



Alan LeBovidge
Commissioner

Gerard D. Perry
Deputy Commissioner

City and Town

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The Massachusetts Uniform Electronic Transactions Act

by Linda M. Hamel, Esq.

On February 18, 2004, every city and town in Massachusetts became subject to the Massachusetts version of the Uniform Electronic Transactions Act (MUETA), Chapter 133 of the Acts of 2003, codified at M.G.L. Ch. 110G (2004). This article summarizes what municipal officials need to know about MUETA.

1. MUETA Applies to Municipalities.

Prior to the effective date of MUETA, Massachusetts was subject to Title I of the Federal Electronic Signatures in Global and National Commerce Act (E-SIGN), which validated electronic signatures, contracts and other records used in the private sector, and electronic documents, including contracts, related to municipalities' procurement activities. However, E-SIGN did not validate electronic signatures and records used by local governments in their purely governmental, non-market related activities. Many state and local government activities revolve around non-market-related activities, such as issuing building permits, zoning decisions or tax bills. The MUETA, which replaced Title I of E-SIGN, validates electronic signatures, contracts and other records used in municipalities' market and purely governmental transactions. MUETA overrides state or local law enacted prior to its effective date that explicitly or implicitly requires a handwritten signature or use of paper documents in connection with municipal transactions.

2. MUETA Does Not Apply to Some Municipal Activities.

MUETA does not apply to certain electronic signatures, contracts or other

records used by municipalities, including, among others, those governed by the Massachusetts Uniform Commercial Code, Chapter 106, other than sections 1-107 and 1-206, section 2 and section 2A of Chapter 106; any notice of the cancellation or termination of utility services, including water, heat and power; or of the default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; the cancellation or termination of health insurance or benefits or life insurance benefits, excluding annuities; or any document required by any statute, regulation or rule of law, to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials. Thus, for instance, MUETA would not validate a municipal housing authority's use of an e-mailed electronic notice of eviction to notify a municipal housing project resident of an upcoming eviction. Before relying on MUETA to validate a new electronic system or record, municipal officials must determine whether MUETA applies to the electronic signatures, contracts or other records at issue.

3. MUETA Makes Electronic Signatures, Contracts and Other Records Equal to Their Paper Counterparts, and Preserves Substantive Law.

Although MUETA puts electronic signatures, contracts and other records used by municipalities on the same legal footing as traditional paper documents, MUETA also preserves all other substantive law related to signatures, con-

tracts and other records. For example, although MUETA would validate the use of an electronic, online application for a building permit, it would not change state or local law mandating that the applicant provide particular information in the permit application.

4. MUETA Allows Municipalities to Satisfy Retention Rules by Using Electronic Records.

Under MUETA, if state or local law requires that a municipality retain a record, the municipality can retain that record in electronic form as long as the electronic record (1) accurately reflects the information set forth in the record after which it was first generated in its final form as an electronic record or otherwise and (2) remains accessible for later reference. Legal requirements for check retention can be satisfied by retention of an electronic record of the information on the front and back of the check.

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From the Deputy Commissioner

The Division of Local Services has recently completed a videotaped version of Course 101, the basic course for

assessors, which is now available in DVD format.

Attendance at Course 101 and successful completion of the examination satisfies minimum qualification requirements for assessors that were established by 830 Code of Massachusetts Regulation (CMR) 58.3.1. Assessors, and assistant assessors with valuation responsibilities, must fulfill minimum qualifications within two years of the date of their original election or appointment.

While Course 101 is generally accessible at various locations statewide, some limitations have been observed in offering the course in the traditional classroom setting. For example, there are no review sessions of Course 101 available for those who do not pass the examination. Although not intended to replace the traditional Course 101 classes, providing Course 101 in an electronic (DVD) format will help address these limitations. It can also be used as a training tool for municipal employees.

For more information on the Course 101 DVDs and how to borrow copies, refer to Bulletin 2005-02B, available online at www.mass.gov/dls/publ/bull/2005/2005_02B.pdf. You may also contact Joan Grouke at 617-626-2353.

Gerard D. Perry
Deputy Commissioner

Legal

in Our Opinion

Telecommunications Tax Decision

by James Crowley

In early January the Supreme Judicial Court issued the long awaited decision of *RCN-BecoCom, LLC v. Commissioner of Revenue*, 443 Mass. 198 (2005). The case stemmed from an appeal of an Appellate Tax Board (ATB) decision concerning the local assessment of telecommunications property. The ATB had ruled that RCN-BecoCom, LLC (RCN) qualified as a telephone company under state statute and its telephone personal property, therefore, should be centrally valued by the Commissioner of Revenue. The ATB, however, also determined that all of RCN's personal property was taxable locally since RCN as a limited liability company did not enjoy any corporate exemption. Unanimously, the Supreme Judicial Court upheld the ATB decision.

RCN is a Massachusetts limited liability company that is a multi-service provider offering telephone, cable television and Internet services in the Commonwealth. For fiscal year 2000 RCN requested the Commissioner of Revenue to value its personal property since M.G.L. Ch. 59 Sec. 39 requires the central valuation of "machinery, poles, wires and underground conduits, wires and pipes of all telephone and telegraph companies" by the Commissioner.¹ Under this statute, the Commissioner certifies his valuation results to local assessors where the personal property is located and the assessors must use these central valuations in calculating the local tax obligation. The rationale for central valuation, which was approved by the Legislature in 1915, was to assure consistency in valuation throughout the Commonwealth.

When the Commissioner declined to act on the ground that RCN did not qualify as a telephone or telegraph company,

RCN appealed to the ATB. The City of Newton then entered the fray since the valuation of RCN's taxable personal property in Newton was the subject of another appeal. The principal issue for the Supreme Judicial Court to decide was whether the ATB had properly classified RCN as a telephone company. The court observed that nowhere in M.G.L. Ch. 59 Sec. 39 did the Legislature define "telephone company." The Revenue Department argued that the term "telephone company" must be defined as of the date the statute was enacted, i.e., in 1915. In the early twentieth century, a telephone company referred to an entity *exclusively* involved in telephone type service. While DOR advocated for an "exclusivity" test to define a telephone company, the Newton assessors also proposed a "predominant nature of the business" test to determine eligibility. The Supreme Judicial Court rejected both tests. Instead, the court relied on the "substantiality" test that the ATB had employed. The ATB used a five factor substantiality analysis, which the court itself had originally used in *Fernandes Super Markets, Inc. v. State Tax Commission*, 371 Mass. 318 (1976) to determine the manufacturing classification of corporations.

