

PERSONAL PROPERTY FREQUENTLY ASKED QUESTIONS (FAQS)

FAQs on Local Taxation of Personal Property

Frequently asked questions (FAQs) published by the Division of Local Services (DLS) within the Department of Revenue provide general information about Massachusetts municipal tax and finance laws and DLS policies and procedures in effect when published. They do not answer all questions or address complex issues about their topics. FAQs are not public written statements of the Department. They are informational only as described in 830 CMR 62C.3.I(10)(c), and do not supersede, alter or otherwise change any Massachusetts General Law, Department public written statement or other source of law.

Personal Property Taxation FAQs

1. Do cities and towns in Massachusetts assess a personal property tax?

Yes. The assessors in each city and town assess personal property taxes on all taxable personal property situated within their communities. Although personal property is generally taxable, there are a number of exemptions that apply based on specific factors, including the entity status of the owner, type of property and use of the property.

The tax is calculated by multiplying the assessed value of the property by the personal property tax rate of the city or town. Personal property is assessed separately from real estate where it is located. A single personal property assessment is made for all taxable personal property of the owner located in the city or town.

2. What is considered personal property for local property tax purposes?

Personal property generally includes tangible items that are not firmly attached to land or buildings and are not specially designed for or of such a size and bulk to be considered part of the real estate. This includes, for example, merchandise, furniture, machinery, tools, animals and equipment. Personal property is taxable unless a specific exemption provision applies. G.L. c. 59, § 2.

3. What personal property is subject to local taxation?

All personal property situated in Massachusetts is subject to tax, unless specifically exempt by law. G.L. c. 59, § 2. Property is situated in a particular city or town in the Massachusetts if it is present on January 1 with the owner's intention that it remain with some degree of permanence. Property that is frequently moved from place to place or intended for use temporarily at different places is considered situated where the owner resides or has a principal place of business (if the property is business personal property).

An example of exempt property involves household furnishings and effects. Household personal property at a person's domicile (primary residence) is exempt from personal property tax. G.L. c. 59, § 5, Clause 20. However, household personal property located at other residences is taxable.

4. Which municipality assesses the tax?

The city or town in which the property is situated on January 1 assesses the personal property tax. If the property has established no particular situs, the tax is assessed by the city or town in which the owner resides (or has a principal place of business for business personal property). G.L. c. 59, § 18.

5. To whom is the tax assessed?

The owner of the property on the January 1 before the fiscal year begins is generally the person or entity assessed the tax. G.L. c. 59, § 18. An exception exists for machinery or tangible personal property leased for profit. In that case, the tax may be assessed to the person in possession instead. Personal property of a deceased owner whose death is of record is assessed to the decedent's heirs and devisees and after appointment, to the personal representative of the estate. Jointly owned property may be assessed to one or more of the owners. Partnership property is assessed to the partnership, not any of the partners. Personal property of a limited liability company (LLC) is assessed to the LLC.

Personal Property Tax Exemption FAQs

6. What property is exempt from personal property tax?

Several exemptions from personal property tax may apply depending on a number of factors, including the legal form of the owner, *i.e.*, the entity that owns the property, the type of property, and in some cases the use of the property. Most of the exemptions are set forth in several clauses of G.L. c. 59, § 5. *See, e.g.*, Clause Sixteen. Other exemptions may be found in other statutes and special acts. In some cases the exemptions from personal property tax are offset by another form of exaction, *e.g.* an excise or fee. For example, an exemption for non-commercial airplanes paying a state regulatory fee appears in G.L. c. 90, § 49(b). A good explanation of what personal property is taxable based on the form of ownership (individual, partnership, unincorporated entity or corporation) may be found in Part 3 of the personal property return, known as the Form of List or State Tax Form 2.

