

as of January first, nineteen hundred and seventy-nine, and shall become inoperative on December thirty-first, nineteen hundred and eighty-three. Section 15 of this act shall take effect on November first, nineteen hundred and eighty. All other sections of this act shall take effect on January first, nineteen hundred and eighty.

Approved November 16, 1979.

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Chap. 797. AN ACT MAKING CHANGES IN THE LAW PROVIDING FOR THE TAXATION OF REAL PROPERTY BY USAGE CLASSIFICATION.

Whereas, The deferred operation of this act would tend to defeat its purpose which is to provide immediately for the taxation of real property by usage classification and to provide for an equitable application of the real property tax burden among commercial, industrial and residential property owners, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 40 of the General Laws is hereby amended by adding the following section:-

Section 56. The board of assessors with the approval of the selectmen in each town and the mayor, with the approval of the city council of each city, which city or town has been certified by the commissioner of revenue to be assessing property at full and fair cash valuation, shall biennially on or before May first determine the percentages of the local tax levy to be borne by each class of real property, as defined in section three of chapter fifty-nine, and personal property for the next two fiscal years. In determining such percentages, the selectmen or mayor, as the case may be, shall first adopt a residential factor. Said factor shall be an amount not less than the minimum residential factor determined by the commissioner of revenue in accordance with the provisions of section one A of chapter fifty-eight.

Class one percentage, the full and fair cash valuation of the class one property divided by the full and fair cash valuation of all real and personal property in said city or town multiplied by the residential factor.

Class two percentage, the full and fair cash valuation of the class two property divided by the full and fair cash valuation of all real and personal property in said city or town multiplied by not less than eighty-five per cent of the residential factor.

Class three percentage, the full and fair cash valuation of the class three property divided by the sum of full and fair cash valuation of class three and class four real property and personal property in such city or town multiplied by the difference between one hundred per cent and the sum of the class one and two percentages.

Class four percentage, the full and fair cash valuation of the class four property divided by the sum of the full and fair cash valuation of the class three and class four real property and personal property in such city or town multiplied by the differ-

ence between one hundred per cent and the sum of the class one and class two percentages.

Personal property percentage, the full and fair cash valuation of the personal property in a city or town divided by the sum of the full and fair cash valuation of the class three and class four real property and the personal property in a city or town multiplied by the difference between one hundred per cent and the sum of the class one and class two percentages.

As used in this section the full and fair cash valuation amounts shall be those amounts as determined by the commissioner of revenue and sent to each city and town pursuant to section one A of chapter fifty-eight.

The percentages, so determined, shall upon certification of the commissioner be transmitted to the board of assessors to be used in setting the tax rates pursuant to section twenty-three A of chapter fifty-nine.

SECTION 2. Chapter 41 of the General Laws is hereby amended by inserting after section 30A the following section:-

Section 30B. Any two or more cities and towns may enter into an agreement for joint or cooperative assessing, classification and valuation of property. Such agreement shall provide for:-

- (1) the division, merger or consolidation of administrative functions between or among the parties, or the performances thereof by one city or town on behalf of all the parties;
- (2) the financing of the joint or cooperative undertaking;
- (3) the rights and responsibilities of the parties with respect to the direction and supervision of the work to be performed and with respect to the administration of the assessing office including the receipt and disbursement of funds, the maintenance of accounts and records and the auditing of accounts;
- (4) annual reports of the assessor to the constituent parties;
- (5) the duration of the agreement and procedures for amendment or termination thereof; and
- (6) any other necessary or appropriate matter.

Unless the agreement provides for assessing by one city or town on behalf of the other cities and towns parties thereto, the agreement shall provide for the designation of an appointing authority representing all of the cities and towns in the district, which shall be responsible for the appointment of an assessor who shall serve as the assessor for each and all cities and towns in the district. Subject to the rules and regulations established by the commissioner of revenue pursuant to section one of chapter fifty-eight, the agreement shall provide for qualifications, terms and conditions or employment for the assessor and employees of his office. The agreement may provide for inclusion of the assessor and said employees in insurance, retirement programs and other benefit programs of one of the constituent parties. Any city or town party to such an agreement may include employees of an assessing district in such programs.

No agreement for joint or cooperative assessing made pursuant to this section shall take effect until it has been approved in writing by the commissioner of revenue.

SECTION 3. Chapter 58 of the General Laws is hereby amended

by striking out section 1, as most recently amended by section 1 of chapter 580 of the acts of 1978, and inserting in place thereof the following two sections:-

Section 1. The commissioner of revenue in chapters fifty-eight to sixty-five C, inclusive, called the commissioner, shall make, and from time to time revise, such reasonable rules, regulations and guidelines, as may be necessary to establish minimum standards of assessment performance. The specific areas to which such standards relate shall include but not be limited to the following: the administration of all laws providing for the assessment and classification of property; the methods of determining the actual fair cash valuation of different kinds of property for tax purposes; the types of qualifications of assessing personnel; and the adequacy of tax maps and other records.

