



Interim
Deputy
Commissioner
Joseph McDermott

In this Issue:

- ['Tis the Tax Rate Setting Season](#)
- [By the Numbers](#)
- ["Why Wasn't I Notified?" Maintaining the Local Officials Directory](#)
- [Ask DLS](#)
- [Conservation Land Eligible for Charitable Exemption](#)

Local Officials Directory

Municipal Calendar

IGR's & Bulletins

Workshops, Seminars & Events

What's New

DOR 360



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'Tis the Tax Rate Setting Season

As the newly appointed Interim Deputy Commissioner for the Division of Local Services - and as someone who has had a window into DLS from my post as vice chair of the Town of Walpole's Finance Committee - it is a pleasure to now work with local officials and DLS staff and to see firsthand our combined efforts leading to good local governance. I look forward to working cooperatively with all of you.

I have arrived during the height of the tax rate setting season and the numbers indicate that on the whole it is going well.

As of the close of business on December 3rd, the Bureau of Accounts had set 164 FY15 tax rates, 35 more than that recorded a year ago at this time.

In that same time frame, the Bureau of Local Assessment has given final certification to 79 property valuations and preliminary approval to 101 communities, somewhat better than the numbers from a year ago (69 final certifications and 93 preliminary).

While I am delighted to report these numbers, the real success here accrues to the local officials who, working in partnership with their DLS field representatives, have moved these processes forward cooperatively. There is nothing more essential to the responsibilities of DLS than the setting of tax rates and the certification of property values.

In our pilot Taxpayer Assistance Program (TAP), nine of the 13 communities have set their FY15 tax rates and the four remaining are not long to do so. Becket, Chelsea, Dartmouth, East Bridgewater, Egremont, Newburyport, Pepperell, Revere and Tewksbury have all set their tax rates earlier than a year ago. In all likelihood, TAP will return in FY16, so stay tuned for more details in the spring of 2015.

I also want to commend local officials in 236 communities for accumulating nearly \$859 million in free cash, which indicates that once again the Commonwealth's 351 cities and towns and two special taxing districts are again on the way to exceeding \$1 billion in free cash.

This is a testament to good fiscal budgeting and spending oversight and reflects well on the ability of cities and towns to manage their fiscal affairs.

Joe McDermott
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By the Numbers

In order to provide an update on the progress of the ongoing tax rate and certification season, below please find an overview of the ongoing process. The following information is accurate as of close of business on December 3rd, 2014:

Preliminary Certifications: 101 Communities Approved (105 Submitted)

Final Certification: 79 Communities

La4/ New Growth: 279 Approved (316 Submitted)

Tax Rates: 164 Approved

Balance Sheets: 236 Approved

Aggregate Free Cash Approved Total: \$858,947,825

"Why Wasn't I Notified?" Maintaining the Local Officials Directory

Information Technology Section

[The Local Officials Directory](#) is a joint effort of the Division of Local Services (DLS) and city and town clerks to provide a regularly maintained resource for addresses and contact information for officials in Massachusetts' 351 cities and towns and many other local jurisdictions. The Directory determines who can have accounts and use DLS Gateway.

The Directory also determines who will get the automatic notifications generated by Gateway modules such as Free Cash, Schedule A, and Tax Rate. These notifications are sent to email addresses in the Directory which local finance officials should check for accuracy. In some cases, local network firewall settings have resulted in non-delivery of these email messages. Local officials should work with their computer staff to ensure that messages sent by the Division are not blocked or considered SPAM since the Division now relies on email to deliver legally required notifications. In other cases, a community might change its email domain address and those still listed with the old address in the directory wonder why they did not get the timely notification. If your address is accurate, you will get the notification.

Plans are underway to make the Local Officials Directory the communications standard, thereby eliminating duplicative efforts throughout state government to maintain contact lists for the local officials affected by their individual programs. Having one directory serve all purposes, maintained by both state and local officials, will obviously make accurate communication much more efficient. To succeed in this goal, efforts are in place to make the the Local Officials Directory easier to navigate and update.