The ATB listed these five factors as: financial receipts from telephone services, proportion of telephone receipts to total income, percentage of entire capital invested in telephone services, number of telephone service employees compared to total work force, and the ratio of telephone services to entire business activities. In reviewing the ATB's analysis, the court found that "extensive, careful and measured" findings supported the ATB's conclusion of a substantial telephone business. In the court's view, telephone companies had evolved over the decades to include more than just telephone service. The

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Focus

on Municipal Finance

Circuit Breaker Update

by Joan E. Gourke

This article provides an overview of the senior circuit breaker, which has been available in Massachusetts since 2001. It also discusses circuit breaker data derived from tax years 2001 through 2003. Data for tax year 2004 is not yet available, since the income tax filing season has not yet ended. Analysis of this data shows that although the number of communities in which filers claimed the circuit breaker credit rose only slightly from 2001 to 2003, there was a healthy increase in the number of senior citizens that claimed this credit, especially in the larger cities. Coupled with the fact that the amount of the maximum credit available more than doubled from tax years 2001 through 2003, this steady increase in the number of claimants resulted in the near tripling of the total value of circuit breaker credits claimed over this time span.

The "circuit breaker" is a tax credit program to assist low- and moderate-income elderly persons in paying property taxes and utility charges relating to their domiciles. Under this program (M.G.L. Ch. 127 Secs. 80 and 81 of the Acts of 1999), eligible homeowners and renters can receive a refundable credit on their state income taxes.

For the tax year beginning January 1, 2004, the maximum credit allowed is

\$820. If the credit due the taxpayer exceeds the amount of the total income tax payable for the year, the excess amount will be refunded to the taxpayer without interest.

To qualify for a credit, a person must be at least 65 years of age, occupy the subject property as his or her principal residence, and have had an income below a prescribed ceiling amount for the relevant calendar year. The taxpayer's total income cannot exceed \$44,000 for a single filer who is not the head of household, \$55,000 for a head of household, or \$66,000 for taxpayers filing jointly. Moreover, the assessed valuation of the real estate cannot exceed \$441,000.

The amount of the credit to which a qualifying person is entitled is the amount by which the taxpayer's property taxes, together with the eligible amount of that taxpayer's water and sewer charges, exceed 10 percent of the taxpayer's income. Taxpayers residing in communities that do not include water and sewer debt service in their property tax assessments may claim, in addition to their property tax payments, 50 percent of the water and sewer charges actually paid during the tax year when figuring their credit.

A senior who rents his or her domicile may also qualify for an income tax credit under circuit breaker tax credit program. The law presumes that 25 percent of a person's rent is for property

taxes and water and sewer bills. Accordingly, renters may claim the credit in the amount by which 25 percent of their annual rental payment is more than 10 percent of their total income. A renter whose rent is subsidized by the state or federal government through a rental assistance program, however, is not entitled to a tax credit under the program.

Tax credits received by qualifying seniors are not considered income for the purpose of obtaining eligibility or benefits under other means-tested assistance programs, including food, medical, housing energy and educational assistance programs.

Example for a Homeowner for Tax Year 2004 (in dollars)

Assessed value of home as of January 1, 2004	\$395,000
Single taxpayer's total income less certain deductions and exemptions	40,000
Real estate tax paid plus 50% of water and sewage charges	4,900
10% of total income	4,000
Real estate tax paid	4,900
Portion of real estate tax that exceeds 10% total income	900
2004 refundable credit limitation	820
Tax due	0
Total credit	820

Example 1

In order to safeguard the benefits of the tax credit program from the effects of inflation, the legislation contains language that automatically increases both the benefit amount and the eligibility limits in future years. The income, valuation and credit limits, set out in the statute, adjust automatically in synchrony with the consumer price index.

Table 1 shows the income threshold amounts for renters and homeowners, the assessed valuation threshold amount for homeowners, as well as the

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Circuit Breaker Credit Basics

— Income threshold amounts —

Tax year	Single indiv. not head of household	Head of household	Married filing joint return	Assessed valuation threshold amounts for homeowners	Maximum credit amount
2001	\$41,000	\$51,000	\$61,000	\$412,000	\$385
2002	42,000	53,000	63,000	425,000	790
2003	43,000	54,000	64,000	432,000	810
2004	44,000	55,000	66,000	441,000	820

