
Massachusetts Department of Revenue
Division of Local Services

LOCAL TAXES
**Options for Economic, Renewable Energy and
Other Developments**



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Workshop A

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LOCAL TAXES
Current Options
For
Economic, Renewable Energy or other Developments

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LOCAL TAXES
Current Options
For
Economic, Renewable Energy or other Developments
Discussion Topics

ECONOMIC AND HOUSING DEVELOPMENTS
CASE STUDY 1

Boomtown, Massachusetts is competing for a new office and industrial park which will cater to businesses engaged in research, development, and manufacturing of cutting-edge telecommunications technologies. A developer is considering Boomtown, a city in Northern California, and a suburb of Shanghai, China as potential sites for this park. The developer plans to offer competitive rents and custom amenities, marshaling the relative advantages of the chosen site to attract tenants. The site under consideration in Boomtown is presently open space on the edge of town, but well-served by roads and has easy access to water, sewer, and other town services.

Questions:

1. Although Boomtown is not within a designated economic target area, the Economic Assistance Coordinating Council considers that the proposed area of the office and industrial park presents “exceptional opportunities for increased economic development.” Town officials are eager to attract the new office and industrial park and are considering available economic incentives. What are their options?
2. After negotiations with the developer over a Tax Increment Financing incentive, Boomtown officials enter into an agreement to limit the taxation of the increased property value attributable to the development project. How long can the agreement go for? What percentage of the value of personal property located at the site will be subject to tax?
3. How would the assessor go about calculating real estate taxes due on the new office/industrial park site?
4. How would the assessor calculate taxes due on personal property situated at the new office/industrial park site?
5. Is a TIF the only economic development incentive Boomtown can offer to the developer to induce him to locate his office/industrial park there?

6. What happens if the property value declines to the point that the parcel as improved has a fair cash value less than the adjusted base value under the TIF agreement?
7. Let's say that despite the tax incentives the development is a failure. The developer isn't able to attract enough quality tenants to maintain a positive cash flow, and he fails to keep up with his real estate tax payments. What happens?
8. Imagine that the developer enjoys several years of tax exemptions, but never delivers on the number of jobs promised. He then decides to abandon the site to take a better deal on offer in China. He sells the property at a loss, and the new owner has no intention of maintaining the number of jobs the TIF agreement contemplates. What can Boomtown do?

In-Between Town, Massachusetts has a cranberry processing plant that has been in operation for many years. At the plant the company, Ocean Mist Cranberries, produces products including cranberry jelly, canned cranberries, and cranberry sauce, but its product line has not been updated to reflect the evolving tastes of American consumers. Its sales are declining, and the plant has stopped hiring and is considering downsizing.

Market research indicates that health-conscious shoppers are interested in cranberry products that contain less sugar and are easier to eat on-the-go. Dried cranberries that can be packaged in plastic bags and gourmet items like artificially sweetened cranberry garnishes and spreads that can be sold in plastic containers could appeal to consumers less likely to buy standard products like sweetened sauce and jelly.

Accommodating new product lines at the existing plant would require customized real estate improvements and, most importantly, a workforce with the necessary, reconfigured skills to process cranberries into new and different products. Ocean Mist is considering building a new facility in Maine where it can train fresh recruits to develop and manufacture the new product lines. In-Between Town would like it to build out the existing plant instead to accommodate production of the new product lines, and have the existing workforce retrained so they are equipped with the skills needed for the new manufacturing operations.

Questions:

1. What are In-Between Town's options to persuade Ocean Mist to consolidate its new operations in the existing facility and undertake retraining programs so its employees acquire the enhanced skills needed to make products that will appeal to 21st century consumers?
2. Are there available economic incentives for manufacturing workforce development?

Center City, Massachusetts has a strong urban core with numerous office and industrial properties, museums and historical sites, and a college highly regarded for its science programs and leadership in the development of green energy technologies. A new research lab focused on renewable energy development, which draws on the personnel and resources of the college, is about to open downtown. City officials see potential for an expanded research presence focused on renewable energy innovation if the city can attract residents who are qualified to work in science and engineering. However, the residential neighborhoods ringing the downtown area, consisting primarily of triple-deckers, two-family units, and similar older housing stock, are losing upscale residents to distant communities, whose larger single-family residential properties are more attractive to educated professionals. Students represent a significant portion of the population in Center City's older neighborhoods, and loud parties are prompting a rising number of complaints from long-time residents.

Given the population changes in its neighborhoods, Center City's downtown area becomes deserted in the evening hours, as recreational and entertainment pursuits draw people away to suburban communities. Without a highly-skilled population in the vicinity of the downtown area, able to come and go quickly in order to work long hours, Center City will not be able to attract desirable research start-ups.

The science and technology programs at Center City College are in direct competition with those of a college located in a town in a Sunbelt state, and that community is trying to lure the same science-oriented venture capitalists and entrepreneurs Center City is courting. The Sunbelt town lacks the entertainment and cultural amenities of Center City, but that state offers generous tax incentives and housing there is commodious, cheap, and plentiful.

Question:

1. What options are available to Center City officials to revitalize residential uses in the vicinity of downtown and the college campus, so they can more effectively compete for the skilled professionals research businesses need to thrive?

Downtown St. Botolph's Town, Massachusetts has lost much of the appeal to tourists and pedestrians it had just a few decades ago. New construction and renovations in the area are stagnant. Retail businesses have seen a drop-off in customer traffic and sales activity. A number of large commercial properties are vacating as tenants move out. One large vacant site, partially excavated, stands out in particular and has become an eyesore. The commercial real estate market is sluggish.

At the same time the downtown area has become a magnet for non-commercial visitors in the afternoon and evening; they congregate in the streets and on the sidewalks but do not patronize the businesses. There has been an uptick in crime. Littering and minor property damage like broken windows are more noticeable in the area. Shoppers and tourists increasingly avoid the area after dark.

Question:

1. City leaders and business owners are exasperated with the decline of the downtown shopping district and are wondering what options exist to restore the area's former luster.

**RENEWABLE ENERGY DEVELOPMENTS
CASE STUDY 2**

Greenville has a number of attractive locations for renewable energy developments. The following renewable energy installations have been proposed. The property owners or developers claim the installations are exempt from property taxes.

1. A wind turbine at the Greenville DPW yard. It would be owned and operated by Greenville and provide electricity to municipal buildings.
2. Solar panels installed on the roof of the Greenville Valley Regional High School. The owner of the panels would be granted exclusive use of the area for 10 years.
3. A solar farm located on the former Greenville landfill. The town would lease the land to the private operator of the facility. About 10% of the electricity would power municipal buildings.
4. A wind farm to be sited on land the Greenville Valley Electric Company plans to acquire for that purpose. It would be owned and operated by the company, which is in the business of generating electricity.

Questions:

1. Do any property tax exemptions or special tax treatments apply to these projects?
2. If not, are the solar panels and wind turbines taxable as real estate or personal property?

The site the Greenville Valley Electric Company is considering is part of 100 acres that are classified as farmland under G.L. c. 61A. The company has not decided whether to purchase or lease the 50 acres it needs for the wind farm.

Questions:

1. If the company leases the land, can it remain classified? Would the result be different if classified as forest or recreational land?
2. Does the lease or sale trigger the right of first refusal or penalty tax?

**PLEASE NOTE THIS COMPILATION WAS MADE FROM
ELECTRONIC, NOT OFFICIAL EDITION OF GENERAL LAWS OF
MASSACHUSETTS**

**ECONOMIC TARGET AREAS (ETA)
General Laws Chapter 23A, § 3D**

Section 3D. The EACC may from time to time designate one or more areas of the commonwealth as ETAs, and take any and all actions necessary or appropriate thereto, upon compliance with the following:

(a) receipt of a municipal application requesting such designation and representing therein that the municipality, based on its own independent investigation, has determined that the area proposed for designation and comprised of three or more contiguous census tracts or one or more contiguous municipalities, in their entirety and either;

(i) has an unemployment rate that exceeds the statewide average by at least twenty-five percent; or

(ii) satisfies at least one of the following criteria:

(A) if the municipality is located in a metropolitan area as defined by the EACC, then at least fifty-one percent of the households in the area proposed for designation have household incomes that are below eighty percent of the median income for households in the metropolitan area in which said municipality is located;

(B) if the municipality is not located in a metropolitan area as defined by the EACC, then at least fifty-one percent of the households in the area proposed for the designation have household incomes that are below eighty percent of the median income for households (i) in the commonwealth, or (ii) in such applicable non-metropolitan area category as the EACC may from time to time establish or employ;

(C) has a poverty rate which is at least twenty percent higher than the average poverty rate for the commonwealth;

(D) if the municipality has experienced a plant closing or permanent layoffs, or military base closing resulting in job loss of two thousand or more within the four years prior to designation as an ETA;

(E) is located in a community or labor market area which has a distress factor greater than one and thirty-three one hundredths, as defined in section three A;

(F) if within the municipality there is an area owned by a state agency or authority authorized and established under the laws of the commonwealth which exceeds fifty acres and such land has, within the past ten years, been used to manufacture or repair maritime vessels and is zoned for development or industrial use which the municipality would like to designate as an ETA to develop and return to the tax rolls, and is not being developed or used by such agency or authority;

(G) the designated area has a commercial vacancy rate of 20 per cent or more;

or

(H) the municipality has sited within it a generation facility, as defined pursuant to section 1 of chapter 164, which has a market value at the time of sale that is at least 50 per cent less than its current net book value.

(I) the area has sited within it a facility of at least 1,000,000 square feet, which facility would qualify as an abandoned building within the meaning of 380 of chapter 63;

or

(J) the area has sited within it a development project of at least 200 acres to be used for the establishment of a regional technology center with the capability of supporting the build-out of 3,000,000 square feet of commercial or industrial space;

(K) the area has been designated by the municipality as an area with potential for the development of a Class I renewable energy generating sources, as defined by section 11F of chapter 25A.

(b) approval of the municipal application by the EACC; provided, however, that the EACC shall find, based on the information submitted in support of the municipal application and such additional investigation as the EACC shall make, and incorporate in its minutes, that the area or areas proposed for designation in said application comport with the definition of an ETA as set forth in, clauses (i) to (iii), inclusive, of paragraph (a); provided, further, that such decision shall be effective as specified by the EACC; provided, further, that the statistical criteria employed by the EACC in making such designation shall be the most recent data available as of the date of such decision; provided, further, that the EACC shall be under no obligation to revoke or modify any designation because of changes in statistical data which are published subsequent to a designation decision; and, provided further, that in the event the statistical categories incorporated by reference as aforesaid are subsequently materially altered or superseded by the publishers thereof, the EACC is authorized and directed to develop or employ new categories of statistical criteria which most nearly comport with the aforesaid referenced criteria; provided, that said new categories of statistical criteria shall become effective when approved by the director of economic development.

ECONOMIC OPPORTUNITY AREAS (EOA)

General Laws Chapter 23A, § 3E

Section 3E. The EACC may from time to time designate one or more areas of an ETA as an EOA, and take any and all actions necessary or appropriate thereto, upon compliance with the following:

(1) receipt of a municipal application requesting such designation for a specified period of years, which shall be not less than five years nor more than twenty years, and representing that the municipality, based on its own independent investigation, has determined that the area proposed for designation:

(a) is wholly within an area designated as an ETA pursuant to section three D;

(b) conforms to the definition of a “blighted open area”, “decadent area”, or “substandard area” as set forth in section one of chapter one hundred and twenty-one A or has experienced a plant closing or permanent layoff resulting in a job loss of two thousand or more within the four years prior to designation as an EOA or the municipality has sited within it a generation facility, as defined pursuant to section 1 of chapter 164, which has a market value at the time of sale that is at least 50 per cent less than its current net book value; and

(c) satisfies such additional mandatory or permissive criteria as may be prescribed from time to time by the EACC; and

(2) receipt with the municipal application of the following documents:

(a) a detailed map of the area proposed for designation, which clearly delineates and identifies such area and which indicates with particularity existing streets, highways, waterways, natural boundaries and other physical features;

(b) a statement describing the economic development goals of the municipality for the area proposed for designation for the five year period subsequent to the date on which the application is submitted;

c) a statement which describes the manner and extent to which the municipality shall provide for an increase in the efficiency of the delivery of local services within the area proposed for designation;

(d) a plan, if any, to link the municipality's choice of banking institutions to the performance of such institutions in complying with the requirements of the community reinvestment act;

(e) a proposal which identifies an individual who shall be authorized to review and approve project proposals for and on behalf of the municipality and the standards and procedures to be employed thereby; and

(f) in the case of a municipal application submitted, in whole or in part, by a municipality with a population in excess of fifty thousand people according to the most recent United States census, an economic development plan submitted by said municipality which contains the following elements:

(i) a proposal which provides for streamlined licensing procedures for certified projects within the area proposed for designation;

(ii) a proposal which provides for the provision of adequate infrastructure support, including transportation access, water and sewer hook-ups, lighting, and other utilities, to and for certified projects within the area proposed for designation;

(iii) a statement which describes the municipality's proposals to secure access to publicly or privately sponsored training programs to be made available to employees of certified projects, or others who reside in the ETA which contains the area proposed for designation; and

(iv) a plan by which the municipality shall increase the level of involvement by private persons and community development organizations in the economic revitalization of the area proposed for designation, which may include commitments from private persons to provide jobs and job training to residents and employees who work, or who will work, for certified projects in the area proposed for designation; and

g) such additional documentation or information as may be prescribed by the EACC; and

(3) receipt with the municipal application of a binding written offer from the municipality, subject only to acceptance by the EACC through designation of the area proposed therefor, in the municipal application as an EOA, to provide to certified projects within the project EOA and pursuant to section fifty-nine of chapter forty either tax increment financing or a special tax assessment as follows:

(a) for the purposes of the provision of tax increment financing, said binding written offer shall contain a tax increment financing plan adopted in accordance with the provisions of, section fifty-nine of chapter forty; provided, however, that the tax incremental financing zone proposed in such plan shall in addition satisfy the requirements set forth in paragraph (1) of this section;

(b) for the purposes of the provision of a special tax assessment, said binding written offer shall set forth the following assessment schedule for each parcel of real property in and on which is located, and which is otherwise a part of, a certified project in the project EOA:

(i) in the first year, an assessment of zero percent of the actual assessed valuation of the parcel; provided, that such assessment shall be granted for the year designated in the binding written offer;

(ii) in the second year, an assessment of up to twenty-five percent of the actual assessed valuation of the parcel;

(iii) in the third year, an assessment of up to fifty percent of the actual assessed valuation of the parcel;

(iv) in the fourth year, an assessment of up to seventy-five percent of the actual assessed valuation of the parcel;

(v) in subsequent years, assessment of up to one hundred percent of the actual assessed valuation of the parcel.

