2021 Municipal Law Seminar
WORKSHOP C
Tax Collection

DISCUSSION SUMMARY
(Prepared For Informational and Training Purposes Only)

This summary of the informal discussion presented at Workshop C is provided for educational and training purposes. It does not constitute legal advice or represent Department of Revenue opinion or policy, except to the extent it reflects statements contained in a public written statement of the Department of Revenue.

For information concerning local tax collection please see DLS' "Local Tax Collection Frequently Asked Questions FAQs."

PART 1:

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 educational use. 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, § 44A

Answer:

Municipalities may accept title from owners of properties on which there are liens for outstanding real estate taxes and municipal charges as an alternative

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to a tax taking and foreclosure proceedings. G.L. c. 60, § 77C. Properties accepted under this option do not have to be in tax titles, but they are then treated as if a tax title foreclosure has been completed, i.e., as tax possession properties. Acceptance of title to the parcel is by majority vote of the municipal legislative body, i.e., town meeting or city or town council. The vote should specifically state that the acceptance is pursuant to G.L. c. 60, § 77C. The property is treated in the same manner as if a tax title foreclosure had been completed. All taxes and charges outstanding as of the date of the deed is recorded are considered paid in full at that time. It should also be noted that a municipality may acquire a property through the eminent domain process, as outlined in G.L. c. 79. Under G.L. c. 79, § 44A, the collector must be paid all outstanding taxes and charges prior to the award of the pro tanto amount is given to the owner.

Note: Further information on the deed in lieu of foreclosure process may be found at IGR 2021-22.

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. 40, § 1; G.L. c. 41, § 1B

Answer:

G.L. c. 41, § 1B provides the mechanism for a town in this case. It allows changing an elected board or office under G.L. 41, § 1, except the board of selectmen and school committee, to an appointed board or office. It requires a majority vote of an annual or special town meeting and acceptance by the voters at an annual town election. It specifically allows combination of the elected positions of town treasurer and collector of taxes into a combined appointed position. If passed, incumbents continue to hold their office and perform the duties until the expiration of their terms or until vacating the office. If the elected officer is elected at the same election where voters voted to make the position appointed, then that person holds office until the appointment of the appointed person is made. There is no requirement that the appointed persons be citizens of the town.

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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; IGR 2016-101

Answer:

A municipality that accepts G.L. c. 60, § 15B may establish a tax title collection revolving fund for the treasurer, collector or treasurer-collector for the deposit of "…any fees, charges and costs incurred by such officer under sections 15, 55, 62, 65 or 79 and collected upon the redemption of tax titles and sales of real property acquired through foreclosures of tax titles."

G.L. c. 60, § 15B(b) states in part that

"Expenditures from a tax title collection revolving fund … shall be spent to pay expenses incurred by such officer under this chapter in connection with a tax taking or tax title foreclosure, including, but not limited to, fees and costs of recording or filing documents and instruments, searching and examining titles, mailing, publishing or advertising notices or documents, petitioning the land court, serving court filings and documents and paying legal fees."

G.L. c. 60, § 77B provides for the appointment of a tax title custodian who shall have the care, custody, management, and control of tax title properties in their respective municipalities. Under the statute, the tax title custodian shall receive as compensation a sum fixed by the mayor or selectboard. Because the expenditure purposes of G.L. c. 60, § 15B do not allow for compensation of a tax title custodian from a tax title collection revolving fund, a municipality employing such a tax title custodian must pay said compensation from general revenue funds.

Further information on tax title collection revolving funds may be found at IGR 2016-101.

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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

Answer:

31 USC § 5103, the federal "Cash Tender Law" requires that entities must accept cash as a payment for obligations. Now in practical terms in that regard, to ensure reasonable operation of the office, and availability of staff to help process the counting, the Collector may require that Mr. Smith make an appointment for his rather unique payment methods. It might be deemed unreasonable to expect for staff to accept such payment at five minutes before closing time.

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.