Section 1A. The commissioner, in addition to exercising the powers or performing the duties otherwise assigned to him, shall enforce all laws relating to the valuation, classification and assessment of property and shall supervise the administration of such laws by local assessors in accordance with the rules, regulations and guidelines established under the provisions of section one.

He shall determine whether or not the locally assessed values represent the full and fair cash valuation for each class of real property, as defined in section three (b) of chapter fifty-nine, and personal property not exempt from local taxation within each city and town. In each city and town which he has determined to be assessing at full and fair cash valuation, he shall determine a minimum residential factor for each city and town which shall be sixty-five per cent subject to such adjustment upward as may be required to provide that the percentage of the total tax levy imposed on any class of real or personal property shall not exceed one hundred fifty per cent of the full and fair cash of the taxable property in said class divided by the full and fair cash of all taxable real and personal property in the city or town. In no instance, however, shall the minimum residential factor, so determined, be greater than the amount of one hundred per cent, although a city or town may decide to adopt a residential factor greater than that amount. For this purpose, he may utilize the information on assessed values and classifications gathered pursuant to sections nine and ten and such other information as may be available to him. The taxable values and minimum residential factor so determined shall be sent to the individual cities and towns on or before April first of each year in which there is to be a determination of the percentages of the local tax levy to be borne by each class of property pursuant to section fifty-six of chapter forty.

In the performance of such duties, he may visit any city or town, inspect the work of its assessors and require of them any information he shall deem necessary regarding the procedures used in keeping records, maintaining tax maps and determining the valuation and classification for taxation of the property or any part thereof in such city or town. He shall require of them such action as will tend to produce uniformity within such city or town and throughout the commonwealth in the valuation,

classification and assessment of property for local taxation.

He may require from state and town officers such returns and statements relative to the amount and value of taxable property in the several towns as he deems necessary. Information provided by said assessors shall include: (1) the total of all property subject to local taxation in each city and town, (2) the amount, if any, of tax abatements for the preceding year, and (3) such other information as may be required to aid the commissioner in the discharge of his responsibility in respect to the preparation of the equalization and apportionment report as provided in sections nine and ten.

He shall, at the request of the assessors of any city or town or upon his own initiative, give his opinion to assessors and collectors upon any question arising under any statute relating to the assessment, classification and collection of taxes or he may obtain the opinion of the attorney general upon such question. In either case, the opinion of the commissioner or the opinion of the attorney general, if any, shall be binding.

He shall issue, and may from time to time revise, a list of private firms or individuals qualified to perform appraisals or reappraisals of property for tax purposes in the commonwealth and shall make such list available to assessors. In any case where a city or town proposes to contract with any such private firm or individual for such appraisal or reappraisal services, such contract shall be with a firm or individual determined by the commissioner to be qualified to perform such services and said contract shall be approved as to form and content by the commissioner. Upon completion, he shall certify that valuations established under such appraisal or reappraisal of property for tax purposes by any such firm in the commonwealth comply with guidelines established under section one. Firms or individuals aggrieved by a decision of the commissioner that they are not qualified to perform appraisals or reappraisals of property for tax purposes in the commonwealth may appeal such decision to the appellate tax board.

He may cause an assessor to be prosecuted, either in the county where said officer resides or in an adjoining county, for any violation of law relative to assessment or classification of taxes for which a penalty is imposed. He may appear before any court or before any board of county commissioners sitting for the abatement of taxes, or before the appellate tax board.

SECTION 4. Said chapter 58 is hereby further amended by striking out section 3, as most recently amended by section 2 of said chapter 580, and inserting in place thereof the following section:-

Section 3. In order to assist the assessors in the performance of their duties, the commissioner shall prepare, issue and periodically revise guides for local assessors. Such guides shall include the rules, regulations, and guidelines of the commissioner relative to the assessment, classification and administration of local taxes, an appraisal manual and, in addition, may include special studies, cost and price schedules, news and reference bulletins and digests of laws relating to local taxation. He shall prepare and issue such other printed instructions to the assessors

which are adapted to varying local circumstances and to differences in the character and condition of property subject to local taxation as he shall deem necessary.

He shall conduct or sponsor in-service, pre-entry, and intern training programs on the technical, legal, and administrative aspects of the assessment process and may require assessors to attend such programs. Such programs shall include but not be limited to training required to meet minimum standards of assessment and classification performance established in accordance with section one. The commissioner may contract with educational institutions or appropriate professional associations to provide such training programs. He shall develop, prescribe, and require the use of all forms necessary for administration of the laws relating to the taxation of property. So far as practicable, the forms shall be uniform, but nothing herein shall be deemed to prevent the prescribing of substitute or additional forms where special circumstances require.