For the purposes of this clause the term "municipality's fiscal year" shall refer to a period of three hundred and sixty-five days beginning, in the first instance, with the, calendar year in which the assessed property is purchased or acquired or the calendar year in which the assessed property is designated as an EOA, whichever is last to occur; provided, further, that no such written offer from a municipality shall be considered to be binding as aforesaid unless and until it is authorized.

(4) approval of the municipal application by the EACC, provided that the EACC shall find, based on the information submitted in support of the municipal application and such additional investigation as the EACC shall make, and incorporate in its minutes, that:

(a) the area or areas proposed for designation in said application comport with the definition of an EOA as set forth in clauses (a) to (c), inclusive, of paragraph (1); provided, however, that such decision shall be effective as specified by the EACC; provided, further, that the statistical criteria employed by the EACC in making its decision hereunder shall be the most recent data available as of the date of such decision; provided, further, that the EACC shall be under no obligation to withdraw or rescind any such designations because of changes in said statistical data which are published subsequent to such decision; provided, further, that in the event the statistical categories incorporated by reference in said clauses (a) to (c), inclusive, of said paragraph (1) are subsequently materially altered or superseded by the publishers thereof, the EACC is authorized and directed to develop or employ new categories of statistical criteria which most nearly comport with those incorporated by reference as aforesaid; and provided, further, that said new categories of statistical criteria shall become effective when approved by the director of economic development;

(b) the documents required pursuant to clauses (a) to (g), inclusive, of paragraph (2) are final and complete and otherwise satisfactory;

(c) the binding offer of the municipality complies with the requirements of paragraph (3); and

(d) the request for designation as set forth in the municipal application, in its entirety and including all documents and materials submitted therewith, will if approved, have a reasonable probability of inducing businesses to locate or expand within the area proposed for designation and thereby increase the prospects of achieving economic stability and reducing chronic unemployment in said area; provided, however, that (i) in evaluating requests for designation pursuant to this clause the EACC may, subject to such criteria as it shall prescribe, consider and rank the relative merits of municipal applications, ascribing to each a total score which reflects the considered judgment of the EACC as to the prospects and degree to which said applications, if approved, will further the public purposes set forth in this clause; (ii) the EACC shall, if and as directed by the director of economic development, establish an application process pursuant to which municipal applications are reviewed in a competitive fashion; (iii) the EACC shall work with interested municipalities to assist such municipalities to understand the purpose and requirements of the application process and how to best exploit the economic

development potential of an affirmative designation decision and, further, to minimize the administrative burden associated with such application process; and (iv) the EACC shall, through regulations or otherwise, tailor its program specifications to maximize the extent to which the commonwealth's economic opportunity area program can benefit from similar programs sponsored by the federal government and if necessary or appropriate, file legislation with the general court which seeks amendments designed to serve such purpose.

An EOA shall retain its designation for at least five years and not more than twenty years from the date it is so designated, as determined by the EACC, unless such designation is revoked prior to the expiration of the specified period; provided, however, that the EACC shall not specify a duration in excess of that requested in the municipal application. The designation of an EOA may be revoked only by the EACC, and only upon the following grounds: (a) upon the petition of the municipality which requested the designation which petition satisfies the authorization requirements for a municipal application, and which petition shall be granted as a matter of course; or (b) if the EACC determines, based on its own investigation, that plans and commitments incorporated with the municipal application for such designation are materially at variance with the conduct of the municipality subsequent to the designation and such variance is found to frustrate the public purpose which such designation was intended to advance. Any such revocation shall only be applied prospectively to deny certification to any projects located or to be located in such EOA and not certified prior to such revocation and shall not apply to, nor revoke any benefits due to or which may become due to, any certified project already in existence in said EOA, including but without limitation any benefits included in any plans and commitments incorporated with the municipal application for such designation; provided, however, that in no event shall a certified project receive any benefits arising from its status as a certified project for a period of longer than that specified by the EACC in its certification designation, including any renewals thereof, or twenty years, whichever period is of shorter duration. The EACC shall review the designation of each EOA at least once every two years. No designation of an area as an EOA may be renewed or extended except pursuant to the provisions of paragraphs (1) to (4), inclusive. No renewal shall be granted for a period to exceed, when combined with the durations of all prior periods of designation, twenty years.

(5) notwithstanding any provisions of sections three to three H, inclusive, the EACC shall not designate nor shall there exist at any one time more than 40 Economic Target Areas. The limitations imposed by this section shall not apply to the EACC in its designation of communities applying for designation under the federal empowerment zones and enterprise communities program, so called, or to communities applying for economic target area designation that qualify under the criteria set forth in subclauses (I) and (J) of clause (ii) of paragraph (a) of section 3D.

RENEWABLE ENERGY GENERATING SOURCE CLASSIFICATIONS

General Laws Chapter 25A, § 11F (Excerpts)

Section 11F. (a) The department shall establish a renewable energy portfolio standard for all retail electricity suppliers selling electricity to end-use customers in the commonwealth. By December 31, 1999, the department shall determine the actual percentage of kilowatt-hours sales to end-use customers in the commonwealth which is

derived from existing renewable energy generating sources. Every retail supplier shall provide a minimum percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable energy generating sources, according to the following schedule: ... For the purpose of this subsection, a new renewable energy generating source is one that begins commercial operation after December 31, 1997, or that represents an increase in generating capacity after December 31, 1997, at an existing facility. Commencing on January 1, 2009, such minimum percentage requirement shall be known as the "Class I" renewable energy generating source requirement.

(b) For the purposes of this subsection, a renewable energy generating source is one which generates electricity using any of the following: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; (7) naturally flowing water and hydroelectric; (8) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; or (9) geothermal energy... .

(c) New renewable energy generating sources meeting the requirements of this subsection shall be known as Class I renewable energy generating sources. For the purposes of this subsection, a Class I renewable energy generating source is one that began commercial operation after December 31, 1997, or represents the net increase from incremental new generating capacity after December 31, 1997 at an existing facility, where the facility generates electricity using any of the following: (1) solar photovoltaic or solar thermal electric energy; (2) wind energy; (3) ocean thermal, wave or tidal energy; (4) fuel cells utilizing renewable fuels; (5) landfill gas; (6) energy generated by new hydroelectric facilities, or incremental new energy from increased capacity or efficiency improvements at existing hydroelectric facilities ... (ii) only energy from new facilities having a capacity up to 25 megawatts or attributable to improvements that incrementally increase capacity or efficiency by up to 25 megawatts at an existing hydroelectric facility shall qualify ... (7) low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; (8) marine or hydrokinetic energy as defined in section 3; or (9) geothermal energy. A Class I renewable generating source may be located behind the customer meter within the ISO-NE control area if the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the department.

TAX INCREMENT FINANCING PLAN (TIF)

General Laws Chapter 40, § 59

Section 59. Notwithstanding any general or special law to the contrary, any city or town by vote of its town meeting, town council, or city council with the approval of the mayor where required by law, on its own behalf or in conjunction with one or more cities or towns, and pursuant to regulations issued by the director of housing and community development, may adopt and prosecute a tax increment financing hereinafter referred to as TIF plan, and do any and all things necessary thereto; provided, however, that the TIF plan:

(i) designates one or more areas of such city or town as a TIF zone; provided, however, that each area so designated is wholly within an area designated by the director of economic development, pursuant to regulations adopted by the economic assistance coordinating council established pursuant to section three B of chapter twenty-three A, as presenting exceptional opportunities for increased economic development; provided, further, that in the case of a TIF plan adopted by more than one city or town, the areas designated as TIF zones shall be contiguous areas of such cities or towns;

(ii) describes in detail all construction and construction-related activity, public and private, contemplated for such TIF zone as of the date of adoption of the TIF plan; provided, however, that in the case of public construction as aforesaid, the TIF plan shall include a detailed projection of the costs thereof and a betterment schedule for the defrayal of such costs; provided, further, that the TIF plan shall provide that no costs of such public constructions shall be recovered through betterments or special assessments imposed on any party which has not executed an agreement in accordance with the provisions of paragraph (v); and provided, further, that in the case of private construction as aforesaid, the TIF plan shall include the types of industrial and commercial developments which are projected to occur within such TIF zone, with documentary evidence of the level of commitment therefor, including but not limited to architectural plans and specifications as required by said regulations;

(iii) authorizes tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the TIF zone and for which an agreement has been executed with the owner of the real property under clause (v); provided, however, that the TIF plan shall specify the level of the exemptions expressed as exemption percentages, not to exceed 100 per cent to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for an exemption under this clause; provided, further that the inflation factor for each fiscal year shall be a ratio;

(a) the numerator of which shall be the total assessed value of all parcels of commercial and industrial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment for the current fiscal year attributable to the commercial and industrial real estate as determined by the commissioner of revenue under subsection (f) of section 21C of chapter 59; and

(b) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided, however, that the ratio shall not be less than 1;

(iv) establishes a maximum percentage of the costs of any public construction, referenced in paragraph (ii) and initiated subsequent to the adoption of the TIF plan, that can be recovered through betterments or special assessments against any parcel of real property eligible for tax increment exemptions from property taxes pursuant to paragraph (iii) during the period of such parcel's eligibility for exemption from annual property taxes pursuant to clause fifty-first of section five of chapter fifty-nine, notwithstanding the provisions of chapter eighty or any other general or special law authorizing the imposition of betterments or special assessments;

(v) includes executed agreements between such city or town and each owner of a parcel of real property which is located in such TIF zone; provided, however, that each such agreement shall include: (1) all material representations of the parties which served

as the basis for the descriptions contained in the TIF plan in accordance with the provisions of paragraph (ii); (2) a detailed recitation of the tax increment exemptions and the maximum percentage of the cost of public improvements that can be recovered through betterments or special assessments regarding such parcel of real property pursuant to paragraphs (iii) and (iv); (3) a detailed recitation of all other benefits and responsibilities inuring to and assumed by the parties to such agreement; and (4) a provision that such agreement shall be binding upon subsequent owners of such parcel of real property;

(vi) delegates to one board, agency or officer of the city or town the authority to execute agreements in accordance with the provisions of paragraph (v); and (vii) is certified as an approved TIF plan by the economic assistance coordinating council established by section three B of chapter twenty-three A pursuant to regulations adopted by said council; provided, however, that the economic assistance coordinating council shall find, based on the information submitted in support of the TIF plan by the city or town and such additional investigation as the economic assistance coordinating council shall make, and incorporate in its minutes, that the plan is consistent with the requirements of this section and will further the public purpose of encouraging increased industrial and commercial activity in the commonwealth; provided, further, that a city or town may at any time revoke its designation of a TIF zone and, as a consequence of such revocation, shall immediately cease the execution of any additional agreements pursuant to paragraph (v); provided, further, such revocation shall not affect agreements relative to property tax exemptions and limitations on betterments and special assessments pursuant to said paragraph (v) which were executed prior thereto; and provided, further, that the board, agency or officer of the city or town authorized pursuant to paragraph (vi) to execute agreements shall forward to the board of assessors a copy of each such agreement, together with a list of the parcels included therein.

(viii) requires of an owner of a parcel pursuant to clause (v) to submit to the city or town clerk and the economic assistance coordinating council a report detailing the status of the construction laid out in the plan; the current value of the property; and the number of jobs created to date as a result of the plan; provided, however, that a report shall be filed every 5 years for the term of the tax increment exemption allowed under clause Fifty-first of section 5 of chapter 59; and provided further, that a final report shall be filed in the final year of the exemption.

URBAN CENTER HOUSING TAX INCREMENT FINANCING PLAN (UCH-TIF) General Laws Chapter 40, § 60

Section 60. (a) Notwithstanding any general or special law to the contrary, a city or town by vote of its town meeting, town council or city council with the approval of the mayor where required by law, on its own behalf or in conjunction with 1 or more cities or towns and under regulations issued by the director of housing and community development, in consultation with the department of economic development and the department of revenue, may adopt and prosecute an urban center housing tax increment financing plan, in this section referred to as a UCH-TIF plan, intended to encourage increased residential growth, affordable housing and commercial growth in urban center housing zones and do all things necessary thereto; provided, however, that the UCH-TIF plan shall:--

(i) designate any area of the city or town as an urban center housing tax increment financing zone, in this section referred to as a UCH-TIF zone, which shall be defined as a commercial center characterized by a predominance of commercial land uses, a high daytime or business population, a high concentration of daytime traffic and parking and a need for multi-unit residential properties; provided, however, that the designation of a UCH-TIF zone shall be subject to the approval of the department of housing and community development under regulations adopted by the department consistent with this section; provided further, that a city or town may not enter into any UCH-TIF agreement, as defined in clause (v), unless the area governed by the UCH-TIF agreement is so designated and approved by the department of housing and community development; and provided further, that in the case of a UCH-TIF plan adopted by more than 1 city or town, the areas designated as UCH-TIF zones shall be contiguous areas of those cities and towns;

(ii) describe in detail all construction, reconstruction, rehabilitation and related activities, public and private, contemplated for such UCH-TIF zone as of the date of the adoption of the UCH-TIF plan; provided, however, that in the case of public construction as aforesaid, the UCH-TIF plan shall include a detailed projection of the costs and a betterment schedule for the defrayal of such costs; provided further, that the UCH-TIF plan shall provide that no costs of such public constructions shall be recovered through betterments or special assessments imposed on a party which has not executed a UCH-TIF agreement in accordance with clause (v); and provided, further, that in the case of private construction as aforesaid, the UCH-TIF plan shall include the types of affordable housing and residential and commercial growth which are projected to occur within such UCH-TIF zone, with documentary evidence of the level of commitment therefor including, but not limited to, architectural plans and specifications as required by the regulations;

(iii) authorize tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the UCH-TIF zone and for which an agreement has been executed under clause (v); provided, however, that the UCH-TIF plan shall specify the level of exemptions expressed as exemption percentages, not to exceed 100 per cent to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for such exemption under this clause; provided, further, that the inflation factor for each fiscal year shall be a ratio:

(1) the numerator of which, shall be the total assessed value of all parcels of all residential real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment factor for the current fiscal year attributable to the residential real estate as determined by the commissioner of revenue under paragraph (f) of section 21C of said chapter 59; or

(2) the numerator of which, in a UCH-TIF zone where the property includes a mix of residential and commercial uses, shall be the total assessed value of all parcels of all residential and commercial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment factor for the current fiscal year attributable to the residential and commercial real estate as determined by the commissioner of revenue under said paragraph (f) of said section 21C of said chapter 59; and

(3) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided, however, that such ratio should not be less than 1.

