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City and Town

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FY04 Wrap Up

by Joan E. Grouke

The financial woes experienced by the state over the past few years have prompted legislative actions designed to provide fiscal relief to cities and towns. Two of these measures, the municipal tax amnesty program and an amendment that removes the local acceptance provision of the law relating to supplemental property tax assessments, were included in the Municipal Relief Act (Chapter 46 of the Acts of 2003), which became effective on July 31, 2003. Another new legislative act allows cities and towns to temporarily increase the tax burden on commercial and industrial properties from 175 percent up to 200 percent (Chapter 3 of the Acts of 2004). This article provides information on which cities and towns chose to adopt (or reject) these new legislative changes before the close of fiscal year 2004.

The Municipal Tax Amnesty Program was originally enacted in March 2003.¹ If adopted by a municipality, there would be a waiver of all or a uniform percentage of interest and charges, but not for the underlying tax or excise itself. Full payment of the unabated bal-

ance must be made by the end of the amnesty period. The Legislature extended the prior deadline of December 31, 2003, to June 30, 2004.

As shown in *Table 1*, 12 communities have reported that they opted to implement a municipal tax amnesty program. Only three communities chose to extend the program beyond the original deadline of December 31, 2003.

With only 12 communities statewide choosing to implement the tax amnesty program, and such a small total of tax collections (less than \$5 million), it appears that most local officials did not view the program as a viable means of recouping revenue. Probably the most significant reason is that cities and towns have always had an almost foolproof method of collecting unpaid real estate taxes (without having to forego penalties and interest charges) through the tax taking and foreclosure processes.

M.G.L. Ch. 59 Sec. 2D permits a community to impose supplementary property tax assessments on improvements made to a parcel after the January 1 assessment date. The assessment is trig-

gered if an occupancy permit is issued and the new construction increases the parcel's value by more than 50 percent. This assessment is in addition to the regular property tax assessment. Previously, M.G.L. Ch. 59 Sec. 2D had to be accepted by a majority vote at a city or town election. However, the Municipal Relief Act requires that M.G.L. Ch. 59 Sec. 2D be in effect in a community automatically unless the selectmen or city council with the concurrence of the mayor reject it. If the supplementary assessment statute is rejected, the Department of Revenue must be notified.

Table 2 lists the communities that have voted to reject the supplemental assessment provision. The intention of supplemental assessments is to provide cities and towns with additional tax revenue from development. However, there are some concerns regarding this provision. For example, the additional tax burden created by the supplemental assessment may negatively impact development. It is possible that some projects could be delayed or scaled back due to this additional tax. Supplemental assessments may also create an additional administrative burden on assess-

[continued on page six](#)

Municipal Tax Amnesty Communities

	Tax collections	Estimated interest and charges waived	Pct. waived	Program ends
Becket	\$ 34,589	\$ 28,895	100	10/31/2003
Chester	39,066	15,832	100	9/30/2003
East Longmeadow	107,645	16,374	50	6/30/2004
Egremont	4,930	2,593	100	10/1/2003
Gloucester	880,074	79,500	50	11/30/2003
Holliston	589	24	100	12/31/2003
Holyoke	2,554	2,392	100	12/30/2003
Lawrence	3,334,448	1,689,351	75	6/30/2004
Lynn	9,502	7,174	100	7/15/2003
New Bedford	157,616	13,682	25	6/30/2003
New Marlborough	16,355	7,619	25	7/31/2003
Pittsfield	353,625	88,268	75	2/28/2004

Table 1

Inside This Issue

From the Acting Deputy Commissioner	2
Legal Questions and Answers	2
Focus	
"Pay As You Throw" Trash Fees	3
Mark Your Calendars	4
DLS Update	
Clause 18A Financial Hardship Deferrals	5
City and Town Clerks: Reminder	5
2004 Corporations Book on Web	5
DLS Profile	7
Strong Summer Tourism Outlook	7



From the Acting Deputy Commissioner

By law, assessors must assess property at full and fair cash value as of January 1 each year. To ensure full and fair cash value assessments, it is critical that assessors collect and maintain accurate property data.