7. Is personal property in the nature of construction works in progress ("CWIP") or not in service taxable?

Yes if the owner is otherwise taxable for that type of property. For example, corporations are taxable on their networks of poles, underground conduits, wires and pipes and machinery used in the conduct of business. Underground conduits, wires and pipes, as well as the poles with wires attached are taxable if laid or erected and connected to or capable of connection to be part of "one great integral machine." *Boston Gas Co. v. Assessors of Boston*, 334 Mass. 549, 565 (1956). *See also* M.G.L. c. 59, § 18, Clause Fifth. Moreover, the machinery is likewise subject to tax if connected or capable of being hooked up to the system. There is no requirement that such property be "in service" in order to be taxable. *See* *Verizon New England, Inc. v. Assessors of Boston*, 81 Mass. App. Ct. 444, 455 (2012). *Accord Hamilton Manufacturing Co. v. Lowell*, 274 Mass. 477, 485-86 (1931) (machinery not in service nevertheless taxable where it was still "well adapted ...for the purpose for which it was designed.")

8. What personal property tax exemptions apply generally to all taxpayers, regardless of the form of entity of the owner?

Most exemptions that apply generally are those that are offset by other taxes, excises or fees. These exemptions include motor vehicles and trailers subject to or exempt from a motor vehicle excise; boats

subject to or exempt from a boat excise; ships and vessels assessed a ship excise; farm animals, machinery and equipment subject to a farm animal excise; non-commercial airplanes for which a registration fee is paid; and manufactured homes in licensed parks for which a fee is charged. Exemptions may also apply to the owner of certain pollution control devices certified by the state as effective in eliminating or reducing pollution; or for solar or wind powered systems. See G.L. c. 59, § 5, Clauses 36, 44 and 45; G.L. c. 59, § 8, and § 8A; G.L. c. 60A and G.L. c. 60B.

Goods in transit temporarily located at a licensed public storage warehouse are generally exempt, provided the owner has no domicile or place of business in Massachusetts. See G.L. c. 59, § 2.

In addition, by local option, cities and towns may exempt personal property from tax if the value of the personal property account does not exceed a minimum threshold established by the municipality. The established threshold cannot exceed \$10,000 in value. See G.L. c. 59, § 5, Clause 54.

Individual Exemption FAQs

9. What exemptions apply to the personal property owned by an individual?

The primary exemption for individuals is for household furnishings and effects at the person's domicile. G.L. c. 59, § 5, Clause 20. This includes the personal property kept in or about the house or garage. The domicile of a person is the place he or she calls home and intends to return to when away. Domicile is the place where the individual has his or her principal and legal home, is the place where family, social, civic and economic life is centered and where the applicant plans to return whenever he or she is away. Indicators of domicile include where the applicant votes, registers a car, spends most of his or her time, replies to the census, files tax returns from and has ties to the community, such as where the applicant's spouse and children live and where memberships in churches, clubs and social organizations, and where bank accounts, are maintained.

SECOND HOMEOWNERS - PLEASE BE AWARE THAT IF YOU ARE THE ASSESSED OWNER AS OF JANUARY 1st. OF THE PRECEDING YEAR, YOU WILL BE RESPONSIBLE FOR PAYING THE ENTIRE CURRENT FISCAL YEARS PERSONAL PROPERTY BILLS.

MASSACHUSETTS GENERAL LAW Ch. 59 Sec. 18 provides that tangible personal property taxes shall be assessed to the owner of record as of January 1st. The Supreme Judicial Court has held in all its cases that the question of ownership relates to the date when the status of the property is ascertained for the current year. It is further held that taxes are assessed annually, not however, for a period of time but as of a fixed day and that it is immaterial if the property has been sold, destroyed or removed. Therefore, the tax is due and payable for the entire Fiscal Year.

Individuals are also exempt on farming utensils and tools of trade of a mechanic. G.L. c. 59, § 5, Clause 20. Farming utensils include hand tools and simple mechanical devices but not equipment such as tractors, combines, balers and the like, which are considered machinery. Tools of trade of a mechanic are hand tools, including hand-held electrical devices used in the vocation of the owner, but not lathes, table saws, routers and other machinery generally bolted to or resting on the floor for support. A mechanic is a tradesman, such as a plumber, electrician, carpenter or auto mechanic and does not include a professional, such as an accountant, lawyer, dentist or doctor.