(iv) establish a maximum percentage of the costs of any public construction, referenced in clause (ii) and initiated subsequent to the adoption of the UCH-TIF plan, that can be recovered through betterments or special assessments against real property eligible for tax increment exemptions from property taxes under clause (iii) during the period of the parcel's eligibility for exemption from annual property taxes under said clause Fifty-first of said section 5 of said chapter 59, notwithstanding chapter 80 or any other general or special law authorizing the imposition of betterments or special assessments;

(v) include executed agreements, hereinafter referred to as UCH-TIF agreements, between a city and town and each owner of real property which is located in a UCH-TIF zone, but each such agreement shall include, but not be limited to, the following: (1) all material representations of the parties which served as a basis for the descriptions contained in the UCH-TIF plan in accordance with clause (ii) and which served as a basis for the granting of a UCH-TIF exemption; (2) any terms deemed appropriate by the city or town relative to compliance with the UCH-TIF agreement including, but not limited to, what shall constitute a default by the property owner and what remedies shall be allowed between the parties for any such defaults, including an early termination of the agreement; (3) provisions requiring that either 25 per cent of the housing units assisted by the UCH-TIF agreement shall be affordable to occupants or families with incomes at or below 80 per cent of the median income for the area in which the city or town is located as defined by the United States Department of Housing and Urban Development or such other requirement of affordable housing as is necessary to achieve financial feasibility for the development pursuant to regulations and guidelines promulgated by the department of housing and community development; (4) provisions stating that housing units that meet the affordability requirements of subclause (3) shall subject to use restrictions as defined in this section; (5) provisions stating that the property shall be subject to an option to purchase and a right of first refusal as defined in subsections (c) and (d); (6) a detailed recitation of the tax increment exemptions and the maximum percentage of the cost of public improvements that can be recovered through betterments or special assessments regarding a parcel of real property pursuant to clauses (iii) and (iv); (7) a detailed recitation of all other benefits and responsibilities inuring to and assumed by the parties to an agreement; and (8) a provision that the agreement shall be binding upon subsequent owners of the parcel of real property; and

(vi) delegate to a board, agency or officer of the city or town, the authority to execute agreements in accordance with clause (v).

(b) An executed UCH-TIF agreement shall be submitted by the applicable city or town to the department of housing and community development for the approval of the director; provided, however, that the city or town shall, if it has not previously done so, submit a plan showing the boundaries of its urban center housing zone and a report explaining the criteria used by the city or town in establishing the zone; provided, however, that the director shall review each UCH-TIF plan and agreement to determine whether they comply with the terms of this section and any regulations which may be adopted by the director of housing and community development; provided further, that the director shall certify, based upon the information submitted in support of the UCH-TIF plan by the city or town and through such additional investigation as the director shall make, that the plan and agreement are consistent with the requirements of this section and will further the public purpose of encouraging increased residential growth, affordable

housing and commercial growth in the commonwealth; provided further, that a city or town may, at any time, revoke its designation of a UCH-TIF zone and, as a consequence of such revocation, shall immediately cease the execution of any additional agreements under clause (v) of subsection (a); provided, further, that a revocation shall not affect agreements relative to property tax exemptions and limitations on betterments and special assessments under said clause (v) of said subsection (a) or use restrictions or options to purchase and rights of first refusal required by this section which were executed before the revocation; provided further, that the board, agency, or officer of the city or town authorized under clause (vi) of said subsection (a) to execute agreements shall forward to the board of assessors a copy of each such agreement, together with a list of the parcels included therein; and provided further, that an executed and approved UCH-TIF shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies.

(c) Notwithstanding any other general or special law to the contrary, an affordable housing unit benefiting from a real estate tax exemption under this section that meets the affordability requirements of subclause (3) of clause (v) of subsection (a) shall continue to meet those requirements for 40 years or for its useful life, whichever is longer as may be specified in the recorded restriction. Such restriction shall be approved by the department of housing and community development in accordance with section 32 of chapter 184 and shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies. Upon the expiration of such restrictions, the department of housing and community development or its assignee shall have an option to purchase the property subject to or previously subject to a UCH-TIF agreement.

(d) (1) Within 120 days after the expiration of the affordability restrictions created under this section, the department or its assignee, who shall be a qualified developer selected pursuant to the terms of this section under the guidelines of the department, shall have an option to purchase the property at its current appraised value reduced by any remaining obligation of the owner. Two impartial appraisers shall determine, within 60 days after the expiration of the affordability restrictions, the current appraised value in accordance with recognized professional standards. Two professionals in the field of multi-unit residential housing shall select each such appraiser. The owner and the department, respectively, shall each designate 1 professional within 30 days after the expiration of the affordability restrictions. If there exists a difference in the valuations provided by the appraisals, the 2 valuations shall be added together and divided by 2 to determine the current appraised value of the property.

(2) Prior to a sale or transfer or other disposition of housing assisted under this section where the department has not previously exercised an option to purchase, an owner shall offer the department or its assignee, who shall be a qualified developer selected under this section under the guidelines of the department, a first refusal option to meet a bona fide offer to purchase the property. The owner shall provide to the department or its assignee written notice, by regular and certified mail, return receipt requested, of his intention to sell, transfer or otherwise dispose of the property. The department or its assignee shall hold a first refusal option for the first 120 days after receipt of the owner's notice of intent to transfer the property. Failure to respond to the written notice of the owner's intent to sell, transfer or otherwise dispose of the property within 120 days after the receipt of the notice shall constitute a waiver of the right of first refusal by the department.

(3) No sale, transfer or other disposition of the land shall be consummated until either the first refusal option period has expired or the owner was notified in writing by the department or assignee in question that the option will not be exercised. Such option

may be exercised only by written notice signed by a designated representative of the department or its assignee, mailed to the owner by certified mail at such address as may be specified in his notice of intention and recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located, within the option period. If the first refusal option has been assigned to a qualified developer selected under this section under guidelines issued by the department, such written notice shall state the name and address of the developer and the terms and conditions of the assignment. An affidavit before a notary public that the notice of intent was mailed on behalf of the owner shall conclusively establish the manner and time of the giving of the notice, but the affidavit, and the notice that the option will not be exercised shall be recorded with the registry of deeds or the registry district of the land court of the county in which the affected real property is located. Each notice of intention, notice of exercise of the option and notice that the option will not be exercised shall contain the name of the record owner of the land and description of the premises to be sold or converted adequate for identification thereof. Each such affidavit before a notary public shall have attached to it a copy of the notice of intention to which it relates. The notices of intention shall be deemed to have been duly mailed to the parties above specified if addressed to them in care of the keeper of records for the party in question.

(4) Upon notifying the owner in writing of its intention to pursue its first refusal option during such 120-day period, the department or its assignee shall have an additional 120 days, beginning on the date of the termination of the first refusal option period, to purchase the property. The time periods may be extended by mutual agreement between the department or its assignee and the owner of the property; provided, however, that any such extension agreed upon shall be recorded in the registry of deeds or the registry district of the land court of the county in which the affected real property is located. Within a reasonable time after request, the owner shall make available to the department or its assignee any information, which is reasonably necessary for the department to exercise its rights. The department or its assignee may purchase or acquire the property only for the purposes of preserving or providing affordable housing; provided, however, that such housing shall remain affordable for not less than 40 years. Such use restrictions shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies.

(e) The owner of property subject to a UCH-TIF plan shall certify to the city or town the income of the families or occupants, upon initial occupancy, of the affordable housing units designated in the UCH-TIF agreement and such certification shall be provided to the department on an annual basis. If the owner fails to provide certification or otherwise fails to comply with the UCH-TIF agreement, including failing to maintain the affordability of housing units assisted under this section, the city or town may place a lien on the property in the amount of the real estate tax exemptions granted pursuant to the UCH-TIF agreement for any year in which the owner is not in compliance with this subsection. If the city or town determines, with the approval of the department of housing and community development, that the owner is unlikely to come into compliance with the affordability requirements of subclause (3) of clause (v) of subsection (a), the city or town may place a lien on the property in the amount of the total real estate tax exemption granted pursuant to the UCH-TIF agreement. Any such lien shall be recorded in the registry of deeds or the registry district of the land court wherein the land lies.

MANUFACTURING WORKFORCE TRAINING TAX INCREMENT FINANCING PLAN (MFW-TIF)

General Laws Chapter 40, § 60A

Section 60A. (a) Notwithstanding any general or special law to the contrary, a city or town, by vote of its town meeting, town council or city council, with the approval of the mayor where required by law, on its own behalf or in conjunction with 1 or more cities or towns and pursuant to regulations issued by the director of workforce development and in consultation with the department of economic development, may adopt and implement a manufacturing workforce training tax increment financing plan, referred to as a MWT-TIF plan in this section, intended to encourage increased commercial growth of manufacturing facilities that have been located in such city or town for not less than 2 years. Any such MWT-TIF plan shall:

(i) designate 1 or more areas of such city or town as a manufacturing workforce training tax increment financing zone, referred to as a MWT-TIF zone in section, subject to the approval of the department of workforce development under regulations adopted by said department consistent with this section. Any MWT-TIF plan adopted by more than 1 city or town shall be contiguous areas of such cities or towns;

(ii) describe in detail all training, retraining and workforce repositioning contemplated for such MWT-TIF zone as of the date of adoption of the MWT-TIF plan that shall be eligible for the MWT-TIF;

(iii) authorize tax increment exemptions from property taxes, under clause Fifty-first of section 5 of chapter 59, for a specified term not to exceed 20 years, for any parcel of real property which is located in the MWT-TIF zone and for which an agreement has been executed with the owner of the parcel under clause (iv); provided, however, that the MWT-TIF plan shall specify the level of exemptions expressed as exemption percentages, not to exceed 100 per cent, to be used in calculating the exemptions for the parcel, and for personal property situated on that parcel, as provided under said clause Fifty-first of said section 5 of said chapter 59; provided, further, that the exemption for each parcel of real property shall be calculated using an adjustment factor for each fiscal year of the specified term equal to the product of the inflation factors for each fiscal year since the parcel first became eligible for such exemption pursuant to this clause; provided, further, that the inflation factor for each fiscal year shall be a ratio:

(a) the numerator of which shall be the total assessed value of all parcels of all commercial and industrial real estate that is assessed at full and fair cash value for the current fiscal year minus the new growth adjustment for the current fiscal year attributable to the commercial and industrial real estate as determined by the commissioner of revenue under paragraph (f) of section 21C of said chapter 59; and

(b) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator, except that such ratio shall not be less than 1;

(iv) include executed agreements between such city or town and each eligible owner of a parcel of real property which is located in a MWT-TIF zone. Each such agreement shall include the following: (1) all material representations of the parties which served as a basis for the descriptions contained in the MWT-TIF plan in accordance with paragraph (ii) and which served as a basis for the granting of a MWT-TIF exemption; (2) any terms considered appropriate by the city or town relative to compliance with the MWT-TIF agreement including, but not limited to, that which shall constitute a default by the property owner and the remedies that shall be instituted between the parties for any such

defaults, including an early termination of the agreement; (3) provisions requiring that 75 per cent of the eligible workforce shall receive training that is designed to retain employment in such city or town; (4) a detailed recitation of all other benefits and responsibilities inuring to and assumed by the parties to such agreement; and (5) a provision that such agreement shall be binding upon subsequent owners of such parcel of real property;

(v) delegate to 1 board, agency or officer of the city or town the authority to execute agreements in accordance with clause (iv); and

(vi) be certified as an approved MWT-TIF plan by the economic assistance coordinating council established by section 3B of chapter 23A pursuant to regulations adopted by said council if the council finds, based on the information submitted in support of the MWT-TIF plan by the city or town and such additional investigation as the council shall make, and incorporate in its minutes, that the plan is consistent with the requirements of this section and shall further the public purpose of retaining or encouraging increased industrial and commercial manufacturing activity in the commonwealth. A city or town may at any time revoke its designation of a TIF zone and, as a consequence of such revocation, shall immediately cease the execution of any additional agreements pursuant to paragraph (iv). The board, agency or officer of the city or town authorized pursuant to paragraph (v) to execute agreements shall forward to the board of assessors a copy of each such agreement, together with a list of the parcels included therein. An executed and approved MWT-TIF shall be recorded in the registry of deeds or the registry district of the land court for the county wherein such land lies.

There is no subsection (b)

BUSINESS IMPROVEMENT DISTRICTS (BID)

General Laws Chapter 40O, §§1-3, 8

Section 1. As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Business improvement district board of directors” or “Board of directors”, a locally designated board of property owners or their designees who are assigned responsibility for the management of a business improvement district.

“BID”, a business improvement district formed pursuant to this chapter, which is a contiguous geographic area with clearly defined boundaries in which at least three-fourths of the area is zoned or used for commercial, industrial, retail, or mixed uses.

“BID member”, a property owner who elects to participate in a BID. . . .

“Elector”, a BID member, or a natural person designated by a member to vote by proxy for such member; provided, however, that such designation shall be in writing and filed with the city or town clerk; provided, further, that only one such proxy may be designated by an owner.

“Fee”, a payment for services or improvements specified by the BID improvement plan.

“Improvement plan”, the strategic plan for the BID which sets forth the supplemental services and programs, revitalization strategy, budget and fee structure, as well as the management entity for the business improvement district, and is approved by the local municipal governing body as part of the creation of the BID. An improvement plan shall, within the limitations described in section nine, be updated at least once every

three years by the BID board of directors, and a copy thereof shall be mailed or delivered to each BID member. The updated improvement plan shall take effect upon the approval of a majority of the electors. Any amendment to the improvement plan under section nine shall be deemed to be an update of the improvement plan.

“Local municipal governing body”, the city council or board of aldermen in a city or the board of selectmen or town council in a town.

“Management entity”, an entity designated in an improvement plan to receive funds to carry out and implement the purposes of the BID, and which shall be governed by the BID board of directors. The improvement plan may designate the BID board of directors to act as the management entity, or may designate that the management entity will be selected by the board of directors. If a management entity is utilized, such entity shall be required to furnish a surety bond conditioned on the faithful performance of its duties.

“Property”, any real property located within the BID.

“Property owner”, the owner of record of property.

“Standard government services”, governmental functions, programs, activities, facilities, improvements and other services which a municipality is authorized to perform or provide.

“Supplemental service”, the provision of programs, public services, activities, amenities, or information in addition to the standard governmental services provided to the BID.

Section 2. The rights and powers of a BID approved by a municipal governing body shall include: retaining or recruiting business; administering and managing central and neighborhood business districts; promoting economic development; managing parking; designing, engineering, constructing, maintaining, or operating buildings, facilities, urban streetscapes or infrastructures to further economic development and public purposes; conducting historic preservation activities; leasing, owning, acquiring, or optioning real property; supplementing maintenance, security, or sanitation; planning and designing services; formulating a fee structure; accumulating interest; incurring costs or indebtedness; entering into contracts; suing and being sued; employing legal and accounting services; undertaking planning, feasibility and market analyses; developing common marketing and promotional activities; and supporting public art and human and environmental services as related to the enhancement of the business district or other supplemental services or programs that would further the purposes of this chapter

Section 3. The organization of a BID shall be initiated by a petition of the property owners within the proposed BID which shall be filed in the office of the clerk of the municipality.

