing of the abatement

application for a lack of ATB jurisdiction. The ATB denied the motion then scheduled the appeal for a hearing in 2024.

a. What might be the basis for the ATB's assertion of jurisdiction after the late-filed abatement application?
b. Does the ATB have regulatory authority over the filing process for applications for abatement?
c. Is the February 2nd filing of the application for abatement consistent with the requirements of G.L. c. 59, § 59?
d. What recourse do the assessors have to establish a lack of jurisdiction over this appeal?

G.L. c. 59, § 59; G.L. c. 59, § 64

Case Study 10

Solar power developers targeted Pudsey, MA for a large-scale solar array able to generate over 800 MW. They have negotiated for a PILOT agreement which would reflect a significant offset for the value of the plant given the company's claim for a Clause 45th exemption. The value of the plant, at the rate of payments in lieu of taxes, was substantially underestimated, in the opinion of the assessors. The energy produced will be sold to the electricity grid.

A group of residents filed an action for a declaratory judgment in Superior Court alleging that the underassessment of the solar plant constituted an illegal expenditure. The litigants asked that the PILOT agreement be invalidated.
The Superior Court judge assigned to the case examined the evidence of value on a summary judgment motion. She concluded that the scale of this solar plant and its commercial character could not be reconciled with the requirements of the Clause Forty-fifth exemption, which she viewed as an exemption for small solar devices and systems used for a single property.
The judge held that the PILOT agreement substantially undervalued the solar plant so as to constitute a gratuity to the solar plant owners The PILOT agreement did not conform to the requirement in G.L. c. 59, § 38H that payments be based on fair cash value. The agreement was ruled invalid.

a. Is the Superior Court bound by the Appellate Tax Board's interpretation of the Clause Forty-fifth exemption as applicable to solar plants regardless of size, commercial purpose, or revenues generated (unless they supply exempt property)?
b. Assuming the Superior Court issues an opinion narrowing the construction of the Clause Forty-fifth exemption to small systems designed to power a single property, is the Appellate Tax Board bound by the Superior Court's view?
c. If the ATB follows its precedents and continues to hold large commercial power plants exempt from property tax, how should assessors respond?
d. Is the Superior Court opinion relevant in the appeal of the ATB's Clause Forty-Fifth jurisprudence?
e. Will an SJC or Appeals Court decision on the scope of the Clause Forty-fifth exemption control the Appellate Tax Board and the trial court in future cases

involving the taxation of solar power?

f. Assuming the SJC or Appeals Court adopts the narrow construction of the Clause Forty-fifth exemption, what will be the fate of PILOT agreements based on a value less than fair cash value?

G.L. c. 59, § 5, Clause Forty-fifth; G.L. c. 59, § 38H

Case Study 11

The city of Northallerton, MA entered into a TIF agreement with a business to develop a parcel of real estate with an old factory building. The taxpayer undertook to tear down the factory building and replace it with a state-of-the-art research and development facility. Negotiations began in FY 17, but the agreement was not finalized and approved by the Economic Affairs Coordinating Council until the end of December, 2017 in FY 18. The business was offered an exemption equal to 50% of the fair cash value of the incentivized improvements to real estate, and a 100% exemption on personal property.

The agreement took effect at the beginning of the next fiscal year after its execution, FY 19, on July 1, 2018. However, the assessors never received a copy of the final TIF agreement. The assessors committed the property tax for FY 19 in December but did not include the TIF exemption on the higher fair cash value of the property subject to the TiF agreement.

The company made no protest when they received their FY 19 tax bill which made no allowance for the exemption. The bill was paid in full. The assessors remained unaware of the TIF agreement entering FY 20 and committed FY 20 property taxes again without allowing the TIF exemption. The FY 20 bill was paid in full.

In late February of 2020, the company inquired of the assessors as to whether the FY 19 and FY 20 billings included the exemption authorized by the TIF agreement. They supplied a copy of the TIF agreement to the assessors, which was the first time they had read the final agreement. The assessors initiated a request for authority under G.L. c. 58, § 8 to abate the tax attributable to the agreed TIF exemption.

a. Does the Commissioner have authority to allow the requested abatement?
b. What factors militate against a grant of abatement authority for the TIF exemptions?
c. What factors support the grant of abatement authority for the TIF exemptions?
d. Was the failure of the company to apply for abatement of the tax amounts attributable to the TIF exemptions fatal to the request for authority under IGR 92-206?
e. Does it matter that the assessors were not responsible for the failure of the Mayor to provide a copy of the TIF agreement?
f. Is the amount of the overassessment a relevant factor in analyzing a request for authority to abate under G.L. c. 58, § 8?

G.L. c. 40, § 59; G.L. c. 58, § 8.

Case Study 12

The incorporated recycling plant in Framlingham, MA owned extensive items of personal property used its local processing operation. The company took the position that its personal property was exempt from taxation because it was a business corporation. However, machinery used in the conduct of business is taxable to a business corporation.

Arguing that it owned personal property which was exempted under G.L. c. 59, § 5, Clause Sixteenth, the company failed to file timely forms of list for FY 18 and FY 19. Although the assessors repeatedly requested the forms of list, they were never filed.

The assessors opened a personal property audit and subpoenaed inventory records to ascertain the extent of the company's personal property. The company balked at producing these records but was ordered by the Superior Court to turn over all requested records. Based on these inventory records, the assessors assessed a personal property tax bill of $250,000.

The company filed for abatement, but the assessors denied the application. On the company's appeal to the Appellate Tax Board, the assessors argued that the petition was subject to dismissal because the company failed to file a form of list and it did not voluntarily comply with the personal property audit. The Appellate Tax Board denied the Motion to Dismiss, relying on the case of ***Boston & A.R.R. Co. v. Boston,*** 275 Mass. 133 (1931) to hold that it had jurisdiction over the appeal.

The ***Boston & A.R.R. Co.*** case involved a challenge to the Board's jurisdiction where a taxpayer had failed to file a form of list declaring its real estate holdings. (Real estate is not required to be disclosed under G.L. c. 59, § 29, since the assessors did not request a form of list filing for items of real estate.) The petition, by contrast, addressed a personal property tax assessment, unlike the ***Boston & A.R.R. Co.*** case.

a. What are the time limits for filing a petition in the Appellate Tax Board to challenge an audit assessment?
b. What opportunities do the assessors have to raise their argument about jurisdiction?
c. Do the assessors have a mechanism to avoid a trial on the merits where the threshold question of jurisdiction was contested?
d. The company made no showing at trial under G.L. c 59, § 61 that there had been a reasonable excuse for the failure to file the form of list or that the value of the personal property as assessed was more than 150% of fair cash value. Will the company have an opportunity to introduce the evidence required by G.L. c. 59, § 61 at the appellate stage?
e. What if the recycling company were classified as a manufacturing corporation?

G.L. c. 59, § 31A; G.L. c. 59, § 61; ***Boston & A.R.R. Co. v. Boston,*** 275 Mass. 133 (1931)

Case Study 13

Ms. Nellie McGillicuddy had a bad fall down the stairs in her home in Carlton, MA shortly after Christmas. She was hospitalized for over a month, then had several months of physical therapy before she regained mobility. Though her property tax bill was paid by an escrow agent for her mortgagee on February 1, the Carlton assessors did not credit her with the Clause Forty-first C exemption she had received the previous fiscal year. Still suffering from lack of mobility on April 1, she failed to file her claim to a 41C exemption.
When she brought the exemption issue to the assessors' attention, they prepared an application for authority to abate under G.L. c. 58, § 8 to submit to the Commissioner of Revenue.

a. What are the legal issues that must be addressed in deciding whether Ms. McGillicuddy is entitled to relief under the 8 of 58 process?
b. What showing must be made to warrant abatement of a paid tax?
c. Is there an obvious clerical error?
d. Would the result be different if the tax due on February 1 had not been paid?

G.L. c. 58, § 8; G.L. c. 59. § 5, Clause Forty-first C

Case Study 14

A taxpayer owns a house in a quarterly billing community. The taxpayer was late in paying his first quarter installment for FY2018 since he was on vacation. Payment of the first two installments was made in October. When he received his actual FY2018 tax bill in December 2017, he was surprised to see his assessed value skyrocket with a resulting $4,500 total tax bill for the year compared to $2,400 for FY2017. He filed a timely abatement application which the assessors denied.

a. Can the taxpayer appeal his FY2018 valuation to the ATB?
b. Assume the taxpayer's total tax bill is $5,500. Would your answer be different?
c. Under the 3-year average tax rule would the ATB have jurisdiction?

G.L c. 59, § 57C; G.L. c. 59, § 59; G.L. c. 59, § 64

Case Study 15

Acme Farm Machinery was assessed a tax on its real estate in the town of Maryport, MA, consisting of an acre of land improved with a single structure including a large farm machinery showroom and business offices. By February 1, 2019, Acme filed for an abatement for the Maryport assessors, contending that the real estate was overvalued.

On March 27, 2019, the assessors denied the application for abatement by notice sent to the taxpayer. Settlement negotiations were conducted in the aftermath of the denial, as both parties

worked to achieve an amicable resolution of the dispute. The negotiations continued over several months, then finally broke down.

On July 25, 2019, Acme filed a Petition under Formal Procedure with the Appellate Tax Board. The assessors moved to dismiss the appeal because the filing was made more than 3 months after the denial of abatement. The taxpayer countered that the assessors were estopped given the fact that the assessors had engaged in negotiations for much of the time period in question. They contended that the time limitation should be tolled during the pendency of negotiations.

The Appellate Tax Board allowed the motion to dismiss, and Acme took the case to the Appeals Court.

a. Does the doctrine of estoppel apply in the context of ATB jurisdiction, such that the appellee cannot raise the defense of lack of jurisdiction?
b. Estoppel requires proof that Acme was induced by the conduct of the assessors to do something differently from what it otherwise would have done, and the assessors knew that their conduct would produce this consequence. What evidence would Acme need to support its argument?
c. What would be the impact of the Supreme Judicial Court adopting Acme's argument?

Corea v. Assessors of Bedford, 384 Mass. 809 (1981); G.L. c. 59, § 64

DELINQUENT COLLECTIONS; PROCEEDINGS BY ATTORNEY GENERAL; ABATEMENT OF CERTAIN TAXES, ETC.; EXPEDITED ABATEMENT PROCEDURE FOR ABANDONED REAL PROPERTY

General Laws, Chapter 58, Section 8

If, at any time after any tax, assessment, rate or other charge has been committed to a collector such tax, assessment, rate or charge, or any interest thereon or costs relative thereto, remains unpaid and the commissioner is of the opinion that such tax, assessment, rate, charge, costs or interest should be abated, he may, in writing, authorize the assessors or the board or officer assessing such tax, assessment, rate or charge, to abate any part or the whole of such tax, assessment, rate, charge, costs or interest, whether or not the same is secured by a tax title held by the town. Whenever in the opinion of the commissioner, the assessors or the board or officer assessing a tax, assessment, rate or charge have made an obvious clerical error and such tax, assessment, rate or charge has been paid, the commissioner may, in writing, authorize the assessors or such board or officer to abate any part or the whole of such tax, assessment, rate or charge for a period not to exceed the three fiscal years preceding the year of the application to the commissioner; provided, however, that no interest shall be due in connection with any such abatement. The assessors or the board or officer aforesaid may thereupon make the abatement authorized and enter the same in their or his record of abatements, making reference in said record to such authorization as the cause or reason for the abatement. If there is more than one such tax, assessment, rate or charge, the abatement may be authorized and made either by items or by a sum total, stated in such written authorization. Whenever authority to abate is granted under this section, the commissioner shall forthwith give written notice of the grant of such authority to the collector, and, if the tax, assessment, rate, charge, costs, or interest involved is secured by a tax title held by the town, also to the treasurer.

The commissioner shall make and from time to time revise, rules, regulations and guidelines necessary for establishing an expedited procedure for granting authority to abate taxes, assessments, rates, charges, costs or interest under this section in such cases as the commissioner determines are in the public interest and shall from time to time for such periods as the commissioner considers appropriate authorize the assessors or the board or officer assessing the tax, assessment, rate or charge to grant these abatements. No abatement authorized by these procedures shall be granted unless the assessors or board or officer shall certify, in writing, under pains and penalties of perjury that the procedures have been followed. The commissioner shall require yearly reports and audits of these abatements by assessors or boards or officers that the commissioner considers necessary to ensure that any authority granted under this paragraph has been properly exercised and shall withdraw this grant of authority to the particular assessors, board or officer upon his written determination that the authority has been improperly exercised. The commissioner may make and from time to time revise, reasonable rules, regulations and guidelines that he considers necessary to carry out this paragraph.

PROPERTY; EXEMPTIONS
General Laws, Chapter 59, Section 5

Clause Third, Personal property of a charitable organization, which term, as used in this clause, shall mean (1) a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth, and (2) a trust for literary, benevolent, charitable, scientific or temperance purposes if it is established by a declaration of trust executed in the commonwealth or all its trustees are appointed by a court or courts in the commonwealth and if its principal literary, benevolent, charitable, scientific or temperance purposes are solely carried out within the commonwealth or its literary, benevolent, charitable, scientific or temperance purposes are principally and usually carried out within the commonwealth; and real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations; and real estate purchased by a charitable organization with the purpose of removal thereto, until such removal, but not for more than two years after such purchase; provided, however, that:—
(a) If any of the income or profits of the business of the charitable organization is divided among the stockholders, the trustees or the members, or is used or appropriated for other than literary, benevolent, charitable, scientific or temperance purposes or if upon dissolution of such organization a distribution of the profits, income or assets may be made to any stockholder, trustee or member, its property shall not be exempt; and

(b) A corporation coming within the foregoing description of a charitable organization or trust established by a declaration of trust executed in the commonwealth and coming within said description of a charitable organization shall not be exempt for any year in which it omits to bring in to the assessors the list, statements and affidavit required by section twenty-nine and a true copy of the report for such year required by section eight F of chapter twelve to be filed with the division of public charities in the department of the attorney general, nor shall it be exempt for that athletic property or portion thereof for the part of the year which the assessors have determined to be utilized for other than literary, educational, benevolent, temperance, charitable, or scientific purposes in direct competition with a person engaged in the same activity and subject to the tax imposed by this chapter on properties so used. In the case of the exemption of property from tax for a part of the year, the tax imposed shall bear the same proportion to the tax which would be applicable to such property if it were subject to tax for the entire year as the time such property is employed in such use bears to the total time during which such property is available for use during the year.

(c) Real or personal property of a charitable organization occupied or used wholly or partly as or for an insane asylum, insane hospital, or institution for the insane, or principally for the treatment of mental diseases or mental disorders, shall not be exempt unless at least one fourth of all property so occupied or used, wholly or partly, on the basis of valuation thereof, and one fourth of the income of all trust and other funds and property held for the benefit of such asylum, hospital or institution and not actually occupied or used by it for such purposes, is used and expended entirely for the treatment, board, lodging or other direct benefit of indigent insane persons, or indigent persons in need of treatment for mental diseases, as resident patients, without any charge therefor to such persons either directly or indirectly, except that a charitable organization conducting an insane asylum, insane hospital or institution for the insane to which persons adjudged insane by due process of law may be committed shall be exempt from taxation on personal property and buildings so occupied or used, but shall be subject to taxation on the

fair cash value of the land owned by it and used for the purposes of such asylum, hospital or institution; and

(d) Real estate acquired after May fourth, nineteen hundred and eleven, by any association or private corporation formed or incorporated for the care of the insane, shall not be exempt under paragraph (c) unless the city council of the city, or the inhabitants of the town, in which it is situated, have by vote lawfully taken consented to the acquisition of such real estate, to be so exempt; nor shall real estate of a trust coming within the foregoing description of a charitable organization, if occupied or used wholly or partly as or for an insane asylum, insane hospital, or institution for the insane, or principally for the treatment of mental diseases or mental disorders, be exempt under paragraph (c) unless the city council of the city, or the inhabitants of the town, in which it is situated, have by vote lawfully taken consented to such exemption; and

(e) Real and personal property of an educational institution coming within the foregoing description of a charitable organization which is occupied or used wholly or principally as residences for officers of such institutions and which is not part of or contiguous to real estate which is the principal location of such institution shall not be exempt.

In any city or town which accepts the provisions of this sentence, the provisions of subsection (c) shall not apply to any charitable non-residential mental health facility, organized under chapter one hundred and eighty which provides clinical, therapeutic, diagnostic and counseling services to persons with mental disorders. In any city or town that accepts this sentence, any real estate owned by, or held in trust for, a charitable organization for the purpose of creating community housing, as defined in section 2 of chapter 44B, that was purchased from an entity that acquired the property pursuant to section 14 of chapter 244 shall be exempt until such real estate is leased, rented or otherwise disposed of, but not for more than 7 years after such purchase.

Clause Sixteenth (1) In the case of: (i) a financial institution as defined in section 1 of chapter 63; (ii) a business corporation subject to taxation under chapter 63 other than a corporation mentioned in either paragraph (2) or (3); (iii) a telephone corporation subject to chapter 166; or (iv) a business corporation subject to taxation under section 20, 23 or 58 of said chapter 63, all property owned by such financial institution or corporation except real estate, poles, underground conduits, wires, pipes and machinery used in manufacture or in supplying or distributing water; provided, however, that in the case of a business corporation subject to taxation under said sections 20 or 23, the laws of the state of incorporation or, in the case of a business corporation of another nation, the laws of the state where it has elected to establish its principal office in the United States, grant similar exemption from taxation of tangible property owned by like corporations organized under or created by the laws of the commonwealth.

(1A) Underground wires, conduits and appurtenant equipment installed in accordance with the provisions of an ordinance or by-law adopted pursuant to the provisions of section twenty-two C or section twenty-two D of chapter one hundred and sixty-six to the extent of seventy-five per cent of the value thereof.

(2) In the case of a business corporation subject to tax under section 39 of chapter 63 that is not a manufacturing corporation or a telephone corporation subject to chapter 166, all property owned by the corporation other than the following:— real estate, poles, underground conduits, wires and pipes, and machinery used in the conduct of the business, which term, as used in this clause, shall not be considered to include stock in trade or any personal property directly used in connection with dry cleaning or laundering processes or in the refrigeration of goods or in the air-conditioning of premises or in any purchasing, selling, accounting or administrative function.

(3) In the case of (i) a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63, or (ii) a limited liability company that; (a) has its usual place of business in the commonwealth; (b) is engaged in manufacturing in the commonwealth and whose sole member is a manufacturing corporation as defined in section 42B of chapter 63 or is engaged in research and development in the commonwealth and whose sole member is a research and development corporation as defined in said section 42B; and (c) is a disregarded entity, as defined in paragraph 2 of section 30 of chapter 63, all property owned by the corporation or the limited liability company other than real estate, poles and underground conduits, wires and pipes; provided, however, that no property, except property entitled to a pollution control abatement under clause forty-fourth or a cogeneration facility, shall be exempt from taxation if it is used in the manufacture or generation of electricity and it has not received a manufacturing classification effective on or before January 1, 1996. For the purposes of this section, a cogeneration facility shall be an electrical generating unit having power production capacity which, together with any other power generation facilities located at the same site, is not greater than 30 megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes. For purposes of this paragraph, in determining whether the sole member of a limited liability company treated as a disregarded entity is a manufacturing corporation or a research and development corporation, the attributes and activities of the limited liability company shall be taken into account by the member along with the member's other attributes and activities. This clause as it applies to a research and development corporation, as defined in section 42B of said chapter 63, and as it applies to a limited liability company that is a disregarded entity and whose sole member is a manufacturing corporation or a research and development corporation shall take effect only upon its acceptance by the city or town in which the real estate, poles and underground conduits, wires and pipes are located.

(4) Exemption under this clause shall not extend to a corporation subject to section 15.01 of subdivision A of Part 15 of chapter 156D, if the corporation has failed to deliver the certificate required by section 15.03 of said subdivision A of said Part 15 of said chapter 156D.

(5) The classification by the commissioner or the appellate tax board of a corporation as a business corporation, manufacturing corporation or research and development corporation, as respectively defined as aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business.

Clause Forty-first C Real property, to the amount of four thousand dollars of taxable valuation or the sum of five hundred dollars, whichever would amount in an exemption of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by them as their domicile, or for a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided: (A) that such person (1) has been domiciled in the commonwealth for the preceding ten years, (2) has so owned and occupied such real property or other real property in the commonwealth for five years, or (3) is a surviving spouse who inherits such real property and has occupied such real property in the commonwealth five years and who otherwise qualified under this clause; (B) that such person had, in the preceding year gross receipts from all sources of less than thirteen thousand dollars, or if

married, combined gross receipts with his spouse of less than fifteen thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses; and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such gross receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (C) that such person had a whole estate, real and personal, not in excess of twenty-eight thousand dollars, or if married, not in excess of thirty thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income and exceeds two dwelling units. A city, by vote of its council and approval of its mayor, or a town, by vote of town meeting, may adjust the following factors contained in these provisions by: 1) reducing the requisite age of eligibility to any person age 65 years or older; 2) increasing either or both of the amounts contained in the first sentence of this clause, by not more than 100 per cent; 3) increasing the amounts contained in subclause (B) of said first sentence whenever they appear in said subclause from $13,000 to not more than $20,000 and from $15,000 dollars to not more than $30,000; 4) increasing the amounts contained in subclause (C) of said first sentence whenever they appear in said subclause from $28,000 dollars to not more than $40,000 and from $30,000 to not more than $55,000; and 5) by further excluding from the determination of whole estate up to 3 dwelling units. In the case of real property owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of four thousand dollars valuation or the sum of five hundred dollars, whichever would result in an exemption of the greater amount of taxes due, which the amount of his interest in such property bears to the whole tax due, provided: (A) that no exemption shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than thirteen thousand dollars or, if married, the combined gross receipts from all sources whatsoever, of each joint tenant or tenant in common and his spouse is less than fifteen thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses; and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from an annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (B) that the combined whole estate, real and personal, of each joint tenant or tenant in common is less than twenty-eight thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant or tenant in common and his spouse does not exceed thirty thousand dollars, provided that real

property occupied as their domicile shall not be included in computing the whole estate except for any portion of said property which produces income and exceeds two dwelling units. No proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. Household furnishings and property already exempt under the clauses Twelfth, Twentieth, Thirty-first, and Thirty-fifth shall not be included in computing the whole estate for purposes of this section. Where a portion of the real property occupied as a domicile of an applicant under this clause is located within a municipality other than the municipality in which the applicant is domiciled, and where the value of said property, or the taxes, assessed by the municipality in which such applicant is domiciled would result in his receiving less than the maximum exemption provided by this clause, that part of the property of such applicant within such other municipality shall be exempt to a value, or to an amount of tax, sufficient to grant the applicant the total maximum exemption provided by the clause. This clause shall take effect in any city or town upon its acceptance by such city or town for fiscal years commencing on or after July first, nineteen hundred and eighty-six, or for fiscal years commencing on or after such later July first as the city or town may elect. In those cities and towns which accept the provisions of this clause, the provisions of clause Forty-first and Forty-first B shall not be applicable; provided, however, that any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause, clause Forty-first and clause Forty-first B shall be distributed as provided in said clause Forty-first.

Clause Forty-fifth Any solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device.

APPEALS; ELIGIBILITY FOR EXEMPTION UNDER SEC. 5, THIRD CLAUSE; CORPORATIONS OR TRUSTS
General Laws, Chapter 59, Section 5B

Any person of a city or town aggrieved by a determination of the board of assessors as to the eligibility or noneligibility of a corporation or trust for the exemption granted pursuant to the clause Third of section five may appeal therefrom by filing a petition with the clerk of the appellate tax board in accordance with the provisions of section seven of chapter fifty-eight A within three months of said determination. As used in this section the term "person" shall mean the corporation or trust applying for the exemption or an individual, corporation, or trust engaged in a business activity in direct competition with an activity conducted by the charitable corporation or trust.

