



Taxpayer Advisory Bulletin

Commonwealth of Massachusetts Department of Revenue

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DOR Reaches Out to Business Taxpayers with New Website

Continually seeking ways to utilize technology to improve service to the taxpayers of Massachusetts is one of the Department of Revenue's (DOR) primary objectives. Building on the success of the Department's tax administration website, DOR recently expanded its online presence with a new website geared specifically for the Commonwealth's business taxpayers. The Bay State Business Connection, located at www.baystatebiz.com, is a comprehensive resource designed to provide businesses with the information they need to meet their tax obligations and other business requirements. Visitors to the site will find a wealth of information relating not only to the Department of Revenue, but also to many other local, state and federal agencies.

"We recognize the value of the Internet in providing high-quality service to our customers, and are pleased to offer our business taxpayers this specialized website designed with them specifically in mind," said Revenue Commissioner Frederick A. Laskey.

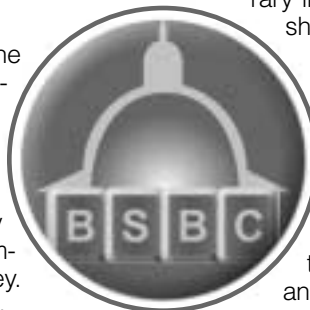
In its first few months of existence, the new business-oriented website has met with a positive reception from the business community. The Department has received several encouraging e-mails from visitors calling the website an "excellent resource" and "outstanding." Some of the site's features designed to make it easier to conduct business with DOR include an in-depth guide to tax and employer obligations, as well as an online registration program and a PC File application for business taxes. More interactive applications currently are in the latter stages of development and will be implemented in the near future. Following is an overview of some of the site's innovative features.

Online Registration

The online TA-1 registration application offers business owners a quick and easy alternative to paper filing in order to reg-

ister a new business, or additional business locations, to collect sales and use tax, room occupancy, sales tax on meals, and other trustee taxes. Businesses also may update existing registrations through this application. Once the online registration is submitted and accepted, the program immediately issues a temporary registration certificate, which is valid for 60 days from the date the application was submitted. A permanent certificate will arrive in the mail within a few weeks.

Commenting on the ease of registering a business online, one user e-mailed the Department stating: "Thank you for making life easy! It was wonderful to discover that I was able to secure a temporary license to collect sales tax on short notice."



PC File for Business Taxes

Much like the PC File software for filing and paying income tax, DOR recently created a PC File for Business Taxes software, which allows business taxpayers to file and pay withholding and/or sales and use taxes via personal computer. The software also allows businesses to make Electronic Funds Transfer (EFT) payments for any tax type. This application is available to any Massachusetts taxpayer registered with DOR to pay business taxes using the EFT method. Your existing EFT Personal Identification Number (PIN) assigned by DOR can be used with your Federal Identification Number to access the system. The software also keeps a record of transaction activity so a business can check its payment and filing history with the click of a mouse button. DOR has already received over 400 returns, and payments in excess of \$4 million.

Future Enhancements

Every employer is required by law to notify DOR within 14 days of all newly hired employees, employees returning to the payroll and independent contractors. To make new hire reporting faster and more

efficient, the Department is in the process of developing an application for the Bay State Business Connection website that would allow employers to report new hires online. Also, DOR plans to make a number of "fill-in" business tax forms available on the website. The "fill-in" forms would allow the taxpayer to enter the necessary information online then print out a completed form for filing. The Department's long-range goal is to provide businesses with various online tools that enable electronic filing of any return or reporting requirement. One specific online appli-

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Massachusetts Interest Rate
for Underpayments and Overpayments
of State Taxes
Third Quarter 2000 — 10%

From the Commissioner



Frederick A. Laskey

This year's tax filing season was an extremely successful one for the Department, and thanks are due in large part to the practitioner community. We received more than 816,000 electronically-filed returns, surpassing last year's total of 681,000 by nearly 20 percent. The number of returns electronically transmitted by practitioners grew by 38 percent over last year, from 220,000 to well over 300,000.

In response to concerns raised by practitioners at the Department's January filing season seminars, we made a concerted effort this year to increase the number and percentage of accepted electronically filed returns. The result was an increase in the acceptance rate from 91 percent last year to 96 percent this year. A number of changes were made to the electronic filing program that helped to increase the acceptance rate. These included (a) allowing first-time filers to remit returns electronically, (b) accepting 1099-Gs into the electronic filing process, (c) allowing up to five attempts to successfully e-file, and (d) building in flexible tolerances for rounding and addressing anomalies.

In addition, by removing the administrative burden of mailing in the M-8453 signature documents, and allowing practitioners to use personal tax identification numbers rather than their own Social Security numbers, more practitioners opted to participate in the electronic filing program. The total number of participants grew from 970 in 1999 to 1,131 this year.

The Department also introduced several new vehicles for communicating with practitioners this filing season, including a practitioner telephone hotline, practitioner e-mail, and the online Abatement and Amended Return Guide, accessible through our website at www.state.ma.us/dor. The feedback that we have received to date on these initiatives has been very positive. During the filing season, over 1,500 practitioners called our hotline numbers (617-887-6377; 508-752-2800; 413-739-1500) to speak directly with technical experts on income, corporate and trustee tax issues. Nearly 400 practitioners sent their inquiries via e-mail and we responded, on average, in less than two business days.

Also during the filing season, we introduced on our website the Abatement and Amended Return Guide. This guide provides taxpayers and practitioners with clear directions on how to file for an abatement of tax or amend a previously filed return. Practitioners will benefit by using this easy to navigate online tool because time-consuming back and forth correspondence with the Department will no longer be necessary. Moreover, you will be able to present a more complete package upon initial filing. By providing specific guidance to practitioners on a topic by topic basis, we hope to work with you to expedite the processing of your clients' claims.

The Department is always interested in hearing from the practitioner community. While we are extremely pleased with this year's filing season outcomes, we are still eager to enhance the programs and services we provide. Please let us know your suggestions for further improving our electronic filing program and for ensuring that next year's filing season goes smoothly. Many of the changes we made this year directly resulted from your input. I look forward to continuing to work with you in our ongoing efforts to better serve the Commonwealth's taxpayers.

Sincerely,

A handwritten signature in black ink that reads "Frederick A. Laskey". The signature is written in a cursive, flowing style.

Frederick A. Laskey
Commissioner

Filing Season Marked by Record-Breaking Numbers

This filing season proved to be a banner year for the Department of Revenue (DOR), as its e-file programs surpassed the 500,000 electronically-filed return mark two weeks earlier than last year. The total number of paperless returns filed by tax practitioners and self-filing taxpayers this past filing season will reach more than 816,000, compared to approximately 681,000 last year, an overall increase of 20 percent.