Such petition shall contain:

- (1) the signatures of the owners of at least fifty-one percent of the assessed valuation of all real property within the proposed BID and sixty percent of the real property owners within the proposed BID;
- (2) a description of and a site map delineating the boundaries of the proposed BID;
- (3) the proposed improvement plan which shall set forth the supplemental services and programs, revitalization strategy, update mechanism, and budget and fee structures;
- (4) the identity and location of the management entity designated to implement and oversee the ongoing improvement plan; and
- (5) the criteria for waiving the fee for any property owner within the BID who can provide evidence that the imposition of such fee would create a significant financial hardship.

Such petition may include a mechanism for reimbursing the municipality for the costs incurred in establishing the BID, and for costs incurred in collecting the district fees.

A copy of said petition shall be filed with the director of housing and community development within thirty days of receipt of such petition by the clerk of the municipality

Section 8. The collector-treasurer of each municipality is hereby authorized to collect such district fees in designated BIDs and to disburse the funds to the designated management entity.

The district fees collected shall be used solely to fund items identified and approved in the improvement plan for the BID.

The collector-treasurer shall disburse revenues to the management entity within thirty days of the collection of such fees, together with the interest earned on the holding of such fees.

Following establishment of the BID, all fees billed by or on behalf of the BID and unpaid after thirty days from the date of billing shall become a lien on the property, which shall have priority over all other liens except municipal liens and mortgages of record prior to the recording of a notice of lien, if notice of the lien is duly recorded by the management entity in the appropriate registry of deeds or land court registry district.

An annual audit, certified by a certified public accountant, of the revenues generated, grants, donations, and gifts received by the BID and its expenses shall be made within one hundred and twenty days of the close of the fiscal year, and shall be placed on file with the collector. Such accounting shall be a public record.

HOUSING DEVELOPMENT INCENTIVE PROGRAM (HDIP)

General Laws Chapter 40V, §§1-5

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Certified housing development project”, a housing development project that has been approved by the department for participation in the housing development incentive program.

”Department”, the department of housing and community development as established by chapter 23B

“Gateway municipality”, gateway municipality as defined in section 3A of chapter 23A.

“Housing development incentive program” or “HDIP”, a program designed to promote increased residential growth, expanded diversity of housing supply, neighborhood stabilization, and economic development within housing development zones in gateway municipalities.

“Housing development project”, a multi-unit residential rehabilitation project that is located in a gateway municipality and once rehabilitated, shall contain at least 80 per cent market rate units.

“Housing development zone” or “HD zone”, a zone designated by a gateway municipality which shall be characterized by a need for multi-unit market rate residential properties.

“Market rate residential unit”, a residential unit priced for households above 110 per cent of the area’s household median income.

“Qualified substantial rehabilitation expenditure”, the cost of substantial rehabilitation meeting the following criteria: (i) an initial certification by the department that the structure meets the definition of certified housing development project; (ii) a second certification by the department, to be issued prior to construction, certifying that if completed as proposed, the rehabilitation work meets the standards required for a certified rehabilitation; and (iii) a final certification by the department, issued when the property is leased or sold by the taxpayer.

“Sponsors”, sponsors, as defined in section 25 of chapter 23B.

“Substantial rehabilitation” and “substantially rehabilitated”, the needed major redevelopment, repair and renovation of a property, excluding the purchase of the property, as determined by the department of housing and community development.

Section 2. The department may from time to time designate 1 or more areas of a gateway municipality as an HD Zone and take any and all actions necessary or appropriate to such a designation, upon receipt of a municipal application requesting such designation and representing in its application that the municipality, based on its own independent investigation, has determined that the area proposed for designation has a need for multi-unit residential properties. The application shall include a plan which shall include a detailed description of the construction, reconstruction, rehabilitation and related activities, public and private, contemplated for such zone as of the date of the adoption of the zone plan.

Section 3. Under section 5M of chapter 59, the department may approve a municipality’s application for a tax exemption for a housing development project located within an approved housing development zone.

Section 4. (a) A project may be eligible to be a certified housing development project under this chapter; provided, however, that the proposed project:

- (i) contains 2 or more residential units; provided, however, the project may be a mixed-use development that includes commercial uses in addition to residential units;
- (ii) contains not more than 50 market rate residential units;
- (iii) is located in a designated or proposed HD zone;
- (iv) contains at least 80 per cent market rate units upon completion of the rehabilitation, to be sold or leased;
- (v) has received from the municipality a property tax exemption under section 5M of chapter 59; and
- (vi) is a substantial rehabilitation of an existing property.

(b) The department may from time to time approve 1 or more housing development projects, located in HD zones designated as certified projects under section 2 and take any and all actions necessary or appropriate to such a designation, upon compliance with the following:

- (i) receipt of a project proposal for such a designation requesting such designation from the municipality, submitted in a timely manner, in such form and with such information as the department prescribes, supported by independently verifiable information and signed under the penalties of perjury by a person authorized to bind the sponsors;

(ii) receipt of an executed agreement by the municipality which contains a tax exemption under section 5M of chapter 59 and this section so long as the municipality has determined and incorporated in a formal written determination, based on the information submitted with the project proposal and such additional investigation as the municipality shall make, that the project as described in the proposal and all documentation submitted with the proposal:

(A) is consistent with and can reasonably be expected to benefit significantly from the gateway municipality's plans relative to the project property tax exemption;

(B) together with all other projects previously certified and located in the same project HDIP zone, shall not overburden the municipality's supporting resources; and

(C) together with the municipal resources committed to the project, shall, if certified, have a reasonable chance of increasing residential growth, diversity of housing supply, supporting economic development and promoting neighborhood stabilization in 1 of the municipality's housing development zones of the municipality as advanced in the proposal; and

(iii) receipt with such written approval by the municipality of a request for a designation of the project as a certified project for a specified number of years, which shall be not less than 5 years and not more than 20 years.

(c) The department shall evaluate and either grant or deny any project proposal not later than 90 days from the date of its receipt of a complete project proposal and failure to do so by the department shall result in approval of such project for a term of 20 years. Approval of a project due to the department's failure to act within 90 days shall not constitute approval by the department of any tax incentives provided under chapter 62 or 63.

(d) The department may impose a fee for the processing of applications for the certification of any project under this section.

(e) The department shall review such certified project at least once every 2 years. A certified project shall retain its certification for the period specified by the department in its certification decision unless such certification is revoked prior to the expiration of the specified period. The certification of a project may be revoked only by the department and only upon: (i) the petition of the municipality that approved the project proposal, if the petition satisfies the authorization requirements for a municipal application or the petition of the director of the department; and (ii) the independent investigation and determination of the department that representations made by the sponsors in its project proposal are materially at variance with the conduct of the sponsors subsequent to the certification and such variance is found to frustrate the public purposes that such certification was intended to advance. Upon such a revocation, the commonwealth and the municipality, may bring a cause of action against the sponsors for the value of any economic benefit received by the sponsors prior to or subsequent to such revocation.

Under this section, revocation shall take effect on the first day of the tax year in which the department determines that a material variance commenced. The commissioner of revenue may, as of the effective date of the revocation, disallow any credits, exemptions or other tax benefits allowed by the original certification under this section. The commissioner shall issue regulations to recapture the value of any credits, exemptions or other tax benefits allowed by the certification under this section.

Annually, on or before the first Wednesday in December, the department shall file a report detailing its findings of the review of all certified projects that it evaluated in the prior fiscal year to the commissioner of revenue, to the joint committee on revenue and the joint committee on housing and community development.

Section 5. The department may award to a sponsor of a certified project tax credits available under subsection (q) of section 6 of chapter 62 and section 38BB of chapter 63 not to exceed 10 per cent of the cost of qualified substantial rehabilitation expenditures of the market rate units in the project. The amount and duration of the credit awarded shall be based on the following factors:

(i) the need for residential development and diversity of housing supply in the gateway municipality;

(ii) the extent to which the project will encourage residential development, expansion of diversity of housing supply, support neighborhood stabilization, and promote economic development in the zone; and

(iii) the percentage of market rate units contained in the project.

(b) The department may, limit any incentive or credit available to a project under subsection (q) of section 6 of chapter 62 and section 38BB of chapter 63 to a dollar amount or in any other manner deemed appropriate by the department.

TAXATION OF PUBLIC PROPERTY LESSEES

General Laws Chapter 59, § 2B

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 and 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 twelve C, unless there is a different agreement, no tax assessed under this section shall be retained out of rent or recovered under section twelve C.

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.

PROPERTY TAX EXEMPTIONS

General Laws Chapter 59, § 5, Clauses 16, 45 and 51

Section 5. The following property shall be exempt from taxation and the date of determination as to age, ownership or other qualifying factors required by any clause shall be July first of each year unless another meaning is clearly apparent from the context; provided, however, that any person who receives an exemption under the provisions of clause Seventeenth, Seventeenth C, Seventeenth D, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Thirty-seventh, Thirty-seventh A, Forty-first, Forty-first B, Forty-first C, Forty-second or Forty-third shall not receive an exemption on the same property under any other provision of this section, except clause Eighteenth or Forty-fifth. ...

Sixteenth, (1) In the case of (a) a Massachusetts savings bank, (b) a Massachusetts co-operative bank, (c) a Massachusetts corporation subject to taxation under chapter sixty-three other than a corporation mentioned in either paragraph (2) or paragraph (3) of this clause, or (d) a foreign corporation subject to taxation under section twenty, twenty-three, fifty-two A or fifty-eight of said chapter sixty-three, all property owned by such bank or corporation other than the following:--real estate, poles, underground conduits, wires and pipes, and machinery used in manufacture or in supplying or distributing water; provided, that in the case of a foreign corporation subject to taxation under said section twenty or said section twenty-three, the laws of the state of incorporation, or, in the case of a foreign corporation of another nation, the laws of the state where it has elected to establish its principal office in the United States, grant similar exemption from taxation of tangible property owned by like corporations organized under or created by the laws of the commonwealth.

(1A) Underground wires, conduits and appurtenant equipment installed in accordance with the provisions of an ordinance or by-law adopted pursuant to the provisions of section twenty-two C or section twenty-two D of chapter one hundred and sixty-six to the extent of seventy-five per cent of the value thereof.

(2) In the case of a business corporation subject to tax under section 39 of chapter 63 that is not a manufacturing corporation, all property owned by the corporation other than the following:-- real estate, poles, underground conduits, wires and pipes, and machinery used in the conduct of the business, which term, as used in this clause, shall not be considered to include stock in trade or any personal property directly used in connection with dry cleaning or laundering processes or in the refrigeration of goods or in the air-conditioning of premises or in any purchasing, selling, accounting or administrative function.

(3) In the case of (i) a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63, or (ii) a limited liability company that; (a) has its usual place of business in the commonwealth; (b) is engaged in

manufacturing in the commonwealth and whose sole member is a manufacturing corporation as defined in section 42B of chapter 63 or is engaged in research and development in the commonwealth and whose sole member is a research and development corporation as defined in said section 42B; and (c) is a disregarded entity, as defined in paragraph 2 of section 30 of chapter 63, all property owned by the corporation or the limited liability company other than real estate, poles and underground conduits, wires and pipes; provided, however, that no property, except property entitled to a pollution control abatement under clause forty-fourth or a cogeneration facility, shall be exempt from taxation if it is used in the manufacture or generation of electricity and it has not received a manufacturing classification effective on or before January 1, 1996. For the purposes of this section, a cogeneration facility shall be an electrical generating unit having power production capacity which, together with any other power generation facilities located at the same site, is not greater than 30 megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating or cooling purposes. For purposes of this paragraph, in determining whether the sole member of a limited liability company treated as a disregarded entity is a manufacturing corporation or a research and development corporation, the attributes and activities of the limited liability company shall be taken into account by the member along with the member's other attributes and activities. This clause as it applies to a research and development corporation, as defined in section 42B of said chapter 63, and as it applies to a limited liability company that is a disregarded entity and whose sole member is a manufacturing corporation or a research and development corporation shall take effect only upon its acceptance by the city or town in which the real estate, poles and underground conduits, wires and pipes are located.

(4) Exemption under this clause shall not extend to a corporation subject to section 15.01 of subdivision A of Part 15 of chapter 156D, if the corporation has failed to deliver the certificate required by section 15.03 of said subdivision A of said Part 15 of said chapter 156D.

(5) The classification by the commissioner or the appellate tax board of a corporation as a business corporation or a manufacturing corporation, as respectively defined as aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business. ...

Forty-fifth, Any solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device. ...

Fifty-first, the value of a parcel of real property which is included within an executed agreement under clause (v) of section 59, clause (v) of subsection (a) of section 60 or clause (iv) of subsection (a) of section 60A of chapter 40, and the value of personal property situated on that parcel, but taxes on real and personal property eligible for exemption under this clause shall be assessed only on that portion of the value of the property that is not exempt under section 59, section 60 or section 60A of chapter 40, and this exemption shall be for a term not longer than the period specified for the exemption in the agreement. The amount of the exemption under this clause for a parcel of real property shall be the exemption percentage adopted under clause (iii) of section 59, subsection (a) of section 60 or of section 60A of said chapter 40 multiplied by the amount by which the parcel's value exceeds the product of its assessed value for the last fiscal

year before it became eligible for exemption under this clause multiplied by the adjustment factor determined under said section 59, section 60 or section 60A of said chapter 40. The amount of the exemption under this clause for personal property shall be the exemption percentage adopted under clause (iii) of section 59, subsection (a) of section 60 or of section 60A of said chapter 40 multiplied by the fair cash valuation of the personal property. Taxes on property eligible for exemption under this clause shall be assessed only on that portion of the value of the property that is not exempt under this clause.

HDIP PROPERTY TAX EXEMPTION

General Laws Chapter 59, §5M

Section 5M. A gateway municipality, as defined in section 1 of chapter 40V, may, by vote of its legislative body, subject to the charter of the municipality, establish an exemption in an amount not less than 10 per cent and not more than 100 per cent of the incremental value of the market rate units contained in a certified housing development project within a housing development zone under chapter 40V, for a period of not less than 5 years and not more than 20 years. For the purposes of this section, "market rate residential unit" shall mean a market rate residential unit as defined in section 1 of chapter 40V. Such exemption shall be approved by the department of housing and community development, as established in chapter 23B. The department shall promulgate applicable rules and regulations to carry out this section.

POWER PLANT TAX AGREEMENTS

General Laws Chapter 59, § 38H (Excerpts)

Section 38H. (a) For the purposes of this section, the term department shall refer to the department of telecommunications and energy.