City and town clerks have the authorization to add, update and delete officials in their respective communities, in as much detail as they think appropriate. Officials in other departments are routinely given permission to update within their department.

DLS strives to maintain accuracy for the financial and management officials with whom it does business, but with close to 13,000 constantly changing officials in the Directory, local updates have always been critical its efficacy and success. Local administrators can designate anyone to keep entries current. The DLS IT Support Section routinely assists local officials in updates and account administration and can be reached at (617) 626-2350 and dlsitgroup@dor.state.ma.us.

Ask DLS

This month's *Ask DLS* features frequently asked questions regarding the property tax exemptions available to veterans' organizations. Please let us know if you have other areas of interest or send a question to cityandtown@dor.state.ma.us. We would like to hear from you.

Does a veterans' organization qualify for a property tax exemption?

Yes. An incorporated organization of veterans is exempt from local property taxes up to a dollar amount of the fair cash valuation of the

following property:

1. The personal property that it owns or is held in trust for its benefit if the net income is used for charitable purposes. [MGL c. 59, sec. 5, Clauses 5, 5A, 5B and 5C.](#)
2. The real property that it owns or is held in trust for its benefit if it is actually used and occupied by the organization and the net income is used for charitable purposes. [MGL c. 59, sec. 5, Clauses 5, 5A, 5B and 5C.](#)

What is the amount of the exemption for which a veterans' organization is eligible?

It depends on the specific clause that operates in the city or town. The basic exemption is for \$200,000 worth of property. [MGL c. 59, sec. 5, Clause 5.](#) If the city or town has accepted [MGL c. 59, sec. 5, Clause 5A,](#) the exemption amount rises to \$400,000. If the city or town has accepted [MGL c. 59, sec. 5, Clause 5B,](#) the exemption amount rises to \$700,000. Acceptance of [MGL c. 59, sec. 5, Clause 5C](#) increases the amount of the exemption to \$1,500,000.

What is the qualification date for a veterans' organization exemption?

Exempt status is determined as of July 1, which is the first day of the fiscal year. To qualify for an exemption from the taxes assessed for that fiscal year, the veterans' organization must meet all eligibility criteria as of that date. [MGL c. 59, sec. 5.](#) It is not entitled to a pro-rata exemption for property acquired after July 1 and should ensure that any taxes for that fiscal year are addressed when closing on the acquisition.

Is a veterans' organization required to file an annual return ([Form 3ABC](#)) to obtain a property tax exemption?

Yes. Every veterans' organization that owns real and personal property on January 1 for which it claims exemption for the fiscal year that begins on the next July 1 must file a property return ([Form 3ABC](#)) with the assessors in order to receive or continue an exemption for that year.

For example, a veterans' organization buys a parcel of real property in January 2014 and begins operating there in April 2014. To receive an exemption for fiscal year 2015 beginning on July 1, 2014, it must apply to the assessors, but it would not have to have filed a Form 3ABC because it did not own the property for which an exemption is claimed on January 1. However, if the organization had bought the property in September 2013 and moved there in December 2013, it would have to have filed a Form 3ABC in order to receive an exemption for fiscal year 2015. In both cases, the organization would have to file a Form 3ABC for subsequent fiscal years so long as it owns real and personal property on January 1.

Does a veterans' organization have to attach a report to the Public Charities Division of the Attorney General's Office ([Form PC](#) with federal form 990) to its annual return to obtain a property tax exemption?

No. Veterans' organizations are not required to register and file an annual report ([Form PC](#)) with the Public Charities Division of the Attorney General's Office.

What is the due date for filing the Form 3ABC and may it be extended or waived?