"The number of returns filed electronically this year will make up 26 percent of the 3.2 million income tax returns submitted to the Department," noted Revenue Commissioner Frederick A. Laskey. "E-file truly is the way to go; it's fast, it's easy, and you receive your refund in as little as three days. It's encouraging to see so many of our taxpayers and practitioners embracing this technology."

The increase in the number of e-filed returns can be attributed to the fact that DOR expanded its e-file eligibility requirements to accept returns from first-time filers as well nonresident filers. These enhancements were developed in response to suggestions from tax practitioners interested in filing electronically for more of their clients, and from nonresident taxpayers who also wanted the option to file by personal computer. The number of electronically filed nonresident tax returns jumped to more than 12,600 this year, compared to nearly 8,900 last year, a 42 percent increase.

On the return processing front, the Department expects to receive 3.2 million personal income tax returns this year. Thus far, the Department has processed more than 2.4 million refunds totaling over \$838 million. This year's average refund amount was \$390. The average refund turnaround time for paper returns dropped to 9 days from last year's average of 13 days; turnaround time for paperless re-

turns remained steady at approximately 3 days. More taxpayers this year also chose to have their refunds direct deposited into their bank accounts. DOR direct deposited more than 229,000 refunds this year, as compared to approximately 195,000 last year.

In other filing season news, the Taxpayer Service Division (TSD) noted a slight drop in the number of filing season related calls coming in to the Customer Service Bureau. TSD fielded more than 564,000 phone calls from taxpayers during the filing season. Fifty-three percent of all calls were handled by DOR's Interactive Voice Response (IVR) system. Although the average length of a call was slightly longer than last year, taxpayer inquiries were answered 34 percent more quickly. The Commissioner also established a Practitioner Hotline, which was favorably received by the more than 1,500 practitioners who called during its debut season.

The decrease in phone calls may well be attributed to increased visits to the Department's website, which proved to be a useful resource for practitioners and taxpayers throughout the filing season. Overall, the website logged more than 2.3 million hits between January and April 2000. Not surprisingly, the most frequently visited pages were the 1999 tax forms page, with Form 1 and Form 1-NR/PY receiving the most hits; and the filing options page, which provided taxpayers with access to the downloadable PC File software. Also, in February of this year, DOR made available an online Abatement and Amended Return Guide. This comprehensive and easy to navigate guide, which covers over 80 topics, outlines what taxpayers and practitioners need to file in order to expedite the processing of their amended returns and requests for abatements. The new guide received 2,300 hits in the month of April alone. ■

New Regulation Changes Applicability of Sales Tax

Some Massachusetts consumers may find themselves paying less sales tax when purchasing taxable items with certain coupons or rebates. The Massachusetts Department of Revenue (DOR) recently issued a new regulation regarding the taxability of manufacturers' or retailers' coupons and manufacturers' rebates, which explains the ways that the taxable sales price of an item may be reduced at the time of sale.

Effective May 1, 2000, DOR expanded its interpretation of the term "cash discount" to include manufacturers' and retailers' coupons and manufacturers' rebates taken at the time of sale. The prior regulation provided that, unlike a store coupon, a manufacturer's coupon was not a cash discount because it enabled the vendor to receive reimbursement for the discount from another party. Under the new regulation, however, a manufacturer's or retailer's coupon or a manufacturer's rebate used to reduce the price paid by the retail customer at the point of sale will be excluded from the taxable sales price of an item. This will reduce the amount of sales tax paid by the retail customer in many situations.

For example, if a consumer is purchasing an automobile for \$18,000, and is offered,

at the time of the sale, a manufacturer's rebate of \$2,000, the sales tax is due on the post-rebate total of \$16,000, not on the full sales price. The \$2,000 rebate is treated as a discount and is excluded from the sales price subject to tax.

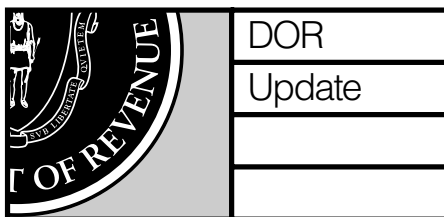
"The new regulation is a common sense approach to the treatment of coupons, benefiting both consumers and retailers by eliminating the confusing nature of the earlier policy," said Revenue Commissioner Frederick A. Laskey.

"Manufacturers' coupons for many items, including most food and clothing products, will not be affected by the regulation because the items are not subject to the sales tax. However, taxable items sold by retailers, including automobiles and appliances, will be affected. Because manufacturers' rebates often are worth thousands of dollars, this regulatory change may mean hundreds of dollars in savings for the buyer," Commissioner Laskey continued.

To obtain a copy of the new regulation, 830 CMR 64H.1.4: Discounts, Coupons and Rebates, contact the Department's Rulings & Regulations Bureau at (617) 626-3250 or visit the Rulings & Regulations section of the DOR website at www.state.ma.us/dor. ■

Filing Season Refund Statistics

| | |
|--------------------------------|---------------|
| Total refunds processed | 2.4 million |
| Total refunded | \$838 million |
| Average refund amount | \$390 |
| Direct deposits | 229,000 |
| Refund turnaround time | |
| Paper | 9 days |
| E-file | 3 days |



DOR

Update

Rosemarie Day Appointed Deputy Commissioner of CSE

Rosemarie Day was appointed Deputy Commissioner of DOR's Child Support Enforcement Division (CSE) in January. She joins the Department from the Executive Office of Administration and Finance, where she served as Assistant Secretary for Management and Operations. Ms. Day's prior management and leadership roles in the public sector also include participation on the County Transition Task Force during the abolition of the Middlesex, Hampden and Worcester county governments; and as senior administrative coordinator for the Massachusetts Performance Enhancement Commission. Ms. Day is a graduate of Harvard University's John F. Kennedy School of Government and Stanford University. In her new role with the Department, she is responsible for all operational functions of CSE, which serves over 250,000 families and distributes more than \$290 million in child support annually.

Steven Remsberg Named Associate General Counsel

Steven Remsberg was named Associate General Counsel for the Department this past March. Mr. Remsberg has served as Chief of the Department's Litigation Bureau for the past three years. Prior to joining DOR, he spent a majority of his 20-year career as a practicing attorney with the law firm Hinckley, Allen & Snyder (formerly Snyder, Tepper & Comen). Mr. Remsberg's academic credentials include an undergraduate degree from Dickinson College and a law degree from the University of Pittsburgh Law School. As Associate General Counsel, he will assist DOR's General Counsel and Deputy General Counsel in managing the operation of the Department's Legal Division.