Any electric company as defined in section 1 of chapter 164 which generates electricity or any distribution company as defined in said section 1 which is authorized by the commonwealth or the department to recover transition cost amounts associated with past investments in generation facilities, or any generation company or wholesale generation company as defined in said section 1 or such company's affiliate, subsidiary, or parent company which currently has no binding agreement for tax payments or payments in lieu of taxes to municipalities in which the company's generation facilities are located shall be required to make transition payments to any municipality in which an affiliated generation facility, as defined in said section 1, or part thereof, is located and has been devalued for property tax payment purposes; provided, however, that where such a binding agreement for the payment of real and personal property taxes or the binding agreement for payment in lieu of such taxes has been entered into on or after the effective date of this section, such agreement shall govern, and such generation facility shall be exempt from the provisions of this section. Said payments shall offset any reductions of property taxes as a result of any devaluation of said generation facility. This section does not provide for any exemption from property tax and is in addition to such tax obligation ...

(b) A generation company or wholesale generation company which does not qualify for a manufacturing classification exemption pursuant to paragraph (3) of the clause Sixteenth of said section 5 may, in order to comply with its property tax liability obligation, execute an agreement for the payment in lieu of taxes with the municipality in which such generation facility is sited, and said company shall be exempt from property taxes, in whole or in part, as provided in any such agreements during the terms thereof. Any such agreement shall be the result of good faith negotiations and shall be the equivalent of the property tax obligation based on full and fair cash valuation. Any such negotiated amount shall be included in the tax base for purposes of determining the levy ceiling and levy limit under section 21C and in determining minimum residential factor and classification of property under section 1A of chapter 58 of the General Laws and section 56 of chapter 40 of the General Laws. The department of revenue may issue guidelines for implementing the provisions of this subsection consistent with preserving the negotiated payment amount in the local tax base for such purpose. A city or town, acting by and through its governing body and board of assessors, is hereby authorized to enter into an agreement with the New England Power Company concerning the assessed valuation of all real and personal property presently owned by said company in said city or town for the fiscal years 1997 to 2001, inclusive; provided, however, that said agreement shall constitute a good faith attempt to value said property at its fair market value. Any such agreement as described herein executed prior to and in effect on December 1, 1997, is hereby ratified, validated, and confirmed in all respects and as though this act had been in full force and effect at the time of the execution of said agreement.

(c) In the case of a nuclear-powered electric generation facility in the commonwealth which exceeds 250 megawatts in size and which was owned in whole or in part by an electric company as of July 1, 1997, whether or not such generation facility is in service as of the date of the collection in rates of the transition costs as defined pursuant to section 1 of chapter 164, such electric company shall not be subject to the provisions of subsections (a) and (b) and, in order to be eligible to collect the full amount of transition costs as approved by the department pursuant to section 1G of said chapter 164, shall enter into an agreement to pay the host community payments in addition to taxes. ... attributed valuation related to such payments in addition to and in lieu of taxes, which shall be calculated by dividing the payments in addition to taxes by the current tax rate expressed as a decimal, and shall be included in the total assessed valuation for the purposes of determining the levy ceiling and levy limit under said section 21C and in determining the minimum residential factor and classification of property under section 1A of chapter 58 and section 56 of chapter 40. The department of revenue may issue guidelines for implementing the provisions of this subsection consistent with preserving the payment in addition to and in lieu of taxes in the local tax base for such purpose.

Notwithstanding the provisions of any general or special law to the contrary, the town of Plymouth, acting through its board of selectmen, may enter into a certain agreement dated March 16, 1999 with the Boston Edison Company relating to property taxes, payments in addition to property taxes, payments in lieu of property taxes for the Pilgrim Nuclear Power Station, as that property is defined in the agreement, for the fiscal years 1998 to 2012, inclusive. Such agreement is hereby authorized, ratified, validated and confirmed in all respects as satisfying all of Boston Edison Company's obligations under this section with respect to agreements relating to property taxes, payments in addition to property taxes and payments in lieu of property taxes for the Pilgrim Nuclear Power Station.

MANUFACTURE AND SALE OF ELECTRICITY

General Laws Chapter 164, § 1 (Excerpts)

Section 1. In this chapter, unless the context otherwise requires, the following words shall have the following meanings: ...

“Generation”, the act or process of transforming other forms of energy into electric energy or the amount of electric energy so produced.

“Generation company”, a company engaged in the business of producing, manufacturing or generating electricity or related services or products, including but not limited to, renewable energy generation attributes for retail sale to the public.

“Generation facility”, a plant or equipment used to produce, manufacture or otherwise generate electricity and which is not a transmission facility.

“Generation service”, the provision of generation and related services to a customer. ...

“Renewable energy”, (i) resources whose common characteristic is that they are nondepletable or are naturally replenishable but flow-limited; or (ii) existing or emerging non-fossil fuel energy sources or technologies, which have significant potential for commercialization in New England and New York, and shall include the following: solar photovoltaic or solar thermal electric energy; wind energy; ocean thermal, wave, or tidal energy; geothermal; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; and low emission advanced biomass power conversion technologies using such fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae; provided, however, that renewable energy supplies shall not include coal, oil, natural gas except when used in fuel cells, and nuclear power. ...

“Wholesaler”, a person, corporation, firm or any part or subsidiary of any firm which supplies, sells, transfers or otherwise furnishes petroleum products to resellers or end-users.

“Wholesale generation company”, a company engaged in the business of producing, manufacturing or generating electricity for sale at wholesale only.

MUNICIPAL LIGHT PLANT COOPERATIVES

General Laws Chapter 164, § 47C (Excerpts)

Section 47C. (a) Any municipal lighting plant created in a manner provided for in this chapter shall be allowed to form cooperative public corporations for the purpose of furnishing efficient, low cost, and reliable electric power and energy-related services and cable television services as provided in this section.

(b) A municipal lighting plant cooperative established pursuant to the provisions of this section shall constitute a body politic and corporate and is constituted a public instrumentality, and the exercise of the powers conferred by this section shall be deemed and held to be the performance of an essential public function. ...

(j) Except as provided for herein, a municipal lighting plant cooperative shall be exempt from paying taxes, including, but not limited to taxes on its income and real and personal property situated within the commonwealth and owned by the municipal light plant cooperative; provided, however, that the cooperative shall agree, in lieu of property taxes, to pay to any governmental body authorized to levy local property taxes the amount which would be assessable as local property taxes on the real and tangible personal property if such property were the property of a domestic corporation; provided, further, that no such municipal lighting plant cooperative shall be allowed to commence any such operations allowed pursuant to this section or exercise any such powers pursuant to subsection (d) until such payment in lieu of taxes is executed. The cooperative shall pay all sales or excise taxes which are properly assessed on its business activities under this section to the extent such taxes are assessed against domestic corporations.

SMALL MUNICIPAL RENEWABLE ENERGY GENERATING FACILITIES General Laws Chapter 164, § 143

Section 143. (a) For the purposes of this section, the term “small municipal renewable energy generating facility” shall mean a generating unit that is designed for, or capable of, operating at a gross capacity of less than 10 megawatts and that qualifies as a Class I renewable energy generating source under section 11F of chapter 25A.

(b) Notwithstanding any general or special law to the contrary, a municipality may design, install, own and operate small municipal renewable energy generating facilities, sell any electricity generated from such facilities and sell any other marketable products resulting from its generation of renewable energy at such facilities, including electronic certificates created to represent the generation attributes, as defined in 225 CMR 14.02, of each megawatt hour of energy generated by the renewable energy facilities; provided, however, that no later than 15 days after the initiation of a procurement of services, equipment or materials related to a small municipal renewable energy generating facility and again no later than 15 days after the date that such small municipal renewable energy generating facility first produces electrical energy, said municipality shall submit a report to the department of public utilities and the department of energy resources detailing the costs of the small municipal renewable energy generating facility and a plan and forecast for the disposition of the facility’s products. The department of energy resources shall annually issue a report containing information on small municipal renewable energy generating facilities, including the number, capacity, production and performance of such facilities and recommendations, if any, for additional legislative action to increase the benefits available to municipalities through ownership of renewable energy generating facilities. The department of energy resources shall submit such report, including drafts of legislation to implement recommendations within such report, to the joint committee on telecommunications, utilities and energy and the senate and house committees on ways and means not later than April 30 of each year.

(c) A municipality may issue from time to time bonds or notes in order to finance all or a portion of the costs of small municipal renewable energy generating facility projects authorized under this section. Notwithstanding any provision of chapter 44 to the contrary, the maturities of any such bonds issued by a municipality hereunder either shall be arranged so that for each issue the annual combined payments of principal and interest payable in each year, commencing with the first year in which a principal payment is

required, shall be as nearly equal as practicable in the opinion of the municipal treasurer or shall be arranged in accordance with a schedule providing for a more rapid amortization of principal. The first payment of principal of each issue of bonds or of any temporary notes issued in anticipation of the bonds shall be not later than 5 years after the anticipated date of commencement of the regular operation of the small municipal renewable energy generating facilities financed thereby, as determined by the municipal treasurer, and the last payment of principal of the bonds shall be not later than 25 years from the date of the bonds. Indebtedness incurred under this section shall not be included in determining the limit of indebtedness of a municipality under section 10 of said chapter 44 but, except as otherwise provided in this subsection, shall be subject to the provisions of said chapter 44.

(d) A municipality shall procure any services required for the design, installation, improvement, repair and operation of small municipal renewable energy generating facilities authorized under this section, and acquire any equipment necessary in connection therewith, in accordance with the procurement requirements of chapter 30B as applicable. A municipality may procure any such services and equipment together as 1 procurement or as separate procurements thereunder.

(e) A municipality may establish an enterprise fund under section 53F1/2 of chapter 44 for the receipt of all revenues from the operation of small municipal renewable energy generating facilities authorized under this section to operate and all moneys received for the benefit of such small municipal renewable energy generating facilities, other than the proceeds of bonds or notes issued therefor. Such receipts shall be used to pay the costs of operation and maintenance of the small municipal renewable energy generating facilities, to pay the costs of future improvements and repairs thereto and to pay the principals and interest on any bonds or notes issued therefor.



Informational Guideline Release

Bureau of Municipal Finance Law
Informational Guideline Release (IGR) No. 11-2XX
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Supersedes IGR 94-201 and Inconsistent Prior Written Statements

PROPERTY TAX EXEMPTIONS TO PROMOTE ECONOMIC DEVELOPMENT, URBAN HOUSING AND MANUFACTURING WORKFORCE DEVELOPMENT

Chapter 240, §§ 75-78, 109 and 206 of the Acts of 2010
(Amending G.L. c. 40, §§ 59, 60 and 60A and c. 59, § 5(51))

This Informational Guideline Release (IGR) informs local officials about recent changes to the law regarding tax increment financing agreements between municipalities and property owners. It also explains the standards and procedures that apply to the property tax exemptions provided under these agreements generally.

Topical Index Key:

Exemptions

Distribution:

Assessors
Selectmen/Mayors
City/Town Managers/Exec. Secys.
Finance Directors
City/Town Councils
Treasurers

Supersedes IGR 94-201 and Inconsistent Prior Written Statements

**PROPERTY TAX EXEMPTIONS TO PROMOTE
ECONOMIC DEVELOPMENT, URBAN HOUSING AND MANUFACTURING
WORKFORCE DEVELOPMENT**

**Chapter 240, §§ 75-78, 109 and 206 of the Acts of 2010
(Amending G.L. c. 40, §§ 59, 60 and 60A, and c. 59, § 5(51))**

SUMMARY:

These guidelines explain recent legislation that amends a property tax exemption available under the Economic Development Incentive Program (EDIP) and programs to promote housing in urban commercial centers and manufacturing workforce development.

A municipality and property owner will now be able to negotiate the property tax exemption percentage for personal property located on a parcel of real property covered by a tax increment financing (TIF) agreement. Previously, a TIF agreement only specified the real estate tax exemption percentage for the parcel and then all tangible personal property on the parcel was exempt even if owned by lessees.

The 2010 Economic Development Reorganization Act amended the three TIF statutes (G.L. c. 40, § 59 to promote economic development; c. 40, § 60 to promote urban center housing; and c. 40, § 60A to promote manufacturing workforce training) to require that a personal property exemption percentage also be specified in the agreement. The exemption may be up to 100 percent. St. 2010, c. 240, §§ 75-78. In addition, Clause 51 of G.L. c. 59, § 5, which provides the property tax exemption for TIF parcels, was amended to exempt the percentage of personal property valuation specified in the agreement. St. 2010, c. 240, § 109.

These changes apply to TIF agreements entered into on or after August 1, 2010 that provide for TIF exemptions that first take effect in fiscal years beginning on or after July 1, 2011. St. 2010, c. 240, § 206.

These guidelines supersede the guidelines issued when the TIF exemption to promote economic development was enacted in 1994. See Informational Guideline Release No. 94-201, *Property Tax Exemptions to Promote Economic Development*, (February 1994). They also update the features and operation of TIF exemptions to reflect other legislative and regulatory changes.

GUIDELINES:

I. TYPES OF PROPERTY TAX EXEMPTIONS

A. Economic Development Incentive Program

The EDIP provides for two types of local property tax exemptions intended to spur economic development. A municipality may grant either exemption to a business in conjunction with a comprehensive plan for the development of economically distressed areas proposed by the community and approved by the Economic Assistance Coordinating Council (EACC).

Economically distressed areas are designated as “economic target areas” (ETAs) by the EACC. G.L. c. 23A, § 3D. The EACC may designate those parts of an ETA that are suitable for commercial or industrial development as “economic opportunity areas” (EOAs). G.L. c. 23A, § 3E. EACC-certified real estate projects within an EOA (or within an area designated as presenting exceptional opportunities for increased economic development) are eligible for one of two types of local property tax exemptions, but only one of the exemptions can be granted to any particular parcel. G.L. c. 40, § 59. Communities may also grant parcels receiving TIF exemptions whole or partial exemptions from betterments or special assessments.

Detailed regulations have been issued by the EACC governing the application process for the designation of ETAs and EOAs, and for the certification of real estate projects eligible for property tax exemptions for economic development. See 402 Code of Massachusetts Regulations (CMR) 2.00. The standards and procedures that apply for EDIP TIF zones and plans are found in regulations issued by the Department of Housing and Community Development (DHCD). See 760 CMR 22.