He shall annually, on or about January first, furnish to each board of assessors all the information relating to the assessment, classification, valuation and ownership of property taxable in their town that has come into possession of his department, particularly under chapter sixty-five and sixty-five C.

He shall cause a representative of his office to visit every city or town to give to the assessors such assistance as may be authorized or required by law.

SECTION 5. Said chapter 58 is hereby further amended by striking out section 4, as amended by section 4 of said chapter 580, and inserting in place thereof the following four sections:-

Section 4. Whenever it appears to the commissioner that the property, or any part thereof, in any town is not valued for taxation according to the first paragraph of section thirty-eight of chapter fifty-nine, and that such failure to comply with the law is the result of failure of the city or town to meet the minimum standards prescribed by the commissioner under the provisions of section one, including but not limited to minimum standards for keeping records of valuation, classification and ownership, production and maintenance of tax maps, and use of the opinions guides, manuals or other information furnished the assessors under the provisions of sections one A and three by the commissioner, or is due to failure on the part of its assessors, or any of them, to properly examine the records of the registry of deeds and probate court, he shall forthwith direct said assessors to meet the minimum standards required, to make use of the opinions, guides, manuals or other information furnished by him, and to make such examinations of the records of the registry of deeds and probate court as he deems necessary to correct the failure of the town to value any or all of the property for taxation according to law. On failure by the assessors, or any of them, to comply with such directions of the commissioner, for any reason, he shall forthwith notify the mayor or the selectmen, in writing, of said failure and of any requirements which he deems necessary to expedient to insure proper performance, valuation and classification of property for taxation according to law. Such notice shall contain a statement that failure of the

town to comply with such requirements will result in court action.

At the request of local assessors, he shall, subject to appropriation, contract on behalf of the city or town for engineering, professional or technical services for the installation of such record keeping system, the production and installation of tax maps, the appraisal or reappraisal of property, or such other action as has required for the town to meet the minimum standards prescribed.

Section 4A. If such city or town fails, within a reasonable time, to comply with the notice and requirements of the commissioner and continues to fail to meet the minimum standards provided in section one and to value property for taxation in violation of section thirty-eight of chapter fifty-nine, (a) the commissioner may, subject to appropriation, contract on behalf of the city or town to provide engineering, professional or technical services for the installation of such record keeping systems, the production and installation of tax maps, the appraisal or reappraisal of property, or such other action as he has required for the town to meet the minimum standards prescribed, or (b) a single justice of the supreme judicial court may, on the petition of the commissioner, order the mayor or selectmen to comply with the requirements of the commissioner or order its assessors to value property for taxation at its fair cash valuation and to classify real property according to use and to meet the minimum standards necessary to accomplish this within a definite period of time to be determined by the court. The commissioner shall file with his petition copies of his directions to the assessors and of his notice to the mayor or selectmen under the provisions of section four, together with such other evidence in his possession which he has collected in accordance with sections one A and six as will be helpful to the court in determining whether or not such an order should be issued.

Section 4B. A city or town whose mayor or selectmen and assessors have been ordered by the court under section four A to comply with the requirements of the commissioner may request said commissioner to provide engineering, professional or technical services for the installation of such record keeping systems, the production and installation of tax maps, the appraisal or reappraisal of property, the classification of property, or such other action as may be necessary for such city or town to comply with such court order.

Section 4C. Whenever the commissioner provides any service under the provisions of section four, four A or four B, the costs of such services shall be incurred by the commonwealth; and payment therefore shall be deducted by the state treasurer under the provisions of section twenty A of chapter fifty-eight from any amount distributable or payable by the commonwealth to such city or town.

Whenever, in the opinion of the commissioner, it is necessary for an assessor to attend any training program under the provisions of section three, the registration fees, costs of study material and necessary travel expense will be paid by the city, town or district or such assessor.

SECTION 6. Said chapter 58 is hereby further amended by striking out section 6, as amended by section 5 of chapter 580 of the acts of 1978, and inserting in place thereof the following section:-

Section 6. The commissioner may collect and tabulate information as to the classification, sales price and fair cash value of real estate in the several towns. For this purpose he may require assessors to furnish him with any information in their possession, may consult persons likely to have knowledge as to the classification, sales price and fair cash value of separate parcels of real estate, and may examine probate and other relevant records.

SECTION 7. Sections seven A to seven E, inclusive, of said chapter 58 is hereby repealed.

SECTION 8. Said chapter 58 is hereby further amended by striking out section 10, as most recently amended by section 7 of chapter five hundred and eighty of the acts of nineteen hundred and seventy-eight, and inserting in place thereof the following section:-

Section 10. In determining the equalized valuations required by section nine, the commissioner shall make and issue such comprehensive assessment ratio studies of the average level of assessment, the degrees of assessment, uniformity, and over-all compliance with assessment and classification requirements for each major class of property in each city and town of the commonwealth as he shall deem appropriate to indicate the degree of compliance with the law and rules and regulations for the assessment and classification of property in each city and town.

For the purposes of this section, the commissioner shall collect and tabulate information relative to all sales of real estate and shall also cause appraisals to be made of properties of various classes in each city and town sufficient in number and so selected, by random sampling or otherwise, as to (a) confirm the assessment ratio derived from selling prices, (b) assist in determining assessment ratio wherever the number of sales is insufficient to represent all properties of any specific class in a city or town, (c) provide a substitute for selling prices of properties of a unique character or which are sold at infrequent intervals, and (d) establish an assessment ratio for personal property assessed in each city or town.

The commissioner may require from state, city and town officers and from individual property owners such returns and statements relative to the amount and value of taxable property and the income derived therefrom in the several cities and towns as he deems necessary. If a city or town fails to submit such information in its possession or which it can reasonably be expected to obtain as the commissioner requests in writing for use in determining the equalized valuations required by section nine and such failure continues for thirty days after such written request, such city or town shall not have a right to submit testimony to the commissioner as provided under section ten A and the decision of the commissioner with respect to such city or town shall

be final.

SECTION 9. Section 17B of said chapter 58, as most recently amended by section 8 of said chapter five hundred and eighty, is hereby further amended by striking out the second sentence and inserting in place thereof the following sentence:- Such losses of taxes as determined by the commissioner shall be based on the then current tax rate in each town in which property has been taken for flood control reservoirs and on the average assessed valuation for a period of five years prior to the acquisition of said land; provided, however, that whenever a town wherein a flood control reservoir or portion thereof is located shall have made a general revaluation of property subject to the annual municipal taxes for such town, the commissioner may use such revaluation for determining the taxes for which payment shall be made.

SECTION 9A. The first sentence of section 6 of chapter 58A of the General Laws is hereby amended by striking out the words "; chapter fifty-nine A", inserted by section 10 of chapter 580 of the acts of 1978.

SECTION 10. Said chapter 58A is hereby further amended by adding the following section:-

Section 14. In cases where the appellate tax board finds that a taxpayer is being assessed disproportionately with respect to other properties within the same city or town, the board shall compute the measure of damages in the following manner:

(1) by computing an equalized tax rate by dividing the total taxes as assessed for that city or town for the year for which the finding was made by the fair cash value of the city or town, which shall in no event be higher than the equalized value as finally reported to the general court by the state tax commission pursuant to section ten C of chapter fifty-eight for that city or town in the year next preceding the year for which the finding was made.

(2) by applying the rate as computed in accordance with subsection one to the fair cash value of the property and thereby determine the taxes which should have been paid.

(3) by subtracting the amount of taxes which should have been paid from those actually paid or assessed.

In such cases within a city or town that has been certified for classification by the commissioner under the provision of section fifty-six of chapter forty and has implemented such classification system the measure of damages shall be computed on the basis of the tax rate of the class in which the property has been assessed.

SECTION 11. Chapter 59 of the General Laws is hereby amended by inserting after section 2, the following two sections:-

Section 2A. (a) Real property for the purpose of taxation shall include all land within the commonwealth and all buildings and other things thereon or affixed thereto, unless otherwise exempted from taxation under other provisions of law. The assessors of each city and town shall determine the fair cash valuation of such real property for the purpose of taxation on the first day of January of each year.

Mortgages upon buildings or other things, which with the land upon which they are erected or to which they are affixed are taxable as real estate defined herein, shall be deemed mortgages of real estate for the purpose of taxation, and shall be taxed under sections eleven to fourteen, inclusive.

(b) The assessors shall determine the fair cash valuation of such real property according to section thirty-eight; and if the city or town has been certified by the commissioner pursuant to clause (c) of this section shall classify such real property according to the following uses:-

"Class one, residential", property used or held for human habitation containing one or more dwelling units including rooming houses with facilities designed and used for living, sleeping, cooking and eating on a non-transient basis. Such property includes accessory land, buildings or improvements incidental to such habitation and used exclusively by the residents of the property or their guests. Such property shall not include a hotel, or motel. Such property may be exempt from taxation under other provisions of law.

"Class two, open-space", land which is not otherwise classified and which is not taxable under the provisions of chapter sixty-one or sixty-one A, or taxable under a permanent conservation restriction or lands otherwise taxed for recreational purposes under other provisions of law, and which land is not held for the production of income but is maintained in an open or natural condition and which contributes significantly to the benefit and enjoyment of the public.

"Class three, commercial", property used or held for use for business purposes and not specifically includible in another class, including but not limited to any commercial, business, retail, trade, service, recreational, agricultural, artistic, sporting, fraternal, governmental, educational, medical or religious enterprise, for non-profit purposes. Such property may be expressly exempt from taxation under other provisions of this chapter.

"Class four, industrial", property used or held for use for manufacturing, milling, converting, producing, processing or fabricating materials; the extraction or processing of materials unserviceable in their natural state to create commercial products or materials; the mechanical, chemical or electronic transformation of property into new products and any use that is incidental to or an integral part of such use, whether for profit or non-profit purposes; and property used or held for uses for the storage, transmitting and generating of utilities regulated by the department of public utilities. Such property may be exempt from taxation under other provisions of law.

Where real property is used or held for use for more than one purpose and such uses result in different classifications, the assessors shall allocate to each classification the percentage of the fair cash valuation of the property devoted to each use according to the guidelines promulgated by the commissioner.

Real property which is exempt from taxation under section five shall be classified according to said guidelines.

(c) Classification of real property shall not be implemented in any city or town until the commissioner has certified in writing to the assessors of such city or town assessing property at full

and fair cash valuation as required by section thirty-eight and that a majority of its assessors are qualified to classify its property.

Section 2B. Except as otherwise provided in section three E, real estate owned in fee or otherwise or held in trust for the benefit of the United States, the commonwealth, or a county, city or town, or any instrumentality thereof, if used in connection with a business conducted for profit or leased or occupied for other than public purposes, shall for the privilege of such use, lease or occupancy, be valued, classified, assessed and taxed annually as of January first to the user, lessee or occupant in the same manner and to the same extent as if such user, lessee or occupant were the owner thereof in fee, whether or not there is any agreement by such user, lessee or occupant to pay taxes assessed under this section; provided, however, that whenever under the constitution or laws of the United States the privilege of such use, lease or occupancy of real estate owned by the United States cannot be taxed as aforesaid, but a leasehold or other interest in such real estate or the ownership of or an interest in buildings and other things erected thereon or affixed thereto, may be taxed, such interest or ownership shall be valued, classified, assessed and taxed to the holder thereof to the extent permitted by such constitution and laws. Except as otherwise provided, a payment purporting to be in lieu of a local tax for a particular year on real estate subject to this section shall be applied in reduction of the tax assessed under this section for such year with respect to such real estate. Notwithstanding any contrary provision of section fifteen, unless there is a different agreement, no tax assessed under this section shall be retained out of rent or recovered under section fifteen.

No tax assessed under this section shall be a lien upon the real estate with respect to which it is assessed; nor shall any such tax be enforced by any sale or taking of such real estate; but the interest of any lessee therein may be sold or taken by the collector of the town in which the real estate lies for the nonpayment of such tax in the manner provided by law for the sale or taking of real estate for nonpayment of annual taxes. Such collector shall have for the collection of taxes assessed under this section all other remedies provided by chapter sixty for the collection of annual taxes upon real estate.

This section shall not apply to a use, lease or occupancy which is reasonably necessary to the public purpose of a public airport, port facility, Massachusetts Turnpike, transit authority or park, which is available to the use of the general public or to easements, grants, licenses or rights of way of public utility companies; to the property of the United States, or any instrumentality thereof, for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed, in behalf of the United States or any instrumentality thereof; or to the property of the United States, or any instrumentality thereof, which is used by a manufacturing corporation so classified under chapter fifty-eight.

SECTION 12. Said chapter 59 is hereby further amended by

inserting after section 5B, the following four sections:-

Section 5C. With respect to each parcel of real property classified as Class one, residential, in each city or town certified by the commissioner to be assessing all property at its full and fair cash valuation, and at the option of the board of selectmen or mayor, with the approval of the city council, as the case may be, there shall be an exemption equal to not more than ten per cent of the average assessed value of all Class one, residential, parcels within such city or town. This exemption shall be in addition to any exemptions allowable under section five; provided, however, that in no instance shall the taxable valuation of such property after all applicable exemptions be reduced below ten per cent of its full and fair cash valuation, except through the applicability of clause eighteen of section five. Where, under the provisions of section five, the exemption is based upon an amount of tax rather than on valuation, the reduction of taxable valuation for purposes of the preceding sentence shall be computed by dividing the said amount of tax by the residential class tax rate of the city or town and multiplying the result by one thousand dollars. For purposes of this paragraph, "parcel" shall mean a unit of real property as defined by the assessors in accordance with the deed for such property and shall include a condominium unit.