Table 1

Senior Circuit Breaker Credits Claimed by Community for Tax Years 2001 and 2002

Municipality	No. of filers claiming credit		Value of credits claimed		Average credit per claimant		Municipality	No. of filers claiming credit		Value of credits claimed		Average credit per claimant			
	2001	2002	2001	2002	2001	2002		2001	2002	2001	2002	2001	2002		
Unknown	14	20	\$5,123	\$366	\$366	\$600	Chicopee	234	234	\$112,933	\$483	n/a	n/a		
Abington	108	122	71,891	589	n/a	n/a	Chilmark	n/a	42	21,813	519	n/a	n/a		
Acton	142	188	50,785	358	127,537	678	Clinton	32	29	20,455	327	48,806	687		
Acustnet	38	42	11,589	305	20,124	479	Cohasset	79	71	48,806	687	n/a	n/a		
Adams	12	18	4,008	334	9,127	507	Colrain	9	3,069	341	7,766	555	n/a	n/a	
Agawam	93	94	30,182	325	47,800	509	Concord	89	31,033	349	74,767	650	74,185	355	
Amesbury	110	139	37,595	342	92,082	663	Conway	6	1,922	320	3,716	531	n/a	n/a	
Amherst	92	32	32,534	355	68,050	642	Cummington	5	1,730	346	1,714	571	35,540	326	
Andover	186	240	64,860	349	155,821	649	Dalton	34	10,246	301	34	15,484	453	61	18,902
Arlington	557	667	192,450	346	432,276	648	Danvers	196	67,358	344	182,425	583	6	1,518	
Ashburnham	23	16	6,148	287	8,722	545	Dartmouth	74	21,763	294	56,632	539	96	34,980	
Ashby	4	1	1,253	313	3,538	590	Dedham	221	71,924	325	162,181	605	84	27,143	
Ashfield	9	14	3,004	334	8,620	616	Deerfield	34	10,348	304	16,137	436	30	10,746	
Ashland	111	137	36,866	332	82,366	601	Dennis	42	12,704	302	41	18,207	444	78	27,406
Athol	12	18	3,822	319	8,729	485	Dighton	24	7,985	333	20	10,186	509	7	2,695
Attleboro	72	99	21,973	305	48,923	494	Douglas	10	3,609	361	13	7,789	599	58	17,570
Auburn	32	28	10,479	327	12,890	460	Dover	9	3,102	345	11	8,032	730	80	26,642
Avon	15	27	5,050	337	14,227	927	Dracut	98	30,032	306	145	73,847	509	8	26,642
Ayer	6	15	2,002	334	8,414	561	Dudley	13	3,732	287	10	3,493	349	89	29,542
Barnstable	198	250	62,810	317	138,333	553	Dunstable	7	2,575	368	13	7,982	614	60	20,721
Barre	10	9	3,850	385	4,868	541	Duxbury	83	28,532	344	104	63,741	613	28	9,263
Becket	*	n/a	n/a	n/a	n/a	n/a	E. Bridgewater	45	15,451	343	42	22,767	542	16	5,393
Bedford	136	136	46,275	340	83,763	616	E. Brookfield	4	2,009	502	6	2,009	502	10	2,925
Belchertown	53	42	22,004	330	22,004	524	E. Longmeadow	142	49,465	348	155	92,209	595	42	12,266
Bellingham	56	56	17,852	319	28,563	510	Eastham	19	6,156	324	21	9,698	462	22	6,613
Bellows Falls	194	175	69,118	356	119,971	686	Easthampton	45	12,883	286	44	17,152	390	13	3,423
Berkley	11	6	4,326	308	4,326	721	Easton	86	27,735	323	92	58,230	633	25	8,454
Berlin	13	15	4,067	313	9,029	602	Edgartown	7	2,372	339	4	2,686	672	75	21,733
Bernardston	15	22	3,962	284	11,469	522	Egremont	*	*	*	7	3,351	479	4	1,206
Beverly	241	336	79,995	332	207,832	619	Erving	*	*	*	*	*	263	94,440	
Billerica	141	146	46,765	332	83,363	571	Essex	15	5,136	342	22	12,844	584	16	5,598
Blackstone	23	34	7,234	315	18,690	550	Everett	93	28,059	302	93	43,051	463	16	5,598
Blandford	*	4	2,419	305	2,419	605	Fairhaven	51	16,205	318	66	29,494	447	27	9,549
Bolton	21	21	7,210	343	15,205	691	Fall River	65	18,551	285	82	39,164	478	126	43,845
Boston	620	738	197,106	318	394,060	534	Falmouth	110	34,173	311	101	57,518	569	146	44,480
Bourne	66	22,222	337	337	43,036	519	Fitchburg	72	22,222	309	117	55,049	471	100	30,368
Boxborough	14	4,883	349	660	17,148	660	Foxborough	84	27,755	330	100	55,775	558	44	13,470
Boxford	26	26	8,715	335	17,516	674	Framingham	422	143,428	340	616	374,784	608	219	69,629
Boylston	22	22	7,227	329	13,253	602	Franklin	82	26,583	324	106	64,119	605	107	38,067
Braintree	237	290	76,666	323	162,148	559	Freetown	22	7,151	325	23	11,390	495	276	93,140
Brewster	62	58	21,667	349	32,707	564	Gardner	34	10,753	316	42	19,232	458	32	8,516
Bridgewater	75	66	25,310	337	38,246	579	Georgetown	22	7,712	351	26	13,407	516	48	16,638
Brimfield	7	6	2,299	328	3,092	515	Gill	5	1,656	331	6	2,075	346	38	46,430
Brockton	213	273	65,666	308	150,396	551	Gloster	142	49,323	347	162	100,790	622	138	43,430
Brookfield	6	13	1,890	315	7,087	545	Gosnold	*	*	*	n/a	n/a	117	40,131	
Brookline	157	202	55,029	351	130,070	644	Grafton	51	16,445	322	50	28,105	562	209	71,657
Buckland	*	3	1,789	356	1,789	596	Granby	27	9,013	334	28	14,797	528	48	14,930
Burlington	100	116	31,550	316	58,534	505	Granville	4	2,138	535	4	2,138	535	28	9,549
Cambridge	114	119	37,718	331	70,805	595	Grt. Barrington	52	17,857	343	68	35,824	527	147	51,562
Canton	127	131	42,821	335	75,397	576	Greenfield	120	40,483	337	164	89,040	543	104	38,021
Carlisle	34	28	10,878	320	20,340	726	Groton	35	12,072	345	26	18,076	695	540	184,248
Carver	25	49	8,138	326	29,266	597	Groveland	17	4,545	267	20	12,093	605	65	21,292
Charentmont	7	4	2,551	364	3,121	780	Hadley	22	7,696	350	34	16,268	478	266	89,190
Charlton	16	9	5,275	330	5,357	595	Halifax	33	10,727	325	35	20,328	580	10	3,028
Chatham	22	37	7,011	319	20,071	542	Hamilton	58	20,646	356	82	57,620	703	20	7,054
Chelmsford	297	456	104,293	351	287,058	630	Hampden	36	10,827	301	45	25,208	560	108	32,837
Chelsea	31	46	10,543	340	24,460	532	Hanover	136	48,461	356	144	93,891	652	59	18,709
Cheshire	4	5	1,436	359	2,599	520	Hanson	58	19,166	330	61	36,370	596	59	18,709
Chester	*	4	1,063	266	1,063	266	Hardwick	7	2,605	372	5	3,515	703	36	11,297
Chesterfield	5	7	1,783	357	4,044	578	Harvard	16	5,773	361	27	15,516	575	121	39,961
Chilmark	n/a	n/a	n/a	n/a	n/a	n/a	Hudson	58	17,570	303	74	41,055	555	29	15,117
Clinton	32	29	20,455	327	48,806	687	Hull	80	26,642	333	109	70,107	643	36	23,485
Cohasset	79	71	48,806	687	n/a	n/a	Huntington	8	2,925	293	6	2,329	388	3	1,953
Colrain	9	3,069	341	7,766	555	n/a	Ipswich	89	29,542	332	113	69,155	612	113	69,155
Concord	89	31,033	349	74,767	650	n/a	Kingston	60	20,721	340	60	37,676	628	29	15,117
Conway	6	1,922	320	3,716	531	n/a	Lakeville	28	9,263	331	29	15,117	521	36	23,485
Cummington	5	1,730	346	1,714	571	n/a	Lancaster	16	5,393	337	17	8,400	494	29	19,343
Dalton	34	10,246	301	34	15,484	453	Lenox	25	8,454	338	29	19,343	667	36	23,485
Danvers	196	67,358	344	182,425	583	n/a	Leominster	75	21,733	290	92	47,626	518	92	47,626
Dartmouth	74	21,763	294	56,632	539	n/a	Leverett	4	1,206	302	6	4,363	727	6	4,363
Dedham	221	71,924	325	162,181	605	n/a	Lewiston	263	94,440	359	310	211,739	683	310	211,739
Deerfield	34	10,348	304	16,137	436	n/a	Leyden	16	5,598	350	16	9,764	610	4	2,361
Dennis	42	12,704	302	41	18,207	444	Lincoln	16	5,598	350	16	9,764	610	16	9,764
Dighton	24	7,985	333	20	10,186	509	Littleton	27	9,549	354	32	21,514	672	32	21,514
Douglas	10	3,609	361	13	7,789	599	Longmeadow	126	43,845	348	145	92,664	639	145	92,664
Dover	9	3,102	345	11	8,032	730	Lowell	146	44,480	305	257	122,597	477	257	122,597
Dracut	98	30,032	306	145	73,847	509	Ludlow	100	30,368	304	118	63,797	541	118	63,797
Dudley	13	3,732													