1. Special Tax Assessment

The first type of economic development exemption is a “special tax assessment.” G.L. c. 23A, § 3E. A special tax assessment, which is available only within an EOA, provides for a declining minimum exemption expressed as a percentage of a real estate parcel’s total fair cash value over four years, and an exemption flexible as a percentage of a parcel’s total value for the fifth year and any subsequent years (up to a total of 20 years). The special real estate tax assessment and exemption schedule is as follows:

<u>Year</u>	<u>Maximum Assessment</u>	<u>Minimum Exemption</u>
1	0% of fair cash value	At least 100% of fair cash value
2	Up to 25% of fair cash value	At least 75% of fair cash value
3	Up to 50% of fair cash value	At least 50% of fair cash value
4	Up to 25% of fair cash value	At least 25% of fair cash value
5 -20	Up to 100% of fair cash value	0% of fair cash value

2. Tax Increment Financing Exemption

The other type of economic development exemption is a tax increment financing (TIF) exemption. G.L. c. 40, § 59; G.L. c. 59, § 5, Clause 51. The TIF exemption covers a percentage of the increase in a parcel's fair cash value, net of inflation, over its base value in the fiscal year before the first fiscal year in which the EDIP TIF agreement is in effect. The parcel's base value is adjusted to insure that the exemption applies only to increases in its value that exceed the ordinary inflationary increases in the value of other commercial and industrial properties in the community. The exemption can last for up to 20 years, and the percentage of the incremental value that is exempt can be up to 100 percent. Both the duration of the exemption and the percentage of increased value that is exempt are fixed by the TIF agreement between the municipality and the property owner. In addition, up to 100 percent of the value of personal property situated on a TIF parcel may be exempt.

B. Housing in Urban Commercial Centers

A TIF exemption may be used to promote the development of housing in urban centers that are predominantly commercial, have a high daytime or business population, have a high concentration of daytime traffic and parking and have a need for multi-unit residential properties. G.L. c. 40, § 60(a)(i). Projects eligible for urban center housing TIFs (UCH-TIF) must be situated in a UCH-TIF zone designated by the municipality under regulations issued by the DHCD and approved by the DHCD. See 760 CMR 58.

C. Manufacturing Workforce Development

A TIF exemption may be used to support manufacturing workforce retraining and expansion of manufacturing facilities that have been located in the city or town for not less than two years. G.L. c. 40, § 60A(a). Projects eligible for a manufacturing workforce training TIFs (MWT-TIF) must be situated in MWT-TIF zones designated by the community under regulations issued by the Department of Workforce Development (DWD) and approved by the EACC. See 429 CMR 2.00.

II. IMPLEMENTATION OF EXEMPTIONS

A. Adoption of Exemption

1. Adoption Procedure

TIF plans, which contain the special assessment or TIF property tax exemption, must be approved by town meeting, the town council, or city council with the mayor's approval where required. TIF plans provide that a certain area of a city or

town, or a contiguous area of more than one city or town, be designated a TIF Zone. EDIP and MWF TIF zones must fall wholly within an ETA and EOA, except that EDIP TIF plans are also allowed in areas designated by the Undersecretary of Business Development as presenting exceptional opportunities for increased economic development. The designation of EDIP and MWF TIF zones must be approved by the EACC and an UCH-TIF zone by the DHCD.

Locally-approved TIF plans and exemptions incorporate executed agreements between the municipality and property owners intended to benefit from the exemption. The plans must identify each parcel that will be receiving a property tax exemption, specify how long the exemption will last, which may not be more than 20 years, and specify an exemption percentage for each year that the exemption will be in effect, which cannot be greater than 100%. With respect to special tax assessments, the exemptions in the first four years cannot fall below the minimum exemption percentages prescribed by statute. See Section I-A-1 above.

EDIP and UCH TIF plans may establish a maximum percentage of the cost of public improvements attending development of the TIF zone that may be recovered from TIF eligible parcels through betterments and special assessments. These public improvements must be incorporated into the plan for the development of the TIF zone. EDIP TIF exemptions and special tax assessments require, in addition, EACC certification of the project intended to benefit from one or the other exemption. No parcel can receive both the special tax assessment and TIF exemption.

2. **Tax Agreement**

The owner of each parcel that will receive an exemption must enter into an agreement with the city or town setting out the terms of the exemption applicable to the parcel, and the responsibilities and undertakings of the parties with respect to the development and use of the parcel. The agreement must also contain a provision that it will be binding upon subsequent owners of the property.

3. **Notification Requirements**

The board, agency, or officer responsible for executing TIF agreements on behalf of the municipality must forward a copy of each agreement to the assessors, together with a list of the affected parcels. While sending the assessors a copy of a UCH-TIF or special tax assessment agreement is not required for those agreements to take effect, all agreements and lists of affected parcels should be forwarded to the assessors to ensure timely and proper implementation of the exemption.

4. **TIF Zone Revocation**

A municipality may revoke the designation of an area as a TIF zone for economic development, urban center housing, or manufacturing workforce training at any time. After a revocation, no additional TIF exemptions may be granted in the TIF zone, but the extent and duration of existing TIF exemptions will be unaffected by the revocation of the TIF zone.

B. **Administration of Exemption**

1. **Real Estate Valuation and Assessment**

For both a special tax assessment and TIF exemption, the tax committed by the assessors must be based upon the value of the parcel after allowing for the exemption, rather than upon the parcel's fair cash value. Using the property value after the exemption is applied means no abatement or charge should ordinarily be made against the overlay account because of these exemptions. It also means that the value after exemption will be used in calculating the levy class percentages under G.L. c. 40, § 56 and the minimum residential factor under G.L. c. 58, § 1A.

2. **Effective Dates**

The special tax assessment or TIF exemption takes effect in the fiscal year specified in the TIF plan, provided all necessary approvals have been given.

3. **Personal Property Valuation and Assessment**

Personal property situated at a parcel receiving a TIF exemption is exempt on the negotiated percentage of its value as provided for in the TIF plan. The exemption does not depend on the ownership of the personal property, *e.g.*, whether owned by an individual, partnership, domestic business corporation, or manufacturing corporation.

4. **Ownership Changes**

A change in the ownership of a parcel receiving a TIF exemption does not disqualify the parcel from receiving the exemption.

5. **Abatements**

Property owners claiming overvaluation for any reason including the fair cash value to which the exemption was applied, an error in calculating the exemption or failure to apply the exemption, must apply by the same deadline and follow the same rules that apply to abatement for other parcels.

6. **Recordkeeping**

Assessors should maintain a copy of each agreement establishing a TIF or special tax assessment exemption, a record of the vote approving the TIF plan or special tax assessment, and a table of the exemption percentages for each fiscal year that the exemption is in effect. In the case of TIF exemptions, a year-by-year table of the inflation factors for each fiscal year of the TIF agreement should also be kept.

C. **Calculation of Exemption**

1. **Special Assessment**

To calculate a special tax assessment, the assessors determine the fair cash value of the parcel in accordance with usual assessment methods. The fair cash value is then reduced by the exemption percentage (not less than the statutory minimum) applicable for the given year of the special tax assessment period.

2. **Tax Increment Financing**

a. **Personal Property**

To calculate the TIF exemption on personal property situated on the parcel, the assessors apply the exemption percentage specified in the agreement to the fair cash value of the personal property. See Attachment 1 for personal property exemption calculation example.

b. **Real Estate**

The value of the EDIP or MWF TIF exemption is adjusted annually for inflation in the value of commercial and industrial properties in the municipality. The UCH TIF exemption is adjusted for inflation in the value of residential properties, or residential and commercial properties where the TIF zone includes mixed uses.

(1) **Parcel Base Value**

To calculate the TIF exemption on the parcel, the assessors start with the base value of the parcel. The base value is the assessed valuation of the parcel in the last fiscal year before the TIF exemption went into effect.

(2) **Adjustment Factor**

The base value is then multiplied by an adjustment factor, which is the product of the inflation factors for all the years the TIF exemption has been in effect for the parcel.

Each exemption year's inflation factor is a fraction. If the fraction is less than one, then the inflation factor for that fiscal year is one.

Numerator – For EDIP and MWF TIFs, the numerator of the fraction is the current fiscal year's total assessed value of all commercial and industrial parcels in the municipality that are being assessed at fair cash value (i.e., excluding TIF parcels), minus the part of that year's Proposition 2½ tax base growth adjustment that is attributable to commercial and industrial real estate. For UCH TIFs, the numerator is (a) the current year's total value of all non-TIF residential parcels, minus residential new growth, or (2) if the TIF zone includes mixed use, the current year's total value of all non-TIF residential and commercial parcels, minus residential and commercial new growth.

Denominator – For EDIP and MWF TIFs, the denominator of the fraction is the prior fiscal year's assessed value of commercial and industrial properties (excluding TIF parcels) overall. For UCH TIFs, the denominator is (a) the prior year's total value of all non-TIF residential parcels, or (2) if the TIF zone includes mixed use, the prior year's total value of all non-TIF residential and commercial parcels.

In determining the numerator and denominator in the subsequent fiscal year, note that the prior year's new growth is included in the total assessed value of the properties for the fiscal year.

(1) Exempt and Assessed Value

After the base value of the parcel is multiplied by the inflation factors for all the years of the exemption up to and including the current fiscal year, the result of that calculation is subtracted from the current year's fair cash value. That difference is then multiplied by the TIF exemption percentage for that fiscal year to arrive at the exempt value for the current fiscal year.

The assessed value is the fair cash value minus the value of the exemption. If the exemption percentage is 100%, the assessed value will simply be the base value multiplied by all the inflation factors.

See Attachment 2 for real estate exemption calculation example.

D. Calculation of Tax Base Growth

Increases in the value of a parcel receiving a special tax assessment or TIF exemption during the exemption period will be treated as tax base growth for the levy limit calculation under G.L. c. 59, § 21C(f) in the year or years when the increased value first becomes taxable. See Attachment 3 for tax base growth calculation example.

DRAFT

ATTACHMENT 1
CALCULATION OF TIF PERSONAL PROPERTY EXEMPTION

The TIF agreement with the owner of Parcel A includes a 50% personal property tax exemption for FY1-10 and 25% for FY11-20.

FY1

Step 1 – Calculate FY1 Exempt Valuation

The owner Parcel A is a business corporation. The assessors determine that the fair cash value of all machinery used in the conduct of business owned by the corporation on the FY1 January 1 assessment date is \$250,000, with \$50,000 worth of machinery located in a leased site and \$200,000 located on Parcel A.

$$\begin{array}{rcl} \$200,000 & & \\ \text{Fair Cash Value} & \times .5 & \\ & \text{Exemption \%} & \\ & & = \$100,000 \\ & & \text{FY1 Exempt Valuation} \end{array}$$

Step 2 – Calculate FY1 Assessed Valuation

The FY11 assessed value is $\$250,000 - \$100,000 = \$100,000$

FY11

Step 1 – Calculate FY11 Exempt Valuation

The corporation has consolidated all operations within the community to Parcel A. The assessors determine that the fair value of the machinery used in the conduct of business owned by the corporation on the FY11 January 1 assessment date is \$300,000.

$$\begin{array}{rcl} \$300,000 & & \\ \text{Fair Cash Value} & \times .25 & \\ & \text{Exemption \%} & \\ & & = \$ 75,000 \\ & & \text{FY1 Exempt Valuation} \end{array}$$

Step 2 – Calculate FY11 Assessed Valuation

The FY11 assessed value is $\$300,000 - \$75,000 = \$225,000$

ATTACHMENT 1
CALCULATION OF TIF REAL ESTATE EXEMPTION

A TIF plan is adopted by the municipality that gives a 50% TIF real estate tax exemption to the owner of Parcel A for 20 years, starting in FY1. In the FY before the exemption begins (FY0 base year), the assessed valuation of Parcel A was \$100,000.

FY1

Step 1 – Calculate FY1 Inflation Factor

In FY1, there are 10 non-TIF eligible parcels of commercial and industrial (C & I) land in the community with a total valuation of \$11,000,000. In the base FY those same 10 parcels had a total valuation of \$10,000,000.

In FY1, \$500,000 of the municipality’s Proposition 2½ levy limit due to approved tax base growth is attributable to the C & I classes. The inflation factor for FY1 is determined as follows:

$$\frac{\$10,500,000 \text{ [\$11,000,000 (FY1 Total Value Non-Eligible C\&I Parcels) - \$500,000 (FY1 C\&I new growth)]}}{\$10,000,000 \text{ (FY0 total value of parcels included in the numerator)}} = 1.05 \text{ Inflation Factor}$$

Step 2 – Calculate FY1 Exempt Valuation

The owner of the TIF parcel constructs a new building, increasing the parcel’s market value for FY1 to \$2,000,000. Its assessed value for FY1, after allowing for the TIF exemption, is determined as follows:

\$2,000,000 -	(\$100,000) x 1.05	x .5	= \$947,500
Fair Cash Value	Base Value x FY1 Inflation Factor	Exemption %	FY1 Exempt Valuation

Step 3 – Calculate FY1 Assessed Valuation

The FY11 assessed value is \$2,000,000 - \$947,500 = **\$1,052,500**

FY2

Step 1 – Calculate FY2 Inflation Factor

For FY2, the aggregate value of C&I parcels assessed at fair cash value has risen to \$12,000,000 and \$550,000 of that value increase reflects new growth.

$$\frac{\$11,450,000 \text{ [\$12,000,000 (FY2 Total Value Non-Eligible C\&I Parcels) - \$550,000 (FY2 C\&I new growth)]}}{\$11,000,000 \text{ (FY1 total assessed value of parcels included in the numerator)}} = 1.04 \text{ Inflation Factor}$$

Step 2 – Calculate FY2 Exempt Valuation

For FY11, the fair cash value of the TIF parcel has risen to \$2,100,000.

$$\begin{array}{rclclcl} \$2,100,000 & - & (\$100,000) \times 1.05 \times 1.04 & \times .5 & = & \$995,400 \\ \text{Fair Cash Value} & & \text{Base Value x FY1 \& 2 Inflation Factors} & \text{Exemption \%} & & \text{FY2 Exempt Valuation} \end{array}$$

Step 3 – Calculate FY2 Assessed Valuation

The FY2 assessed value is \$2,100,000 - \$95,400 = **\$1,104,600**

FY3

Step 1 – Calculate FY3 Inflation Factor

For FY3, the aggregate value of C&I parcels assessed at fair cash value is \$12,500,000 and \$140,000 of the increase reflects new growth.

$$\frac{\$12,360,000 \text{ [\$12,500,000 (FY3 Total Value Non-Eligible C\&I Parcels) - \$140,000 (FY3 C\&I new growth)]}}{\$12,000,000 \text{ (FY2 total assessed value of parcels included in the numerator)}} = 1.03 \text{ Inflation Factor}$$

Step 2 – Calculate FY3 Exempt Valuation

For FY3, the fair cash value of the TIF parcel has risen to \$2,150,000.

$$\begin{array}{rclclcl} \$2,150,000 & - & (\$100,000) \times 1.05 \times 1.04 \times 1.03 & \times .5 & = & \$1,018,762 \\ \text{Fair Cash Value} & & \text{Base Value x FY1, 2 \& 3 Inflation Factors} & \text{Exemption \%} & & \text{FY3 Exempt Valuation} \end{array}$$

Step 3 – Calculate FY3 Assessed Valuation

The FY3 assessed value is \$2,150,000 - \$1,018,762 = **\$1,131,238**

ATTACHMENT 3
CALCULATION OF TAX BASE GROWTH FOR PARCEL WITH TIF OR SPECIAL ASSESSMENT

New growth on TIF or special assessment parcels is allowed only in the year when the additional value becomes taxable for the first time. An excel spreadsheet with the methodology for calculating and documenting growth for these parcels is found on the **DLS website**.