Section 5D. Property held by a city, town or district including the metropolitan water district, in another city or town for the purpose of a water supply, the protection of its sources or a sewage disposal, or of a public airport if yielding no rent, shall not be liable to taxation therein; but the city, town or district so holding it shall annually on July first, pay to the city or town in which such property is located an amount equal to that which such city or town would receive in taxes upon the average of the assessed taxable valuation of the land, which shall not include buildings or other structures except in the case of land taken for the purpose of protecting the sources of an existing water supply, for the three years last preceding the acquisition thereof, the valuation for each year being reduced by all abatements thereon. Whenever a city or town in which such land is located shall have made a general revaluation of all its real property for purposes of taxation, the valuation of such land for the purpose of payments authorized by this section shall be determined by the commissioner of revenue as of January first, between January first and June first, in the year succeeding such revaluation and in every fifth year thereafter, so that the payment with respect to such land shall remain substantially the same as that made prior to such revaluation. The city, town or district owning such land, if aggrieved by the determination of the commissioner, may within six months after written notice thereof appeal to the appellate tax board. Any part of such land or buildings from which any revenue in the nature of rent is received shall be subject to taxation. Revenue received for the use of such areas of land within the property so held for the purpose of a public airport as are used for the take-off and landing of aircraft, including runways and taxi strips, or for the use of buildings on such property which are used as a

terminal or administration building or for housing, servicing and repairing aircraft, shall not be deemed to be rent or revenue in the nature of rent within the meaning of this paragraph.

If such land is part of a larger tract which has been assessed as a whole, its assessed valuation in any year shall be taken to be that proportional part of the valuation of the whole tract which the value of the land so acquired, exclusive of buildings, bore in such year to the value of the whole tract.

Section 5E. The assessors of a city or town where land is acquired by such other city, town or district for water supply or sewage disposal or for a public airport shall, within one year after such acquisition, determine the average valuation of such land under section five D and certify the amount so determined to such other city, town or district. The mayor or selectmen, the commissioners or prudential committee of a district, or the metropolitan district commission, within six months after receipt of said certificate, may appeal from such determination to the appellate tax board; and upon the approval said board shall determine the valuation in the manner provided in the preceding section, and section sixty-five, so far as applicable, shall govern such appeal.

If land within any city or town shall have been taken from it for said purposes, and for any one of the three years prior to the taking shall have been used for any public purpose, and for that reason no taxes have been collected thereon, the city or town and the board or officer having charge of the land so taken may within six years after such taking agree as to the value of the land upon which the annual payment is to be made as aforesaid from the time of the taking, and if they cannot agree the board or officer shall notify the city or town thereof, and thereupon the value shall be determined by the appellate tax board under said section sixty-five, and said notice shall be deemed to be the notice referred to in said section sixty-five. This section and section five D shall apply to property held for the purposes of the metropolitan water supply, except property situated in Ashland, Boylston, Holden, Hopkinton, Sterling or West Boylston, but shall apply only to property acquired by a city, town or district, including the metropolitan water district, prior to January first, nineteen hundred and forty-six.

Section 5F. Land acquired on or after January first, nineteen hundred and forty-six, by a municipality or a district, including the metropolitan water district, and held on January first in any year for any public purpose by such municipality, in this section referred to as the holding municipality, or by such district, if such land is located in a municipality other than such holding municipality, or, in the case of land so acquired and held by a district, in a municipality other than the municipality or municipalities in which the district lies or which constitute the district, shall, with all buildings and other things erected thereon or affixed thereto, be exempt from taxation for the next following fiscal year except as hereinafter otherwise provided: such holding municipality or district shall, on July first of such year, pay to the municipality in which such land is located the amount which would be assessable for the next following fiscal year upon

a valuation equal to the average of the assessed taxable valuations of the land and all buildings and other things erected thereon or affixed thereto on the three assessment dates next preceding the acquisition of the land, the assessed valuation for each assessment date being reduced by all abatements, if any. If land subject to this section was not separately assessed or was exempt from taxation on any of said assessment dates, the fair cash value of the land and all buildings and other things erected thereon or affixed thereto on such assessment date shall for the purposes of this section be deemed to be the assessed valuation thereof on such date. Whenever a city or town in which such land is located shall have made a general revaluation of all its real property for purposes of taxation, the valuation of such land for the purpose of payments authorized by this section shall be determined by the commissioner of revenue as of January first, between January first, and June first, in the year succeeding such general revaluation and in every fifth year thereafter. The holding municipality or district, if aggrieved by the determination of the commissioner, may within six months after written notice thereof appeal to the appellate tax board.

The assessors of the municipality where land subject to this section lies shall determine the average valuation in accordance with this section and certify such valuation to the holding municipality or district liable under this section. Such holding municipality or district, if aggrieved by such determination, may within three months, after such certification appeal to the appellate tax board, which shall determine the average valuation in accordance with this section.

If rent or any revenue in the nature of rent is received from any part of any real estate subject to this section, the party yielding such rent or revenue shall be subject to taxation. The tax shall be in addition to the amount payable under this section. Revenue received for the use of such portions of a public airport as are used for the taking-off and landing of airplanes, including runways, taxi and transition strips, or revenue received for the use of buildings on a public airport, which are actually and exclusively used for servicing and repairing airplanes, shall not be deemed to be rent or revenue in the nature of rent within the meaning of this paragraph.