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Answer:

Prior to the preparation of the Instrument of Taking, it is presumed that the lien for unpaid real estate taxes was perfected after a demand notice of delinquency has been issued (G.L. c. 60, § 16), and a notice of intent to take was advertised and posted (G.L. c. 60, §§'s 17, 40, 53). Pursuant to G.L. c. 60, § 43, the Collector, on behalf of the municipality, shall make a single sale or taking of any parcel of land for all unpaid taxes, including amounts added to the tax. The Instrument of Taking lists the total principal owed. If the taxpayer redeems the tax title, by payment in full, the tax title interest must be allocated to each of the items being paid. It appears to be an internal accounting procedure, but it is the treasurer's responsibility to make the initial allocation for the accountant. If the property is sold after foreclosure, the statute governs how the proceeds must be applied, including interest, in the event they are less than the amount owed when the foreclosure decree is entered.

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 (maybe, with accent lighting on the prime architectural elements of the building, colorful banner flags to draw attention to the mill's history, or installation of a water feature) May Peters do so?

G.L. c. 40, § 5; G.L. c. 40D; G.L. c. 58, § 8C; G.L. c. 59, § 59A; Mass. Const. Amendment Art. 46, amended by Art. 103; Mass. Const. Amend. Art. 88; IGR 2021-21

Answer:

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Not directly, see G.L. c. 59, § 59A, abatements for purpose of continuing environmental cleanup on sites zoned for commercial or industrial use where there has been a release of oil or hazardous material, and G.L. c. 58, § 8C, for the development of affordable housing.

Under G.L. c. 58, § 8C, Town Meeting must vote to authorize an agreement with the developer and the town relative to creation of affordable housing and commercial uses at the property, regarding the abatement of up to 75% of the outstanding real estate tax obligations and up to 100 % of the outstanding interests and costs of the sites or portions of the sites. The agreement should also specify payment terms and other contractual arrangements made by the parties. See IGR 2021-21, which advises local officials about tax collection and tax abatement agreements with developers of affordable housing, including changes made by the Municipal Modernization Act of 2016. It also includes standards and procedures for tax agreements and accepting and implementing a local option law that permits tax agreements in connection with the cleanup of contaminated sites, or Brownfields.

With respect to the Town Administrator's seeking a Town Meeting appropriation for his sprucing up ideas, there is no state statute that presently allows for such direct payment. The idea may be interpreted as a violation of the Anti-Aid Act of the State Constitution, or a violation of G.L. c. 40, § 5, which requires that public monies be spent for municipal purposes. That is because, generally, public funds must be used for public purposes under the Massachusetts Constitution and the Anti-Aid Amendment. Moreover, G.L. c. 40, § 5 requires appropriation of money for the exercise of any municipality's corporate powers. Article 88 of the Massachusetts Constitution, though, provides that "The industrial development of cities and towns is a public function, and the Commonwealth and the cities and towns therein may provide for the same in such manner as the General Court may determine." That means that the legislature could authorize a program for a municipality to give loans or grants to businesses for economic development. G.L. c. 40D, for example, provides for a loan program for industrial development, through local adoption of an Industrial Development Financing Authority. Finally, for municipalities that receive federal appropriations, such as from federal Community Development Block Grants, such federal funds might be available.

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

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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

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Answer:

A. A collector should protect against the possibility of the municipality's losing its automatic lien by making tax takings within the time period set forth in G.L. c. 60, § 37 (i.e., three years and six months from the end of the fiscal year for which the taxes were assessed). When the standard tax taking procedure cannot be pursued (due to a bankruptcy filing, for example), the collector must preserve the lien by filing a continuation of the lien certificate under G.L. c. 60, § 37A.

B. G.L. c. 60, § 40 requires that a published notice of intent to sell or take real estate must include all owners known to the collector. While the language of § 40 itself does not define the word "owners," G.L. c. 60, § 54 requires that the instrument of taking be in the name of the assessed owner, and G.L. c. 60, § 56 provides that a taking in the name of any assessed owner will be valid against all owners of the property. A demand for real estate taxes, which is a prerequisite to a valid tax taking, may be made only to an assessed owner. Therefore, we believe that the word owners in § 40 is best read in an inclusive sense, to refer to assessed owners as well as any other known owners at the time of taking.

C. The collector must issue a demand, wait 14 days, then post notices of intention to take the property in a newspaper and in a public building.

D. The Instrument of Taking may be executed no earlier than 28 days after issuance of the demand.

E. After the taking, the collector must record or register an instrument of taking at the Registry of Deeds within 60 days of the date of taking, for the taking to be effective. If, however, the Instrument of Taking is not recorded within sixty days, then it is invalid, and the process must be started all over. Recording the Instrument of Taking is a statutory prerequisite.