EXAMPLE 1 – TIF

A TIF agreement provides for an exemption of 100% of the increased value for the maximum of 20 years, beginning in FY1. The parcel’s base value was \$100,000. A \$1,000,000 building is added. The fair cash value of the building in the 21st year, FY21, is \$3,000,000, and the compounded inflation adjustments bring the base value to \$200,000. There is no new growth through FY20.

\$3,000,0000 - Building Fair Cash Value	\$ 200,000 [(\$100,000) x Compounded FY1-20 Factors] Base Value x Compounded Inflation Factors for Exemption Years	= \$2,800,000 FY21 New Growth
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EXAMPLE 2 - TIF

Same facts as Example 1, but the exemption is on 100% of the increased value for the first five years and thereafter on only 50%. In FY6, when the exemption decreases to 50%, the fair cash value of the building is \$1,300,000, and the compounded inflation adjustments bring the base value to \$110,000. There is no new growth through FY5 and the rest of the growth is picked up at the end of the exemption period, as in Example 1.

\$1,300,0000 - Building Fair Cash Value	\$ 110,000 [(\$100,000) x Compounded FY1-5 Factors] Base Value x Compounded Inflation Factors for 100% Exemption Years	x .5 FY5 – FY6 Exemption %	= \$595,000 FY6 New Growth
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THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

IRA A. JACKSON
COMMISSIONER

EDWARD J. COLLINS, JR.
DEPUTY COMMISSIONER

PROPERTY TAX BUREAU

INFORMATIONAL GUIDELINE
RELEASE NO. 84 - 209

SUBJECT: Solar or wind-
powered heating and energy
systems or devices

PROPERTY TAX EXEMPTIONS FOR SOLAR
AND WIND POWERED SYSTEMS OR DEVICES
(G.L. Ch.59, Sec.5, Cl.45)

GUIDELINES:

1. The property tax exemption available for solar or wind-powered heating or energy systems or devices applies only to those devices whose sole function is to supply heat or other energy.
2. Only one application is required for the duration of the 20-year exemption period.
3. Assessors should indicate on the property record card the year the exemption expires and note that the taxable value shown on the card is net of the exempt device or system.
4. Assessors should maintain a separate list of such exemptions, indicating the respective expiration dates.

DISCUSSION:

Eligibility. The law provides an exemption from local property taxes for any solar or wind-powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under Chapter 59. The exemption is allowed for 20 years from the date of installation.

Any components that serve a dual purpose (both structural and energy-related, for example) are not eligible for this exemption. Greenhouses are not eligible; they serve more than one purpose. Windows, thermal drapes and floors are among other features which are considered to have a dual purpose and, therefore, will not be exempt under Clause 45.

Examples of items which are eligible for the exemption are the thermal storage rods, storage box, fan system, and duct work that are constructed to function exclusively as part of the solar or wind-powered energy or heat-supplying system.

PROPERTY TAX BUREAU - Anthony P. Grosso, Chief - (617)727-423
Francis T. Seifert, Asst. Chief - (617)727-051

Application. Because eligibility for an exemption under Cl. 45 depends solely upon characteristics of the property, rather than the taxpayer's situation or his use of the property, there is no need to require an annual application which would merely restate the facts ascertained in establishing the original eligibility. This distinguishes Cl. 45 exemptions from others for which an annual application is required (such as Cl. 17, 22, 37, and 41), because qualification for those exemptions depends upon the taxpayer's circumstances, which may change after the first determination of eligibility.



Informational Guideline Release

Bureau of Local Assessment
Informational Guideline Release (IGR) No. 98-403
September 1998

VALUATION AND TAXATION OF ELECTRIC GENERATING PROPERTY

Chapter 164 of the Acts of 1997
(Amending G.L. Ch. 59 §5(16)(3) and Adding G.L. Ch. 59 §38H)

This Informational Guideline Release (IGR) provides assessors and other local officials with information about the valuation and taxation of electric generating property as a result of the 1997 Electric Utility Restructuring Act.

Questions should be addressed to the Bureau of Local Assessment.

Topical Index Key:

Assessment Administration
Personal Property
Valuation

Distribution:

Assessors
Mayors/Selectmen
City/Town Councils

VALUATION AND TAXATION OF ELECTRIC GENERATING PROPERTY

**Chapter 164 of the Acts of 1997
(Amending G.L. Ch. 59 §5(16)(3) and Adding G.L. Ch. 59 §38H)**

These guidelines address the valuation and taxation of electric industry property as a result of the 1997 Electric Utility Restructuring Act. Chapter 164 of the Acts of 1997. That act provides for the restructuring of the electric utility industry in Massachusetts by separating the generation of electricity from its transmission and distribution. Transmission and distribution of electricity will still be performed by regulated local electric utilities. However, electric generation will now be performed by independent, non-utility producers in a deregulated environment.

Of particular significance for local assessors and other municipal officials are provisions of the act that affect the taxation of electric generating facilities and give tax base protections to communities hosting them. These provisions:

- Make taxable certain electric generating plants of non-utility owners classified as manufacturing corporations.
- Allow host communities of electric generating plants that devalue after restructuring to continue to receive transition revenues attributable to those plants at levels equivalent to property tax revenues received in FY1997 before restructuring, but declining gradually to tax revenues based on actual full and fair cash value by FY2010.
- Allow host communities to enter into legally binding tax agreements with electric generation companies in order to provide revenue stability while restructuring occurs.
- Require transition or agreement payments to be treated as property tax revenues for Proposition 2½ and tax classification purposes.

The act also results in generating plants being subject to the same market forces as other non-regulated property bought and sold based on investor expectations. Beginning with assessments as of January 1, 1998 for fiscal year 1999, local assessors must consider how the removal of regulatory restrictions on potential buyers affects the valuation of plants in their community, whether or not the plants have been sold to a generation company.

I. TAX AGREEMENTS

Municipalities hosting electric generating facilities have two avenues of taxing generating plants. The first is to value and assess property taxes on the facility in the same manner as other taxable property. Transition payments will supplement the assessed taxes during a transition period depending on whether the annual valuation of the plant is higher or lower than its FY1997 assessed valuation.

The second avenue is a voluntary tax agreement that is based on good faith negotiations and is the equivalent of assessing taxes on the full and fair cash valuation of the plant. This requires a negotiated agreement with a generation company.

This section explains the requirements for entering a tax agreement and outlines the roles of municipal officers in determining the avenue the municipality will pursue. The decision to enter into an agreement is made by the legislative body of the municipality. That decision will depend on a projection of the revenues that may be generated from taxing the plant at full and fair cash value and receiving transition payments, if any, and those received from a predictable, negotiated agreement.

A. Entering Tax Agreements

1. Agreements Executed Before Restructuring Act

“Binding” tax agreements made before the effective date of the Electric Restructuring Act (November 25, 1997) continue to govern until their expiration. Special legislation authorizing the agreement was or is required to make an agreement executed before restructuring binding.

2. Agreements Authorized by Restructuring Act

Host municipalities may enter into agreements with generation companies under the act. G.L. Ch. 59 §38H.

a. Authority to Negotiate Agreement

Authorization to negotiate on behalf of a municipality should be specifically granted to the chief executive board or officer (CEO) of the municipality (Board of Selectmen, Mayor or Manager), or some other municipal officer or officers, such as the Board of Assessors, by vote of the municipal legislative body (Town Meeting, City or Town Council). The authority may also be given some combination of officers, such as the CEO and assessors.

b. Approval of Agreement

After an agreement has been negotiated by the authorized officials, it must be approved or ratified by the legislative body to be binding.

B. Estimating Property Tax Revenues

In order to determine whether a tax agreement is in the municipality's interest, the plant's current full and fair cash value should be determined and a revenue projection made.

1. Role of the Board of Assessors

The board of assessors is responsible for establishing full and fair cash values of property for local tax assessment purposes. Assessors must determine what a willing buyer under no compulsion to buy would pay for the property of a willing seller with no compulsion to sell. Ordinarily this determination is made on an annual basis, using information gathered over the year. This would be the method the assessors would continue to use in the valuation of electric generating plants if a tax agreement has not been negotiated or is not in effect.

If a multi-year tax agreement is being considered instead, the assessors should make projections of full and fair cash value for each year of the agreement, taking into account plant additions and retirements. These projections will necessarily be speculative, given the uncertainty involved with restructuring a complex industry.

2. Role of Town Meeting, City or Town Council

The legislative body has the power to authorize negotiations and to approve agreements with power producers and therefore, should have information as to the potential value of the property. It may rely on information provided by the assessors or seek an independent analysis of projected values for the purpose of determining whether an agreement is in the municipality's interest.

3. Role of the Board of Selectmen, Mayor or Manager

The CEO may be authorized to negotiate and execute a tax agreement on behalf of the municipality. The CEO may also rely on information provided by the assessors or seek an independent analysis of projected values.

C. Agreement Requirements

The primary purpose of tax agreements is to provide revenue stability for host municipalities over a transition period. However, agreements between host municipalities and generation companies must be the result of good faith negotiations and any payments the equivalent of property taxes assessed on a full and fair cash valuation basis. G.L. Ch. 59 §38H.

- Agreements should be for a reasonable term. As a general rule, a term within the 12 year transition period provided by the act would be a reasonable one.
- Agreements should fix values or formulas for determining values (rather than fixing tax payments). These values should be representative of the future full and fair cash values of the plant for the term of the agreement and payments resulting from them will be treated as property taxes for Proposition 2½ and tax classification purposes. The payments are subject to the municipality's levy limit, and the values will be used to calculate its levy ceiling and minimum residential factor.
- Agreements may include negotiated transition values to offset potential revenue losses due to the devaluation of existing electric generating property as a result of restructuring. These values will also be used in levy limit and minimum residential factor calculations and resulting payments considered part of the tax levy.
- Agreements may establish billing procedures and payment schedules for negotiated amounts that are the same as or different from the ones used for annual property taxes.

A copy of any executed and approved tax agreement, and any later amendments to the agreement, must be sent to the Bureau of Local Assessment immediately upon execution and approval. See Section III below.

D. Assessing Taxes and Transition Payments

Assessors should assess the amounts based on the representative full and fair cash and transition values negotiated under the agreement to the generation company and commit them to the tax collector at the same time and in the same manner as annual property taxes for the fiscal year, unless otherwise provided in the agreement.

B. Communities Assessing Property Taxes

1. Triennial Certification

In any certification year, assessors in a host community must submit to the Bureau an appraisal report or documentation that supports the proposed full and fair cash value of each generating plant. All three approaches to value are to be considered in arriving at a final value. See Section V below.

2. Interim Year Valuation

Assessors adjusting the valuation of generating plants in non-certification years must use appropriate appraisal methods and adjust valuations in other property classes to ensure equitable and consistent assessments within and between all property classes, as evidenced by conformity with accepted mass appraisal measures of assessment level and uniformity. See Bureau of Local Assessment Informational Guideline Release, *Guidelines for Annual Assessment and Allocation of Tax Levy*, Section 1-B.

C. Communities with Tax Agreements

A host community entering into a tax agreement under G.L. Ch. 59 §38H, or a special act, must submit the following to the Bureau:

1. A copy of the executed tax agreement along with a certified copy of the vote by the legislative body approving it.

If an agreement effective for FY1999 has not been approved by the time the host community submits its tax rate, the community may set its rate if it agrees to seek approval before the FY2000 tax rate is submitted and provides assurances the FY1999 overlay is sufficient in the event the agreement is not approved and the plant owner seeks an abatement of the assessment made.

2. Appraisal documentation used to support the estimates of full and fair cash value included in any tax agreement. This documentation must only be submitted once unless the agreement is amended as to the valuations to be used.
3. A copy of any executed amendment to the agreement.

IV. TAX BASE GROWTH

Municipalities hosting electric generating plants may use certain increases in the assessed or negotiated valuation of the plant as allowable value for the purpose of computing the annual tax base growth adjustment in its Proposition 2½ levy limit. See Bureau of Local Assessment Informational Guideline Release, *Determining Annual Levy Limit Increase for Tax Base Growth*.

A. Communities Assessing Property Taxes

If a community is assessing annual property taxes based on the full and fair cash valuation of a particular generating plant, the following assessed valuation increases are allowable:

- The value of any new plant installed (real or personal)
- The value of any additions to plant installed (real or personal)
- The additional market value attributable to the removal of regulatory restrictions. This is a one-time increase.

Future market value increases documented during triennial revaluations or interim valuation adjustment programs will not qualify as allowable value for growth purposes. Nor will any increase in value attributable to transition payments made as a result of plant devaluation qualify.

B. Communities with Tax Agreements

If a community is receiving payments under a tax agreement, the following negotiated full and fair cash valuation increases are allowable:

- The value of any new plant installed (real or personal)
- The value of any additions to plant installed (real or personal)
- The additional value attributable to the removal of regulatory restrictions. This is a one-time increase.

Increases in the negotiated full and fair cash valuation that are intended to reflect future increase in the market value of the plant will not qualify as allowable value for growth purposes. Nor will any increase attributable to negotiated transition payments made as a result of plant devaluation qualify.

The Official Website of the Department of Revenue (DOR)

Mass.Gov

Department of Revenue

Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > 1984 and Prior > 1981 Rulings >

Letter Ruling 81-107: Solar Energy Property

December 9, 1981

Mr. [T] ***** is having an addition to his Massachusetts residence constructed. The addition has been designed to use energy from the sun to reduce heating costs for the addition and for the residence as a whole. Mr. [T] ***** has requested a letter ruling determining what portion of the addition will be exempt from local property taxation under General Laws Chapter 59, Section 5, Forty-fifth.

The addition will be a two-story structure with a living room and an extension of the existing kitchen on the upper level, and a playroom and a study on the lower level.

The longest wall of the addition will face south; double thermopane windows will comprise most of the south-facing wall. The windows will be equipped with thermal drapes or detachable insulation panels to minimize heat loss at night. The south-facing windows on the upper level will be set at an angle from the vertical so that exposure to the sun will be greatest during the winter months.

The upper level will have a slate floor, supported by twelve-inch joists, that will act as a heat absorber.

The lower level will have a four-inch-thick cement floor, with a gravel base beneath it.