Senior Circuit Breaker Credits Claimed by Community for Tax Year 2003

Municipality	Number of filers claiming credit	Value of credits claimed \$	Avg. credit per claimant	Municipality	Number of filers claiming credit	Value of credits claimed \$	Avg. credit per claimant	Municipality	Number of filers claiming credit	Value of credits claimed \$	Avg. credit per claimant
Unknown	15	9,208	\$614	Chicopee	248	\$120,502	\$486	Hatfield	20	12,340	\$617
Abiton	177	120,095	679	Clarksburg	*	*	*	Haverhill	283	160,140	566
Acton	229	160,999	703	Clinton	69	37,034	537	Heath	3	2,430	810
Acushnet	54	26,774	496	Cohasset	77	54,991	714	Hingham	219	151,493	692
Adams	24	11,718	488	Collrain	14	8,442	603	Hinsdale	3	1,166	389
Agawam	124	65,927	532	Concord	145	99,742	688	Holbrook	165	105,078	637
Amesbury	187	125,026	669	Conway	8	4,911	614	Holden	107	62,892	588
Amherst	116	77,398	667	Cummington	3	1,940	647	Holland	19	9,655	508
Andover	265	186,631	704	Dallin	36	18,679	519	Holliston	148	102,659	694
Arlington	754	502,983	667	Danvers	389	238,199	612	Holyoke	103	57,934	562
Ashburnham	19	9,453	498	Dartmouth	122	71,089	583	Hopedale	50	31,141	623
Ashby	13	7,187	553	Deedham	287	178,682	623	Hopkinton	97	65,034	670
Ashfield	16	9,239	577	Deerfield	31	15,204	490	Hubbardston	*	*	*
Ashland	174	110,913	637	Dennis	38	18,600	489	Hudson	82	44,915	548
Athol	19	7,692	405	Dighton	33	18,528	561	Hull	129	83,703	649
Attleboro	142	77,733	547	Douglas	19	11,650	613	Huntington	5	2,777	555
Auburn	57	26,669	468	Dover	9	6,447	716	Ipswich	134	83,860	626
Avon	31	15,934	514	Dracut	221	123,740	560	Kingston	79	51,170	648
Ayer	21	12,559	598	Dudley	11	4,373	398	Lakeville	23	11,899	517
Barnstable	272	156,787	576	Dunstable	21	13,532	644	Lancaster	31	16,661	537
Barre	10	6,125	613	Duxbury	132	88,247	669	Lanesborough	9	4,140	460
Becket	*	*	*	East Bridgewater	75	44,249	590	Lawrence	107	53,337	498
Bedford	195	129,561	664	East Brookfield	4	3,102	776	Lee	43	22,642	527
Belchertown	42	22,762	542	East Longmeadow	181	111,395	615	Leicester	24	12,439	518
Bellingham	71	38,350	540	Eastham	24	12,049	502	Lenox	39	24,952	640
Belmont	186	129,328	695	Easthampton	65	27,495	423	Leominster	138	73,923	536
Berkley	5	2,626	525	Easton	157	91,646	584	Leverett	7	4,927	704
Berlin	19	10,359	545	Edgartown	*	*	*	Lexington	349	245,045	702
Bernardston	17	8,748	515	Egmont	5	1,422	284	Leyden	5	4,050	810
Beverly	398	255,552	642	Erving	*	*	*	Lincoln	12	8,555	713
Billerica	220	130,960	595	Essex	30	18,010	600	Littleton	42	25,728	613
Blackstone	34	15,994	470	Everett	140	76,422	546	Longmeadow	191	126,781	664
Blandford	10	6,316	632	Fairhaven	80	41,315	516	Lowell	335	171,915	513
Bolton	26	17,943	690	Fall River	89	42,383	476	Ludlow	123	63,973	520
Boston	1,003	571,795	570	Falmouth	145	82,307	568	Lunenburg	67	40,618	606
Bourne	82	47,138	575	Fitchburg	148	77,933	527	Lynn	496	282,434	569
Boxborough	25	15,334	613	Foxborough	118	65,964	559	Lynnfield	171	122,629	717
Boxford	32	23,823	744	Frammingham	173	511,091	661	Malden	347	217,442	627
Boylston	36	22,684	630	Franklin	142	86,159	607	Manchester	41	27,251	665
Braintree	378	225,190	596	Freetown	27	13,365	495	Mansfield	103	61,527	597
Brewster	67	37,421	559	Gardner	44	23,815	541	Marblehead	180	110,140	612
Bridgewater	131	78,113	596	Georgetown	43	22,793	530	Marion	37	20,701	559
Brimfield	8	3,223	403	Gill	5	1,407	281	Marlborough	212	129,273	610
Brockton	406	294,191	577	Gloucester	203	124,761	615	Marshfield	240	152,434	635
Brookfield	16	9,873	617	Grafton	64	35,005	547	Mashpee	86	49,513	576
Brookline	223	152,557	684	Granby	29	17,974	620	Mattapoisett	72	44,676	621
Buckland	4	2,576	644	Granville	6	3,745	624	Maynard	180	121,117	673
Burlington	182	102,365	562	Great Barrington	82	46,785	571	Medfield	128	89,409	689
Cambridge	132	84,582	641	Greenfield	206	119,443	580	Medford	657	417,395	635
Canton	160	99,662	623	Groton	59	37,821	641	Medway	106	67,014	632
Carlisle	28	21,928	783	Groveland	35	20,122	575	Melrose	411	271,238	660
Carver	48	33,398	696	Hadley	44	20,657	469	Mendon	25	14,085	563
Charlmont	7	5,670	810	Halifax	48	26,409	550	Merrimac	35	19,300	551
Charlton	11	6,693	608	Hamilton	101	70,633	699	Methuen	222	122,692	553
Chatham	20	10,922	546	Hampden	53	30,000	566	Middleborough	74	43,198	584
Chelmsford	584	389,575	667	Hanover	166	112,152	676	Middlefield	3	2,044	681
Chelsea	60	32,015	534	Hanson	77	47,095	612	Middletown	51	35,011	686
Cheshire	3	1,626	542	Hardwick	6	3,320	553	Milford	195	112,553	577
Chester	5	3,375	675	Harvard	25	14,727	589	Millbury	90	49,955	555
Chesterfield	5	2,763	553	Harwich	81	40,551	501	Millis	92	52,995	576