F. The collector should prepare a list of recorded takings to be set up as tax title accounts, giving one to the treasurer, one to the accounting officer, and keeping one for the collector's own records. The list of recorded takings should contain the names of the delinquent taxpayers, a brief description of the property included, the years, and taxes, interest and costs for which the property was taken at the time of the taking.

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G. From the list, the treasurer should set up a tax title account for each parcel of real estate included in the list.

H. In each subsequent year, for all parcels of real estate taken into tax title and not redeemed, the collector, after sending a demand, must certify to the tax title account all unpaid taxes and assessments, together with any costs and interest accrued.

I. Foreclosure proceedings may begin in six months after the taking unless the property is abandoned, or the land of low value procedure is used.

The treasurer must issue an instrument of redemption if the tax title is redeemed and the liability is paid off. If the tax title is not redeemed, the treasurer is responsible for enforcing the tax title through foreclosure.

J. Owners have one year to file a motion to vacate the decree of foreclosure. Vacating the decree is at the discretion of the Land Court. G.L. c. 60, § 65.

K. Taxes that remain on the collector's books after the Land Court issued a foreclosure decree on the property, or the treasurer deeded the property to the municipality after a land of low value auction, should be certified to the tax possession account rather than abated, provided that the municipality stills holds the property as a tax possession, i.e., has not sold the property, or voted to dedicate it to a municipal use.

L. If the municipality later disposes of the property for less than the tax possession account (due to conversion to public use or sale for lower amount), the loss of revenue is accounted for in the General Fund, not by abatement.

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?

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

Answer:

Lauren Burnside is likely concerned that, due to the negative value of the property relative to the clean-up costs, the City may find no buyers in a tax title auction. Therefore, she may consider utilizing other remedies to collect the outstanding taxes. Assuming the City adopted G.L. c. 40, § 57, and passed the required ordinance, Lauren may wish to see what City licenses are issued relative to the businesses at the strip mall. For example, maybe the gas station has a convenience store as part of the business that requires a dairy permit, for example. That store may include a retail liquor license issued by the City, pursuant to G.L. c. 138. If so, under G.L. c. 40, § 57, Lauren may work with the City's licensing authorities to suspend the liquor license until the real estate taxes are paid in full. Another method she may choose would be to sue Perry in court to collect the outstanding taxes, pursuant to G.L. c. 60, § 35, which allows lawsuits in contract against the property owner for the outstanding taxes. Under an action of contract, she can file suit within six years. Additionally, pursuant to G.L. c. 218, s. 21, which was amended by the Municipal Modernization Act of 2016, she can file a lawsuit in Small Claims Court, if the amount of outstanding taxes owed is less than $15,000, which is the jurisdictional limit for small claims court actions. Of course, taxes owed on an otherwise valuable commercial property with leased tenants are likely to exceed the jurisdictional amount of $15,000 for Small Claims Court. If the $15,001 threshold is reached, then Lauren would have to file an action in Superior Court under a contract action.

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

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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; and G.L. c. 139, § 3A

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

Answer:

For information concerning Demolition Charges and Liens please see IGR 2021-14.

Question 2: G.L. 58, § 8

The usual abatement process would apply. The Town should also be on the lookout for the possibility of a lawsuit filed by the owner relative to the public safety code liens.

For information concerning the abatement of local taxes and charges by the Commissioner please see IGR 2020-10.

PART 2:

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.

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

Town meeting may adopt G.L. c. 41, § 38A to make the collector a "town collector" and thereby collect all accounts due the town.

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?

The finance committee must determine whether this is an extraordinary or unforeseen expenditure. This is a judgment call on the part of the finance committee. G.L. c. 40, § 6.

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?

No. G.L. c. 41, § 24 provides that "In no city or town, including Boston, shall an assessor hold the office of collector of taxes or deputy collector of taxes… ."

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?

No. G.L. c. 60, § 15B permits town meeting to adopt a local option revolving fund for certain receipts from costs, charges and fees to be used by the collector or treasurer to pay, without appropriation, out of pocket

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expenses related to tax takings, redemptions, and foreclosures of tax titles. Whether or not town meeting has adopted this revolving fund, all interest and tax payments are credited to Surplus Revenue in the General Fund under G.L. c. 59, § 23.

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?