A "thermal storage box" will be built into the lower level. The box will contain thermal storage rods made up of a material that absorbs large amounts of heat by changing from a solid to a liquid state at about 80°F.

On sunny days, sunshine will pass through the windows of the upper level and heat the slate floor and the air above it. The warmed air will be drawn by fans through duct work running between the two levels and into the thermal storage box on the lower level. When the temperature in the structure falls below a certain point, thermostatically-controlled dampers in the duct work will open, and warm air will be drawn by additional fans from the thermal storage box to the upper level. The duct work, damper and fan system will serve no purpose other than to conduct solar-heated air between the lower and upper levels.

The addition will be heavily insulated throughout.

General Laws Chapter 59, Section 5, Forty-fifth provides an exemption from local property taxes for:

"[a]ny solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device."

Based on the foregoing, it is ruled that those portions of the addition the sole purpose of which is the transmission or use of solar energy will be exempt from local property taxation for twenty years from the date of installation under Chapter 59, Section 5, Forty-fifth. Components that serve a dual purpose, such as those that have a significant structural function, will not be so exempt. Specifically, the value of the thermal storage rods and storage box and the duct work, damper and fan system will not be included in the value of the property for purposes of local taxation. The value of the insulating materials and the windows, floors, gravel base and other structural components of the addition will be included.

Very truly yours,

/s/L. Joyce Hampers

L. Joyce Hampers
Commissioner of Revenue

LJH:JXD:mf

LR 81-107

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December 6, 1999

Everett L. Martin, Assessor
P.O. Box 269
New Ashford, MA 01237

Re: Taxation of Windmill Farm
Our File No. 99-753

Dear Mr. Martin:

You have asked several questions concerning the taxation of a proposed windmill farm to be constructed in New Ashford for the purpose of providing electric energy for general distribution. Specifically you ask whether the exemption under G.L. c. 59, §5, cl. 45 for a solar or wind-powered system or device, or some other exemption applies. In addition, you ask what procedures should be followed to assess a tax on the property and whether a payment-in-lieu-of-tax agreement (PILOT) would be appropriate.

We do not believe that the exemption provided in Clause 45 would apply to a commercial supplier of electricity. That exemption is for:

Any solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of *property taxable under this chapter*; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of installation of such system or device. (emphasis added)

We have interpreted this provision as applying a real property tax exemption for such a system or device associated with the real estate on which the system or device is located or specifically associated. In fact, we have interpreted the provision as limiting the exemption to those cases in which the system or device is solely used for the production of energy or heat and does not serve a dual purpose, e.g., a structural use as well as an energy-related one. Informational Guideline Release 84-209 and Department of Revenue Letter Ruling 81-107.

This interpretation is supported by the provisions of the first paragraph of G.L. c. 59, §5. Specifically that statute provides in part:

... Any person who receives a [personal] exemption [under several enumerated clauses] shall not receive an exemption on the same property under any other provision of this section, except clause Eighteenth [hardship] or Forty-fifth.

Clearly the solar and wind power exemption is intended to apply to property of an individual who may or may not be entitled to a personal exemption, suggesting that the solar or wind powered exemption provided is a personal one. At least in the case of a commercial generator of electricity for general distribution, we believe the wind power exemption does not apply.

Nor do we think that any other exemption applies, based on the information provided. Electric generating machinery is taxable now to every owner, regardless of the legal form of the owner. See G. L. c. 59, §5, cl. 16(3), as amended by St. 164, Chapter 70 of the Acts of 1997. That provision does exempt electric generating property of a manufacturing corporation if it is a cogeneration facility of 30 megawatts capacity or less or if the property qualifies as a pollution control device under G.L. c. 59, §5, cl. 44. We have no information that the windmill farm will produce any other form of energy, such as heat, and we have no information about the megawatt capacity of the proposed facility.

The facility is presumably a cleaner form of producing energy, but we do not believe such a facility to be an air pollution control device in and of itself. That exemption is intended to provide relief from taxation for those portions of a facility that reduce pollution that would otherwise be produced by the facility. In any event, the Department of Environmental Protection would have to certify that any particular portion of the premises was an effective pollution control device in order for the property or any portion to qualify for that exemption.

With respect to your questions concerning the procedures for valuation and negotiating a PILOT, please refer to the enclosed Informational Guideline Release 98-403.

We hope this addresses your concerns. If we may be of further assistance, please do not hesitate to contact us again.

Very truly yours,



Bruce H. Stanford, Chief
Property Tax Bureau

Enc.



October 15, 2009

Michael D. Hughes, Chairman
Douglas Board of Selectmen
28 Depot Street
Douglas, MA 01516

Re: Douglas Wind Farm Property Classification
Our File No. 2009-1042

Dear Mr. Hughes:

Your request for a letter ruling has been forwarded to this bureau for a response, as it deals almost exclusively with local property tax classification. Therefore, it will not be treated as a request for a letter ruling of the Department of Revenue under 830 CMR 62C.3.2, but as a written opinion of the Division of Local Services. You indicate that the town is contemplating entering into a tax increment financing (TIF) agreement with a limited liability company (LLC), which intends to erect a wind farm on property in Douglas. The improvements to be erected consist of a "controls" building, 13 wind turbines with 50 meter blades and 2 MW capacities each and thirteen 100 meter towers "anchored to the ground." You seek guidance on which of these items of property located at the facility will be considered part of the real estate subject to taxation under the TIF and which will be considered personal property exempt from taxation under the TIF.

Based on the description provided, it appears that the towers and building are clearly part of the real estate as being improvements to the real estate and firmly attached thereto. The towers are of sufficient height, bulk, size and attachment to the land that they should be considered part of the real estate. Board of Assessors of Wilmington v. Avco, Corp., 357 Mass. 704, 706 (1970). See also Chelsea v. Richard T. Green Co., 319 Mass. 162 (1946) (cradle, track, hoisting machinery used to haul ships in and out of dry dock). A building is ordinarily considered part of the real estate, regardless of the degree of attachment. M.G.L. c. 59, §2A(a) ("Real property for the purposes 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."). See Franklin v. Metcalfe, 307 Mass. 386 (1940) (lunch cart resting on its own wheels and four cement posts). The towers and building would be assessed as part of the real estate to the owner of the land, even if the owner of the land is not also the owner of the towers and building. Board of Assessors of Wilmington, Id.

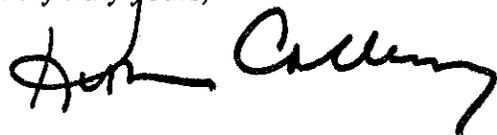
The turbines are electric generating machinery that are also firmly attached to the real estate at the top of the towers and are of such bulk and size that they would ordinarily be considered part of the real estate for tax assessment purposes. Boston Edison Company v. Board of Assessors of Boston, 402 Mass. 1, 6-12 (1988); Chelsea v. Richard T. Green Co., Inc., Id. In the Boston Edison case the company argued that as an electric generating utility corporation its electric manufacturing machinery had to be assessed as personal property, but the Supreme Judicial Court declined to so rule and determined that the board of assessors had properly assessed it as part of the real estate.

Thus, we conclude that the turbines, building and towers of the wind farm would be part of real estate for property tax classification purposes and not subject to the complete personal property tax exemption under a TIF agreement. There would be no need to provide a PILOT, as any monetary benefits to the town could be negotiated in the form of a lesser tax exemption in the TIF. The town would retain the tax lien on all the property to protect against any failure to pay the real estate taxes, something that would be questionable under a PILOT.

You have not indicated what will be housed in the building, but we assume it will contain equipment and perhaps an office. The furnishings, machinery, equipment and other property located in the building and not part of the fixtures of the building or the electric generating and distribution machinery will likely be personal property that would be subject to personal property tax to the LLC and would be entitled to the TIF exemption under a TIF agreement. Any separate PILOT negotiated for such personal property would likely be unenforceable under Town of Saugus v. Refuse Energy Systems Company, 388 Mass. 822 (1983) (town could not enter into agreement as to future tax liability of waste to energy power plant subject to tax in the manner and in the procedure otherwise provided by statute). No statutory PILOTs appear to apply in this case. See M.G.L. c. 121B, §16 (housing authorities), M.G.L. c. 59, §5D et seq (property held for specific purposes in a community by another community), M.G.L. c. 58, §13 et seq (state-owned land) and M.G.L. c. 59, §38H(b) (negotiated PILOTs for power plant property otherwise subject to tax). Again, however, the town could negotiate a lesser real estate TIF exemption to compensate for the loss of personal property taxes. Note also that proposals to change the total personal property TIF exemption to a negotiated exemption that may be partial are currently before the state legislature. See the Municipal Relief Commission Report from May 2009 at http://www.mass.gov/legis/reports/municipal_relief_commission_report_may_2009.pdf on page 20 and Senate Bill 1266 at <http://www.mass.gov/legis/bills/senate/186/st01pdf/ST01266.PDF>.

If you have further questions, please do not hesitate to contact me again.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law



July 5, 2011

Joan Sarafin
Principal Assessor
Municipal Building
212 Main Street, Room 306
Northampton, MA 01060

Re: Adding Business Improvement District Fee to Tax Bill
Our File No. 2011-606

Dear Ms. Sarafin:

You asked whether the fee assessed on members of the Northampton Business Improvement District ("NBID") may appear on the real estate tax bills issued by the City of Northampton. In our opinion, the NBID fees cannot be added to the real estate tax bills.

You supplied us with a copy of the Memorandum of Understanding between the City of Northampton and the Northampton Business Improvement District, Inc. ("NBIDI"), a non-profit corporation organized under the laws of the Commonwealth and the designated management entity for the NBID. You have further advised that the NBID commenced operations as of Fiscal Year 2010, or July 1, 2009, with prior approval having been given to the creation of the NBID by the Northampton City Council.

Business Improvement Districts ("BID's") are authorized by G.L. c. 40O. BID's provide a financing mechanism whereby property owners within "a contiguous geographic area at least three-fourths of [which] is zoned or used for commercial, industrial, retail, or mixed uses" may establish an "improvement plan" to provide "supplemental services and programs" and implement a "revitalization strategy" for the proposed district. *See* G.L. c. 40O, §§ 1 & 3(3). A BID is initiated by a petition containing "the signatures of the owners of at least 51 percent of the assessed valuation of all real property within the proposed BID and 60 percent of the real property owners within the BID." G.L. c. 40O, § 3(1). The petition is subject to approval by the "local municipal governing body" (*i.e.* City Council), which may after hearing "declare the district organized and describe the boundaries and service area of the district." G.L. c. 40O, § 4. Property owners within the BID must receive notice of the declaration of the organization of the BID and an opportunity to opt out of participation and the obligation to support the district by paying the fee required of members. *Id.*

A designated "management entity" receives fee revenues assessed against members of the BID "to carry out and implement the purposes of the BID." G.L. c. 40O, § 1. The formula for determining the fee structure to finance the improvement plan must be set out in the petition initiating the BID. G.L. c. 40O, § 7. The municipal governing body adopts the fee structure in approving a BID. *Id.* The amount of the fee "may be determined by a formula utilizing any one or combination" of factors enumerated, but the total fee assessment "may not exceed one-half of one percent of the sum of the assessed valuation of the real property owned by participating members in the BID district." *Id.* "The collector-treasurer of each municipality is ... authorized to collect such district fees ... and disburse the funds to the designated management entity" within 30 days of collection. G.L. c. 40O, § 8.

The BID statute is unambiguous in characterizing the exaction imposed on members as a "fee" and defines it as "a payment for services or improvements specified by the BID improvement plan." G.L. c. 400, § 1. The "Legislature's classification of the exaction [is] accord[ed] deference...." *Doe v. Sex Offender Registry Bd.*, 459 Mass. 603, 609 (2011.) Indeed, the enhanced benefits the BID fee supports for property owners within the defined area and the voluntariness entailed in the opt-out provision of G.L. c. 400, § 4 underscore the character of the charge as a fee, not a tax. *See generally Emerson College v. Boston*, 391 Mass. 415, 424-425 (1984.)

As you know, the content of local real estate tax bills is regulated by statute in minute detail, leaving little room for local variations. *See* G.L. c. 60, §§ 3 & 3A. *See generally Boston Gas Co. v. Somerville*, 420 Mass. 702, 703(1995)(Legislative intent to foreclose local initiative can be inferred "because legislation on the subject is so comprehensive that any local enactment would frustrate the statute's purpose.") While numerous items of data must appear on a tax bill, there is no provision of law which authorizes a municipality to include a charge for a BID fee on the prescribed notices of taxes owed by a property owner. *See* G.L. c. 60, §§ 3 & 3A. "As a general rule, an express inclusion of one thing in a statute is an implied exclusion of things not mentioned . . ." *Trust Ins. Co. v. Bruce at Park Chiropractic Clinic*, 430 Mass. 607, 609 (2000.)

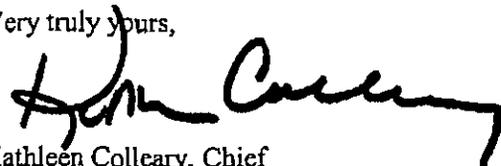
We note that, in enacting the 2010 Municipal Relief Act, the legislature authorized municipalities to "include in the envelope or electronic message in which a property tax bill is sent those bills or notices for rates, fees and charges assessed by the city or town for water or sewer use, solid waste disposal or collection or electric, gas or other utility services as may be authorized by ordinance or by-law...." G.L. c. 60, § 3A(c), *as amended by* St. 2010, c. 188, § 54. Even when bills for the specified rates, fees and charges are lawfully included in the same envelope, they must be "separate and distinct from the property tax bills." G.L. c. 60, § 3A(c). There is no parallel authorization for the inclusion of bills for BID fees assessed by an entity other than the municipality.

We also think it is significant that G.L. c. 400 does not give the municipal collector access to the tools G.L. c. 60 provides for the collection of taxes, or delinquent municipal charges added to real estate taxes under various statutes, in collecting BID fee assessments. While a lien arises by operation of law on the property of a BID member whose fee is "unpaid after thirty days from the date of billing[,]" recording the lien is the responsibility of the BID management entity, not the collector. G.L. c. 400, § 8. The lien is made junior to "municipal liens and mortgages" recorded previously. *Id.* We note that among the powers conferred on the BID is that of "suing and being sued..." G.L. c. 400, § 2. It appears that, in collecting overdue BID fees, a BID is limited to the remedies available to a private creditor owed a debt which is secured by real estate.

Accordingly, we conclude that the amount of the fee due from a member of a BID pursuant to G.L. c. 400 cannot appear on the municipality's real estate tax bill. A collector-treasurer who is going to collect fees on behalf of a BID must issue a separate bill.

Please do not hesitate to contact us if we may be of further assistance.

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG

