WORKSHOP C QUESTIONS

QUESTION 1:

The City of Warrendale has a property in tax title consisting of five acres that is located, on one side, next to its elementary school that the City is seeking to replace, and on the other side, next to a City playground. The tax title property, located on a major thoroughfare, would be an ideal location on which to build a new elementary school to replace the existing one, while not interrupting the educational use of the existing elementary school, and to allow for the building of playing fields. The City is concerned, however, that if it were to proceed with tax title foreclosure procedures, a potentially lengthy process, a developer wishing to purchase the property from the owner at a high value would thwart the efforts of the City to attain the property for its desired public uses. Does the City have any options by which to achieve its goals? If so, how would the Collector handle the issue of pending outstanding taxes on the property?

G.L. c. 60, § 77C; G.L. c. 79; G.L. c. 79, § 44

QUESTION 2:

The Town of Somertown is considering combining its separately elected treasurer and collector positions into one appointed position. How may Somertown combine its elected treasurer position with its elected collector position into one position and make it an appointed position?

G.L. c. 41, § 1B

QUESTION 3

The Mayor of Waterbridge appointed a Tax Title Custodian to manage and maintain properties acquired by the city through tax title foreclosures and to collect rents from the properties. The Waterbridge City Council accepted G.L. c. 60, § 15B and approved an ordinance creating a Tax Title Collection Revolving Fund. The ordinance provided that the collector may credit to the account fees, charges and costs emanating through the tax title process. The Mayor, seeking to find other revenue sources in a tight fiscal year, is requesting that the collector pay the

salary of the Tax Title Custodian from the Tax Title Collection Revolving Fund. May he do so?

G.L. c. 60, § 15B; G.L. c. 60, § 77B

QUESTION 4:

Ben Smith has been holding a grudge against the Town of Aquino ever since the Town utilized eminent domain procedures to take a portion of his property to construct a water treatment plant. In escalating his dismay with the Town, he began appearing in person before the Office of the Collector of Taxes to pay his tax and water bills using coins, eventually burdening the office staff by paying all of his bills with pennies. The only way to process the coins was to have a staff member painstakingly count each of the coins brought by Mr. Smith and subsequently provide him with a receipt. The Town's Collector, wearying of the long lines that resulted from Mr. Smith's payment method, the physical demands placed upon her employees in carrying the coins, and the fear that Mr. Smith refuses to wear a mask, is seeking to establish a policy to prevent taxpayers from making any payment to the Town utilizing coins. May she do so?

31 USC § 5103

QUESTION 5:

Penny Wilson, the Tax Collector for the Town of Calais is dealing with a complicated collection issue involving the demise of a local demolition business known as Calais Drilling and Blasting. The taxpayer has fallen behind on real estate taxes, CPA charges, user charges, betterments, demolition liens and fines added to the tax that remain unpaid after Penny applied partial payments to the tax account. She is questioning whether she must list the interest due for each item added to the tax contained in the Instrument of Taking (i.e., separate amount for the taxes, the liens, the charges and the fines or whether it may it be listed as one total sum. The Town collector also questions whether, upon redemption of the outstanding tax title account, the Town Treasurer is required to distribute the 16% tax title interest by category share.

G.L. c. 60, §§ 43, 54.

QUESTION 6:

John Peters, the Town Administrator of Rustville, is seeking to utilize creative measures to bring economic development to the town. The town had, up until the 1950's been the regional manufacturer of factory machinery, and there were many mill complexes located in the town. Starting in the 1960's, factory production for such products began moving to the south, resulting in an industrial decline in the town. The town already owns several former derelict mill complexes through tax foreclosures, and Peters does not want the town to acquire any more of them. He has been approached by the owner of a mill complex that is not yet in the tax foreclosure process. Peters is seeking to attain a sale of this waterfront mill complex, which he thinks would spur a new owner to invest heavily in the emerging life sciences industry and build a much-needed hotel to serve the region. Peters thinks the Town's compromise of a substantial amount of property taxes and resulting re-development of the property will promote tourism and incentivize regional economic development. He is also considering asking Town Meeting for an appropriation to provide the owner with funds to spruce up the property to make it more marketable for private sector investment. May Peters do so?

G.L. c. 58, § 8C; G.L. c. 59, § 59A; IGR 2021-21

QUESTION 7:

Carolyn Mitchell owned a property on Green Street in Harborside, MA for over a decade and always paid her property taxes on time. In February of 2019, Kim Halliday purchased the property. Under the terms of the closing, the amount of taxes due for the fourth quarter of FY2019, was held in escrow and paid over to the town in April. Halliday hasn't paid property taxes since she moved in. She missed the first, second, third, and fourth quarterly payments for FY2020, and she has failed to pay her first quarterly bill for FY2021.

A. What is the first step in collecting the delinquent taxes by enforcing the lien on the real property, and what is the earliest date that the collector should act?

B. Who should receive notice?

C. What is the next step in enforcing the lien, and what is the earliest date it can happen?

D. How soon can the collector sign the instrument of taking?

E. How long after executing the instrument of taking does the collector have to record it? What happens if the instrument of taking is not recorded during that period?

F. What happens after the instrument of taking is recorded?

G. How are taxes that arise subsequently to the year for which the property taken accounted for?

H. How long must the treasurer wait before filing a petition to foreclose the right of redemption?

I. What happens if Ms. Halliday pays off the entire liability for taxes, interest, and costs?

J. Once the Land Court issues a decree foreclosing the right to redeem the property, how long does party with an interest in the property have to seek relief from the decree?

K. How should the treasurer account for taxes that had not been certified to the tax title account before the foreclosure decree?

L. How is the shortfall accounted for if an auction is held and the proceeds of the sale are less than the amount of the liability?

G.L. c. 60, §§ 37, 37A, 40, 42, 53, 54, 56, and 65

QUESTION 8:

Perry Albert owns a small strip mall in the City of Edgecliff, where he owns a gasoline station and a dry-cleaning business, which are located along a small river. Both businesses, especially the dry-cleaning business, have been identified as containing multiple hazardous materials and are listed on the state Department of Environmental Protection's properties of immediate concern. Remediation costs would be substantial, and likely to exceed the property value of the strip mall. The property has been in tax title starting with FY 2020. Edgecliff's Collector Lauren

Burnside is reluctant to proceed with collecting payment of the unpaid taxes by a taking or sale of the Albert property. Is she stuck?

G.L. c. 60, § 35; G.L. c. 40, § 57; G.L. c. 218, § 21

QUESTION 9:

Scary Town, a Halloween-themed amusement park, has run afoul of Jim Morris, the building inspector for the Town of Holloway, as crowds of visitors were beginning to swarm into the park to celebrate Halloween and to display celebratory costumery. In the previous year, Building Inspector Morris had ordered Scary Town to install automatic fire sprinklers in one of its main buildings, as required by the State Building Code. This year, Morris has discovered that not only did Scary Town fail to install the sprinklers that he ordered in the intervening year, but he now found that Scary Town added a Haunted Maze in one of the antique farm buildings that comprised the complex. That building was likewise not equipped with sprinklers, contained no illuminated exit signs, and the materials used in the construction of the indoor maze were flame accelerants. Pursuant to his authority under the State Building Code, Morris issued cease and desist orders for the unlawful use of the two buildings. The Town's Fire Inspector issued similar orders, pursuant to the State Fire Code. After receiving a court order, the town's officials enacted measures to make the buildings secure and keep away park attendees. Pursuant to G. L. c. 139, § 3A, the Town filed a lien with the county registry of deeds to secure the Town's expenses in making the buildings secure. In addition, the Fire Inspector assisted with the safety remediation and arranged for the deployment of a fire watch at the park, until the safety measures were enacted. Pursuant to G.L. c. 148, § 5, the Town filed a lien with the registry to recover the fire department's costs. The owner of Scary Town has refused to pay the liens, claiming the costs were excessive.

1. How may the Town collect the State Building Code and State Fire Code liens?

G.L. c. 41, § 38A; G.L. c. 60, § 35; G.L. c. 60, § 93; G.L. c. 111, § 125; G.L. c. 139, § 3A; and G.L. c. 111, § 125

2. Scary Town's owner wants to file for an abatement of the charges, claiming the costs were excessive. How may he do so?

G.L. c. 58, § 8

What's New in Municipal Law 2021

September 2021

SITUATIONS IN THE COLLECTION OF TAXES

James F. Crowley
Bureau of Municipal Finance Law

Question 1

The town water department bills and collects water bills. The tax collector believes water billing should be modernized and turnovers to the treasurer should be more frequent.

A. Is there a mechanism whereby the tax collector could be responsible for water billing and water receipts?

B. The collector underestimated the number of bills which would have to be sent to residents. He has requested a Reserve Fund transfer from the finance committee to fund a new full-time position in the collector's office. Can the finance committee fund the new position?

C. The assessor has had a "falling out" with the collector over many subjects. The assessor plans to run against the collector in the upcoming municipal election. Can the assessor hold the office of collector of taxes?

G.L. c. 41, § 38A
G.L. c. 40, § 6
G.L. c. 41, § 24

Question 2

The treasurer has met with the board of selectmen concerning the large number of tax title accounts. The treasurer was told to increase collection efforts and thereby improve the town's cash flow position.

A. The treasurer's attorney believes the treasurer's foreclosure appropriation is inadequate. The attorney suggested that any money realized from tax title redemptions or from the sale of tax possessions should be placed in a revolving account with the money used for the payment of Land Court filing fees and attorney salaries. Can the town accountant and treasurer establish such an account?

B. The selectmen are very pleased with the treasurer for his collection efforts during the fiscal year. The selectmen voted to give the treasurer a $10,000 bonus. Is this payment permissible?

G.L. c. 59, § 23
G.L. c. 40, § 5

Question 3

Motor vehicle excise payments are lower than projected. The collector has decided to hire a new deputy collector to improve cash flow.

A. Is the compensation of the deputy collector set by statute?

B. The collector noticed that a certain taxpayer has a history of nonpayment. The taxpayer's calendar year 2021 motor vehicle excise bill is unpaid. Given the taxpayer's prior performance, the collector sent the excise bill, waited 30 days and then marked the taxpayer at the Registry of Motor Vehicles. Is this legal?

C. The new deputy collector served the motor vehicle excise warrants by mailing the warrants to the taxpayers. Is this permissible?

Finer v. City of Boston, 334 Mass. 234 (1956)
Wright v. Collector of Arlington, 422 Mass. 455 (1996)
G.L. c. 60, § 15 cl.11

Question 4

The taxpayer moved from Boston, Massachusetts to New York in 2018. He never paid his 2018 excise bill. He returned to Boston in 2021 and bought a house. When the taxpayer attempted to renew his Massachusetts license, the Registry of Motor Vehicles informed him that he was marked for nonpayment of excise taxes.

A. The taxpayer visited Boston City Hall and learned that he owed 2018, 2019 and 2020 excise bills. The interest and charges exceed each year's original tax bill. What is the taxpayer's recourse?

B. The collector learned from the parking clerk that the taxpayer owed parking fines to the city. Can the assessors place the parking fines on the taxpayer's fiscal year 2022 real estate tax bill?

M.G.L. c. 60A, § 2
M.G.L. c. 40, § 58
M.G.L. c. 40U

Question 5

A new boat owner was told by an acquaintance to expect a boat excise bill for fiscal year 2022. The new boat owner's family has owned boats for years and never paid a boat excise bill. He believed boat excise must be some new tax. The boat owner had a permit to moor his boat in Boston. He also leased a slip in a privately owned marina in Hyannis for dockage of the boat. As of September 2021, the boat was at his house in Weymouth since he planned to sell or trade the boat.

A. Is boat excise a discretionary tax? Which community (Boston, Barnstable or Weymouth) is entitled to assess boat excise for FY 2022?

B. How does a community account for boat excise receipts? Is boat excise an unrestricted general fund revenue?

C. The taxpayer sold the boat in November 2021 to his brother. The taxpayer requested an abatement from the assessors who imposed the tax. Is he entitled to a refund? Can his brother be assessed a boat excise on that boat for fiscal year 2022?

G.L. c. 60B

Question 6

A taxpayer claims his house was overassessed for three fiscal years. His tax bills were $4,100 for FY 2019, $4,200 for FY 2020 and $4,350 for FY 2021. The taxpayer filed timely abatement applications each year with the assessors and the applications were denied. His taxes for the three years are unpaid.

A. Could the taxpayer each year file an appeal with the Appellate Tax Board?

B. Can the collector make a tax taking while the case is pending at the Appellate Tax Board?

C. Assume the taxes are paid. If there is an abatement, to which account is the abatement charged? Can the taxpayer receive interest on a refund? What is the rate of interest? To which account is the interest on the refund charged? What is your answer if the municipality did not properly budget for abatements?

G.L. c. 59, § 64
G.L. c. 59, § 25
G.L. c. 59, § 69
G.L. c. 58A, § 13

Question 7

The new tax collector has been elected. He intends to make several changes in his department.

A. The collector plans to increase the demand fee from $5 to $30. Can the collector do this?

B. The collector seeks to operate his department with a departmental revolving fund. He wants to deposit lien certificate fees, demands and other charges into this fund. Is this permissible?

C. The new collector is pursuing collection of taxes which are years old. Some of the taxpayers claim they paid these bills or never received the bills in question. What would you recommend to the collector?

G.L. c. 60, § 15 cl. 2
G,L. c, 44, § 53E ½
G.L. c. 60, §§ 13 & 97

Question 8

The tax collector complained that several small parcels are on the tax rolls each year, even though their value is minimal and no revenue is received by the town. These parcels are in tax title.

A. Are the assessors required to assess these parcels which have insignificant valuations?

B. The parcels were assessed to Owner Unknown from the mid-1990s to the present. What is the procedure to be followed in making an Owner Unknown assessment?

C. The actual owners of some of these small parcels have been identified. What should the collector do?

G.L. c. 59, § 2
G.L. c. 59, § 11
G.L. c. 59, § 77

Question 9

The owner recorded in 2020 a plan which subdivided a seven-acre parcel into seven house lots. Fiscal year 2019 taxes remain unpaid.

A. What effect does the tax delinquency have on the validity of the subdivision plan? How should the land be assessed for fiscal year 2022?

B. For FY 2022 the land was assessed in a single bill. One of the seven lots has been sold. The new owner of this lot has requested the collector send a separate tax bill for his lot. Can the collector comply?

C. Can the collector send a separate bill to the owner of the new lot if the seven-acre parcel is in tax title?

G.L. c. 59, § 11
G.L. c. 59, § 78A
G.L. c. 60, § 76A

Question 10

A house was sold in March 2020. The new owner was upset when his FY 2021 quarterly tax bills were sent with the name of the former owner.

A. The collector told the new owner that "the assessors would take care of it." What can the assessors do?

B. The fourth quarter FY 2020 tax bill remains unpaid. The collector is preparing to make a tax taking. To whom should the collector send the demand?

C. What owner's name should be listed in the notice of intent to make a tax taking?

G.L. c. 59, § 11
G.L. c. 60, § 3
G.L. c. 60, § 16
G.L. c. 60, § 40

Question 11

In 2015 a taxpayer bought a parcel on which he planned to build a summer cottage. He paid $85,000 for the lot. He later discovered in 2017 that the lot was unbuildable. The assessors continued to assess the lot as buildable and denied the owner's abatement applications. Taxes for fiscal years 2017-2021 are unpaid. The parcel is in tax title.

A. The assessors now concede that the parcel was vastly overassessed for the years in question. The parcel's actual value is only $19,000. The treasurer is not eager to file a foreclosure petition in Land Court due to the filing fees and the insignificant value of the parcel. What would you recommend to the treasurer?

B. What must the treasurer do to implement the less expensive statutory nonjudicial foreclosure?

C. The treasurer held the Land of Low Value auction. The parcel valued at $19,000 with a tax title of $4,000 was sold at auction for $20,000. How should the $20,000 purchase price be entered in the town's financial records?

G.L. c. 60, § 79
Guaranty Mortgage Corp. v. Burlington, 385 Mass. 411 (1982)

Question 12

The collector's office issued a few erroneous municipal lien certificates (MLC) this summer.

A. Ordinarily, the collector states on the MLC that a parcel is in tax title. Such was not the case with the MLC for 95 Main Street. Did the town lose its lien?

B. Another MLC failed to list unpaid fourth quarter FY 2021 real estate taxes. The MLC was recorded within 150 days after its date. Did the town lose its lien?

C. If the town has lost its lien due to the erroneous MLC, are the taxes uncollectible?

G.L. c. 60, § 23

Question 13

A taxpayer is experiencing financial troubles and his house was placed in tax title for unpaid FY 2019 taxes. Subsequent years taxes were certified to the tax title account.

A. The taxpayer turned 65 years of age in January 2021. Can he defer his FY 2022 taxes under Clause 41A? Can there be two tax titles on a parcel?

B. What is the rate of interest on the FY 2019-2021 taxes? What is the rate of interest on the FY 2022 taxes?

G.L. c. 59, § 5, cl. 41A
G.L. c. 60, § 62

Question 14

The taxpayer filed a voluntary petition for bankruptcy in federal Bankruptcy Court in April 2021. In the Schedule of Creditors, taxpayer listed Your Town as a creditor. The collector was notified by the Clerk of the Bankruptcy Court. Taxpayer's FY 2020 and FY 2021 real estate taxes are unpaid.

A. What should the collector file with the Bankruptcy Court?

B. The taxpayer's property is not in tax title. Can the collector send a demand? Can the collector make a tax taking?

C. The collector cannot make a tax taking. What should the collector record at the Registry of Deeds?

11 USC 362
G.L. c. 60, § 37A

Question 15

The collector seeks to collect outstanding personal property taxes for fiscal year 2021.

A. What is the collector's most effective remedy in the collection of unpaid personal property taxes?

B. Some of the taxpayers have gone out of business and cannot be located. What action can the collector take if diligent efforts to collect are unsuccessful?

C. The collector brought a civil suit against a corporation for unpaid FY 2021 personal property taxes on construction equipment. The taxpayer did not file a form of list and did not file an abatement application with the assessors. In the Superior Court where the litigation commenced, the taxpayer claimed the personal property was exempt as stock in trade of a corporation principally engaged in leasing. Did the taxpayer waive his right to claim exemption at trial since the taxpayer did not pursue the administrative route of an abatement and simply ignored the tax bill and collection efforts?

G.L. c. 60, § 35
G.L. c. 59, § 71
Tax Collector of Braintree v. J.G. Grant & Sons, Inc., 20 Mass. App. Ct. 731 (1989)