The Form 3ABC must be received in the assessors' office on or before March 1. However, the assessors can extend the March 1 deadline if the veterans' organization makes a written request and demonstrates a good reason for not filing on time. The latest the filing deadline can be extended to is the last day for applying for abatement of the tax for the fiscal year to which the return relates (the date the first actual tax installment for the year is due). [MGL c. 59, sec. 29.](#)

The requirement to file the return is a jurisdictional prerequisite to an exemption for any property owned by the veterans' organization on

January 1. An organization that willfully fails to file the return is not exempt for the year. No exemption can be granted by the assessors or appeal reviewed by the ATB.

Conservation Land Eligible for Charitable Exemption

James Crowley, Esq. - Bureau of Municipal Finance Law

Recently, in a landmark case which was of critical importance to conservation organizations in the Commonwealth, the Supreme Judicial Court ruled that a nonprofit corporation which held land for conservation purposes was eligible for a charitable exemption. The Court in its opinion also discussed the occupancy and the public access requirements for exemption. The Court reversed the Appellate Tax Board (ATB) which held that the taxpayer did not establish that it occupied or used its property for charitable purposes within the meaning of [MGL Ch. 59 Sec. 5 Cl. 3](#). The decision is [New England Forestry Foundation, Inc. v. Board of Assessors of Hawley, 468 Mass.138 \(2014\)](#).

New England Forestry Foundation, Inc. (NEFF) is a [Chapter 180](#) non-profit corporation formed in 1944 for the purposes of protecting forest land, and educating forest owners and the general public about forestry. The organization has about one thousand members. In 1999, NEFF acquired a 120 acre parcel in the town of Hawley. Shortly after acquiring the subject parcel which abuts the Dubuque State Forest on two sides, NEFF hired an independent licensed forester to prepare a forest management plan for the land. NEFF paid reduced taxes on the parcel since it was classified forest land under [MGL Ch. 61](#). The assessors placed a MGL Ch. 61 lien on the property and valued the land for FY 2010 at \$96,000 with a tax bill of \$173. There was a ten year forest management plan through the year 2016. For fiscal year 2010, however, NEFF decided to seek a tax exemption on the theory that it owned and occupied the property for charitable purposes. NEFF sought a charitable exemption to avoid the time and expense of applying for M.G.L. Ch. 61 status. NEFF contended that an exemption was warranted and one of NEFF's claims was that it used the subject parcel to educate the public on sustainable forestry practices. NEFF followed all the procedural requirements for exemption, and when the Hawley assessors denied its application, there was a timely appeal to the ATB.

The Hawley assessors contended that the parcel could not be exempt since passively owning land, in their view, was not a basis for a charitable exemption. The outcome of this case was of significance to other assessors in the State, particularly those in western communities, since there are many non-profit conservation land organizations operating there. As one of the leading land-conservation organizations in the Commonwealth, NEFF owns or has conservation easements on 7,500 acres in 39 Massachusetts municipalities.

The ATB was skeptical of NEFF's eligibility since forest management is not a traditionally charitable endeavor. According to the ATB, NEFF's use of the property also did not serve a sufficiently large class of beneficiaries due to NEFF's limited efforts to make the property accessible to the public. From testimony it appeared the only activity on the land had been one pre-cut educational walk before NEFF harvested timber on the parcel. In addition, the ATB held that NEFF was precluded from receiving a charitable exemption since the Legislature in enacting MGL Ch. 61 had intended that forest land could only receive a limited tax break and not a total exemption from tax. For these reasons, the ATB held that the parcel was not tax exempt. NEFF appealed this decision and the Supreme Judicial Court agreed to hear a direct appeal.