Municipality	Number of filers claiming credit	Value of credits claimed	Avg. credit per claimant	Municipality	Number of filers claiming credit	Value of credits claimed	Avg. credit per claimant	Municipality	Number of filers claiming credit	Value of credits claimed	Avg. credit per claimant
Millville	13	\$ 7,056	\$543	Rochester	18	\$ 9,905	\$550	Warwick	*	*	*
Milton	311	206,468	664	Rockland	169	107,678	637	Washington	*	*	*
Monson	37	16,295	440	Rockport	84	52,900	630	Watertown	328	\$208,141	\$635
Montague	96	62,822	654	Rowe	*	*	*	Wayland	161	113,558	705
Monterey	1,740	435	435	Rowley	39	24,019	616	Webster	27	27,639	628
Montgomery	4	1,369	342	Royalston	3	1,922	641	Wellesley	86	63,169	735
Mount Washington	*	*	*	Russell	3	1,852	617	Wenham	16	7,565	473
Nahant	45	26,673	593	Rutland	14	6,214	444	West Brookfield	*	*	*
Nantucket	8	5,043	630	Salem	399	255,508	640	West Newbury	37	23,643	639
Natick	387	254,229	657	Salisbury	49	30,339	619	West Springfield	65	37,666	579
Needham	275	193,415	703	Sandwich	3	1,060	353	West Stockbridge	5	2,082	416
New Bedford	343	186,936	545	Sandwich	173	105,781	611	West Tisbury	5	2,691	538
New Braintree	7	4,014	573	Shelburne	243	136,708	563	Westborough	160	106,063	663
New Marlborough	3	1,602	534	Shelburne	26	15,091	580	Westford	144	73,692	512
New Salem	*	*	*	Shirley	28	20,807	743	Westhampton	213	139,333	654
Newbury	55	34,767	632	Shirley	17	9,429	555	Westminster	14	6,753	482
Newburyport	246	160,776	654	Shrewsbury	184	102,226	556	Weston	18	10,465	581
Newton	598	420,577	703	Shutesbury	5	2,988	598	Westport	21	15,469	737
Norfolk	54	35,182	652	Somersat	71	31,655	446	Westwood	31	14,307	462
North Adams	3	899	300	Somerville	306	195,216	638	Weymouth	202	140,990	698
North Andover	252	168,857	670	South Hadley	175	97,406	557	Whately	514	296,827	577
North Attleborough	65	37,190	572	Southampton	17	10,349	609	Whitman	9	4,882	542
North Brookfield	12	7,367	614	Southborough	100	64,044	640	Williamstown	35	20,562	587
North Reading	135	86,884	644	Southbridge	22	11,644	529	Wilmington	179	105,101	587
Northampton	213	123,072	587	Southwick	26	13,886	534	Winchendon	16	7,351	459
Northborough	138	91,621	664	Spencer	10	4,990	499	Winchester	202	146,528	725
Northbridge	29	13,517	466	Springfield	525	283,697	540	Wintrop	139	91,088	655
Northfield	10	6,616	662	Sterling	35	19,613	560	Woburn	254	140,708	554
Norton	67	43,666	652	Stockbridge	5	3,499	700	Worcester	588	329,313	560
Norwell	122	81,089	665	Stoneham	429	273,595	638	Worthington	10	7,397	740
Norwood	324	190,917	589	Stoughton	221	131,096	593	Wrentham	64	37,844	591
Oak Bluffs	14	9,336	667	Stow	94	66,499	707	Yarmouth	201	119,610	595
Oakham	4	2,890	723	Sturbridge	36	24,448	679	Out-of-state	135	79,805	591
Orange	22	13,729	624	Sudbury	171	126,889	742	All	38,847	\$23,853,312	\$614
Orleans	19	10,326	543	Sunderland	17	10,405	612	Source: Massachusetts Department of Revenue			
Otis	3	1,661	554	Sutton	27	15,675	581	*Totals for towns with less than three claimants have been left blank to maintain filers' privacy.			
Oxford	42	19,505	464	Swampscott	184	124,609	677				
Palmer	80	45,348	567	Swansea	57	30,604	537				
Paxton	15	7,661	511	Taunton	86	45,544	530				
Peabody	457	259,794	568	Templeton	11	6,319	574				
Pelham	13	9,199	708	Tewksbury	209	118,589	567				
Pembroke	112	64,536	576	Tisbury	14	7,797	557				
Pepperell	44	24,233	551	Tolland	*	*	*				
Peru	*	*	*	Topsfield	86	64,926	755				
Petersham	10	6,574	657	Townsend	33	19,662	596				
Phillipston	*	*	*	Truro	15	7,894	526				
Pittsfield	158	86,216	546	Tyngsborough	77	47,023	611				
Plainfield	*	*	*	Upton	29	19,571	675				
Plainville	61	37,468	614	Uxbridge	65	37,688	580				
Plainville	339	203,478	600	Wakefield	359	224,037	624				
Plymouth	26	18,084	696	Wales	*	*	*				
Plympton	14	10,318	737	Walpole	368	231,849	630				
Provincetown	25	15,010	600	Wareham	345	196,995	571				
Quincy	936	594,573	635	Ware	32	14,693	459				
Randolph	233	128,407	551	Wareham	89	52,726	592				
Ravenna	82	49,566	604	Warren	18	10,118	562				
Reading	422	286,892	680								
Rehoboth	32	15,902	497								
Revere	341	207,143	607								
Richmond	3	1,186	395								