SECTION 13. Said chapter 59 is hereby further amended by inserting after section 12, the following six sections:-

Section 12A. If the holder of such mortgage fails to file in the assessor's office a sworn statement of all his estate liable to taxation under the preceding section, including a statement of the full amount remaining unpaid upon such mortgage and of his interest therein, the amount stated in the mortgage shall be inclusive as to the extent of such interest; but his interest in such real estate shall not be assessed at a greater sum than the fair cash valuation of the land and the structures thereon or affixed thereto; and the amount of a mortgage interest in an estate divided after the creation of such mortgage need not be apportioned upon the several parts of such estate, except as provided in sections seventy-nine to eighty-one, inclusive. Whenever, in any case of mortgaged real estate, such statement

is not brought in, no tax on such real estate for the year then current shall be invalidated for the reason that a mortgagee's interest has not been assessed to him.

Section 12B. Mortgagors and mortgagees referred to in the two preceding sections shall for the purpose of taxation be deemed joint owners until the mortgagee takes possession; and until such possession is taken by a first mortgagee, an assessor or the collector of taxes, upon application, shall give to any such mortgagee or mortgagor a tax bill showing the whole tax on the mortgaged estate and the amount included in the valuation thereof as the interest of each mortgagee and of the mortgagor respectively. If the first mortgagee is in possession, he shall be deemed sole owner; and any other mortgagee in possession shall be deemed joint owner with prior mortgagees.

Section 12C. If a tenant paying rent for real estate is taxed therefor he may retain out of his rent the taxes paid by him, or may recover the same in an action against his landlord, unless there is a different agreement between them.

Section 12D. The undivided real estate of a deceased person may be assessed to his heirs or devisees, without designating any of them by name, until the names of such heirs or devisees appear in the probate court records in the county in which said real estate lies; and each heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective proportions thereof.

Section 12E. The real estate of a person deceased, the right or title to which is doubtful or unascertained by reason of litigation concerning the will of the deceased or the validity thereof, may be assessed in general terms to his estate, and said tax shall constitute a lien upon the land so assessed and may be enforced by sale of the same or a part thereof, as provided for enforcing other liens for taxes on real estate.

Section 12F. Wherever real estate has been unassessed because the right or title thereto has been doubtful or unascertained because of missing records or otherwise, and a municipality has conducted a search and has determined the record ownership of said real estate, the said real estate shall become subject to a lien for the expenditures incurred by said municipality in the determination of said ownership. The assessor of said municipality shall forthwith cause to be recorded in the registry of deeds for the county or district in which the real estate is located a statement containing the name of the owner or owners of said real estate, an adequate description thereof, and the amount of said expenditures incurred, for which amount a lien on said real estate shall become effective as of the time and date of its recording. No such lien shall be effective against a bona fide purchaser or other transferee without notice of such lien. The recording fee for such statement shall be added to and become a part of the expenditures constituting said lien.

SECTION 14. Said chapter 59 is hereby further amended by striking out section 23A, as most recently amended by section 21 of chapter 766 of the acts of 1971, and inserting in place thereof

the following section:-

Section 23A. The assessors, as soon as the tax rates are fixed for a fiscal year, shall notify the auditor or similar officer in cities and towns, the town accountant, if any, otherwise the town treasurer, of the amount to be raised for state, county, and city or town purposes, and for overlay, specifying the amounts, as determined by percentages provided to them by section fifty-six of chapter forty, if applicable, to be levied on each class of real and personal property, and to accrue from estimated receipts.

SECTION 15. Said chapter 59 is hereby further amended by striking out section 38, as most recently amended by chapter five hundred and seventy-six of the acts of nineteen hundred and seventy-eight, and inserting in place thereof the following section:-

Section 38. The assessors of each city and town shall at the time appointed therefor make a fair cash valuation of all the estate, real and personal, subject to taxation therein, and such determination shall be the assessed valuation of such estate. In cities, the assessors may, in any year, divide the city into convenient assessment districts.

The assessed valuation of real property subject to taxation under this chapter shall be classified as follows:-

Class one, residential;

Class two, open;

Class three, commercial, and

Class four, industrial.

The resulting amount shall be the taxable valuation of each class of property to which the assessors shall apply the tax rates applicable to each class as determined under section twenty-three A of chapter fifty-nine of the city or town, to determine the tax due and payable on such property.

SECTION 16. Said chapter 59 is hereby further amended by inserting after section 38C, the following two sections:-

Section 38D. A board of assessors may request the owner or lessee of any real property to make a written return under oath within sixty days containing such information as may reasonably be required by it to determine the actual fair cash valuation of such property.