If the assessor is unsure about the quality or uniformity of the existing data, then a data quality analysis should be undertaken. The Bureau of Local Assessment (BLA) has materials explaining the proper methodology, and the city or town's BLA advisor can provide technical assistance in completing this analysis.

As an ongoing practice, the Division recommends that assessors plan a cyclical inspection program through which accurate data can be collected and maintained by a periodic reinspection of all property. In this way, existing data can be updated and verified. A periodic inspection program should provide for a visit to each parcel at least once during a nine-year cycle. It is recommended that the program be ongoing. By that we mean once all the properties have been reinspected, the program should begin again. This approach is not only good for data quality, it also spreads the costs evenly over the years and avoids large spikes in the assessors' budgets.

Unless property data is regularly collected and maintained, a community will most likely face the requirement of an expensive community-wide data recollection effort in order to meet triennial certification requirements.

Gerard D. Perry
Acting Deputy Commissioner

Legal

in Our Opinion

Questions and Answers

by James Crowley

Q: *A town department operates a revolving account under M.G.L. Ch. 44 Sec. 53E½. Can the department charge expenses for non-fee based programs to its departmental revolving account?*

A: No. M.G.L. Ch. 44 Sec. 53E½ authorizes an alternative financing mechanism whereby user fees are charged to participants to allow a program or service provided by a municipal department to be essentially self-supporting. This statute states in pertinent part that a city or town may establish revolving funds for departments "to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund." In our view, this statutory language requires some connection or nexus between the receipts and the expenditures. This interpretation is consistent with the nature of a departmental revolving account, which is to match revenues from fee-based activities with expenses that fluctuate with demand. When authorizing the departmental revolving fund, town meeting should identify the types of fees to be credited to the fund as well as the kinds of expenses that may be charged to the fund. Other ordinary operating expenses must be charged to the department's appropriation as voted by town meeting.

Q: *What are the rules regarding overlay reserve?*

A: M.G.L. Ch. 59 Sec. 23 establishes an overlay account for each fiscal year's levy that serves as a reserve account to cover abatements and exemptions granted by the assessors in conjunction with real estate and personal property taxes for that particular fiscal year. By this statute, the assessors have ex-

clusive control over the overlay accounts. Under M.G.L. Ch. 59 Sec. 25, if the assessors on their own initiative determine that an amount in an overlay account is surplus, the assessors may vote to certify the amount that may be transferred from that specific fiscal year's overlay to overlay surplus. M.G.L. Ch. 59 Sec. 25 also provides that the amount transferred cannot exceed "the amount of the warrant remaining to be collected or abated." Alternatively, in accordance with this statute, the board of assessors upon the request of the chief executive officer must also review within 10 days the municipality's overlay accounts to determine if there is any surplus. Any decision on this matter, however, rests solely with the board of assessors.

Overlay surplus is an available fund which may be appropriated for any lawful purpose as set forth in M.G.L. Ch. 59 Sec. 25. This statute also provides that any unappropriated balance in overlay surplus at the end of the fiscal year is closed out by the accountant or city auditor to General Fund surplus revenue.

Q: *Under the terms of a loan from a state agency, a non-profit corporation received financing for the construction of an apartment building used to provide affordable housing. There are restrictions on the amount that can be charged for rents. Would the building be exempt from local taxes?*

A: No. In *Charlesbank Homes v. City of Boston*, 218 Mass. 14 (1914), the Supreme Judicial Court was asked to determine the tax status of an apartment building owned by a charitable organization and used for housing for working people of small means at moderate cost. The Court held that under the relevant statute, M.G.L. Ch. 59 Sec. 5 Cl. 3, it is not sufficient for purposes of exemption that a charitable organization

[continued on page seven](#)

Focus

on Municipal Finance

“Pay As You Throw” Trash Fees — Can They Work in Your Community?

by Carolyn Dann,
DEP Regional Recycling Coordinator

Background

Many Massachusetts cities and towns are charging fees for municipal services received by taxpayers, such as fees for trash services. Trash fees come as unit fees, flat fees, or a combination. Unit-based fees are also known as bag fees, “Pay Per Bag” or “Pay As You Throw” (PAYT) programs.

As of 2004, 107 Massachusetts municipalities use PAYT programs to finance all or part of their solid waste budget and the number is growing. In the past two years, the Massachusetts Department of Environmental Protection (DEP) has given grants to 17 municipalities to evaluate PAYT.

What is a PAYT program?

In a PAYT Program, residents pay for each unit (bag or barrel) of trash. There is no separate cost for recycling or yard waste collection. This gives residents a financial incentive to reduce waste, recycle and compost. Some curbside collection programs offer “basic service” in which a resident pays only if they

use more than one trash bag or barrel. Residents pay by buying specially designed bags or stickers. For bulky items, some programs set additional fees and others allow residents to dispose of one item per week as part of the fixed costs of the program.

DEP promotes PAYT because it offers three advantages over a tax-funded system:

- **Equity.** Users who generate more trash pay more. Those familiar with PAYT programs view them as a fair way to fund trash disposal. In a Natick referendum six months after the start of

[continued on page four](#)

Municipal Solid Waste “Pay As You Throw” Communities in Massachusetts

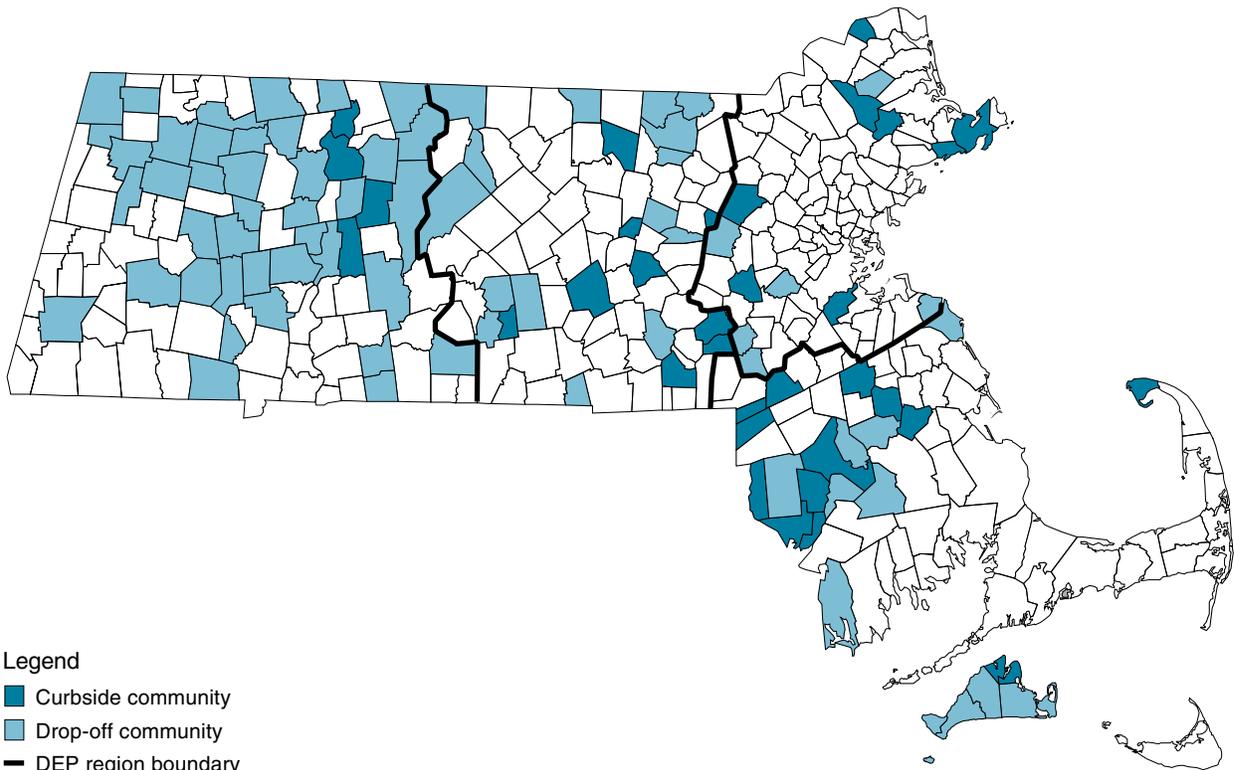


Figure 1

PAYT Trash Fees

continued from page three

their PAYT program, voters supported the PAYT program by a 2:1 margin.¹

• **Environment.** National and local research shows that residents reduce their trash tonnage by 15–50 percent when required to pay by the bag/barrel. Brockton's mayor, John T. Yunits, said PAYT has been successful in their city, reducing trash 24 percent initially and more each year and resulting in cleaner streets.²

• **Economics.** A PAYT system can reduce the demand on property tax revenues. DEP statewide data shows that the average per household trash tonnage is 30 percent lower in PAYT cities and towns.³ In addition, PAYT programs reduce overall solid waste management costs and create a new source of revenue to pay for the service. Natick's sanitation supervisor, George Russell, projected revenue to cover approximately \$1 million of disposal costs and so far they are "on track."⁴

Rate Setting and Estimating Revenue

Rate design is key to accurately predicting and meeting revenue needs. The ideal approach is to match fixed costs with predictable funds (i.e., flat fees or tax funds) and match variable costs with unit fees. Fixed costs are defined as costs that do not change with the tonnage of solid waste handled, at least within a one-year time frame, such as running the transfer station, providing recycling or curbside collection. Variable costs, such as the disposal of trash, change as tonnage changes.

Setting unit fees (the fee per bag or sticker fee) is a critical step since it may not be changed for several years. The unit fee should reflect the disposal cost for 30–35 pounds of trash. If the fee covers fixed costs as well as the disposal costs, there is a risk that residents will recycle more than expected, buy fewer bags or stickers than expected, and produce less revenue than needed to cover fixed costs. When "basic service" (the first unit is included in the fixed costs) is offered, residents buy fewer bags so the cost for disposal plus the fixed costs need to be covered

by tax revenue or a fixed fee in addition to the unit fee.

The total revenue will depend on the amount of municipally generated waste and bulky items. Revenue projections should exclude municipal waste unless the municipal departments are included in the PAYT program. Worcester required its fire and police departments to participate or use a private hauler. Ideally, for bulky items, residents would pay a fee that reflects the town's cost of disposal. If not, fee revenue should exclude the tonnage of bulky items. DEP, local haulers, and other communities can help provide estimates for municipal and bulky waste tonnage.

Costs of PAYT programs

There are some start-up costs associated with PAYT programs. Obvious ones include the cost to purchase, store and distribute the bag or stickers sold. Less obvious costs may include administrative and enforcement time, accounting and marketing. There are state contracts for suppliers of bags and stickers, which eliminate the need for an extensive procurement process. Some suppliers can also arrange for storage and delivery on demand. Even with additional costs, towns and cities with PAYT programs have experienced a positive net benefit due to reduced disposal costs and/or new revenues.

Accounting Options

The Department of Revenue (DOR) has several accounting options for PAYT other than the General Fund, such as Offset Receipts, Revolving Funds, Special Revenue Funds or Enterprise Funds. At DEP workshops in May 2004, Anthony Rassias, Deputy Director of the Bureau of Accounts, described advantages of each option but concluded that Enterprise Funds were best suited to PAYT programs. The advantages of Enterprise Funds (under Chapter 44, section 53E½) are that:

- both direct and indirect costs can be allocated to the program;
- interest stays with the fund;

- surpluses stay with the fund;
- multiple programs can be included (bulky waste as well as solid waste fees); and
- it carries its own fixed assets (trucks, transfer station equipment, etc.).

To create an enterprise fund, a municipality must already be using UMAS accounting.

More Information

DEP's website (www.mass.gov/dep/recycle/cities.htm) offers a listing of Massachusetts PAYT programs and contacts; one-page fact sheets; a full cost accounting guide; and an implementation guide. DEP can provide technical assistance (including a financial planning model, sample publicity materials, timelines and case studies) as well as grants to offset start-up costs. The EPA website (www.epa.gov/payt) has additional publications, research and links. Relevant publications, such as "Enterprise Funds, MGL Chapter 44 section 53F½" and "Costing Municipal Services" are available on the DLS website (www.mass.gov/dls) under "Publications and Forms." ■

1. *MetroWest Daily News*, December 17, 2003.

2. Mayor John T. Yunits, Mayor's Panel, DEP Waste Forum Conference, January 13, 2004.

3. DEP Bureau of Waste Planning Data from 2002 Recycling Data Sheets, provided by John Fisher.

4. George Russell, Presentation at PAYT Workshops, April 2004.

Mark Your Calendars

The Division of Local Services' Property Tax Bureau will offer the seminar "What's New in Municipal Law" on Friday, September 24, 2004, at the Best Western Hotel in West Springfield and Friday, October 1, 2004, at Lantana in Randolph. Presentations will include new legislation and recent court decisions pertaining to local government. The Property Tax Bureau specializes in property taxation and municipal finance. Watch for a registration bulletin in July. ■

DLS Update

Clause 18A Financial Hardship Deferrals

The Division of Local Services has issued Informational Guideline Release (IGR) No. 04-208, *Temporary Financial Hardship Property Tax Deferral*, to explain the provisions of a new property tax deferral, M.G.L. Ch. 59 Sec. 5(18A), that assessors may now grant to taxpayers experiencing temporary financial difficulties. The taxpayer may be of any age and the financial hardship may be due to any number of reasons, including a change to active military status.

Assessors have the discretion to establish specific criteria for determining whether a taxpayer meets the statutory standard of financial hardship in the same manner they establish criteria for granting the Clause 18 hardship exemption to older taxpayers who are sick or disabled and of limited means.

A Clause 18A deferral can be granted for a maximum period of three consecutive years. After the end of that period, the deferred taxes must be paid. The taxpayer may pay the deferred taxes, plus interest, in annual installments over a five-year period. The first payment is due two years after the last year of the deferral. For more information, please refer to IGR No. 04-208, available online at www.mass.gov/dls/PUBL/IGR/2004/igr04_208.pdf.

In conjunction with this IGR, the Division also issued a new series of five state tax forms for assessors, collectors and treasurers to use for Clause 18A financial hardship deferrals. All these forms are included in Bulletin 2004-09B, available online at www.mass.gov/dls/PUBL/BULL/2004/2004_09B.pdf.

City and Town Clerks: Reminder

In order for the Division of Local Services (DLS) to maintain a list of qualified assessors, a summary form must be completed annually by each municipality. Once annual elections are over, city and town clerks should return a copy of the "Assessors Qualification Summary" to Debra Joyce at the following address: Division of Local Services, 40 Southbridge Street, Room 210, Worcester, MA 01608.

This information is required by law and helps DLS choose the proper geographical areas for upcoming assessors' courses. Also, prompt return of this form will give the Division the opportunity to notify any individual who may be nearing the deadline for qualifying. For more information, contact Debra Joyce at (508) 792-7300, extension 22315.

The Division also requests that city and town clerks notify the Municipal Data Management/Technical Assistance Bureau as soon as possible if their community accepts the Community Preservation Act by referendum. The notification form, which is self-explanatory, is attached to our Informational Guideline Release No. 00-209 issued in December 2000. It is available online at www.mass.gov/dls/PUBL/IGR/2000/2000209igr.pdf.

2004 Corporations Book on Web

The listing of *2004 Massachusetts Domestic and Foreign Corporations Subject to an Excise* was recently published on the Division of Local Services' website at <http://dorapps.dor.state.ma.us/corpbook/home/home.asp>. The Division publishes this list solely on the Internet to facilitate keyword and community based searches.

The *2004 Massachusetts Domestic and Foreign Corporations Subject to an Excise* lists all corporations registered to do business in Massachusetts as of January 1, 2004, including corporations that were granted "manufacturing" status or whose manufacturing status was revoked. Insurance companies and financial institutions are also included in this listing, but are listed separately under their own section headings because they are taxed differently from other corporations. The separate listings for financial institutions and insurance companies are based on returns filed by the entities and not a classification by the Department of Revenue.

Every effort is made to include all manufacturing (M) and revocation (R) decisions made by the Massachusetts' Department of Revenue's Manufacturing Unit in this listing. However, some decisions occur after the listing release and are retroactive to January 1 of the current year. It is the policy of DOR to notify assessors of the subsequent decisions by letter. For informational purposes, a separate compilation of subsequent manufacturing and revocation decisions applicable in the current calendar year will be posted (updated) on our website three times during the year — June, September and December. Assessors may check the website for these updates. ■

FY04 Wrap Up

continued from page one

ing departments. Ron Rakow, Commissioner of Assessing for the City of Boston, provided an in-depth discussion of these and other considerations associated with supplemental assessments in the April 2004 issue of *City & Town*.

In January 2004, Chapter 3 of the Acts of 2004 was enacted to enable cities and towns to shift a higher percentage of the property tax burden from the residential class to the commercial and industrial (CIP) property classes. This legislation was prompted by the current economic situation. In recent years, rapidly increasing residential values, combined with flat or declining CIP values, resulted in a substantial potential increase in the residential property tax burden in some communities with classified tax rates.

Under Chapter 3, communities have the option to temporarily increase the shift in the tax burden for commercial properties up to 200 percent for FY2004 and reduce the minimum burden for residential taxpayers to 45 percent. These percentages will be in place for FY2004 and then phased back over the next three fiscal years. Prior to the enactment of this new law, commercial taxpayers could pay no more than 175 percent of the taxes they would pay under a single rate and residential taxpayers could pay no less than 50 percent of what would have been due if a single rate had been used.

Table 3 lists the communities that chose to take advantage of the expanded shift parameters allowable under Chapter 3. It is important to point out that since this legislation was not passed until January 2004, many cities and towns had already set their FY04 tax rate and therefore were not eligible to choose this option. While only 13 communities in FY04 did choose the temporary shift increase, this option remains available for others to implement in FY05 if they qualify. ■

Communities That Rejected M.G.L. Ch. 59, Sec. 2D

Acushnet	Dalton	Hopedale	Northborough	Spencer
Amesbury	Danvers	Hudson	Norton	Sterling
Andover	Deerfield	Hull	Oakham	Stockbridge
Aquinnah	Dennis	Kingston	Orange	Stoneham
Arlington	Douglas	Lakeville	Orleans	Stoughton
Ashfield	Dunstable	Lanesborough	Otis	Tisbury
Athol	Duxbury	Lee	Paxton	Tolland
Auburn	East Bridgewater	Lenox	Peabody	Topsfield
Avon	East Brookfield	Lexington	Pembroke	Townsend
Barre	Eastham	Lincoln	Pepperell	Truro
Becket	Edgartown	Longmeadow	Peru	Tyringham
Belchertown	Erving	Lowell	Pittsfield	Wakefield
Bellingham	Essex	Ludlow	Plainville	Wales
Belmont	Fairhaven	Manchester	Plymouth	Waltham
Berkley	Fitchburg	Marlborough	Plympton	Wareham
Berlin	Florida	Marshfield	Princeton	Warwick
Blandford	Foxborough	Mattapoissett	Raynham	Wellesley
Bourne	Franklin	Maynard	Richmond	Wellfleet
Braintree	Freetown	Medfield	Rockport	West Bridgewater
Brewster	Georgetown	Medway	Rowley	West Newbury
Bridgewater	Gloucester	Mendon	Royalston	West Tisbury
Brookline	Goshen	Methuen	Russell	Westhampton
Buckland	Grafton	Millville	Rutland	Westminster
Burlington	Halifax	Montague	Salisbury	Weston
Cambridge	Hampden	Monterey	Sandisfield	Whately
Canton	Hardwick	Nantucket	Scituate	Whitman
Chatham	Harwich	Needham	Seekonk	Wilbraham
Cheshire	Hatfield	New Ashford	Sharon	Winchendon
Chesterfield	Heath	New Braintree	Sherborn	Winchester
Chicopee	Hingham	New Marlborough	Somerset	Windsor
Chilmark	Hinsdale	Newbury	Somerville	Woburn
Concord	Holbrook	Newburyport	South Hadley	Wrentham
Conway	Holyoke	North Brookfield	Southborough	

Table 2

Communities Choosing the Temporary Tax Shift for FY04

Community	Maximum possible shift for FY04	Selected FY04 shift	Selected FY03 shift
Boston	200	200	175
Dedham	200	200	175
Everett	193	193	175
Fall River	200	200	175
Lexington	194	180	170
Lynn	195	195	175
Malden	200	187	175
Medford	200	200	175
New Bedford	187	184	175
Saugus	192	192	175
Somerville	200	200	175
Waltham	194	194	175
Wilmington	200	200	174

Note: All figures in percentages.

Table 3

1. Chapter 4 Sec. 73 of the Acts of 2003.

DLS Profile: New PTB Attorney

Mary Mitchell began working for the Division of Local Services' Property Tax Bureau (PTB) in December 2003. Since each of her colleagues in the bureau has at least 20 years' experience, she is by far the newest addition.

Although Mary is new to the Property Tax Bureau, she has worked in the field of state tax law since 1991, and has managed cases involving sales, use, income and corporate excise tax. As an attorney for the Boston law firm of Chu, Ring and Hazel, she also handled legal matters for clients in the telecommunications industry. In the Property Tax Bureau, Mary has handled a variety of issues including school budgeting, legislative recommendations and issues relating to charitable exemptions.



Mary Mitchell

Mary attended Wellesley College where she earned a bachelor's degree in Chinese language, and is also a graduate of Boston College Law School. From 2002 through 2003, she was the chairperson of the Boston Bar Association's state tax committee.

Mary said that she finds working with such an experienced staff valuable. She intends to resume her duties in the PTB some time in September, but for now, she is enjoying a brief hiatus from the law, since she just gave birth to her daughter in May. Needless to say, the Division is looking forward to her return. A native of Wayland, Mary lives with her family in Winchester. ■

Strong Summer Tourism Outlook

by **Paul J. Sacco**, Executive Director, Massachusetts Office of Travel & Tourism

On average, twenty-five million visitors spend time in the Commonwealth each year and spend more than \$11 billion dollars at restaurants, hotels, attractions and local businesses.

The faltering economy contributed to a downturn in tourism in recent years. However, the Travel Industry Association of America has forecasted that the economic improvement will help make 2004 one of the strongest years the tourism industry has seen in quite some time. In Massachusetts, the summer months account for 41 percent of all travel.

Promoting Massachusetts

The Massachusetts Office of Travel & Tourism (MOTT) is dedicated to bringing more leisure travelers to the Bay State by creating advertising, promotions and media relations programs that market the state both domestically and internationally.

Each year, MOTT produces the *Massachusetts Getaway Guide*—a comprehensive guidebook to the state. This guidebook features more than 2,000 places to stay and see, and things do right here in the Commonwealth. These guides are available on the MOTT website at www.mass-vacation.com.

Additionally, MOTT runs advertising campaigns in our primary target markets: New York, Connecticut, and Greater New England. Nearly 70 percent of Massachusetts' visitors drive to their destinations, but the rising gas prices are not expected to be a detriment to travel. According to tourism industry research, rising gas prices have historically not deterred travel.

All signs point to a strong year for tourism. As long as the economy continues to grow, we hope to surpass the 27 million visitors who vacationed in Massachusetts last year. ■

Q&A

continued from page two

merely owns a parcel. There is a further requirement that the charitable organization occupy the parcel in furtherance of its charitable purposes. In *Charlesbank*, the Court held that occupancy was in the tenants rather than in the corporation itself. The Court concluded that, while furnishing apartments at below market rents may be praiseworthy, it does not entitle the owner, as a general matter, to receive a charitable exemption on the premises.

For assessment purposes, however, the assessors should take into account any restrictions placed by governmental regulations on the actual income. The Supreme Judicial Court held that federal restrictions on rental income must be taken into consideration when valuing a parcel since the federal restrictions were a condition for financing and the project could not have been built without this federal assistance. *Community Development Company of Gardner v. Assessors of Gardner*, 377 Mass. 351 (1979).

Consequently, under the facts presented, it appears the parcel is taxable but the assessed value must take into consideration the governmental rental restriction. ■

City & Town

City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

Joan E. Grouke, Editor

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