NOTICE OF ASSESSMENTS; LISTS
General Laws Chapter 59, Section 29

Assessors before making an assessment shall give seasonable notice thereof to all persons subject to taxation in their respective towns. Such notice shall be posted in one or more public places in each town, or shall be given in some other sufficient manner, and shall require the said persons to bring into the assessors, before a date therein specified, in case of residents a true list, containing the items required by the commissioner in the form prescribed by him under section five of chapter fifty-eight of all their personal estate not exempt from taxation, except intangible property the income of which is included in a return filed the same year in accordance with sections twenty-two to twenty-five, inclusive, of chapter sixty-two, and in case of non-residents and foreign corporations such a true list of all their personal estate in that town not exempt from taxation, and may or may not require such list to include their real estate subject to taxation in that town. It shall also require all persons, except corporations making returns to the commissioner of insurance as required by section thirty-eight of chapter one hundred and seventy-six, to bring in to the assessors before a date therein specified, which shall not be later than March first following, unless the assessors for cause shown extend the time to a reasonable later time but in no event later than the last day for filing an application for abatement of the tax for the fiscal year to which the filing relates, true lists, similarly itemized, of all real and personal estate held by them respectively for literary, educational, temperance, benevolent, charitable or scientific purposes on January first preceding, or at the election of any such corporation on the last day of its fiscal year preceding said January first, together with such information as may be required to comply with regulations promulgated by the commission pursuant to section three of chapter fifty-eight and the amount of receipts and expenditures for said purposes during the year together with copies of federal tax returns containing unrelated business income taxable under section five hundred and eleven of the Internal Revenue Code. The assessors may require from any person claiming under the Seventeenth, Eighteenth or Twenty-second clause of section five an exemption from taxation, a full list of all such person's taxable property, both real and personal.

EXAMINATION OF RECORDS TO VERIFY COMPLETENESS AND ACCURACY OF ACCOUNTING OF TAXABLE PERSONAL PROPERTY REQUIRED TO BE FILED UNDER SECTION 29
General Laws Chapter 59, Section 31A

For the purpose of verifying that a person required to file a true list of taxable personal property under section 29 has made a complete and accurate accounting of that property, the assessors may at any time within 3 years after the date the list was due, or within 3 years after the date the list was filed, whichever is later, examine the books, papers, records and other data of the person required to file the list. The assessors may compel production of books, papers, records and other data of the person through issuance of a summons served in the same manner as summonses for witnesses in criminal cases issued on behalf of the commonwealth, and all provisions of law relative to summonses in such cases shall, so far as applicable, apply to summonses issued under this section. A justice of the supreme judicial court or of the superior court may, upon the

application of the assessors, compel the production of books, papers, records and other data in the same manner and to the same extent as before those courts.

FAILURE TO FURNISH LISTS; ESTIMATING VALUE
General Laws Chapter 59, Section 36

Assessors shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person not bringing in such list, and shall estimate its just value, according to their best information and belief.

FAIR CASH VALUATION; CLASSIFICATION OF ASSESSED VALUATION; TAXABLE VALUATION
General Laws Chapter 59, Section 38

The assessors of each city and town shall at the time appointed therefor make a fair cash valuation of all the estate, real and personal, subject to taxation therein, and such determination shall be the assessed valuation of such estate. In cities, the assessors may, in any year, divide the city into convenient assessment districts.

The assessed valuation of real property subject to taxation under this chapter shall be classified as follows:—

Class one, residential;

Class two, open;

Class three, commercial, and

Class four, industrial.

The resulting amount shall be the taxable valuation of each class of property to which the assessors shall apply the tax rates applicable to each class as determined under section twenty-three A of chapter fifty-nine of the city or town, to determine the tax due and payable on such property.

TRANSITION PAYMENTS TO MUNICIPALITIES IN WHICH AN AFFILIATED GENERATION FACILITY IS LOCATED
General Laws Chapter 59, Section 38H

(a) For the purposes of this section, the term department shall refer to the department of telecommunications and energy.

Any electric company as defined in section 1 of chapter 164 which generates electricity or any distribution company as defined in said section 1 which is authorized by the commonwealth or the department to recover transition cost amounts associated with past investments in generation

facilities, or any generation company or wholesale generation company as defined in said section 1 or such company's affiliate, subsidiary, or parent company which currently has no binding agreement for tax payments or payments in lieu of taxes to municipalities in which the company's generation facilities are located shall be required to make transition payments to any municipality in which an affiliated generation facility, as defined in said section 1, or part thereof, is located and has been devalued for property tax payment purposes; provided, however, that where such a binding agreement for the payment of real and personal property taxes or the binding agreement for payment in lieu of such taxes has been entered into on or after the effective date of this section, such agreement shall govern, and such generation facility shall be exempt from the provisions of this section. Said payments shall offset any reductions of property taxes as a result of any devaluation of said generation facility. This section does not provide for any exemption from property tax and is in addition to such tax obligation.

For the purposes of this section, "fiscal year" shall be determined by sections 56 and 56A of chapter 44. For fiscal years 1998, 1999 and 2000, such payments shall be the difference between the property taxes for fiscal years 1998, 1999 and 2000, respectively, and the property taxes for fiscal year 1997. From fiscal year 2001 to fiscal year 2009, inclusive, such future payments shall be calculated as follows:

(i) For fiscal year 2001, such amount shall be equivalent to 90 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2000, multiplied by the applicable commercial tax rate for the fiscal year 2001;

(ii) For fiscal year 2002, the calculated amount shall be equivalent to 80 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2001, multiplied by the applicable commercial tax rate for the fiscal year 2002;

(iii) For fiscal year 2003, the calculated amount shall be equivalent to 70 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2002, multiplied by the applicable commercial tax rate for the fiscal year 2003;

(iv) For fiscal year 2004, the calculated amount shall be equivalent to 60 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2003, multiplied by the applicable commercial tax rate for the fiscal year 2004;

(v) For fiscal year 2005, the calculated amount shall be equivalent to 50 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2004, multiplied by the applicable commercial tax rate for the fiscal year 2005;

(vi) For fiscal year 2006, the calculated amount shall be equivalent to 40 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2005, multiplied by the applicable commercial tax rate for the fiscal year 2006;

(vii) For fiscal year 2007, the calculated amount shall be equivalent to 30 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair

cash value of the property as of January 1, 2006, multiplied by the applicable commercial tax rate for the fiscal year 2007;

(viii) For fiscal year 2008, the calculated amount shall be equivalent to 20 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2007, multiplied by the applicable commercial tax rate for the fiscal year 2008;

(ix) For fiscal year 2009, the calculated amount shall be equivalent to 10 per cent of the difference between the local property tax value of the property as of January 1, 1996 and the fair cash value of the property as of January 1, 2008, multiplied by the applicable commercial tax rate for the fiscal year 2009.

Any such transition payments shall be included in the tax base for purposes of determining the levy ceiling and levy limit under section 21C of this chapter and in determining minimum residential factor and classification of property under section 1A of chapter 58 and section 56 of chapter 40. The department of revenue may issue guidelines for implementing the provisions of this subsection consistent with preserving the transition payment amounts in the local tax base for such purposes.

(b) A generation company or wholesale generation company which does not qualify for a manufacturing classification exemption pursuant to paragraph (3) of the clause Sixteenth of said section 5 may, in order to comply with its property tax liability obligation, execute an agreement for the payment in lieu of taxes with the municipality in which such generation facility is sited, and said company shall be exempt from property taxes, in whole or in part, as provided in any such agreements during the terms thereof. Any such agreement shall be the result of good faith negotiations and shall be the equivalent of the property tax obligation based on full and fair cash valuation. Any such negotiated amount shall be included in the tax base for purposes of determining the levy ceiling and levy limit under section 21C and in determining minimum residential factor and classification of property under section 1A of chapter 58 of the General Laws and section 56 of chapter 40 of the General Laws. The department of revenue may issue guidelines for implementing the provisions of this subsection consistent with preserving the negotiated payment amount in the local tax base for such purpose.

A city or town, acting by and through its governing body and board of assessors, is hereby authorized to enter into an agreement with the New England Power Company concerning the assessed valuation of all real and personal property presently owned by said company in said city or town for the fiscal years 1997 to 2001, inclusive; provided, however, that said agreement shall constitute a good faith attempt to value said property at its fair market value. Any such agreement as described herein executed prior to and in effect on December 1, 1997, is hereby ratified, validated, and confirmed in all respects and as though this act had been in full force and effect at the time of the execution of said agreement.

(c) In the case of a nuclear-powered electric generation facility in the commonwealth which exceeds 250 megawatts in size and which was owned in whole or in part by an electric company as of July 1, 1997, whether or not such generation facility is in service as of the date of the collection in rates of the transition costs as defined pursuant to section 1 of chapter 164, such electric company shall not be subject to the provisions of subsections (a) and (b) and, in order to be eligible to collect the full amount of transition costs as approved by the department pursuant to section 1G of said chapter 164, shall enter into an agreement to pay the host community payments in addition to taxes. Such payments in addition to taxes shall be made in equal

payments on or before July 31, October 31, January 31 and April 30 of each year by such electric company in the following amounts: for fiscal years 1999, 2000 and 2001, in an amount which, when added to the amount of taxes due for each year, equals the amount of tax payments remitted to such host community in fiscal year 1998. Such electric company shall, by the commencement of fiscal year 2002, have entered into an agreement to pay the host community payments in lieu of taxes for such generation facility; provided, however, that such agreement shall be executed as a result of good faith negotiations between the electric company and the host community; provided further, that such agreement shall cover a period of time the greater of which is the time until the licensed termination date of such facility, as included in the original license or in a renewal of such license or 15 years beginning with fiscal year 1998. For the purposes of this subsection, the standard of good faith shall not require either party to agree to a proposal or require the making of concessions but shall require active participation in negotiations and a willingness to make reasonable concessions and to provide justification for proposals and a sincere effort to reach agreement. In the event that an agreement on such payment in lieu of taxes cannot be effected through such good faith negotiations on or before January 1, 1999, the parties shall submit to arbitration and such arbitration shall be performed by the department of telecommunications and energy or by a state-certified professional arbitrator or arbitration firm appointed by said department and operating in accordance with any applicable rules and regulations. The department shall not approve any plan submitted by such electric company to utilize the provisions of securitization pursuant to section 1H of chapter 164 if such tax agreement has not been executed pursuant to the provisions of this subsection. Such payments in addition to and in lieu of taxes, whether determined by the provisions of this subsection or by negotiation or by arbitration, shall be included in the tax levy and the attributed valuation related to such payments in addition to and in lieu of taxes, which shall be calculated by dividing the payments in addition to taxes by the current tax rate expressed as a decimal, and shall be included in the total assessed valuation for the purposes of determining the levy ceiling and levy limit under said section 21C and in determining the minimum residential factor and classification of property under section 1A of chapter 58 and section 56 of chapter 40. The department of revenue may issue guidelines for implementing the provisions of this subsection consistent with preserving the payment in addition to and in lieu of taxes in the local tax base for such purpose.

Notwithstanding the provisions of any general or special law to the contrary, the town of Plymouth, acting through its board of selectmen, may enter into a certain agreement dated March 16, 1999 with the Boston Edison Company relating to property taxes, payments in addition to property taxes, payments in lieu of property taxes for the Pilgrim Nuclear Power Station, as that property is defined in the agreement, for the fiscal years 1998 to 2012, inclusive. Such agreement is hereby authorized, ratified, validated and confirmed in all respects as satisfying all of Boston Edison Company's obligations under this section with respect to agreements relating to property taxes, payments in addition to property taxes and payments in lieu of property taxes for the Pilgrim Nuclear Power Station.

PRELIMINARY TAX FOR REAL ESTATE AND PERSONAL PROPERTY; NOTICE; INSTALLMENT PAYMENTS; DATE OF DELIVERY OF PAYMENTS

General Laws Chapter 59, Section 57C

This section shall be applicable in any city or town which accepts this section for the purpose of establishing quarterly tax payments or semi-annual tax payments, notwithstanding section 57. Except as otherwise provided, a notice of preliminary tax for real estate and personal property shall be sent out no later than July 1 of each year. In the case of cities and towns with quarterly tax payments, the preliminary tax shall be due and payable in 2 installments, the first installment due on August 1, the second installment on November 1, after which dates if unpaid, they shall become delinquent and subject to interest as provided herein, and in the case of cities and towns with semi-annual tax payments, the preliminary tax shall be due and payable on October 1, after which date if unpaid, it shall become delinquent and subject to interest as provided herein. The preliminary tax shall in no event exceed 50 per cent of 1021/2 per cent of the tax payable during the preceding fiscal year and of the amount by which such tax would have increased if any referendum question submitted to the voters under paragraph (g), (i1/2), (j) or (k) of section 21C and approved for the fiscal year had been approved for the preceding fiscal year.