Failure of an owner or lessee of real property to comply with such request within sixty days after it has been made shall bar him from any statutory appeal under this chapter, unless such owner or lessee was unable to comply with such request for reasons beyond his control. If any owner or lessee of real property in a return made under this section makes any statement which he knows to be false in a material particular, such false statement shall bar him from any statutory appeal under this chapter.

Section 38E. A board of assessors may require testimony under oath of a taxpayer relative to his written return filed under section thirty-eight D and may also require testimony under oath of any applicant for abatement under section fifty-

nine.

SECTION 17. Said chapter 59 is hereby amended by striking out section 44, as most recently amended by section 31 of chapter 580 of the acts of 1978, and inserting in place thereof the following section:-

Section 44. The list shall exhibit the valuation, classification and assessment of the estates of the inhabitants assessed; and the valuation, classification and assessment of the estates of nonresident owners, and shall contain the names of the nonresident owners of the property assessed, or such description of them as can be given, their places of abode, if known, the description of their estate, and the tax thereon.

SECTION 18. Said chapter 59 is hereby further amended by inserting after 78, the following section:-

Section 78A. If real property is divided by sale, mortgage, upon a petition for partition or otherwise after a tax has been assessed thereon and such division has been duly recorded in the registry of deeds, the assessors, at any time before said real property has been advertised for sale for nonpayment of taxes, upon the written request of the owner or mortgagee of any portion thereof, shall apportion said tax, with costs and interest upon the several parcels thereof, in proportion to the value of each, and only the portion of said tax, interest and costs so apportioned upon any such parcel shall continue to be a lien upon it; and the owners or mortgagees shall be liable only for the tax apportioned upon the parcel owned in whole or in part by them respectively. If a tax so apportioned upon any parcel remains unpaid after such a commitment to the collector, it may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the collector either in his own name or in the name of the town against said owners and mortgagees. Assessors shall send notice of the request for such apportionment and of the time appointed thereof, by mail, to every person interested in said real property whose address is known to them.

SECTION 19. Section 3A of chapter 60 of the General Laws, as most recently amended by section 39 of chapter 580 of the acts of 1978, is hereby further amended by striking out the third, fourth and fifth sentences and inserting in place thereof the following two sentences:- Every bill or notice for real or personal property tax shall have printed thereon in a conspicuous place the school tax rate, the general tax rate and the total tax rate for each class within the town, as determined by the assessors. In addition, every bill or notice for a tax upon real property shall, by street and number, or, if no street number has been assigned, by lot number or by name of property or otherwise, describe in a manner sufficient to identify it, each parcel of real property separately assessed and shall state for each such parcel the assessed fair cash valuation of the land, the aggregate assessed valuation of the buildings and other things erected thereon or affixed thereto, the total assessed fair cash valuation, the classification of the property, total taxable valuation of the

property, the residential exemption, if applicable, and the tax due and payable on such property; provided, however, that if there are three or more buildings or structures on any such parcel, a bill or notice for a tax on such parcel shall also state, or be accompanied by a paper stating, the assessed valuation of each building or structure on such parcel.

SECTION 20. Section 2 of chapter 61 of the General Laws, as most recently amended by section 89 of chapter 514 of the acts of 1978, is hereby further amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

The owner shall pay annually a land tax on the bare land, based upon a valuation of not more than ten dollars per acre, at the rate determined to be applicable to class three, commercial property under chapter fifty-nine.

SECTION 21. Section 4 of chapter 61A of the General Laws is hereby amended by adding the following paragraph:-

The rate of tax applicable to such agricultural or horticultural or recreational land shall be the rate determined to be applicable to class three, commercial property under chapter fifty-nine.

SECTION 22. Notwithstanding any provisions of section one of chapter fifty-eight of the General Laws, as inserted amended by section 3 of this act, any person who on the effective date of this act shall have been elected or appointed an assessor in any city or town and who is continuing to perform such duties on the date the commission establishes the minimum standards for qualifications of assessing personnel required by said section one shall have three years from such date to acquire the necessary qualifications.

SECTION 23. Sections thirty-eight, forty-one and forty-two of chapter five hundred and eighty of the acts of nineteen hundred and seventy-eight are hereby repealed.

SECTION 24. The provisions of section ten of this act shall apply to all cases before the Appellate Tax Board upon the effective date of this act and all other cases filed thereafter relative to assessments for the fiscal years ending on or before June thirtieth, nineteen hundred and eighty-three.

SECTION 25. Section ten of this act shall take effect on the effective date of this act and the remaining sections of this act shall take effect on January first, nineteen hundred and eighty and apply to the assessment and classification of all property for the fiscal years commencing on or after July first, nineteen hundred and eighty.

Approved November 16, 1979.

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Chap. 798. AN ACT PROVIDING FOR A CAPITAL OUTLAY PROGRAM FOR THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is, in part, to provide funds immediately for a capital outlay program for the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the