Elisabeth Ditomassi Appointed Chief of Litigation Bureau

Elisabeth Ditomassi was appointed Chief of the Litigation Bureau in May. Ms. Ditomassi brings to DOR 11 years' experi-

Regulations, TIRs, Directives and Letter Rulings

DOR has issued the following public written statements between February and April 2000. For copies or more information, please call (617) 626-3250. The documents below also are available through DOR's Fax on Demand system by dialing (617) 887-1900 from the handset and the keypad of your fax machine and entering the code number following the title of the appropriate document.

Regulations

| Cite | Category | Title | Promulgation Date |
|---------|-------------------|--|-------------------|
| 62.4.1 | Income Tax | Capital Gains and Losses/2672 | 3/31/00 |
| 63.38.7 | Corporate Excise | Apportionment of Income of Mutual Fund Service Corporations/2673 | 3/31/00 |
| 64H.1.4 | Sales and Use Tax | Discounts, Coupons and Rebates/2674 | 4/28/00 |

Regulation Amendments

| Cite | Category | Title | Promulgation Date |
|---------|------------------|------------------------------|-------------------|
| 63.38.1 | Corporate Excise | Apportionment of Income/2675 | 3/31/00 |

Technical Information Releases (TIR)

| TIR | Category | Title | Issuance Date |
|------|--------------------|---|---------------|
| 00-4 | Income Tax | Massachusetts Exclusion Amounts for Qualified Transportation Fringe Benefits/1914 | 3/3/00 |
| 00-5 | Tax Administration | Interest Rate on Overpayments and Underpayments/1915 | 3/31/00 |

DOR Directives (DOR-D)

| DOR-D | Category | Title | Issuance Date |
|-------|-------------------|--|---------------|
| 00-3 | Sales and Use Tax | Sales Tax Treatment of Rentals of Portable Toilets/3570 | 3/24/00 |
| 00-4 | Corporate Excise | Manufacturing Corporation Status of LLCs, Partnerships and Corporate Members and Partners/3571 | 3/31/00 |

Letter Rulings (LR)

| LR | Category | Title | Issuance Date |
|------|-------------------|--|---------------|
| 00-3 | Sales and Use Tax | Computer Sales Inventory Items Used for Demonstration and Returned to Sales Inventory/2317 | 2/10/00 |
| 00-4 | Sales and Use Tax | Throwback Sales Under G.L. c. 63, § 48(f)/2318 | 3/3/00 |
| 00-5 | Corporate Excise | Partnership Status of Brazilian Limited Liability Quota Company/2319 | 3/20/00 |
| 00-6 | Sales and Use Tax | Pest Elimination System/2320 | 3/24/00 |
| 00-7 | Sales and Use Tax | Sales Tax Treatment of Transactions That Relate to Communications Towers/2321 ■ | 3/24/00 |

ence as a practicing attorney specializing in litigation in both the private and public sectors. She joins the Department from the law firm Kirkpatrick & Lockhart, where she served as a Senior Litigation Associate. Ms. Ditomassi also has worked in the Attorney General's Criminal Bureau, first as an Assistant Attorney General in the Public Integrity Division, and later as Director of the Central Artery/Tunnel Project where she prosecuted criminal fraud on the project. Ms. Ditomassi received her

undergraduate degree from Tufts University and her law degree from Boston University School of Law. In her new role, she is responsible for oversight of the bureau handling all litigation involving the Department.

DOR Manager Joins Private Sector

After 12 years with the Department, former Associate General Counsel Kevin Brown left DOR in March to pursue a career in the private sector with Arthur Anderson. ■

For Your Information



2000 MASSTAX Guide

The 2000 MASSTAX Guide now is available from West Group in traditional print format, and in electronic format as a new searchable database on Westlaw.

The guide, published in five printed volumes, covers the following major tax types: sales and use tax and miscellaneous excises; personal income tax; corporate excise; and estate and inheritance tax. An administrative volume completes the set. Included in the MASSTAX Guide are statutes, regulations, forms, case law summaries, public written statements and an index.

The guide is now available on Westlaw as the MASSTAXGD database. The database contains the same content as the print version, with the exception of display of forms. The database facilitates a number of searching options, provides a table of contents service and allows hypertext linking to related documents.

For information on ordering the new edition or access to the newly created database, call West Group at 1-800-328-9352.

DOR Introduces PC File for Business Taxes

The Department of Revenue recently expanded its PC File program to allow business taxpayers to file and pay withholding and/or sales and use taxes via personal computer. The PC File for Business Taxes software allows businesses to make Electronic Funds Transfer (EFT) payments for any tax type. This application is available to any Massachusetts taxpayer registered with DOR to pay business taxes using

the EFT method. Your existing EFT Personal Identification Number (PIN) assigned by DOR can be used with your Federal Identification Number to access the system. The software can be easily downloaded directly from DOR's tax administration website at www.state.ma.us/dor or from the Department's new Bay State Business Connection website at www.baystatebiz.com.

New Hire Reporting

Employers should note that DOR must be notified within 14 days of the hiring or reinstatement of all new employees or employees returning to the payroll, as well as independent contractors. This information should be sent to the Massachusetts Department of Revenue, PO Box 7032, Boston, MA 02204, or faxed to (617) 887-5049. For more information on New Hire Reporting, visit the Child Support Enforcement Division's website at www.state.ma.us/cse, or call 1-800-332-2733. Tape layout information for reporting via magnetic tape is available by calling DOR's Automated Processing Bureau at (617) 887-5030.

Companies doing business in two or more states, and who report new hires in an electronic or magnetic format can designate one state to report all of their new hires. To take advantage of this multi-state reporting option, employers must register their reporting state with the Federal Office for Child Support Enforcement (OCSE) by calling OCSE at (202) 401-9267, or by visiting the OCSE website at www.acf.dhhs.gov/programs.

Local Services' Publications Available

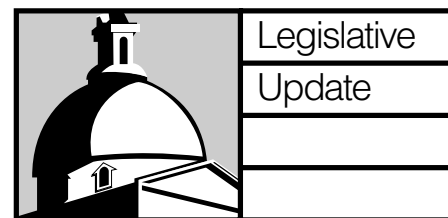
The Department's Division of Local Services (DLS) soon will issue its *Laws Relating to Municipal Finance and Taxation* (Municipal Bulletin 33) and the *Massachusetts Domestic and Foreign Corporations Subject to an Excise, 2000 Supplement*, to local officials in both hard copy and CD-ROM format. DLS distributes copies of these publications, free of charge, to local officials.

Municipal Bulletin 33 is a compilation of the Massachusetts General Laws relating to local government, and has been updated to include laws enacted through April 2000. The last edition, Municipal

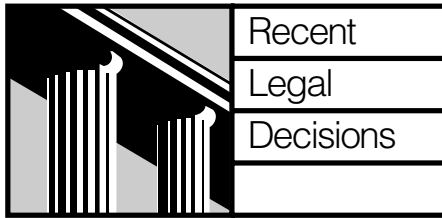
Bulletin 32, was published in April 1998. The CD-ROM format is particularly useful as it facilitates searching by keywords.

Commonly known as the "corporations book," the *Massachusetts Domestic and Foreign Corporations Subject to an Excise, 2000 Supplement*, includes updates to the list of all for-profit corporations doing business in Massachusetts as of January 1, 2000. The book is useful to tax assessors in determining which corporations in a particular community are exempt from the local personal property tax. A complete compilation is printed every five years and supplemental lists are printed annually. The latest full edition of the corporations book was printed in 1998.

For more information about these publications, call Elaine Lombardi in the Division of Local Services at (617) 626-2337. ■



An Act Relative to Income Taxation and Certain Income Eligibility Calculations for Certain Recovered Assets of Holocaust Survivors (St. 2000, c. 79) — This act provides a deduction from Massachusetts gross income for any payments received by a Holocaust survivor (or his or her heirs) because of persecution for racial or religious reasons by Nazi Germany or any other Axis regime. In addition, certain income from stolen assets, proceeds of insurance policies, and other restitution or reparations arising from Holocaust persecution is also nontaxable when received by a taxpayer who was a victim of such persecution (or his or her heirs) and who was the first recipient of such assets after their recovery. This provision is effective for any tax year beginning on or after January 1, 1998. *St. 2000, c. 79, amending M.G.L. c. 62, § 2(a)(2) by adding new subparagraph K.* ■



Supreme Judicial Court

Corporate Excise

Bill DeLuca Enterprises, Inc. v. Commissioner of Revenue, SJC-08111 (April 2000) — In this case, the Supreme Judicial Court (SJC) affirmed the decision of the Appellate Tax Board (ATB) in favor of the Commissioner.

The issues in this case on appeal were two-fold: first, whether the so-called exclusionary form of the “tax benefit rule” as codified in Section 111 of the Internal Revenue Code (Code) operates to exclude from net income the amount of any recaptured depreciation deductions for which no tax benefit was received by the taxpayer; and second, whether the taxation of income derived from recaptured depreciation deductions for which the taxpayers claimed to have received no tax benefit violates Article 44 of the Massachusetts Constitution as “fictional” or “paper” income. The SJC decided in favor of the Commissioner on both issues.

The SJC addressed the first issue by discussing the history of the tax benefit rule under federal common law and the codification of the exclusionary form of that rule in Section 111 of the Code. The SJC stated that it was a “generally accepted principle” based upon common law interpretation of the tax benefit rule as well as federal legislative and regulatory history that the tax benefit rule does not apply to depreciation recapture income created by Section 1245 of the Code. The SJC stated that the accelerated depreciation deduction methods provided by Congress in Section 168 of the Code were themselves a tax benefit and that “[t]hus DeLuca has received a tax benefit from the use of its depreciation deductions.”

The SJC addressed the second issue by distinguishing between the taxation of fictional gains, which are prohibited by Article 44, and “transactional inequities [which] cannot practically be eliminated from the annual tax system.” The SJC stated that DeLuca realized an actual gain in the taxable year at issue and received in excess of \$8 million in proceeds from the disposition of depreciated as-

sets, which the SJC described as “real income, which DeLuca could spend, as it chose, and which the Commonwealth could tax.” The SJC cited and distinguished *Weston Marketing Corporation v. Commissioner of Revenue*, 40 Mass. App. Ct. 1108 (1996) (*Weston*). The SJC stated that in contrast to the gain realized in *DeLuca*, the gain in *Weston* was a “mere paper gain” in that it was based upon an “imaginary transaction that was deemed to have taken place” for tax purposes only. Further, the SJC stated, the gain in *Weston* compensated for a loss that was required under the Code to be taken “but which could not be reported under Massachusetts law.” In *DeLuca*, the SJC stated, “taxes were assessed on an actual transaction which increased DeLuca’s wealth by some \$8 million.”

The SJC, in conclusion, stated that the Massachusetts General Court had consistently chosen to treat the allowance of net operating losses in a far less generous manner than Congress had allowed in Section 172 of the Code. In the taxable year at issue in *DeLuca*, Section 172 of the Code allowed a 15-year carryforward period and 3-year carryback period for net operating losses. During the same taxable year, Massachusetts law allowed no carryback or carryforward of net operating losses to a taxpayer such as DeLuca which did not fall under the five-year carryforward exception for newly formed corporations. The SJC stated that the restriction imposed upon the utilization of net operating losses under M.G.L. c. 63, § 30(b)(5) was a “persistent and conscious legislative decision to take a different path from that of the Federal government in ameliorating the transactional inequities that arise from annual taxation.” The SJC stated that relief for the taxpayers such as DeLuca must thus come from the Legislature and not from the courts.

Appeals Court

Corporate Excise

Erving Paper Mills Corporation and Another v. Commissioner of Revenue, Appeals Court No. 97-P-1329 (March 2000) — In this case, the Appeals Court affirmed the decision of the Appellate Tax Board (ATB) in favor of the Commissioner.

Erving Paper Mills Corporation and its wholly owned subsidiary, Baldwinville Products, Inc. (collectively referred to as the “taxpayer”) had claimed deductions and credits on property they did not pay for and on which they did not hold legal

title. The taxpayer claimed to be the “de facto” owner of the property on which it claimed the deductions and credits. Further, according to the taxpayer, because it had a contractual obligation to pay certain debts under the accrual method of accounting, that obligation allowed the taxpayer to take the deductions and credits it sought.

The taxpayer contended that it had an unconditional obligation during the years in question to reimburse the towns of Erving and Templeton for the government grants that those towns received to build wastewater treatment plants. At the time when the towns applied for the grants, the federal government had in place a program known as Industrial Cost Recovery (ICR). Under ICR, industrial users were required to repay, to the grantees, the portion of the grants that were attributable to them based upon their use of the facilities constructed. The taxpayer contended that a federal moratorium and subsequent repeal of the ICR provisions did not affect its right to claim tax deductions and credits with respect to the grant amounts during the years at issue.

In affirming the ATB’s decision, the Appeals Court ruled:

“The taxpayer’s obligation to repay the Federal grant money was not fixed, certain and unconditional at the end of the tax years in question as Congress had enacted a moratorium which relieved the taxpayer of any repayment obligation for a specified period, culminating in the complete repeal of the ICR provisions. Therefore, the ICR payments cannot be considered an accrued liability of the taxpayer during that time.

“We do not adopt the taxpayer’s view that the extended moratorium simply deferred its unconditional repayment obligation to a later date. Based on the language of the agreements between the taxpayers and the towns, the Federal moratorium placed on ICR repayments, and the eventual elimination of any repayment obligation, the ATB’s conclusion that, at all relevant times, the taxpayer’s obligation remained contingent upon the Federal government requiring repayment of the Federal grants is supported by substantial evidence and represents a correct application of the relevant law.”

The Appeals Court noted that it did not consider it necessary to address the taxpayer’s argument that it was the de facto owner of the property.

Appellate Tax Board

Corporate Excise

New England Power Service Co. v. Commissioner of Revenue, ATB Docket Nos. F233000, 240556, 50895-6 (February 2000) — In this case, the Appellate Tax Board (ATB) issued its Findings of Fact and Report in favor of the taxpayer.

In these consolidated cases, New England Power Service Co. (NEPSC) sought an abatement of corporate excise taxes for the years 1989, 1991, 1992, 1993 and 1994. The issues raised in this appeal related to transactions between two affiliated corporations, New England Energy, Inc. (NEEI) and the New England Power Company (NEP), and the treatment of these transactions for purposes of computing NEEI's sales factor under M.G.L. c. 63, § 38(f). Specifically at issue was whether it was proper for the Commissioner to adjust NEEI's sales factor to include amounts it received and recorded as "sales of fuel" to its affiliate, NEP, but which were not reported as "gross receipts" in NEEI's sales factor for apportionment purposes.

The ATB held that the Commissioner had improperly adjusted NEEI's sales factor. The ATB found as fact that NEEI did not sell fuel oil to NEP and that NEEI served merely as a conduit for the payment of the fuel oil delivered to NEP by third parties. The ATB also found that "the financial dealings between NEP and NEEI were instituted primarily to facilitate external funding for NEEI's operations and to comply with certain SEC concerns regarding NEP's ratepayers."

The ATB's decision awards NEPSC a full abatement of the self-assessments and the deficiency assessments, with the exception of the self-assessment for 1989. Consistent with its decision in *RHI Holdings, Inc. v. Commissioner of Revenue*, the ATB limited the amount of the abatement for 1989 to the deficiency assessments because NEPSC's abatement application for that year was filed more than three years from the due date of the 1989 return.

The Associated Press v. Commissioner of Revenue, ATB Docket No. F246505 (February 2000) — In this case, the Appellate Tax Board (ATB) promulgated its Findings of Fact and Report in favor of the Commissioner. The issue in this case was whether the Commissioner properly denied the taxpayer's classification as a manufacturing corporation. The Commissioner argued that the taxpayer was not

entitled to manufacturing classification because (1) it did not produce a product; (2) its activities did not constitute a substantial and integral step in the process of manufacturing; (3) its activities did not transcend mere manipulation of information; and (4) its activities were valued solely for their content. The Commissioner also argued that the Legislature did not intend to grant manufacturing classification to a news service. The ATB concurred with the Commissioner on all points.

The taxpayer has filed a Notice of Appeal.

Combustion Engineering, Inc. v. Commissioner of Revenue, ATB Docket No. F228740 (March 2000) — In this case, the Appellate Tax Board (ATB) promulgated its Findings of Fact and Report in favor of the taxpayer.

The taxpayer (Combustion Engineering, Inc. or CEI) sold 100 percent of the stock of its subsidiary, Jamesbury Corporation (Jamesbury), to Neles, Inc. (Neles) in September 1988. Neles and CEI subsequently elected, under Section 338(h)(10) of the Internal Revenue Code, to treat the sale as a sale of Jamesbury's assets. Accordingly, Jamesbury recognized a gain on the deemed sale of its assets. Since Jamesbury was a subsidiary of CEI, the gain on the deemed sale of assets was included in CEI's consolidated return and in its Massachusetts combined return.

The issue before the ATB was whether the gross proceeds from the deemed sale of Jamesbury's assets should be included in Jamesbury's Massachusetts sales factor. The ATB ruled that:

"[T]he federal treatment of the sale — based on a fictitious recasting of the actual transaction for purposes of federal tax law — does not determine whether the proceeds of the transaction should be treated as a "sales" for purposes of the Massachusetts apportionment formula. Whatever the transaction may be "deemed" to be for federal purposes, it is, in actuality, a sale of stock, the proceeds from which are specifically excluded from the sales factor."

The Commissioner promulgated a regulation in 1995 which is consistent with the Commissioner's position in this case, that is, that the gross proceeds from the deemed asset sale must be included in Jamesbury's sales factor. See 830 CMR 63.38.1(9)(b)7. The ATB ruled that the regulation was "neither promulgated contemporaneously with the enactment of

§38 ... nor is it consistent with the plain wording of the statute."

The Commissioner has filed a Notice of Appeal.

Income Tax

Charles C. Johnston v. Commissioner of Revenue, ATB Docket No. F231855 (March 2000) — In this case, the Appellate Tax Board (ATB) promulgated its Findings of Fact and Report in favor of the Commissioner. The issue in this case was whether the taxpayer was a domiciliary of Massachusetts for income tax purposes.

The taxpayer claimed that he had abandoned his Massachusetts domicile in 1979, prior to the years at issue and resided in New Hampshire until his retirement and move to Florida in 1998. The ATB found, however, that the "center of Mr. Johnston's domestic, social and personal life was in Massachusetts" and that any "physical presence in New Hampshire, primarily on weekends, was insufficient to establish that he intended to make New Hampshire his home during the years at issue."

The taxpayer has filed a Notice of Appeal.

Kenneth R. Depperman, et al v. Commissioner of Revenue, ATB Docket No. F234866 (March 2000) — In this case, the Appellate Tax Board (ATB) issued its Findings of Fact and Report in favor of the Commissioner. At issue, was whether income received by the taxpayers from noncontributory military pensions was excluded from Massachusetts gross income and, thus, exempt from Massachusetts income tax.

The ATB's decision is a reaffirmation of the Supreme Judicial Court's decisions in *Filos v. Commissioner of Revenue*, 415 Mass. 808 (1993) and *Cooper v. Commissioner of Revenue*, 421 Mass. 557 (1995), which addressed the same issues raised in this case.

The issue of the taxation of income from noncontributory military pensions is moot for tax years beginning after January 1, 1997. The Legislature amended the statute so that such income is now excluded from Massachusetts gross income. *St. 1997, c. 139, §§ 1,2.*

Local Property

Town of Boylston v. Commissioner of Revenue and Metropolitan District Commission and Massachusetts Water Resources Authority, ATB Docket Num-

Recent Legal *continued from page 7*

bers F184626, F229026 (April 2000) — In this case, the Appellate Tax Board (ATB) promulgated its Findings of Fact and Report in favor of the Commissioner, the Metropolitan District Commission, and the Massachusetts Water Resources Authority (interested parties).

In this case, the Town of Boylston appealed the Commissioner of Revenue's 1990 and 1995 valuations of the land located in the Town of Boylston that is part of the Wachusett Watershed and held by the Metropolitan District Commission, Division of Watershed Management for the Massachusetts Water Resources Authority (MWRA). The values established by the Commissioner under M.G.L. c. 58, §§ 13–17, formed the basis of reimbursements to the Town for tax revenues lost as a result of the Commonwealth's ownership of this property. Pursuant to M.G.L. c. 59, § 5G, the reimbursement amounts were paid to the Town of Boylston from funds provided by the MWRA.

The first issue in this case was whether and how the land underneath the Wachusett Reservoir should be valued for purposes of determining the amount of payments-in-lieu-of-taxes due the Town of Boylston. The second issue was whether the Commissioner's methodology for valuing state-owned land for the years 1990 and 1995 was: (a) arbitrary and capricious; (b) designed to achieve the objectives of M.G.L. c. 58, § 13; and (c) could be applied equally to all affected cities and towns.

The Town of Boylston argued that for purposes of determining the amount of its reimbursement pursuant to M.G.L. c. 59, § 5G, the land beneath the Wachusett Reservoir should be valued dry. That is, the land should be valued as if it had not been flooded to create the reservoir. Although the Commissioner had given a minimal value to the submerged land, the ATB agreed with the position of the MWRA that the Commissioner should not have assigned any value to the land beneath the Wachusett Reservoir. The ATB held that the land beneath the reservoir was not part of the Wachusett Watershed and, therefore, was not land subject to the payment-in-lieu-of-taxes program set forth in § 5G. The ATB's determination was based on an analysis of the legislative history behind c. 59, § 5G, which

suggested that the Legislature did not intend to include the land beneath the reservoir in the reimbursement program.

Next, the ATB concluded that the Commissioner's procedures employed for purposes of the 1990 and 1995 valuations could be applied equally to each town where there were eligible state-owned lands. The ATB found that the Commissioner's procedures produced values reasonably approximate to fair cash value. Further, the ATB concluded that the Commissioner's valuation procedures were not arbitrary or capricious. Accordingly, the ATB determined that the method of valuation employed by the Commissioner to value eligible state-owned land complied with M.G.L. c. 58, § 13. Finally, the ATB ruled that the Commissioner complied with these methods in valuing eligible state-owned land in the Town of Boylston for both 1990 and 1995.

Sales/Use Tax

Shaklee Corporation v. Commissioner of Revenue, ATB Docket Nos. F245496-97 (February 2000) — In this case, the Appellate Tax Board (ATB) promulgated its Findings of Fact and Report in favor of the taxpayer. The issue in this case was whether the taxpayer was obligated to collect and pay over sales and use taxes to the Commonwealth based upon the in-state activities of its "family members."

The taxpayer is a multi-tier marketing corporation based in California. It sold its products in Massachusetts through a network of independent contractors called "family members." The Commissioner argued that the taxpayer had nexus in Massachusetts through these contractors.

The ATB found that the taxpayer did not have nexus because these contractors were independent and not "representatives" of the taxpayer within the meaning of that term as found in M.G.L. c. 64H, § 1. The ATB found that the taxpayer was not "engaged in business" in the Commonwealth because it did not "regularly solicit[] orders for the sale of tangible personal property by salesmen, solicitors or representatives in the commonwealth." The ATB held that the "family members" were not the taxpayer's representatives because the "family members" were independent contractors, not subject to the taxpayer's direction and control, and were not authorized to bind the taxpayer as an agent of the taxpayer.

The ATB also found that the taxpayer's activities in Massachusetts did not exceed the protection afforded by PL 86-272, because its activities did not exceed mere solicitation of sales. As such, the ATB found that the taxpayer did not have sufficient nexus to subject it to the Massachusetts corporate excise.

Mobil Oil Corp v. Commissioner of Revenue, ATB Docket Nos. F239392 (March 2000) — In this case, the Appellate Tax Board (ATB) promulgated its Findings of Fact and Report in favor of the taxpayer. The issue in this case was whether the taxpayer's purchase of electricity used at its petroleum processing plant was exempt pursuant to M.G.L. c. 64H, § 6(i).

The Commissioner argued that the electricity at issue was not used in the actual manufacture of tangible personal property, rather the electricity was used merely to process fuel. The ATB determined that the taxpayer's operation did constitute manufacturing and as such the electricity was exempt.

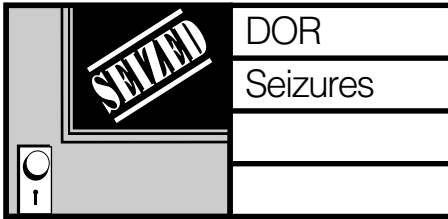
Cape Cod Cruises, Inc. v. Commissioner of Revenue, Appeals Court No. 98-P-1095 (April 2000) — In this case, the Appeals Court issued a rescript opinion affirming the Appellate Tax Board's (ATB) finding in favor of the Commissioner of Revenue.

The taxpayer, Cape Cod Cruises, Inc., had sought abatement of a sales tax assessment made against it for the purchase of a ship and other equipment claiming that its purchases were exempt under M.G.L. c. 64H, § 6(c). The ATB did not uphold the taxpayer's position and found that, even assuming that c. 64H, § 6(c) did not apply, the purchaser would still be subject to a use tax in the same amount.

The ATB also found that the taxpayer had not preserved its right to appeal to the ATB because the petition, although mailed before the 60 days expired, was received late by the ATB.

Tax Administration

Unitrode Corporation v. Commissioner of Revenue, ATB Docket No. 197231 (February 2000) — In this case, the Appellate Tax Board (ATB) issued its Findings of Fact and Report in favor of the taxpayer.



The Department of Revenue conducted nine seizures between February and April 2000, closing businesses that, at the time of seizure, owed over \$491,800 collectively in back taxes.

| Business Seized | Address | Tax Liability at Time of Seizure |
|--|--|---|
| February | | |
| Housatonic Valley Sewing & Upholstery, Inc. | 965 South Main St., Great Barrington | \$ 14,686 (corporate, sales) |
| Lepel, Inc., dba Boston Seafood Restaurant | 160 American Legion Dr., North Adams | \$ 96,066 (meals) |
| Robert & Susan Faria, dba Bob's Restaurant | 118 Alden Rd., Fairhaven | \$ 61,005 (income, meals, withholding) |
| March | | |
| Salvatore Froio, dba Mozart Custom Shirt | 60 Federal St., Boston | \$ 77,681 (income, sales, withholding) |
| Judith Santos, dba Judy's D & D Pizza | 211 Middle Rd., Acushnet | \$ 16,580 (meals, withholding) |
| The Sweet Petite Gourmet Coffee Shop, Inc. (two locations) | 505 State Rd., Dartmouth 63 E. Main St., Norton | \$129,934 (corporate, meals, withholding) |
| Walter J. Stojda Insurance Agency, Inc. | 98 Summer St., Adams | \$ 12,867 (corporate) |
| April | | |
| Stoppers, Inc., dba Stoppers Café | 144-146 Washington St., Peabody | \$ 71,644 (corporate, meals, withholding) |
| David Lawrence | 247 Pawtucket Blvd., Tyngsboro | \$ 11,347 (income) |

Recent Legal

This case presented a procedural issue of whether a meeting with an audit supervisor after the issuance of a Notice of Intention to Assess (NIA) and prior to an assessment satisfied the statutory requirement of a pre-assessment conference under M.G.L. c. 62C, § 26(b). The underlying tax at issue was corporate excise tax for the tax period ended January 31, 1985. The ATB held that the audit supervisor was not a "duly authorized representative" of the Commissioner as required under section 26(b). Accordingly, the ATB ruled that the meeting attended by Unirode's vice president of taxes, the Department's auditor and audit supervisor, did not afford the taxpayer the pre-assessment conference to which it was entitled under the statute.

Paul E. Coan v. Commissioner of Revenue, ATB Docket No. F232273 (April 2000) — In this case, the Appellate Tax Board (ATB) promulgated its Findings of Fact and Report in favor of the taxpayer. The issue in this case was whether the taxpayer could be held personally liable for the unpaid withholding taxes of his

continued from page 8

corporation. The taxpayer conceded that he was personally liable for the unpaid taxes. However, he argued that the assessment against him was invalid because it was not made within three years from the date the withholding taxes were assessed against the corporation. The Commissioner argued that under M.G.L. c. 62C, § 31A, § 65, and 830 CMR 62C.31A.1(2), the Commissioner may deem a person to be individually liable for the unpaid corporate assessment during the entire six-year period of time that the assessment remains unpaid.

Without addressing the legal arguments put forth by either the taxpayer or the Commissioner, the ATB found in favor of the taxpayer on the grounds that the assessment was invalid. Although the taxpayer did not raise the issue, the ATB invalidated the assessment because there was no evidence in the record to show how much, if any, of the corporation's tax liability remained unpaid at the time the taxpayer was deemed a responsible person for them. ■

Website

continued from page 1

that the Department is working on would allow businesses to file their wage reporting, wage withholding and unemployment compensation returns all as part of one "single file" return.

Feedback

The Department is interested in hearing what visitors to the Bay State Business Connection have to say about the website. Users can send in comments and suggestions regarding the site via an online survey or send an e-mail to the Bay State Business Connection's e-mail account at bsbcfeedback@dor.state.ma.us. In addition, DOR is in the process of building a distribution list to send updates about the website to interested parties. Anyone interested in being included in this distribution list can send a request to bsbcfeedback@dor.state.ma.us. ■



3rd Quarter

2000 Tax Calendar*

| | Date** | Form | Form Title | Comments |
|------------------|---------------|---------|--|--|
| July | 7 | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| | 15 | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| | 20 | ST-9Q | Quarterly Sales and Use Tax Return | \$101 to \$1,200 |
| | | ST-9 | Monthly Sales and Use Tax Return | Over \$1,200 |
| | | ST-MAB4 | Monthly Sales Tax on Meals, Prepared Food and All Beverages Return | — |
| | | RO-2 | Monthly Room Occupancy Excises Return | — |
| | 22 | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| | 31 | M-941D | Quarterly Return of Income Taxes Withheld for Employer Paying Weekly | Over \$25,000 |
| | | M-941 | Employer's Quarterly Return of Income Taxes Withheld | \$101 to \$1,200 |
| | | M-942 | Employer's Monthly Return of Income Taxes Withheld | \$1,201 to \$25,000 |
| | August | 7 | M-941W | Employer's Weekly Payment of Income Taxes Withheld |
| 15 | | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| | | M-942 | Employer's Monthly Return of Income Taxes Withheld | \$1,201 to \$25,000 |
| 20 | | ST-9 | Monthly Sales and Use Tax Return | Over \$1,200 |
| | | ST-MAB4 | Monthly Sales Tax on Meals, Prepared Food and All Beverages Return | — |
| | | RO-2 | Monthly Room Occupancy Excises Return | — |
| 22 | | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| 31 | | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| September | 7 | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| | 15 | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| | | 1-ES | Personal Estimated Tax Payment | 3rd Quarter |
| | | 2-ES | Estimated Tax Payment for Filers of Form 2, 3F and 3M | 3rd Quarter |
| | | 355-ES | Corporation Estimated Tax Payment | 3rd Quarter (calendar year filers) |
| | | M-942 | Employer's Monthly Return of Income Taxes Withheld | \$1,201 to \$25,000 |
| | 20 | ST-9 | Monthly Sales and Use Tax Return | Over \$1,200 |
| | | ST-MAB4 | Monthly Sales Tax on Meals, Prepared Food and All Beverages Return | — |
| | | RO-2 | Monthly Room Occupancy Excises Return | — |
| | 22 | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |
| | 30 | M-941W | Employer's Weekly Payment of Income Taxes Withheld | Over \$25,000 |

* For certain taxes.

** For certain business taxes, the number of days for payment after the close of each taxable period may vary — see specific forms and instructions.

Massachusetts Department of Revenue Telephone Directory

Unless otherwise specified, all numbers are in the 617 area code.

Executive Administration

51 Sleeper Street
Boston, MA 626-2201

Commissioner's Office 626-2201
Dispute Resolution Office 626-2201
Office of the Taxpayer Advocate 626-2280
Office of Tax Policy Analysis 626-2100
Problem Resolution Office 626-3833

Communications Office 626-2251
Publishing Services Office 626-2800

Criminal Investigations Bureau 887-6780
Toll-free in MA 1-800-792-5254

Audit Division

200 Arlington Street, Room 4300
Chelsea, MA 887-6800

Bureau of Desk Audit 887-6900
Exempt Organization Unit 887-6970
Installment Sales Unit 887-6950
Manufacturing Corporation Classification Unit 887-6980
Nonprofit Corporations 887-6970
Out-of-State Contracts 887-6995
Security Corporation Classification Unit 887-6990

Special Enforcement Unit 887-6764
IFTA 887-5080

Estate Tax Unit 887-6930
Case Status 887-6930
Estate Assessing 887-6930
Fiduciary 887-MDOR
Forms 887-6940
Release of Lien 887-6930
Taxpayer Assistance 887-MDOR

New England Audit Bureau Headquarters 887-6700
Banking & Insurance 887-6710

Massachusetts Audit Offices
Fall River, MA (508) 678-2844
Hyannis, MA (508) 771-2414
Pittsfield, MA (413) 499-2206
Springfield, MA (413) 784-1000
Worcester, MA (508) 792-7300