Notwithstanding the provisions of the first paragraph, a notice of preliminary tax may be sent out after July first by cities and towns with quarterly tax payments; provided, however, that no such notice of preliminary tax shall be sent unless first approved by the commissioner of revenue; provided, further, that as a condition of such approval, the commissioner may establish such requirements as he deems appropriate, which may include, but not be limited to, the submission by the board of assessors of all information required to set the tax rate under the provisions of section twenty-three, except the assessed valuation of all real and personal property subject to taxation for the current fiscal year. Any notice of preliminary tax mailed after July first shall be due and payable in two installments, the first installment due thirty days after the mailing of the notice, the second November first, after which dates if unpaid, they shall become delinquent and subject to interest as provided herein; provided, however, that in the event that such notice is mailed after August first, the entire notice shall be due and payable November first, or thirty days after the date of mailing, whichever is later. Any notice of preliminary tax mailed after July 1 by cities and towns with semi-annual tax payments shall be due and payable October 1 after which date if unpaid, it shall become delinquent and subject to interest as provided herein; provided, however, that in the event that such notice is mailed after August 1, the notice shall be due and payable November 1, or 30 days after the date of mailing, whichever is later.

All provisions of law regarding the procedures for issuing, mailing and collecting tax assessments upon real and personal property and betterment assessments shall be applicable to the notice of preliminary tax provided hereunder, including the payment of interest. To the extent that any rights or remedies under law accrue from the date that the tax bill is issued, only the tax bill issued upon the establishment of the tax rate for the current fiscal year shall govern such rights and remedies. The provisions of section twenty-one C shall apply to the tax rate established by the city or town for the current fiscal year.

Notwithstanding the provisions of the first paragraph, a city or town that seeks to issue a notice of preliminary tax for any fiscal year may require the payment of a preliminary tax in excess of fifty percent of one hundred and two and one-half percent of the tax payable during the preceding fiscal year and of the amount by which such tax would have increased if any

referendum question submitted to the voters under the provisions of paragraph (g), (i1/2), (j) or (k) of section twenty-one C and approved for the fiscal year had been approved for the preceding fiscal year, to the extent that such excess represents one-half of the amount of tax accruing as a result of the loss of exemption from tax that had been granted in the preceding fiscal year, improvements to the parcel, or the parcel being taxed as a separate parcel for the first time. A city or town is further authorized under this paragraph to issue a notice of preliminary tax for any property which becomes subject to taxation for the first time in a current fiscal year.

Notwithstanding the provisions of any general or special law to the contrary, the assessors of any city or town that issues a notice of preliminary tax may add any betterment assessment or apportionment thereof, water rate, annual sewer use charge and any other charge placed on the annual tax bill to the preliminary tax on the property to which it relates and such amount shall become part of the preliminary tax.

The assessors may, on application or on their own motion, abate so much of the preliminary tax as remains unpaid that is in excess of the property owner's proportional share.

The actual tax bill issued upon the establishment of the tax rate for the fiscal year, after credit is given for the preliminary tax payments previously made, and in the case of cities and towns with quarterly payments, shall be due and payable in 2 installments, on February 1 and on May 1 respectively, after which dates, if unpaid, they shall become delinquent and, in the case of cities and towns with semi-annual payments, shall be due and payable on April 1, after which date, if unpaid, they shall become delinquent. A first actual real estate tax bill sent out for fiscal year 2008 or any subsequent year pursuant to this section shall contain a statement that there exists a delinquency if any tax, betterment assessment or apportionment thereof, water rate, annual sewer use, or other charge which may constitute a lien is overdue for more than 90 days. Such delinquencies shall not include amounts due relating to fire service, electric, water or sewer use in any city or town served by more than 1 independent municipal or district fire, electric, water, sewer, or joint water and sewer district or in any city or town served by an independent municipal or district fire, electric, water, sewer, or joint water and sewer district that is not principally domiciled in that city or town.

In the event that actual tax bills are not mailed by December 31, then the full balance of the actual tax bill issued upon establishment of the tax rate for the fiscal year, after credit is given for the preliminary tax payments previously made, shall be due and payable on May 1, or 30 days after the date of mailing, whichever is later.

Notwithstanding the provisions of the preceding paragraph, whenever such actual tax bills cannot be mailed by December 31 by cities and towns with quarterly tax payments, an additional notice of preliminary tax may be issued and payment of a third quarter preliminary installment may be required; provided, however, that no such additional notice of preliminary tax may issue unless first approved by the commissioner of revenue; and provided, further, that as a condition of such approval, the commissioner may establish such requirements as he deems appropriate, which may include, but not be limited to, the submission by the board of assessors of all information required to set the tax rate under the provisions of section 23, except the assessed valuation of all real and personal property subject to taxation for the current fiscal year. The assessors shall establish the tax rate for the fiscal year no later than April 1. In no event shall the net amount of revenue to be raised by taxation, as submitted to the commissioner pursuant to any such requirements for approval under this section, be exceeded, except to the extent that additional new growth, as certified by the commissioner pursuant to paragraph (f) of section

21C, exceeds the prior approved amount and a referendum question submitted to the voters under the provisions of paragraph (g), (i1/2), (j) or (k) of said section 21C has been approved.

In the event an additional notice of preliminary tax requiring a third quarter preliminary installment payment is issued by a city or town, such notice shall be mailed on or before December 31, or such later date as may be authorized by the commissioner, and such entire notice shall be due and payable on February 1, or 30 days after the date of mailing such notice, whichever is later, after which date if unpaid, it shall become delinquent. The amount of any third quarter preliminary installment payment shall not exceed the amount of the first quarter installment payment for the fiscal year as provided in this section. The actual tax bill issued upon the establishment of the tax rate for the fiscal year, after credit is given for the preliminary tax payments previously made, shall be due and payable on May 1, or 30 days after the date of mailing such bill, whichever is later, after which date if unpaid, it shall become delinquent. Such bill shall represent the full balance owed after credit is given for the preliminary tax payments previously made. All provisions of this section regarding procedures for issuing, mailing and collecting the notice of preliminary tax requiring first and second quarter preliminary installment payments shall be applicable to any additional notice of preliminary tax, including payment of interest.

Bills for taxes assessed under section seventy-five or section seventy-six shall be sent out seasonably upon commitment, and shall be due and payable on May first or thirty days after the date on which the said bills are mailed, whichever is later.

If any such installment, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to such tax, as reduced by any abatement is not timely paid, it shall be delinquent, and interest at the rate of fourteen percent per annum computed from the due date shall be paid. The commissioner of revenue may issue guidelines as appropriate for the implementation of this section.

Notwithstanding the preceding paragraphs, if the last day for making a tax payment without incurring interest on a bill for real estate or personal property taxes occurs on a Saturday, Sunday or legal holiday, or on a day on which a municipal office is closed as authorized by charter, by-law, ordinance or otherwise for a weather-related or public safety emergency, the payment may be made on the next day on which a municipal office is open, without penalty or interest.

To determine jurisdictional interest requirements on appeals brought pursuant to chapter 59, the date of delivery of a payment for taxes pursuant to this section is, after the period or date prescribed by this section, delivered by United States mail or by an alternative private delivery service permitted by the collector to the collector shall be deemed to be the date of the United States postmark, the date of a certificate of mailing stamped and postmarked by the United States Postal Service, the date of a certified mail receipt provided by the United States Postal Service or other substantiating date mark permitted by the rules of practice and procedure of the appellate tax board that is affixed on the envelope or other appropriate wrapper in which the payment is mailed or delivered if the payment was mailed in the United States in an envelope or such appropriate wrapper, first class postage prepaid, or delivered to an alternative private delivery service, properly addressed to the collector; provided, however, that a tax payer shall have the burden of providing the timely mailing of any payment of taxes to said collector pursuant to this section and the collector shall have no obligation to maintain any record relative to the date of mailing of the tax; and provided further, that nothing in this section shall be construed to place the burden of proving any untimely mailing on the collector. As used in this section, "United States postmark" shall mean only a postmark made by the United States Postal Service. This

paragraph shall not apply to the calculation of interest set forth in the preceding paragraphs of this section.

ABATEMENTS
General Laws Chapter 59, Section 59

A person upon whom a tax has been assessed or the personal representative of the estate of such person or the personal representative or trustee under the will of such person, if aggrieved by such tax, may, except as hereinafter otherwise provided, on or before the last day for payment, without incurring interest in accordance with the provisions of section fifty-seven or section fifty-seven C, of the first installment of the actual tax bill issued upon the establishment of the tax rate for the fiscal year to which the tax relates, apply in writing to the assessors, on a form approved by the commissioner, for an abatement thereof, and if they find him taxed at more than his just proportion or upon an improper classification, or upon an assessment of any of his property in excess of its fair cash value, they shall make a reasonable abatement; provided, however, that a person aggrieved by a tax assessed upon him under section seventy-five or section seventy-six or reassessed upon him under section seventy-seven may apply for such abatement at any time within three months after the bill or notice of such assessment or reassessment is first sent to him. A tenant of real estate paying rent therefor and under obligation to pay more than one-half of the taxes thereon may apply for such abatement. If a person other than the person to whom a tax on real estate is assessed is the owner thereof, or has an interest therein, or is in possession thereof, and pays the tax, he may thereafter prosecute in his own name any application, appeal or action provided by law for the abatement or recovery of such tax, which after the payment thereof shall be deemed for the purposes of such application, appeal or action, to have been assessed to the person so paying the same. The holder of a mortgage on real estate who has paid not less than 1/2 of the tax thereon may, during the last 10 days of the abatement period of the year to which the tax relates, apply in the manner above set forth for an abatement of such tax provided the person assessed has not previously applied for abatement of such tax, and thereupon the right of the person assessed to apply shall cease and determine. The holder of a mortgage so applying for abatement may thereafter prosecute any appeal or action provided by law for the abatement or recovery of such tax in the same manner and subject to the same conditions as a person aggrieved by a tax assessed upon him.

Notwithstanding any other provision of this section, a person who acquires title to real estate after January first in any year, shall for the purposes of this section be treated as a person upon whom a tax has been assessed.

An application for exemption under clause Seventeenth, Seventeenth C, Seventeenth C1/2, Seventeenth D, Eighteenth, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Twenty-second F, Thirty-seventh, Thirty-seventh A, Forty-first, Forty-first B, Forty-first C, Forty-first C1/2, Forty-second, Forty-third, Fifty-second, Fifty-third, Fifty-sixth and Fifty-seventh of section 5 may be made on or before April 1 of the year to which the tax relates, or within 3 months after the bill or notice of assessment was sent, whichever is later.

If any application for abatement of tax is, after the period or date prescribed by this section, delivered by United States mail, or by such alternative private delivery service as the commissioner of revenue may by regulation permit, to the assessors, the date of the United States

postmark, or other substantiating date mark permitted by regulation of the commissioner of revenue, affixed on the envelope or other appropriate wrapper in which such application is mailed or delivered shall be deemed to be the date of delivery, if such application was mailed in the United States in an envelope or other appropriate wrapper, first class postage prepaid, or delivered to such alternative private delivery service, properly addressed to the assessors. As used in this section, "United States postmark" shall mean only a postmark made by the United States post office.

Notwithstanding the foregoing provisions, if the last day for making an application for abatement of tax falls on a Saturday, Sunday, legal holiday or day on which municipal offices are closed as authorized by charter, by-law, ordinance or otherwise for a weather-related or public safety emergency, the application may be made on the next day that a municipal office is open.

CONDITIONS OF ABATEMENT
General Laws Chapter 59, Section 61

A person shall not have an abatement of a tax imposed upon his personal property subject to taxation, except as otherwise provided, unless he has brought in to the assessors a list of his personal estate as required by section 29 and complied with any requests by the assessors to examine books, papers, records and other data under section 31A. If such a list of his personal estate is not filed within the time specified in the notice required by said section 29 or the person has not complied with any requests by the assessors to examine books, papers, records and other data under said section 31A, no part of the tax assessed on the personal estate shall be abated unless the applicant shows to the assessors a reasonable excuse for the delay, or unless such tax exceeds by fifty per cent the amount which would have been assessed on such estate, if the list had been seasonably brought in, and in such case only the excess over such fifty per cent shall be abated. A person applying for an abatement of a tax on real estate may have an abatement although no list of the owner's estate was brought in as required by the said notice; provided, that in any application for an abatement of such a tax the applicant shall include a sufficient description in writing of the particular real estate as to which an abatement is requested.