Table 3

Circuit Breaker Update

continued from page three

maximum credit allowed for tax years 2001 to 2004.

Tables 2 and 3 show the number of filers claiming credit, the total value of credits claimed, and the average credit per claimant by community. *Table 2* relates to tax years 2001 and 2002, and *Table 3* relates to tax year 2003.

In 2001, the first year the senior circuit breaker tax credit was available, there were 334 communities with taxpayers claiming circuit breaker credits. While the circuit breaker legislation established the maximum credit amount for 2001 at \$385, it also provided that for subsequent tax years, the maximum credit amount will be an amount equal to \$750 multiplied by the cost-of-living adjustment. In 2001, the total value of credits claimed was \$8,519,448.

In 2002, the number of communities with senior circuit breaker credit claimants increased slightly to 335. However, the total value of credits claimed more than doubled from the total in 2001 to \$18,477,910.

Record Homes Sales and Prices Reported

According to figures released by the Massachusetts Association of Realtors (MAR) in November 2004, sales of detached, single-family homes and condominiums rose to their highest level in state history from July through September 2004. MAR attributed this strong housing market to "low mortgage rates, an improving labor market and rising inventory levels." MAR also reported that "[t]he unprecedented demand led to a 45th consecutive quarter of home price gains, and has the residential real estate market on a pace that would make 2004 the best year ever for home sales in the Bay State."

Although the number of communities with circuit breaker claimants remained relatively stable from 2001 to 2002, it appears that the number of filers claiming credit was on the rise, going from 25,643 to 31,356. Most of the larger cities experienced increases in claimants. For example, the number of claimants in Boston increased from 620 in 2001 to 738 in 2002. In Quincy, the number increased from 562 to 817. The number of filers in Worcester increased from 362 to 428, but the number in Springfield decreased from 400 to 387. In Fall River, the number of claimants increased from 65 to 82.

In addition to the increase in the number of filers, another reason for the sharp increase in the total value of credits claimed from 2001 to 2002 was the fact that the maximum credit amount more than doubled from \$385 in 2001 to \$790 in 2002. As a result, the average credit per claimant rose 77 percent, from \$332 in 2001 to \$589 in 2002.

MAR also reported that across the state, detached single-family home sales "rose in all regions except Cape Cod and the Greater Fall River–New Bedford area, with greater Boston, Worcester County, and the South Shore each reporting year-to-year sales increases greater than the statewide rate of growth for the quarter." In the condominium market, "double-digit sales gains over 2004 third quarter activity occurred in all regional markets except southeastern and western Massachusetts, where sales declined modestly from year ago levels."

Data from MAR's report also found that housing prices continued to rise steadily across the state this past summer to

In 2003, 338 communities had circuit breaker claimants, and there were 38,847 filers claiming circuit breaker tax credits. This figure represents a 51 percent increase over the number of filers claiming credit in 2001 and a 24 percent increase over the number of claimants in 2002. The total value of credits claimed in 2003 (\$23,853,312) was almost triple the amount claimed in 2001. From 2002 to 2003, this amount increased by almost 30 percent.

The maximum credit increased to \$810 in 2003, which represents a 110 percent increase over 2001, but only a 2.5 percent increase over 2002. Compared to 2001, the average claim in 2003 (\$614) increased by 85 percent. From 2002 to 2003, the average claim increased by 4.2 percent. The number of claimants for Boston, Quincy, Springfield, Worcester and Fall River increased for all of these cities from 2002 to 2003. ■

new record highs. In the detached single-family home market, the statewide median selling price increased 11.1 percent, from \$315,000 in the third quarter last year to \$350,000 in the comparable quarter of 2004. In addition, the statewide median selling price for condominiums climbed 15 percent in the past year, from \$233,000 in the three-month period from July–September 2003 to \$268,000 in the same quarter this year.

Sales and price data from the MAR report reflects transactions occurring through Realtor®-affiliated multiple listing services in the Commonwealth, and account for approximately 80 percent of all real estate sales in Massachusetts. ■

MUETA

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5. MUETA Does Not Require Municipalities to Buy Any Particular Hardware or Software.

MUETA is technologically neutral; it does not require that municipalities purchase any particular software or hardware in order to create legally valid electronic signatures, contracts and other records.

6. MUETA Sets Standards for Electronic Signatures.

MUETA defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." It requires that, in order to be valid, electronic signatures created by municipalities identify, or "authenticate," the person creating the signature; that the authenticated individual have intent to sign; and that the electronic

signature be attached to or logically associated with the electronic record being signed.

7. State Agencies Can Set Standards for Electronic Municipal Signatures, Contracts and Other Records.

Under MUETA, the Commonwealth's Supervisor of Public Records and the Records Conservation Board can set standards with respect to municipalities' creation, maintenance and preservation of electronic records, signatures and contracts and the method of converting paper government records to electronic format. The Supervisor of Public Records and the Records Retention Board had already adopted some standards for electronic records prior to the enactment of MUETA, and are likely to issue more over the next few years. Municipal electronic records must adhere to such requirements.

Conclusion

The enactment of the MUETA has significantly impacted the legal environment in which municipalities use electronic signatures, contracts and other records. Municipal officials who plan to replace traditional ink signatures and paper documents used in municipal transactions with their electronic counterparts should consult with legal counsel regarding the impact of MUETA. ■

Linda M. Hamel is the general counsel of the Commonwealth of Massachusetts Executive Department's Information Technology Division and can be reached at Linda.hamel@state.ma.us. The opinions expressed in this article are those of the author alone and do not represent the position of the Commonwealth of Massachusetts, the Massachusetts Department of Revenue, or the Information Technology Division.