Multistate Audit Bureau Headquarters . . . (312) 332-1502

Out-of-State Audit Offices
Atlanta, GA (404) 874-2922
Burbank, CA (818) 840-9059
Chicago, IL (312) 899-9040
Houston, TX (713) 784-7225
New York, NY (212) 768-2750
Pittsburgh, PA (412) 281-2776

Child Support Enforcement Division

51 Sleeper Street
Boston, MA
Toll-Free Nationwide 1-800-332-2733

Compliance Division

200 Arlington Street
Chelsea, MA 887-6400

Collections Bureau 887-6400
Offers in Final Settlement 887-6271
REAP 887-6271
Seizures 887-6270

Filing Enforcement Bureau 887-6400

Massachusetts Compliance Offices
Fall River, MA (508) 678-2844
Hyannis, MA (508) 771-2414
Pittsfield, MA (413) 499-2206
Springfield, MA (413) 784-1000
Worcester, MA (508) 792-7300

Small Business Workshop 887-6400

Inspectional Services Division

51 Sleeper Street
Boston, MA
Internal Affairs Office 626-2130
Internal Audit Office 626-2190

Legal Division

51 Sleeper Street
Boston, MA
General Counsel's Office 626-3200
Appeal & Review Bureau 626-3300
Litigation Bureau 626-3225
Bankruptcy Unit 626-3875
Rulings & Regulations Bureau 626-3250

Local Services Division

51 Sleeper Street
Boston, MA 626-2300

Processing Division

Executive Offices 887-5010

Automated Processing Bureau 887-5030
Electronic Business Transactions 887-5020
Wage Reporting 887-5030

Individual Tax Filing
Telefile 887-5111
Electronic Filing 887-5008

Data Integration Bureau 887-5150
Central Registration Unit 887-5068

Excise Tax Unit 887-5060
Alcoholic Beverage 887-5120
Cigarette 887-5090
Gasoline 887-5070
Motor Carriers 887-5110
Special Fuels 887-5040

Records Management Unit 887-4800

Underground Storage Tank Unit 887-5970

Revenue Accounting Unit

51 Sleeper Street
Boston, MA 626-3550

Taxpayer Service Division

Local Office
19 Staniford Street, 1st Floor
Boston, MA 887-MDOR (6367)

Toll-Free in MA 1-800-392-6089

Abatements 887-MDOR
Bill and Payment Inquiries 887-MDOR
Certificate Unit 887-6550
Corporation Excise 887-MDOR
Corporate Trusts 887-MDOR
Estate Tax 887-MDOR
Estimated Taxes 887-MDOR
Fiduciary Taxes 887-MDOR
Forms Supply 887-MDOR
Income Tax 887-MDOR
Meals Tax 887-MDOR
Motor Vehicles 887-MDOR
Nonresident Information 887-MDOR
Partnerships 887-MDOR
Payment Agreements 887-MDOR
Refunds 887-MDOR
Room Occupancy Excise 887-MDOR
Sales and Use Tax 887-MDOR
Teletypewriter (TTY) 887-6140
Withholding 887-MDOR

To report allegations of suspected misconduct or impropriety involving Department of Revenue employees, please call the Inspectional Services Division's Integrity Hot Line at 1-800-568-0085 or write to PO Box 9480, Boston, MA 02205.



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DOR Programs Simplify Audit Process for Business Taxpayers

Traditional audits of businesses can be time-consuming as well as labor- and paper-intensive operations for both the taxpayer and the Department of Revenue (DOR). The Department has several options available to business taxpayers that can help reduce the administrative burdens associated with audits. For instance, the managed compliance agreement (MCA) program allows businesses to pay a predetermined set rate of use tax to DOR for a specific term instead of undergoing a standard audit.

An MCA is an up-front, binding agreement between a business and DOR that details simplified procedures by which the business would calculate and remit unpaid use tax directly to the Department for a set period of time, usually three years. Under an MCA, the business and DOR would mutually determine and agree upon a taxability rate to be applied against account balances. Using an automated program called Computer Assisted Sampling (CAS), DOR reviews a selection of representative transactions over a base period and comes to an agreement with the business on what percentage of the transactions are taxable. Once the percentage is agreed upon, the company would then pay taxes on that percentage each month for the term of the agreement.

"By engaging businesses in managed compliance agreements, we can now prospectively determine a business's use tax liability, rather than tie up resources in an expensive audit retrospectively every three years," noted Audit Deputy Commissioner Frederick Beebe.

Managed compliance agreements also provide DOR with an efficient means of verifying a taxpayer's compliance. Near the end of the three-year term, DOR reviews the business's payments to determine that the tax liability was met or if any adjustments are necessary. The review will also serve to project the taxability rate for the next three years, if the agreement is continued.

Typically, MCAs are geared towards larger companies that have computerized records, and accrue an annual use tax liability of \$25,000. The Department has drafted a standard Managed Compliance Agreement for all business taxpayers. Each MCA will have an accompanying Memorandum of Understanding detailing the specifics of an individual taxpayer's agreement. The Department's MCA program initially will be limited to the sales and use tax, but may be expanded in the future to incorporate certain other excise taxes.

Key to the MCA program is the use of direct pay certificates. Businesses holding direct pay certificates will pay use tax directly to DOR, instead of paying a sales tax to the vendor at the point of purchase. Direct pay certificates allow businesses to self-accrue more of their tax liability and reduce paperwork and bookkeeping. The Department is awaiting final passage of legislation to legalize the use of direct pay certificates for the program.

While CAS is an integral part of an MCA, it can also be used to expedite the audit process for businesses that do not qualify to enter a managed compliance agree-

ment. CAS reduces the time and personnel resources required to complete an audit as computers handle a bulk of the data entry, data analysis and report generation. Rather than relying on paper records, CAS works directly from electronic data supplied by the taxpayer and, using that data, quickly and accurately determines a taxpayer's liability.

For more information about Managed Compliance Agreements and Computer Assisted Sampling, contact DOR's Audit Division at (617) 887-6800. ■

Taxpayer Advisory Bulletin

This publication is designed to keep taxpayers, tax practitioners and the news media informed of developments, problems, answers to questions and matters of general interest about Massachusetts tax law regulation, policy, and procedures. It is not designed to address complex issues in detail. Nothing contained herein supersedes, alters or otherwise changes provisions of the Massachusetts General Laws, Massachusetts Department of Revenue's Regulations, Technical Information Releases or Letter Rulings.

Frederick A. Laskey
Commissioner of Revenue

Ellen Cummings
Editor

Copies of all forms, public written statements and publications referred to in this bulletin are available upon request from the Publishing Services Office (unless otherwise indicated) at PO Box 9481, Boston, MA 02205-9481, Tel. (617) 626-2800. Various publications also are available through DOR's Fax on Demand system (617-887-1900) and World Wide Web site (www.state.ma.us/dor).