In a unanimous decision the Supreme Judicial Court held that NEFF's land in Hawley was tax exempt. The Court rejected the assessors' claim that a land conservation organization could not qualify for a charitable exemption under MGL Ch. 59 Sec. 5 Cl. 3. The Court stated that MGL Ch. 61 and the Clause Third charitable exemption serve distinct purposes but the statutes are not mutually exclusive. According to the Court, there was no provision in MGL Ch. 61 or Clause Third to preclude a conservation organization from seeking a charitable

exemption. Secondly, the assessors had contended that the Legislature, through its enactment of Chapter 352 of the Acts of 1891 which established the Trustees of Reservations (TOR), had evidenced an intent that TOR was to be the sole land conservation organization eligible for a real estate exemption. In the Court's interpretation of the special legislation, however, the Legislature had not intended TOR to be the exclusive land conservation organization to receive a charitable exemption. Rather, the legislative intent was to ensure that TOR would qualify for exemption in the same manner as other charitable organizations.

Under the facts presented, the Court viewed NEFF's corporate purposes as being traditionally charitable and beneficial to the environment and to the general public. Safeguarding the environment and our natural resources was perceived by the Court to be in furtherance of legitimate governmental conservation objectives as expressed in Article 97 of the [Massachusetts State Constitution](#). Preservation of the land, in the Court's view, was beneficial to an indefinite number of people.

The Court then turned to the issue of charitable occupancy of the land by NEFF. An applicant for a charitable exemption must demonstrate that there is an active appropriation of the property in furtherance of its charitable purposes. Courts in Massachusetts in prior decisions, however, have shown deference to organizations on the use of the land provided the organization acts in good faith and not unreasonably in pursuing its charitable purposes. [Assessors of Dover v. Dominican Fathers Province of St. Joseph, 334 Mass. 530 \(1956\)](#).

In the case at hand, the Court recognized that a public access requirement which the ATB had considered to be an essential element in any claim for exemption could be detrimental to a fragile habitat or ecosystem and defeat the very purpose for which a particular conservation organization was formed. According to the Court, there are differences between bona fide conservation organizations like NEFF and private groups which deny access merely in order to establish a buffer area around their own property. The Supreme Judicial Court listed the following factors as helpful in determining what was a bona fide conservation organization: membership in coalitions of conservation organizations; recognition by the government and by academia as a trusted resource; ownership of multiple parcels; expertise of its staff on conservation topics; grants from federal and State agencies; government certifications and participation in regional or State strategic planning initiatives.

In the case at hand, evidence was presented that NEFF did not exclude the public from its land. In fact, the organization informed the public that the land was available for recreational purposes. NEFF also invited a snowmobiling club, hikers and hunters to use the land. For these reasons, the Court concluded that NEFF occupied the parcel for charitable purposes.

Since NEFF satisfied the Clause Third ownership-occupancy test, the Court reversed the decision of the ATB and held this conservation land was exempt.

December Municipal Calendar

December 1	Taxpayer	<p>Deadline for Applying for Property Tax Exemptions for Persons</p> <p>If tax bills are mailed after September 15, taxpayers have 3 months from the mailing date to file applications for exemptions.</p>
December 15	Accountant/ Superintendent/ School Committee	<p>Submit Amendments to End of School Year Report to DESE</p> <p>Last filing date to impact next</p>

		year's Chapter 70 State Aid.
December 31	Water/Sewer Commissioners	Deadline for Betterments to be Included on Next Year's Tax Bill (M.G.L. Ch. 80, Sec. 13; Ch. 40, Sec. 42I and Ch. 83, Sec. 27)
December 31	Selectmen	Begin to Finalize Budget Recommendation for Review by Finance Committee
December 31	Assessors	Mail 3ABC Forms to Charitable Organizations and Forms of List to Personal Property Owners.
December 31	Collector	<p>Deadline for Mailing Actual Tax Bills</p> <p>For communities using the annual preliminary billing system on a quarterly or semi-annual basis, the actual tax bills should be mailed by this date.</p>
Final Day of Each Month	State Treasurer	<p>Notification of monthly local aid distribution.</p> <p>Click www.mass.gov/treasury/cash-management to view distribution breakdown.</p>