NOTICE OF DECISION
General Laws Chapter 59, Section 63

Assessors shall, within ten days after their decision on an application for an abatement, send written notice thereof to the applicant. If the assessors fail to take action on such application for a period of three months following the filing thereof, they shall, within ten days after such period, send the applicant written notice of such inaction. Said notice shall indicate the date of the decision or the date the application is deemed denied as provided in section sixty-four, and shall further state that appeal from such decision or inaction may be taken as provided in sections sixty-four to sixty-five B, inclusive.

APPEALS; COUNTY COMMISSIONERS; APPELLATE TAX BOARD
General Laws Chapter 59, Section 64

A person aggrieved by the refusal of assessors to abate a tax on personal property at least one-half of which has been paid, or a tax on a parcel of real estate, may, within three months after the date of the assessors' decision on an application for abatement as provided in section sixty-three, or within three months after the time when the application for abatement is deemed to be denied as hereinafter provided, appeal therefrom by filing a complaint with the clerk of the county commissioners, or of the board authorized to hear and determine such complaints, for the county where the property taxed lies, and if on hearing the board finds that the property has been overrated and that the complainant has complied with all applicable provisions of law, it shall make a reasonable abatement and an order as to cost; provided, that if the tax due for the full fiscal year on a parcel of real estate is more than $5,000, said tax shall not be abated unless the full amount of said tax due, including all preliminary and actual installments, has been paid without the incurring of any interest charges on any part of said tax pursuant to section 23D, 57 or 57C of chapter fifty-nine of the General Laws; and provided further, that for the purposes of this section a sum not less than the average of the tax assessed, reduced by abatements, if any, for the three years next preceding the year of assessment may be deemed to be the tax due, provided that a year in which no tax was due shall not be used in computing such sum and if no tax was due in any of the three next three preceding years, the sum shall be the full amount of said tax due, but the provisions of said section 23D, 57 or 57C of said chapter fifty-nine shall apply to the amount of the tax deemed to be due and the payment of said sum without incurring any interest charges on any part thereof shall be deemed to be the payment of the tax. No appeal may be taken under this section with respect to a tax on property in Revere or Winthrop. Whenever a board of assessors, before which an application in writing for the abatement of a tax is or shall be pending, fails to act upon said application, except with the written consent of the applicant, prior to the expiration of three months from the date of filing of such application it shall then be deemed to be denied and the assessors shall have no further authority to act thereon; provided, that during the period allowed for the taking of an appeal including instances where the application for abatement has been denied, the assessors may by agreement with the applicant abate the tax in whole or in part in final settlement of said application, and shall also have the authority granted to them by section seven of chapter fifty-eight A to abate, in whole or in part, any tax as to which an appeal has been seasonably taken. If the list of personal property required to be brought in to the assessors was not brought in within the time specified in the notice required by section twenty-nine, no tax upon personal property shall be abated unless the board appealed to finds good cause for this delay or unless the assessors have so found as provided in section sixty-one, or unless such tax exceeds by fifty per cent the amount which would have been assessed on such estate, if the list had been seasonably brought in, and in such case only the excess over such fifty per cent shall be abated. A tax or assessment upon real estate may be abated although no list of property was brought in within the time specified by the notice required by section twenty-nine; provided, that the application for an abatement of such tax or assessment included a sufficient description of the particular real estate as to which an abatement is requested.

Upon the filing of a complaint under this section the clerk of the county commissioners or the board authorized to hear and determine the same shall forthwith transmit a certified copy of such complaint to the assessors and the assessors or the city solicitor or town counsel may within

thirty days after receipt of said copy give written notice to said clerk and to the complainant that the town elects to have the same heard and determined by the appellate tax board. If the assessed valuation of the property on which the tax complained of was assessed does not exceed twenty thousand dollars and such property is occupied in whole or in part by the complainant as his dwelling, contains not more than three units designed for dwelling purposes and is in no part used for any other purposes, or if the assessed valuation of the property on which the tax complained of was assessed does not exceed five thousand dollars and such property is within the class of tangible personal property described in clause twentieth of section five of chapter fifty-nine, the party making the election under this section to have the complaint heard and determined by the appellate tax board shall, at the time of making such election, pay to the clerk of the county commissioners a transfer fee of two dollars. Thereupon, the clerk of the county commissioners or of the board authorized to hear and determine such complaints shall forward the transfer fee and all papers with respect to such complaint then in the files of the county commissioners or other such board to the clerk of the appellate tax board and proceedings with respect to such complaint shall thenceforth be continued as provided in chapter fifty-eight A under the formal procedure, except that complaints requiring the transfer fee of two dollars shall be continued under the informal procedure under said chapter fifty-eight A, unless the complainant files an election with the clerk of the appellate tax board that the complaint be heard under the formal procedure within ten days after receiving the notice as hereinafter provided that the complaint has been transferred to the appellate tax board. Upon the transfer of such complaint to said board the clerk of said board shall send notice by registered mail to the complainant that such complaint has been transferred, and the complainant shall, within ten days after receiving such notice, pay to said board the entry fee as required by section seven of said chapter fifty-eight A, except that the complainant shall not be required to pay any entry fee if the provisions of this section relative to the payment of the transfer fee have been complied with. Upon receipt of the entry fee or transfer fee herein provided for, the clerk of the appellate tax board shall notify the respondent board of assessors that a complaint is pending against it. In case the respondent desires to answer, it shall file an answer within thirty days of the receipt of notice of the pendency of the complaint or within such further time as the board may allow. If upon hearing it appears that the complainant has complied with all applicable provisions of law and the appellate tax board finds that the complainant is duly entitled to an abatement, it may grant him such reasonable abatement as justice may require, and shall enter an order directing the treasurer of the town to refund said amount, if the tax sought to be abated has been paid, together with all charges and interest at eight per cent on the amount of the abatement from the date of the payment of the tax. The board may make such order with respect to the payment of costs as justice may require.

If any complaint under this section is, after the period or date prescribed by this section, delivered by United States mail, or by such alternative private delivery service as the county commissioners or the board authorized to hear and determine such complaints, may permit, to the clerk of the county commissioners, or to such board, the date of the United States postmark, or other substantiating date mark permitted by the county commissioners or such board, affixed on the envelope or other appropriate wrapper in which such complaint is mailed or delivered shall be deemed to be the date of delivery, if such complaint was mailed in the United States in an envelope or such appropriate wrapper, first class postage prepaid, or delivered to such alternative private delivery service, properly addressed to the county commissioners or the board authorized to hear and determine such complaints. As used in this section, "United States postmark" shall mean only a postmark made by the United States post office.

ACTIONS AGAINST DELINQUENT TAXPAYERS
General Laws Chapter 60, Section 35

If a tax which has been committed to a collector remains unpaid after it has become due and payable, it may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the collector either in his own name or in the name of the town against the person assessed for such tax.

POWER TO ESTABLISH RULES OF SMALL CLAIMS PROCEDURE; VENUE; JURISDICTIONAL AMOUNT; HEARINGS; DAMAGES AND PENALTIES6
General Laws Chapter 218, Section 21

There shall be within the district court department and the Boston municipal court department a simple, informal and inexpensive procedure, hereinafter called the procedure, for the determination, according to the rules of substantive law, of claims in the nature of contract or tort, other than slander and libel, in which the plaintiff does not claim as debt or damages more than $7,000; provided, however, that a city or town may bring an action under section 35 of chapter 60 for the collection of unpaid taxes on personal property or an action which shall not exceed $15,000; and provided further, that said dollar limitation shall not apply to an action for property damage caused by a motor vehicle, and for a review of judgments upon such claims when justice so requires. The procedure shall not be exclusive, but shall be alternative to the formal procedure for civil actions begun by summons and complaint.

The chief justice for the district court department shall make uniform rules with respect to the procedure applicable to all the courts within said department, and the chief justice for the Boston municipal court department shall make rules for the Boston municipal court department, all such rules being subject to the approval of the supreme judicial court.

Actions under this section and sections twenty-two to twenty-five inclusive, shall be brought, at the option of the plaintiff, in the judicial district where either the plaintiff or the defendant lives or has his usual place of business or employment; provided, however, that actions brought against a landlord or lessor of land or tenements rented for residential purposes, and arising out of such property or rental, may also be brought in the judicial district in which the property is located.

Notwithstanding the foregoing, each court within the district court department shall have civil jurisdiction of such actions commenced in such court which should have been brought in some other court, to the extent that the action may be heard and disposed of by the court in which it was begun, if the venue of said action is waived or, if venue requirements are not waived, the court may, on motion of any party, order the action, with all papers relating thereto, transferred for hearing and disposition to the court in which the action should have been commenced. Said action shall thereupon be entered and prosecuted in such court as if it had originally commenced therein, and all prior proceedings otherwise regularly taken shall thereafter be valid. An action may be commenced under this section if the initial amount of damages claimed is $7,000 or less or is an action by a city or town under said section 35 of said chapter 60 for the collection of unpaid taxes on personal property or an action by a city or town which shall not exceed $15,000

for property damage caused by a motor vehicle regardless of the amount of the claims notwithstanding that the court may award double or treble damages in accordance with the provisions of any general or special law.

Actions brought under sections twenty-one to twenty-five, inclusive, may be heard in the first instance by a clerk-magistrate of the district court department or the Boston municipal court department. For the purpose of hearing such property damage claims caused by a motor vehicle the procedure established shall provide for all such claims to be heard on one evening every other week, and on one Saturday on the alternative week, unless otherwise agreed to by all parties in such actions in accordance with the provisions of section thirty-four O of chapter ninety.

In the hearing and disposition of any claim for money damages within the jurisdiction of such procedure, the Boston municipal and district court departments shall have all equity powers and jurisdiction conferred by sections one, one A and two, and clause (1) of section three of chapter two hundred and fourteen.

What's New in Municipal Law 2019
Workshop A:
Abatement and Appellate Tax Board Jurisdiction,
8 of 58 Case Studies
and
Update on Solar Facility Issues

ALPHABETICAL LISTING OF RELEVANT CASES
Boston & Albany RR v. Boston, 275 Mass. 133 (1931) https://casetext.com/case/boston-albany-railroad-v-boston
Corea v. Assessors of Bedford, 384 Mass. 809 (1981) http://masscases.com/cases/sjc/384/384mass809.html
Healthtrax International Inc. v. Assessors of Hanover & So. Shore YMCA, Mass. ATB Findings of Fact and Report 2001-366 (May 14, 2001) https://www.mass.gov/doc/healthtrax-international-inc-and-hanover-club-properties-inc-v-board-of-assessors-of-the-town/download
Nearis v. Gloucester, 357 Mass. 203 (1970) http://masscases.com/cases/sjc/357/357mass203.html
Stagg Chevrolet, Inc. v. Bd. Of Water Commissioners of Harwich, 68 Mass. App. Ct. 120 (2007) https://scholar.google.com/scholar_case?case=4801645869819979890&q=stagg+chevrolet+inc&hl=en&as_sdt=40000006
Veolia Energy Boston, Inc. v. Assessors of Boston, 95 Mass. App. Ct. 26 (2019) https://scholar.google.com/scholar_case?case=248636461530742292&q=veolia+energy+boston&hl=en&as_sdt=40000006

DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Michael J. Heffernan
Commissioner of Revenue

Sean R. Cronin
Senior Deputy Commissioner

Informational Guideline Release

Bureau of Local Assessment
Informational Guideline Release (IGR) No. 17-26
August 2017

Supersedes IGR 98-403 and Inconsistent Prior Written Statements

VALUATION AND TAXATION OF ELECTRIC GENERATING FACILITIES

(G.L. c. 59. § 38H(b))

This Informational Guideline Release (IGR) provides assessors and other local officials with information about the valuation and taxation of electric generating plants and facilities, including under a negotiated tax agreement.

Questions should be addressed to the Bureau of Local Assessment.

Topical Index Key:

Assessment Administration
Personal Property
Valuation

Distribution:

Assessors
Mayors/Selectboards
City/Town Councils

TABLE OF CONTENTS

Informational Guideline Release (IGR) No. 17-26
August 2017

Supersedes IGR 98-403 and Inconsistent Prior Written Statements

VALUATION AND TAXATION OF ELECTRIC GENERATING FACILITIES

(G.L. c. 59. § 38H(b))

SUMMARY:

These guidelines address the valuation and taxation of electric generation facility property. Since 1997 when the electric industry was restructured, the generation of electricity has been conducted by independent, non-utility producers in a deregulated environment. Non-utility generating companies include those producing electricity from conventional power plants and in more recent years, from renewable energy facilities. Transmission and distribution of the electricity continues to be performed by regulated local electric utilities.

Generating plants and facilities are subject to the same market forces as other non-regulated property bought and sold based on investor expectations and are valued and taxed in the same manner as similar property. Alternatively, communities hosting generating plants or facilities owned by electric generation companies or wholesale electric generation companies may enter into agreements for payments in lieu of tax with the owners as a revenue stability measure. Under this option, the parties establish a valuation method for often difficult to appraise power plants or other generating facilities in order to have the owner's annual property tax obligation determined in a predictable and stable manner over the life of the agreement. The agreement must provide for payments over the life of the agreement equivalent to what would have been assessed as property taxes on a full and fair cash valuation basis. These agreements are an alternative means for the company to meet its property tax obligations over the term, not to obtain tax breaks. Payments under the agreement are treated as part of the annual property tax levy for Proposition 2½ and tax classification purposes.

These guidelines are in effect. They supersede Informational Guideline Release (IGR) No. 98-403, *Valuation and Taxation of Electric Generating Property*, and any inconsistent prior written statements.

GUIDELINES:

I. OVERVIEW

Municipalities hosting power plants or other generating facilities owned by electric generation companies or wholesale electric generation companies as defined in G.L. c. 164, § 1 have two avenues of taxing their property. The first is to value and assess property taxes in the same manner as other taxable property. The second avenue is a voluntary payment in lieu of tax agreement (tax agreement) that is based on good faith negotiations and is the equivalent of assessing taxes on the full and fair cash valuation of the plant.

BUREAU OF LOCAL ASSESSMENT **JOANNE GRAZIANO, CHIEF**

II. ASSESSING PROPERTY TAXES

Municipalities may assess property taxes on the taxable property of an electric generating facility in the same manner as the assessment of taxes on other taxable property. Assessors assess taxes based on the full and fair cash value of the property as of the January 1 assessment date to the owner of the plant, facility or other generating property.

A. Exempt Generating Plant or Facility Property

Electric generating plant or facility real and personal property exempt from taxation includes:

- Buildings, structures and personal property of resource recovery facilities (the land remains taxable and a per ton tax on solid waste processed is substituted). G.L. c. 16, § 24A.

- Buildings, structures, devices, appliances, machinery, equipment or other real or personal property constructed, installed or placed in operation as an air or water pollution control device certified as effective by the appropriate state pollution control agency. G.L. c. 59, § 5(44).

- Real and personal property of any hydropower facility constructed after January 1, 1979, except transmission lines from the facility, for a period of up to 20 years (the owner must first enter into an agreement to make an annual payment in lieu of taxes of at least five percent of its gross income in the preceding calendar year). G.L. c. 59, § 5(45A).

B. Taxable Generating Plant or Facility Property

1. Taxable Real Property

   All land, buildings, structures and other improvements to real estate of an electric generating plant or facility other than described in Section II-A-1 above are taxable.

2. Taxable Personal Property

   The tax status of electric generating plant or facility personal property other than described in Section II-A-1 above depends on the form of ownership on January 1. Each of the following owners are taxable for poles, underground conduits, wires and pipes as well as the personalty described below.

   If the owner of the taxable personal property is also the owner of the land on which the plant or facility is located, the assessors may assess it as part of the real estate tax or assess it separately as personal property.

a. Business Corporation or "Corporate" Company

Taxable personal property of an electric generating plant or facility owned by a business corporation, or a limited liability company (LLC) or other unincorporated entity filing as a corporation for federal tax purposes, includes all machinery used in the conduct of business, including the manufacture or production of electricity, except machinery that is:

- Stock in trade
- Directly used in laundering, dry-cleaning, refrigeration of goods, air-conditioning of premises, or
- Directly used in a selling, purchasing, accounting or administrative function.

Other personal property owned by the corporation or LLC is not taxable. G.L. c. 59, § 5(16)(2).

b. Manufacturing Corporation or "Corporate" Manufacturing Company

If the owner is a corporation, or a LLC or other unincorporated entity filing as a corporation for federal tax purposes, that has applied for and been granted classification by the Commissioner of Revenue as a manufacturing corporation as of January 1, all personal property used in the production of electricity is taxable unless it:

- Is a cogeneration facility of 30 megawatts or less capacity, or
- Was previously exempt because of a manufacturing classification in effect on or before January 1, 1996.

G.L. c. 59, § 5(16)(3).

c. Other Entities

Personal property of any electric generating plant or facility, including a cogeneration plant or facility, that is owned by any other entity, such as an individual, association, trust, partnership, limited partnership, LLC treated as a partnership for federal tax purposes or limited liability partnership, is taxable.

G.L. c. 59, § 18.

III. TAX AGREEMENTS

As an alternative to assessing property taxes, municipalities may enter into a voluntary payment in lieu of tax agreement (tax agreement) regarding the property of an electric generating plant or facility. The agreement is an alternative mean for the company owning the plant or facility to comply with its property tax obligation. It is to be based on good faith negotiations and is the equivalent of assessing taxes on the full and fair cash valuation of such property.

This section explains the requirements for entering a tax agreement and outlines the roles of municipal officers in determining the avenue the municipality will pursue. The decision to enter into a tax agreement is made by the legislative body of the municipality. That decision should depend on a projection of the revenues that may be generated from taxing the facility property at full and fair cash value and those received from a predictable, negotiated agreement.

A. Entering Tax Agreements

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

1. Authority to Negotiate Agreement

   The legislative body of the host city or town may vote to authorize the chief executive board or officer (CEO) of the municipality (selectboard, mayor or manager), or some other municipal officer or officers, such as the assessors, to negotiate a tax agreement on behalf of a municipality, or to negotiate and execute the agreement. The authority may also be given to some combination of officers, such as the CEO and assessors, may set parameters for any negotiated agreement or may authorize the CEO to execute the negotiated agreement.

2. Approval of Agreement

   To be binding, the legislative body of the municipality must vote to approve the negotiated tax agreement, unless it has voted to authorize the CEO or other combination of officers to negotiate and execute the agreement on the behalf of the municipality without further legislative body action.

B. Estimating Property Tax Revenues

In order to determine whether a tax agreement is in the municipality's interest, the current or projected full and fair cash value of the plant or facilities should be determined, together with a revenue projection based upon the assessment of regular property taxes.

1. Role of Board of Assessors

The board of assessors is responsible for establishing full and fair cash values of property for local tax assessment purposes. Assessors must determine what a willing buyer under no compulsion to buy would pay for the property of a willing seller with no compulsion to sell. Ordinarily this determination is made on an annual basis, using information gathered over the year. This would be the method the assessors would use in the valuation of electric generating plants or facilities if a tax agreement has not been negotiated or is not in effect.

If a multi-year tax agreement is being considered instead, the assessors should make projections of full and fair cash value for each year of the agreement, taking into account plant or facility additions and retirements. These projections may be speculative to the extent there is uncertainty involved with a complex industry. However, assessors should use their best efforts to make these projections.

2. Role of Legislative Body

The legislative body has the power to authorize negotiations and to approve tax agreements with electric generation or wholesale electric generation companies and therefore, should have information as to the potential value of the property. It may rely on information provided by the assessors or seek an independent analysis of projected values for the purpose of determining whether an agreement is in the municipality's interest.

3. Role of Chief Executive Officer

The CEO may be authorized to negotiate and execute a tax agreement on behalf of the municipality. The CEO may also rely on information provided by the assessors or seek an independent analysis of projected values.

C. Agreement Requirements

The primary purpose of tax agreements is to provide revenue stability for host municipalities over a period of time. Agreements between host municipalities and electric generation or wholesale electric generation companies must be the result of good faith negotiations and payments are to be representative of property taxes assessed on the plant or facility on a full and fair cash valuation basis. G.L. c. 59, § 38H(b).

1. Agreement Term

Agreements should be for a reasonable term. As a general rule, a term of no longer than the useful life of the facility would be a reasonable one.

2. Value and Tax Levy

Agreements should fix values or formulas for determining values (rather than fixing tax payments). Values should be representative of the future full and fair cash values of the plant or facility for the term of the agreement. If formulas are used to determine values, the formula must permit the determination of value before the tax rate is set for the fiscal year because agreement values must be used to calculate the municipality's levy ceiling and minimum residential factor and to set the tax rate for the fiscal year. Payments resulting from the values at the applicable tax rate for the fiscal years are treated as property taxes for Proposition 2½ and tax classification purposes. The payments are subject to the municipality's levy limit. See Section III-D below.

3. Payment and Billing

Agreements should establish the same billing and collection procedures for negotiated amounts, which would include payment schedules, late payment consequences and collection remedies, as the ones used for annual property taxes. Unless otherwise provided in the tax agreement, payments should be billed and collected in the same manner as property taxes.

D. Tax Agreement Value, Payment, Tax Levy and Tax Rate

1. Value

Assessors must report the negotiated agreement "value" for the year on Form LA-4 **"**Assessment/Classification Report" in the assessed valuation of Class 4, Industrial, real property (Class Code 452), or Personal Property (Class Code 552), as applicable, so that it is reflected in the fair cash value levy percentage for that class of real property or of personal property. Those percentages are used to calculate the minimum residential factor under G.L. c. 58, § 1A.

2 Tax Levy and Tax Rate

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

3. Payment in Lieu of Tax

After the rate is set, assessors must determine the amount of payment due under the agreement based upon the values negotiated under the agreement and commit the amount due to the tax collector at the same time and in the same manner as annual property taxes for the fiscal year, unless otherwise provided in the agreement. The amount of the payment becomes part of the total tax levy committed to the collector for collection.

4. Other Payments

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

IV. DOCUMENTATION

The Commissioner of Revenue must approve a municipality's tax rate annually and review its assessments every five years in order to certify compliance with the legal standard of full and fair cash value assessments.

In order to fulfill these requirements, the Bureau of Local Assessment (Bureau) requires certain information and documentation about the taxation of electric generating plants and facilities. The following forms and information are required before certification may be granted and tax rates may be approved.

A. All Communities

The assessors must maintain property records for the taxable real and personal property of the electric generating plant or facility. The records must be updated each year to show the assessed value or negotiated agreement value.

B. Communities Assessing Property Taxes

1. Five Year Certification

In any certification year, assessors in a host community must submit to the Bureau an appraisal report or documentation that supports the proposed full and fair cash value of the property of each electric generating plant or facility. All three approaches to value are to be considered in arriving at a final value. See Section VI below.

2. Interim Year Valuation

Assessors adjusting the valuation of the property of electric generating plants or facilities in non-certification years must use appropriate appraisal methods and adjust valuations in other property classes to ensure equitable and consistent assessments within and between all property classes, as evidenced by conformity with accepted mass appraisal measures of assessment level and uniformity. See Section I-B of the annual IGR, *Guidelines for Annual Assessment and Allocation of Tax Levy*.

C. Communities with Tax Agreements

A host community entering into a tax agreement under G.L. c. 59, § 38H (b) (or a special act) must submit the following to the Bureau no later than the year scheduled for certification:

- A copy of the executed tax agreement along with a certified copy of the legislative body vote authorizing, approving or ratifying it.
- Appraisal documentation used to support the estimates of full and fair cash value included in any tax agreement. This documentation must only be submitted once unless the agreement is amended as to the valuations to be used.
- A copy of any executed amendment to the agreement.

V. TAX BASE GROWTH

Municipalities hosting electric generating plants or facilities may use certain increases in the assessed or negotiated valuation of the plant or facility as allowable value for the purpose of computing the annual tax base growth adjustment in its Proposition 2½ levy limit. See the annual IGR, *Determining Annual Levy Limit Increase for Tax Base Growth.*

A. Communities Assessing Property Taxes

If a community is assessing annual property taxes based on the full and fair cash valuation of a particular generating plant or facility, the following assessed valuation increases are allowable:

- In the first year assessed, the assessed value of a new plant or facility installed (real or personal).
- In subsequent years, the assessed value of any additional new real property built or personal property items installed since the previous fiscal year and assessed for the first time.

Future market value increases to the plant or facility documented during five year certification or interim valuation adjustment programs do not qualify as allowable value for growth purposes.

B. Communities with Tax Agreements

If a community is receiving payments in lieu of tax under a tax agreement, the following negotiated full and fair cash valuation increases are allowable:

- In the first year of the agreement, the negotiated value of the new plant or facility installed (real or personal) used to determine the first year payment.

- In subsequent years, the negotiated value of any additional new real property built or personal property items installed since the previous year that is included in the subsequent year's negotiated valuation under the agreement.

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

Increases in the negotiated full and fair cash valuation that are intended to reflect future increase in the market value of the plant do not qualify as allowable value for growth purposes.

VI. VALUATION

A. Data Collection

As of the January 1 assessment date, the assessors should collect the following data and information for each electric generating plant or facility.

1. Physical Plant

Information about the physical plant or facility may be obtained from the Form of List submitted by the owner. The list should include all property including property donated or given to the owner (Contribution in Aid of Construction), Construction Work in Progress (CWIP) and other unallocated plant. Descriptions and plans should be requested and obtained if the information on the list is insufficient to develop a detailed physical inventory of major plant or facility components.

2. Plant Investment

Information about the dollars invested in the physical plant or facility may be obtained by requesting the original and net book costs of the plant or facility by year invested. This should include all direct and indirect costs associated with the plant or facility. For power plants existing before electric utility restructuring in 1997, the historical original cost, accumulated depreciation and net book cost will be found in the utility company FERC and DPU records. The new book cost of existing power plants acquired in a deregulated market, as well as the original cost of new power plants, may be obtained by requesting a return under G.L. c. 59, §§ 38D and 38F.

3. Plant Income and Expenses

Information about historic, current and future projected plant or facility income and expenses should also be obtained by requesting a return under G.L. c. 59, §§ 38D and 38F. This information includes, but is not limited to:

- Annual net generation exclusive of plant or facility use;
- Annual availability including planned and unplanned outages (separately stated);
- Annual fuel, operating and maintenance costs;
- Annual administrative and general costs;
- Annual taxes;
- Annual net additions to plant or facility in service;
- Annual working capital reserves;
- Dedicated transmission expenses associated with the plant or facility;
- Avoided cost rates;
- Fuel purchase and handling contracts; and
- Contracts or solicitations for purchase of capacity from the plant or facility.

In addition, information should be requested about the existence of any factors that will impair the operation or cost competitiveness of the plant or facility and any planned capital improvements.

B. Valuation Approaches

Generating plants or facilities are valued using the same accepted appraisal methods: cost, market and income, used to value other commercial and industrial properties subject to market forces.

Land at generating plant or facility sites should be treated as industrial land and valued in the same manner as other industrial land, i.e., by applying the appropriate appraisal methodology and land schedule.

1. Cost Approach

a. Original Cost

The original cost of the plant or facility may be used where it is relatively new and depreciation has not exceeded the appreciation of costs in the geographical area.

b. Reproduction Cost New Less Depreciation

The cost to reproduce the plant or facility may be determined from various engineering cost estimating disciplines based on plans and specifications obtained from the facilities. Alternatively, the original costs of the plant or facility may be trended to the present with generally accepted manuals or indexes such as the Handy-Whitman Index of Public Utility Construction Costs.

All forms of depreciation must be considered and allowances made not only for physical depreciation, but also technological and market changes that impact the plant or facility.

c. Replacement Cost New Less Depreciation

Replacement costs developed for an existing plant or facility should consider its intended use of duty cycle, fuel availability, transmission capacity and environmental limitations. The cost analysis will also require the engineering judgment of how new technology affects the existing property. The analysis should recognize that new technology or construction techniques may be more or less expensive than the existing facilities due to the impact of various factors.

All forms of depreciation must be considered and appropriate allowances made for physical depreciation and technological and market changes.

2. Market Approach

A comparable sales approach may use. Generating plant or facility sales should be analyzed on a price per unit of capacity or generation basis. Historical, annual plant generation and capacity factors are indicators of the cost competitiveness of the plant or facility and should be analyzed to determine its ranking within the marketplace. When comparing sales to the subject plant or facility, any non-cash considerations that impact value should be identified and appropriate adjustments made. Additional adjustments may be required to take into consideration the variability of generating sources and fuel types.

3. Income Approach

Indicators of value may be developed either by direct capitalization (*i.e.*, using a single year's income) or yield capitalization (*i.e.*, using income over a period of time including reversion proceeds).

The gross income developed for the plant or facility from the current wholesale market should consider the price of capacity, installed capacity, operable capability, 10 minute spinning reserve, 10-minute non-spinning reserve, 30-minute reserve and automatic generation control. For hydro-electric plants,

especially those dependent on run-of-the river, multiple years of income/actual production should be reviewed to equalize the value of the station, and not value it based on higher or lower water levels due to annual fluctuations in rainfall. Prices for each may vary, depending on the type of generating unit and time of day and year. When analyzing expenses, consideration should be given to the historic cost of operating the plant or facility and future fuel prices.

Business income should be isolated from the gross income to determine the income attributable to the property. Property related expenses to be considered include, but are not limited to, site staff operations, site management, current and future fuel type, routine annual maintenance, operational costs such as chemicals, insurance, various regulatory and license fees, allowance for property taxes (as an expense or in the capitalization rate) and capital reserves and replacements for adequate project life.

GLOSSARY

See G.L. c. 164, § 1 for definitions of the following terms:

Cogeneration facility
Distribution
Distribution Company
Distribution facility
Electric Company
Electric service
FERC
Generation
Generation Company
Generation facility
Transmission
Transmission Company
Transmission facility
Transmission service,

Other Definitions

Automatic Generation Control, (AGC), is a system for adjusting the power output of multiple generators at different power plants in response to changes in the load.

Availability, a measure of time a generating unit, transmission line or other facility is capable of providing service, whether or not it actually is in service. Typically, this measure is expressed as a percent available for the period under consideration.

Avoided cost, the cost the utility would incur had it supplied the power itself or obtained from other sources. Avoided cost rates have been used as the power purchase price utilities offer independent suppliers.

Department of Public Utilities (DPU), state regulatory agency responsible for the structure and control of energy provided in the Commonwealth; monitoring service quality; regulating safety in the transportation and gas pipeline areas; and for the siting of energy facilities. The mission of the Department is to ensure that utility consumers are provided with the most reliable service at the lowest possible cost; to protect the public safety from transportation and gas pipeline related accidents; to oversee the energy facilities siting process; and to ensure that ratepayers' rights are protected.

Independent Power Producer (IPP), any entity that owns or operates an electric generating facility that is not included in an electric utility's rate base.

Investor Owned Utility (IOU), a company that provides utility services and is owned by stockholders or investors.

Net Book Value (Net Book), a method of property valuation based on the rates of return on investment regulated by a governmental agency and the original cost of the property when put into service less depreciation.

Non-spinning reserve, the operating reserve not connected to the system, but capable of serving demand within a specific time, or interruptible demand that can be removed from the system in a specified time. Interruptible demand may be included in non-spinning reserve if it can be removed from service within 10 minutes.

Non-Utility Generator (NUG), an electric generation facility owned and operated by an entity not defined as a utility.

Rate Base, the value of property upon which a utility is permitted to earn a specified rate of return as determined by a regulatory agency.

Restructuring, the reconfiguration of the electric industry from wholly owned electric generation, transmission and distribution systems to a system where electric generating facilities are independently owned. (Restructuring includes re-regulation and is not to be confused with deregulation, which implies the elimination of regulation.)

Spinning reserve, unloaded generation, which is synchronized and ready to serve additional demand.

Utility, a regulated entity providing essential services usually associated with a natural monopoly, the power of eminent domain, the obligation to serve and significant government regulation, including a distribution company, transmission company and electric company, but not a generation company.

Massachusetts Department of Revenue

Division of Local Services

Informational Guideline Release

Commissioner
Mitchell Adams
Deputy Commissioner
Leslie A. Kirwan

Property Tax Bureau
Informational Guideline Release (IGR) No. 92-206
October 1992

(Supercedes IGR No. 91-204)

APPLICATION FOR AUTHORITY FROM THE COMMISSIONER OF REVENUE TO ABATE LOCAL TAXES AND CHARGES

(G.L. Ch. 58, S. 8)

Where extraordinary or clearly mitigating circumstances are demonstrated which justify a taxpayer's failure to have utilized the standard abatement process provided by G.L. Ch. 59, S. 59 or other applicable law, the Commissioner of Revenue, pursuant to G.L. Ch. 58, S. 8, may authorize local assessors or other officers to abate local taxes or charges in cases where they do not otherwise have authority to do so. This Informational Guideline Release explains the requirements and procedures for seeking abatement authority from the Commissioner.

This guideline supersedes IGR No. 91-204. Questions regarding the requirements and procedures set out in this guideline should be directed to the Property Tax Bureau.

Topical Index Key:

Abatements and Appeals

Distribution

Assessors
Collectors

Informational Guideline Release (IGR) No. 92-206
October 1992

APPLICATION FOR AUTHORITY FROM THE COMMISSIONER OF REVENUE TO ABATE LOCAL TAXES AND CHARGES

(G.L. Ch. 58, S. 8)

General Laws Chapter 58, Section 8 empowers the Commissioner of Revenue to authorize assessors or other local officers to fully or partially abate taxes, assessments, rates or other charges assessed or imposed by them.

The Commissioner's power to authorize abatements under this statute affords an administrative procedure whereby substantial inequities, which could not otherwise be remedied under the usual abatement process, may be rectified.

The statute, however, does not provide an alternative to the standard abatement procedures provided by G.L. Ch. 59 §59 or other applicable law. Neither does it constitute a process for assessors to correct routine assessment errors. Indeed, the Supreme Judicial Court has repeatedly declared that, absent extraordinary circumstances, the procedures set out in G.L. Ch. 59 §59 for the abatement of real and personal property taxes constitute the **EXCLUSIVE** remedy for an overassessment. For examples of the Court's expression of this position, see Nearis v. Gloucester, 357 Mass. 203 (1970), Leto v. Assessors of Wilmington, 348 Mass. 144 (1964), Codman v. Assessors of Westwood, 309 Mass. 433 (1941) and Central National Bank v. City of Lynn, 259 Mass. 1 (1927).

GUIDELINES:

I. ELIGIBILITY REQUIREMENTS

FOR THE ABATEMENT OF ANY TAX OR CHARGE UNDER G.L. CH. 58 §8, EACH OF THREE REQUISITES MUST BE SATISFIED. First, sufficient evidence must be presented which establishes that the taxpayer was prevented by extraordinary or mitigating circumstances from seeking an abatement through the usual process. Second, the materials provided must make apparent that granting an abatement would correct a substantial inequity, cure a grievous hardship or provide a considerable public benefit. Third, the overassessment sought to be corrected must be appreciable in amount.

A. Extraordinary or Mitigating Circumstances Justifying Failure to File

A person is eligible for abatement relief under G.L. Ch. 58 §8 only upon a demonstration that extraordinary or mitigating circumstances precluded that person's having sought a remedy under the standard abatement process, afforded by G.L. Ch. 59 §59 or other applicable law. General Laws Ch. 59 §59 demands strict compliance with its provisions. A fundamental requirement of G.L. Ch. 59 §59 is that an aggrieved taxpayer file a timely application for abatement.

Massachusetts courts have repeatedly maintained that a timely filed abatement application is critical for abatement relief. For example, the Appeals Court, in Guzman v. Board of Assessors of Oxford, 24 Mass. App. Ct. 118 (1987), stated, "As to the timeliness of abatement applications, the cases are severe and state the principle that failure timely to file for an abatement destroys the right." For additional examples, also see Old Colony R.R. v. Assessors of Quincy, 305 Mass. 509 (1940), Assessors of Brookline v. Prudential Ins. Co., 310 Mass. 300 (1941), and Roda Realty Trust v. Assessors of Belmont, 385 Mass. 493 (1982).

This long-standing position was reaffirmed in a decision rendered by the Massachusetts Land Court on November 7, 1990, in City of Boston v. Johnson, Tax Lien Case No. 59982. The court held that a property owner was not entitled to an abatement which arose from the city's assessment of a building which it had, itself, demolished. The assessment was made on the razed building for six consecutive years following its removal. However, because the owner had not made a statutory abatement appeal under G.L. Ch. 59 §59, the court refused to grant relief. The court stated, "[I]t has long been the law of the Commonwealth that to attack the amount of an assessment as perhaps distinguished from the liability of an exempt entity to be taxed, the taxpayer must file an application for abatement."

AS A CONSEQUENCE OF COURT PRECEDENT AND IN THE INTEREST OF OVERALL PUBLIC BENEFIT, THE COMMISSIONER HAS DETERMINED THAT AN ESSENTIAL REQUISITE FOR ABATEMENT ELIGIBILITY UNDER G.L. CH. 58 §8 IS A SUFFICIENT EXPLANATION OF WHY THE TAXPAYER DID NOT FILE A TIMELY APPLICATION FOR ABATEMENT.

B. Commissioner's Discretion

Other than providing limitations regarding the abatement of a paid tax, the language of G.L. Ch. 58 §8 does not provide parameters to aid either local officials or the Commissioner in deciding when an abatement is appropriate. In exercising his discretion, therefore, the Commissioner will take due note of the guidance provided by Massachusetts courts. The following criteria are among those which the courts have established as factors to be considered by the Commissioner:

1. Grievous Hardship

In Guzman v. Board of Assessors of Oxford, 24 Mass. App. Ct. 118 (1987), the Massachusetts Appeals Court stated, "To alleviate a grievous hardship, if there is one, the assessors may request the Commissioner of Revenue to authorize an abatement under the provisions of G.L. 58 §8...." Id. at 121.

2. Lack of Access to Standard Process

In Leto v. Assessors of Wilmington, 348 Mass. 144, the Supreme Judicial Court stated that extraordinary abatement relief should only be available where "relief by ordinary abatement procedures...[is] seriously inadequate." See also, Nearis v. Gloucester, 357 Mass. 203. Such relief, therefore, is not intended as a means for assessors to routinely correct assessment errors. If some mistake, such as incorrect information on a property record card, produces an overassessment, relief will only be available under G.L. Ch. 58 §8 where extraordinary or mitigating circumstances are present.

3. Public Interest

In Codman v. Assessors of Westwood, 309 Mass. 433 (1941), the Court stated, "It is needless to say that such power [the Commissioner's power to authorize abatements under Ch. 58 §8] is to be exercised only in the public interest."

Ultimately, when acting on applications under G.L. Ch. 58 §8, the Commissioner will base his decisions on a consideration of what will result in the greatest equity for the taxpayer involved and for all taxpayers in the affected community.

C. Substantial Adverse Impact

The Commissioner will not exercise his authority under G.L. Ch. 58 §8 to correct assessment errors which have inappreciable effects on taxes or charges.

II. ABATEMENT OF PAID TAXES AND CHARGES

No abatement of any tax or charge will be granted under G.L. Ch. 58 §8 unless the requirements enunciated in Section I, above, are satisfied. IN CASES WHERE THE TAX OR CHARGE HAS BEEN PAID, HOWEVER, AN ABATEMENT WILL ONLY BE GRANTED IF ADDITIONAL REQUISITES ARE SATISFIED.

A. Additional Requirements When Tax Has Been Paid

The Legislature placed specific restrictions upon the Commissioner's power to authorize the abatement of a paid tax or charge. The Commissioner can only authorize such an abatement if the paid tax or charge:

1. was made no more than three fiscal years prior to the year when an application for abatement authority is made to the Commissioner, and

2. arose through an "obvious clerical error."

B. Time Limitation

THE COMMISSIONER CANNOT APPROVE ANY REQUEST TO ABATE A PAID TAX OR CHARGE THAT WAS ASSESSED PRIOR TO THE THREE FISCAL YEARS PRECEDING THE YEAR OF THE REQUEST. For example, if a request were submitted on May 15, 1995, (viz., during fiscal year 1995), the Commissioner could only abate it if the underlying assessment had been made during or after FY92.

C. Clerical Error

1. Definition

Since "clerical" pertains to a clerk, copyist, or writer, or to a writing, a "clerical error" is a mistake in copying, writing, recording or processing information. Such an error occurs when a person intends to enter some particular factor or detail, but unintentionally enters some other detail. For example, if an assessor believes that a home is heated with forced hot water, but mistakenly marks forced hot air on the property record card, he has

committed a clerical error. If, on the other hand, that home is, in fact, heated with forced hot water but the assessor believes it is heated with forced hot air and enters forced hot air on the property record card, he has not committed a clerical error.

Moreover, a clerical error does not involve the exercise of any judgment or discretion. IT FOLLOWS THAT ANY ASSESSMENT ERROR WHICH RELATES TO THE GRADE, USE, CLASSIFICATION, QUALITY OF CONSTRUCTION, OR OTHER ELEMENT OF A PROPERTY WHICH INVOLVES THE EXERCISE OF AN ASSESSOR'S OPINION IN THE VALUATION PROCESS, IS NOT A "CLERICAL ERROR."

2. Person Who Commits Obvious Clerical Error

It does not matter which municipal official or agent committed the error, so long as the error was made in the execution of a clerical or data processing function and pertained to the valuation, assessment or collection process. It might have been made by an assessor, revaluation company employee or tax collector. However, an error made by a taxpayer does not qualify.

THEREFORE, WHILE THE ABATEMENT OF ANY TAX OR CHARGE REQUIRES A SUFFICIENT EXPLANATION OF WHY THE TAXPAYER DID NOT FILE A TIMELY APPLICATION FOR RELIEF, THE ABATEMENT OF A PAID TAX OR CHARGE REQUIRES A SHOWING, IN ADDITION, THAT AN OVERASSESSMENT AROSE AS THE RESULT OF AN "OBVIOUS CLERICAL ERROR."

III. SITUATIONS JUSTIFYING ABATEMENT APPROVALS

Situations which may justify the approval of abatement requests under G.L. Ch. 58 §8 include, but are not limited to, the following. In every case, whether the tax or charge is paid or unpaid, sufficient reason must exist to explain why the taxpayer did not avail himself of the usual abatement process.

A. Examples of Situations Where Tax or Charge is Unpaid

Where a tax or charge is unpaid, the standards for abatement eligibility are less strict than where the tax or charge is paid.

1. A property owner who has received tax exemptions in the past unintentionally fails to file seasonably for such exemption during the most recent year involved, due to disability, illness or some other mitigating cause.

2. A new owner of deteriorated property of relatively low value seeks a partial abatement of a delinquent tax in return for obligating himself to an immediate rehabilitation of the property to make it more tax productive for the municipality; there must be a clear showing that the abatement is absolutely essential to the economic feasibility of the project.

3. A charitable corporation seeks an abatement of post-acquisition taxes, and the Commissioner determines that an abatement would be in the public interest.

B. Examples of Situations Where Tax or Charge is Paid

Where a tax or charge is paid, the standards which must be satisfied for abatement eligibility are stricter. Therefore, where circumstances would warrant abatement authority and the tax or charge is paid, abatement authority would also be waranted if the tax or charge were unpaid.

1. A property is overassessed due to a typographical error on a tax bill or on some other assessment or billing record.

2. An obvious recording or processing error, such as a transposition of numbers on an assessment or billing record, results in:

   a. The assessment of a non-existent structure or a tax exempt property.

   b. The issuance of duplicate bills for the same property.

   c. The addition of a water charge (or some other charge) to the tax bill for the wrong property.

IV. EXAMPLES OF SITUATIONS NOT JUSTIFYING ABATEMENT APPROVALS

The Commissioner will not generally authorize an abatement under G.L Ch. 58 §8, whether or not the tax or charge has been paid, if granting the abatement would result in an unwarranted benefit to any party. In addition, the abatement remedy provided by G.L. Ch. 58 §8 will be available only in exceptional circumstances where equity requires relief to a taxpayer. The remedy does not constitute a means for assessors to routinely correct errors on assessment records. In usual situations, a taxpayer is confined to the abatement remedies set out in G.L. Ch. 59 §59 or other applicable law.

Accordingly, the Commissioner has determined that the following situations are among those which do not justify an abatement under G.L. Ch. 58 §8, regardless whether the tax or charge has been paid:

A. The assessors discover after the fact that a property record card contained some error which resulted in an overvaluation, but the taxpayer never questioned the assessment nor was he precluded by extraordinary or mitigating circumstances from access to the usual abatement remedy. Examples of such errors on a property record cards include, but are not limited to, incorrect statements concerning the year of construction, the number of stories, the type of heating system, the construction materials or the condition of a building or the neighborhood of a parcel of real estate.

B. Assessors allow an abatement for a particular fiscal year but fail to carry the abatement over to the subsequent year.

C. A domiciliary in a municipality which has adopted a residential exemption fails to receive the exemption on his domicile, yet he fails to make an application for abatement through the usual process, although not precluded from doing so by extraordinary or mitigating circumstances.

D. Granting an abatement would result in an unwarranted benefit to a taxpayer, as when the purchase price may reflect the existence of the outstanding tax obligation. In that case, an abatement would unfairly benefit the purchaser.

V. SUBMISSION OF APPLICATIONS UNDER G.L. CH. 58 §8

A. Application Must be Made by the Board or Officers Which Assessed the Underlying Tax or Charge

A request for abatement authority can be properly made to the Commissioner only by the assessors or the board or officer which assessed the underlying tax or charge. A request submitted directly by a taxpayer will not be entertained. The Supreme Judicial Court enunciated this rule in Codman v. Assessors of Westwood, 309 Mass. 433 (1941), where it stated, "A taxpayer has no standing to interject himself into such administrative matters in which the commissioner and the assessors are engaged, simply for the purpose of enhancing his private interest."

B. Mailing Address for Submissions

Requests for abatement authority should be addressed to:

Deputy Commissioner
Division of Local Services
P.O. Box 9655
Boston, MA 02114-9655

VI. FORM AND CONTENT OF APPLICATIONS

An application for abatement authority under G.L. Ch. 58 §8 should consist of a letter with all relevant supporting documentation. The letter should fully discuss the reasons why the assessors or officers believe an abatement is warranted. In addition, the letter should provide the following specific information:

A. The address of the property in question.

B. An itemization by fiscal year of the (a) taxes or charges, (b) interest and/or (c) collection costs and charges outstanding with regard to the property in question.

C. A statement itemizing the amounts of the (a) taxes or charges, (b) interest and/or (c) collection costs and charges for which abatement authority is requested.

D. The assessed value of the property for each of the tax years in question.

E. The name and address of the current assessed owner(s). If that owner is other than an individual, the principals or officers of the entity must be listed. If the property was owned by a different party during the period that the taxes became delinquent, that owner must be similarly identified.

F. The social security number of the current assessed owner. If that owner is other than an individual, the social security numbers of the principals or officers of the entity must be provided. In addition, if the subject property is owned by a business or charitable entity, the Federal I.D. number must be listed.

G. If the owner failed to timely file an application for abatement (or exemption) for any of the tax years in question, the reason for that failure.

H. If the present or prospective purchaser is intent upon developing or rehabilitating the property in question, all relevant details, including plans and drawings of the work to be done, itemized copies of expenses, copies of financing arrangements and loan commitment letters, and anticipated commencement and completion dates.

I. If the current assessed owner intends to convey or otherwise dispose of the property in question, all relevant details of this transaction.

J. If any assessor, or member of his or her family, has an interest in the property, a thorough description of that interest.

K. If the tax or charge has been paid, a statement specifying whether a deduction was taken for that payment on any state or federal income tax return. If such deduction was taken, provide all details.

L. If the application is based upon an allegation of financial hardship of the taxpayer, all relevant information, including income and expense statements, copies of income tax returns for the most recent year, copies of all bank statements, pertinent medical records, etc.

Finally, assessors or officers seeking abatement authority should include with their applications copies of all relevant information on the subject property and applicant which in any way lends support to the application.

To the extent he deems appropriate, the Commissioner may request that the assessors or officers provide additional specific information relating to the application.