No. There should be a town meeting bylaw or at least a town meeting vote to establish a framework for awarding a bonus to an employee. There also must be specific appropriation for the bonus to be awarded under G.L. c. 40, § 5. In this instance, the selectmen merely had money available and thought a merit award should be made.

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?

There is no statute which fixes the deputy collector's salary. In Finer v. City of Boston, 334 Mass. 234 (1956), the Supreme Judicial Court held that the City of Boston was not obligated to pay the deputy collector except as provided for in the agreement between the deputy collector and the collector. Under this agreement the deputy collector was not entitled to compensation for warrants which had been recalled by the collector.

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?

In Wright v. Collector of Arlington, 422 Mass 455 (1996) the Supreme Judicial Court held that the issuance and service of a warrant were prerequisites for the notification to the Registry of Motor Vehicles. A collector cannot properly place a delinquent taxpayer in non-renewal status until after a warrant has been duly served.

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

No. The warrant must be served firsthand and in person. The deputy collector must physically present the warrant to the taxpayer or personally deliver a copy of it to the taxpayer's last known residence or place of business. 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?

The interest accrued on the unpaid taxes becomes part of the tax. Upon full payment the taxpayer will be able to renew his license. The taxpayer can file for abatements which must be filed within three years after the date the excise was due or one year after the date the excise was paid. G.L. c. 60A, § 2.

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?

No. The municipal charges lien under G.L. c. 40, § 58 is not available since the parking tickets are a fine or penalty, whereas a charge, by definition, is recompense for services rendered. G.L. c. 40U permits certain fines to be placed on tax bills but this statute must be adopted by the legislative body and procedures must be adopted. The fines must have a nexus or connection to the property. G.L. c. 40U could be utilized for snow/ice removal fines, and sanitary and housing code violations, e.g., septic fines. In the case at hand, the parking fines have no connection to the property.

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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?

Boat excise under G.L. c. 60B is not a local option tax and the assessors are obliged to assess boat excise. Boat excise is assessed to the owner of the boat on July 1 where the boat is habitually moored or docked or if no mooring or docking space, where the boat is principally situated *during the summer season*. Under the facts presented, Boston would appear to be the community where the boat was located during the summer season.

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

Fifty per cent of the boat excise goes to the Waterways Improvement Fund and fifty per cent goes to the General Fund under G.L. c. 60B, § 2. Money in the Waterways Improvement Fund can be appropriated for maintaining the harbor, public access and law enforcement as provided in G.L. c. 40, § 5G.

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:2(h) provides for an abatement upon sale of the boat and cancellation of the boat registration, if registered. The abatement would be for December through June. Unlike motor vehicle excise, there is no boat excise owed by the subsequent owner for fiscal year 2022.

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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?

Yes, even if the taxpayer incurred interest because the tax each year is not more than $5,000. G.L. c. 59, § 64.

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

Yes. Filing the abatement application does not stay the collection of the tax.

C. Assume the taxes are paid. If there is an abatement, to which account is the abatement charged? **The overlay**. Can the taxpayer receive interest on a refund? **Yes. G.L. c. 59, § 69. G.L. c. 58A, § 13.** What is the rate of interest? **8 percent. G.L. c. 59, § 69. G.L. c. 58A, § 13.** To which account is the interest on the refund charged? **Overlay. G.L. c. 59, § 25.** What is your answer if the municipality did not properly budget for abatements? **Abatement refund and interest are still incurred and there is an Overlay deficit. The assessors must carefully calculate the amount of Overlay to be raised each year.**

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?

No, unless there is some charter provision. There is no statutory language allowing the collector to increase the amount. The setting of fees and charges is made by the town's legislative body, i.e., town meeting or town council. G.L. c. 60, § 15 cl. 2.

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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?

No. These are not departmental revenues charged in connection with a self-supporting service. G.L. c. 44, § 53E ½. This is a regular governmental function that benefits the public at large.

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?

There should be an audit before the assessors recommit the taxes to the new collector. The collector would also obtain a recommittal bond and a bond for taxes committed during the fiscal year. G.L. c. 60, §§ 13 & 97. The taxpayers who claim the taxes were paid must provide documentation through cancelled checks or receipts.

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?

Yes. All real estate is taxable unless expressly exempt. G.L. c. 59, § 2.

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?

The assessors must conduct a diligent search at the Registry of Deeds and Registry of Probate and cannot determine ownership. The Commissioner of Revenue used to authorize such assessments upon receiving notice from the assessors. As of January 1, 2016, for fiscal year 2017 and subsequent years, the assessors make the Owner Unknown assessment on their own authority. G.L. c. 59, § 11.

Informal Summary

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

The collector should contact the assessors who would investigate and, if satisfied, reassess the taxes to the actual owners under G.L. c. 59, § 77. The collector would disclaim the Owner Unknown takings and make new tax takings if payments are not made in response to the reassessed bills sent by the collector.

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? **It has no effect on the validity of the plan.** How should the land be assessed for fiscal year 2022? **The assessors have discretion to assess the land as one parcel or rely on the plan and assess it as seven lots. G.L. c. 59, § 11.**

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?

There has been a sale and the new owner of the lot could request the *assessors* in writing to apportion the lien and the tax. G.L. c. 59, § 78A.

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

No. The purchaser of the lot must file a petition in Land Court to obtain a partial redemption since the entire seven-acre parcel is in tax title. 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.

Informal Summary

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

The assessment must be made to the owner of record as of January 1, 2020 for fiscal year 2021. G.L. c. 59, § 11. The collector could send a copy of the bill to the new owner or send a "care of" bill. G.L. c. 60, § 3. No statute authorizes assessors to assess a subsequent owner. Such an assessment would be invalid.

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?

The demand must be sent to the owner of record as of January 1, 2019. G.L. c. 60, § 16.

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

The assessed owner's must be listed and all subsequent owners since G.L. c. 60, § 40 does not state anything to the contrary.

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?

The treasurer should consider a non-judicial foreclosure under the Land of Low Value procedure found in G.L. c. 60, § 79.

Informal Summary

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

The treasurer should apply to the Commissioner of Revenue and if it appears the tax taking is valid and the value of the parcel does not exceed $23,182 for calendar year 2021, then the Commissioner would issue an affidavit. The treasurer would then record the affidavit together with the statement for each parcel; advertise the auction in the newspaper and make a public posting. The treasurer would then hold a public auction. The full procedure is discussed in Informational Guideline Release (IGR) 2021-22.

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?

$4,000 in tax title would be credited to Surplus Revenue (G.L. c. 59, § 23). Costs for advertising, posting, the preparation of the deed, and a $50 legal fee would be deducted and the balance in excess of $15,000 would be placed in a Land of Low Value account which would be kept for five years and paid to the person entitled thereto, upon demand.

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?

No. G.L. c. 60, § 23 provides there is no loss of lien since evidence of a tax taking is on record at the Registry of Deeds.

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?

Informal Summary

Yes, under the terms of G.L. c. 60, § 23.

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

Not necessarily. The town has lost its lien, but the assessed owner is personally liable for the tax and could be subject to a civil suit. Other remedies of the collector include denial of certain licenses and permits (G.L. c. 40, § 57) as well as set-off (G.L. c. 60, § 93) where the municipality offsets money it owes to a taxpayer (e.g. an abatement refund) against money owed by that taxpayer to the municipality.

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?

Yes. G.L. c. 59, § 5, cl. 41A is not a local option statute. A deferral agreement may be entered into notwithstanding prior tax delinquencies, or the existence of an outstanding tax title for prior years. There can only be one tax title on a property. G.L. c. 60, § 61. At the Registry of Deeds the assessors sign and record a Statement of Entry into Tax Deferral and Recovery Agreement. The deferral lien is different from the Instrument of Taking which is signed and recorded by the collector.

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

16 per cent under G.L. c. 60, § 62.

What is the rate of interest on the FY 2022 taxes?

The deferral is at 8 percent unless the legislative body adopts a lesser interest rate.

Informal Summary

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?

A proof of claim.

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

No. Such actions would violate the automatic stay of collection of existing debts. Violation of the stay may be contempt of court. 11 USC 362.

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

Record a Statement to Continue Lien and this extends the time for the collector to make a taking after the stay has been lifted. 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?

A civil suit is most effective and it can be brought in Small Claims Court. G.L. 60, § 35. G.L. c. 218.

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?

Informal Summary

The collector should notify the assessors who can abate due to death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay. G.L. c. 59, § 71.

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?

No. The Appeals Court ruled in favor of the taxpayer where the tax was invalid. Tax Collector of Braintree v. J.G. Grant & Sons, Inc., 20 Mass. App. Ct. 731 (1989).

Informal Summary