Telecommunications Tax Decision

continued from page two

changing nature of the telecommunications industry had led historical telephone companies into becoming bundled service providers. According to the court, denying telephone status to companies such as RCN would effectively amount to a judicial repeal of M.G.L. Ch. 59 Sec. 39. Such action the court refused to take. Rather, the court invited the Legislature to reconsider the entire statutory framework in light of technological advances.

Having ruled in favor of RCN as to telephone company status, the court then addressed the taxability of RCN's personal property. The court noted that M.G.L. Ch. 59 Sec. 5 Cl. 16 granted exemptions to corporations. The court declined to extend corporate exemptions

to entities such as RCN that had made a voluntary business decision to operate in Massachusetts as a limited liability company. The court expressly refused to adopt a policy of granting Cl. 16 corporate exemptions to any business entity operating as a telephone company. Consequently, all of RCN's personal property in Newton was taxable, which amounted approximately to \$3 million in valuation.

In conclusion, the Supreme Judicial Court recognized that a multi-service business, substantially involved in telephone service, can enjoy telephone company status with resulting central valuation of its telephone service personal property and its shared personal property by DOR. Personal property

exclusively used for cable television or Internet service is to be valued by local assessors. Furthermore, most of the entity's personal property will be exempt if the business is a corporation. As a result, the form of ownership can have a significant impact on municipal tax revenues. Consequently, it appears that cable television property that is also used to provide telephone service (shared property) will no longer be subject to valuation by local assessors, and may also enjoy a corporate utility exemption under M.G.L. Ch. 59 Sec. 5 Cl. 16(l), if owned by a corporation that provides a substantial telephone service. ■

1. RCN-Beco was the first bundled carrier to file for central valuation.

Examining Education Systems: The Office of Educational Quality and Accountability

by Joseph Rappa, Ed. D.

In the spring of 2001, the Governor's office once again entered the arena of education reform by establishing the five-member Educational Management Audit Council (EMAC) and the Office of Educational Quality and Accountability (EQA). This new agency was a successor to the similar sounding 13-member Educational Management Audit Board (EMAB), created by Executive Order 393 in 1997 by Governor Weld. The EMAB was supported by Department of Revenue (DOR) auditors under the capable direction of Mr. Dieter Wahl. Independently, the Department of Education (DOE) had been conducting pilot reviews of schools and districts. The EMAB and the DOR auditors conducted a total of 42 district level audits from 1998 until 2001. These extensive financial audits are on file at DOR and at the EQA.

This reform agency originated from legislative action in 2000, M.G.L. Chapter 15, Section 55A, which created the EMAC. This initiative combined elements of both the DOR financial audit and the programmatic inspections conducted the DOE. The resulting review process, adopted by the EQA was approved by the EMAC, and employs a protocol with 15 standards, representing five domains of administrative practice. The five domains are Leadership and Governance, which focuses on the policy and role of the superintendent, school committee, and the district leadership team; Curriculum and Instruction, which examines the learning expectations for students and teaching quality expectations applied by the district; Assessment and Evaluation, which are the district's practices involving the testing of students, and the evaluation

of staff, administrators, programs and purchases; Budget, Finance, and Capital Asset Management, which is the process of budget development, asset and resource management and the efficient and effective use of all funds and capital assets to promote quality education; and Student Academic Support Services, which is the extent to which the district uses its resources to assure that all students meet the state's performance standards for students, as measured by the MCAS tests. The central question of the EQA's process is "To what extent is the critical analysis of student achievement data a driving force in the planning, design, implementation, and evaluation of the school and district improvement process?"

Key Elements

The multi-level EQA examination process has several features that are unique to Massachusetts and our practice of conducting educational audits. First, all of the examiners used by the EQA are subjected to a two-part training, which involves a two-week seminar and over 120 hours of internships and a guided orientation to the process. Currently, there are 48 examiners at the EQA with a combined total of over 1,000 years of experience in the field of education and finance. Examiners take over three weeks to preview, review and evaluate a school system using the domains and standards discussed above. A week is spent reviewing district and state supplied documents covering the four-year examination period. Standards-based questions are generated based on this review. Then, a team of four to six examiners spend four days conducting on-site investigations and interviews. After a period of reflection, the team reconvenes to evaluate the evidence, produce findings, and rate the quality of the administrative practices of the district.

In addition to public school officials and school committee members, municipal officials are interviewed. The financial

review also takes into account all grants, foundation funds, endowments, and other revenue from all sources. This last element is unique to the Massachusetts process. Most discussions of school funding do not include the use and impact of grant, foundation and endowment funds. In Lowell, for example, that would mean that approximately \$20 million would not be included in other review processes, and in Springfield, that figure would be over \$40 million.

Since beginning the district review process in the spring of 2002, over 75 school districts and 25 charter schools have been examined by the EQA. Clearly, the larger urban systems are of greatest interest and involve the largest budgets. As of March of 2005, every major urban area in the Commonwealth will have been examined. To date, in addition to the examinations, the EMAC has recommended seven school districts to the State Board of Education (BOE) for declarations of "under-performance"; the BOE made declarations of "under-performance" on three of them: Holyoke, Winchendon, and Southbridge. In addition, over 14 districts have been placed on "Watch," a monitored, locally-directed improvement process that is re-examined after 18 to 24 months.

In the last year, the EQA's work and capacity has grown. At present, in addition to the executive director, the EQA employs a chief operations coordinator, two full-time field coordinators, two part-time coordinators, two administrative assistants, and a publications and writing staff of three. These staff work with over 47 contracted field examiners to conduct over 50 district examinations annually. In FY2005, there are two to three examination teams in the field every week. For those interested, the EQA's standards, protocols, and reports can be found on the web at www.mass.gov/doe/sda/eqa/. ■

DLS Update

Ferry Embarkation Fee Revenues

Port communities on the Cape and Islands realized more than \$1 million from January 1 through September 30, 2004, the first nine months they were authorized to charge a fee on passenger ferry trips. Section 11 of Chapter 55 of the Acts of 2003, as amended by Sections 44–47 of Chapter 65 of the Acts of 2004, allows any city or town within the counties of Barnstable, Nantucket, Bristol, and Dukes to impose an embarkation fee of \$.50 on all passenger ferry trips leaving from a port within the city or town (see Technical Information Release (TIR) 04-18, available at www.mass.gov/dor/rul_reg/tir/TIR_04_18.htm).

In addition, all commuter excursion fares and school-related fares are exempt from the fee. Under the legislation that was originally passed, a city or town could set the fee at any amount up to \$1 and had the option of exempting the commuter excursion fares.

Acceptance of this law is by referendum placed on the city or town election ballot by the selectmen, town council or city council with the approval of the mayor of any city or town with a port. The question passes by a majority vote. The fee takes effect on January 1 of the calendar year after the acceptance.

Ferry operators pay the fees to the Department of Revenue (DOR) on a quarterly basis, and the state treasurer distributes the funds quarterly. The monies received are deposited in a special fund to be appropriated by the city or town for the purpose of mitigating the impact of ferry service on the municipality.

So far, Barnstable, Falmouth, Tisbury, Oak Bluffs and Nantucket all approved the fee. The communities that do not share a harbor with any other city or town (Falmouth, Tisbury, Oak Bluffs and

Nantucket) receive 100 percent of the receipts. However, since Barnstable shares a harbor with Yarmouth (a town that does not have ferry service), 25 percent of the receipts are credited to Yarmouth, while Barnstable receives the balance.

The following table shows the amount collected by each of these communities from January 1 through September 30, 2004.

Ferry Fee Collections	
Barnstable	\$144,136
Falmouth	351,230
Nantucket	163,167
Oak Bluffs	190,594
Tisbury	217,659
Yarmouth	46,913
Total	\$1,113,699

Table 1

Community Preservation Act Borrowings

A question was raised as to the borrowing authority of cities and towns that have accepted the Community Preservation Act (CPA) established by M.G.L. Ch. 44B. Specifically, a local official inquired whether a community may borrow only in reliance on the local CPA surcharge revenue expected to be received in subsequent years and may not borrow against the state matching funds.

M.G.L. Ch. 44B Sec. 11 authorizes municipalities to “issue, from time to time, general obligation bonds or notes in anticipation of revenues to be raised pursuant to Section 3, the proceeds of which shall be deposited in the Community Preservation Fund.” In our view, a plain reading of the phrase “in anticipation” of surcharge revenue indicates a legislative intent to limit the amount that a municipality may borrow under M.G.L. Ch. 44B for community preser-

vation purposes. Consequently, a city or town may not issue bonds and notes under M.G.L. Ch. 44B unless the debt service on the proposed borrowing as well as on all previously issued debt can be accommodated within local surcharge revenues that are expected to be raised by taxation over the life of the bond payment schedules. If surcharge revenues alone should later prove insufficient, however, the debt service is to be paid from any other fund monies available for that community preservation purpose.

It must also be noted that all CPA borrowings are general obligation debt of the community. Therefore, in the event that fund monies are not available to meet the annual debt service payments, then the payments must be made from other available municipal revenues.

Seminar on Foreclosure Offered

Lieutenant Governor Kerry Healey is offering a seminar for local officials entitled “Understanding the Tax Foreclosure Process.” This seminar will be held on Thursday, March 3, 2005, from 10:30 a.m. to 1:00 p.m. in the Gardner Auditorium at the State House.

Some of the scheduled panelists (subject to change) include: The Honorable Deborah Patterson and John Harrington of the Land Court; Robert J. Kerwin of the City Solicitors Association; Nils Nordberg of the Massachusetts Collectors & Treasurers Association; and Christopher Hinchey, Esq. of the Division of Local Services.

Please note that due to the size of the auditorium, only two individuals per municipality can attend. Please contact sarah.a.maloney@state.ma.us for more information. ■

State House Profile: Special Assistant to the Lieutenant Governor

For Lieutenant Governor Kerry Healey, facilitating communication between the Romney–Healey administration and Massachusetts’ 351 cities and towns is a top priority. As Special Assistant to the Lieutenant Governor, **Jonathan Horka** plays a vital role in the events she holds with local officials, and other Massachusetts citizens, statewide. He has held this position since March 2004.

According to Jonathan, “I’m the guy that keeps the trains running on time.” In other words, Jonathan oversees the operation of the Office of the Lieutenant Governor. He works closely with the Lieutenant Governor’s Chief of Staff and Romney–Healey Administration Director of Municipal Affairs, Christopher Barrett, on issues that local officials bring to the attention of the administration. Along with Barrett, Jonathan makes it his top priority to provide local officials with the access they need to the executive branch of government.

While attending the University of Maryland, where he received a bachelor’s degree in Logistics and Transportation and Marketing, Jonathan worked as a volunteer for some political organizations and campaigns. Jonathan joined the Romney–Healey campaign in 2002 and has gone on to work in the Office of Advance and Special Events and the Governor’s Office of Intergovernmental and Legislative Affairs. While working in the legislative office, Jonathan focused on bills pending before the governor and home rule legislation.

Regarding his work for the Lieutenant Governor, Jonathan said that he appreciates “the public service aspect” of this position. He also said he especially enjoys “the fast pace” involved with “building public events,” and also the fact that “there is no daily routine.”

A native of Northborough, Jonathan resides in Cambridge. ■



Jonathan Horka

Robust Lottery Sales Reported

State lottery sales for the first half of FY05 rose 5.9 percent over the same six-month period in FY04. The Lottery had sales of \$2.2 billion for the months of July through December, surpassing FY04 mid-year revenues of \$2.1 billion. In FY04, the Lottery enjoyed a record-breaking year with \$4.3 billion in revenues.

State Treasurer Timothy P. Cahill, who serves as Lottery Chairman, said that “In FY04, the Lottery returned more than \$700 million in local aid to the Commonwealth.”

Cahill credited a number of factors for the successful start in FY05, including restored lottery advertising after a seven-year hiatus, as well as an increase in instant ticket sales. So far this fiscal year, instant ticket sales have grown by more than \$183 million. He also noted that Mega Millions, the new Cash WinFall game, the Numbers Game and Megabucks have enjoyed robust sales this year.

The Legislature increased the Lottery’s FY05 advertising budget from \$5 million to \$7 million. ■

City & Town

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Joan E. Grouke, Editor

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