Unincorporated Entity Exemption FAQs

10. What exemptions apply to the personal property owned by a partnership or other unincorporated entity?

Partnerships, limited liability companies (LLCs), associations, trusts and other unincorporated entities that are NOT treated as corporations for federal income tax purposes are not entitled to any specific exemptions. They are subject to tax on all personal property they own except personalty subject to an alternative tax or assessment, such as motor vehicles subject to excise. This includes LLCs and other unincorporated entities treated as disregarded entities for federal income tax purposes. Partnerships include limited partnerships and limited liability partnerships. See G.L. c. 59, § 18, Sixth. However, a partnership, LLC, association, trust or other unincorporated entity treated as a corporation for federal

income tax purposes is treated as a corporation for local tax purposes. See G.L. c. 59, § 5, Clause 16; G.L. c. 63, §§ 1, 30, and 42B.

11. What exemptions apply to limited liability companies, partnerships, trusts and other unincorporated legal entities that are treated as corporations for federal income tax purposes?

Limited liability companies (LLCs), partnerships, associations, trusts and other unincorporated entities treated as corporations for federal income tax purposes are treated as corporations for personal property tax purposes. The exemptions that apply depend on whether the entity conducts a business that may be conducted by a business corporation, manufacturing or research and development corporation, telephone corporation, incorporated financial institution or insurance corporation. In addition, to receive the exemptions for a manufacturing or research and development corporation, the entities must apply for and be classified as manufacturing or research and development corporations, as the case may be. See G.L. c. 59, § 5, Clause 16; G.L. c. 63, §§ 1, 30, and 42B.

Corporate Entity Exemption FAQs

12. What exemptions apply to the personal property owned by a corporation?

Corporations are taxable on their networks of poles, underground conduits, wires and pipes as personal property. Corporations are specifically exempt from local taxation for all other personal property except machinery. G.L. c. 59, § 5, Clause 16. However, the type of machinery that is taxable depends on whether the corporation is a (1) business, (2) telephone, insurance or financial institution corporation, or (3) classified manufacturing corporation. Unincorporated entities treated as corporations for federal income tax purposes are subject to and exempt from local taxation as if they are actual corporations.

Out of state corporations not registered with the Massachusetts Secretary of State are not entitled to these property tax exemptions until they register, if so required. G.L. c. 59, § 5, Clause 16(4). In addition, out of state insurance corporations are entitled to the insurance corporation exemptions only if the state of incorporation or principal place of business extends similar exemptions to Massachusetts insurance corporations. G.L. c. 59, § 5, Clause 16(1).

13. What machinery owned by a business corporation is exempt?

Business corporations are taxable on machinery used in the conduct of business in addition to their poles, underground conduits, wires and pipes. However, machinery used in the conduct of business does not include machinery that is the corporation's stock in trade (inventory for sale or lease), or machinery that is directly used in laundering and dry cleaning, refrigeration of goods and air-conditioning of premises, or a selling, purchasing, accounting or administrative function. G.L. c. 59, § 5, Clause 16(2). Business corporations include utility corporations, except telephone corporations.

14. What machinery owned by a telephone, insurance or financial institution corporation is exempt?

Telephone, insurance and financial institution corporations comprise the second category. They are taxable on machinery used in manufacture or supplying and distributing water in addition to their poles, underground conduits, wires and pipe. G.L. c. 59, § 5, Clause 16(1). This includes electric generating machinery. These corporations are exempt from personal property taxation for all other machinery. Financial institutions and insurance companies are listed in separate databases in the Corporations Book.

15. What machinery owned by a manufacturing corporation is exempt?

Corporations classified as manufacturing are entitled to the broadest exemptions and are not taxable on any machinery. Their only taxable personal property consists of their networks of poles, underground conduits, wires and pipes. G.L. c. 59, § 5, Clause 16(3).

To receive this exemption, however, the corporation must apply to the Department of Revenue and be classified as a manufacturing corporation. Those corporations classified by the Department appear as a designated manufacturing ("M") corporation on the Department's annual list of corporations ("Corporations Book") published on the Department's website. The owner or board of assessors may appeal the Department's approval, denial or revocation of manufacturing status. G.L. c. 58, § 2.

Note that a local acceptance option provides for an exemption for research and development (R&D) corporations classified by the Department in communities that accept the option. See G.L. c. 59, § 5, Clause 16(3). A classified R&D corporation is entitled to the same exemptions as a classified manufacturing corporation, but only in the communities that have accepted the local option.

Business Corporation FAQs

16. What is a business corporation?

Business corporations comprise the broadest category of corporations and include most retail and wholesale businesses. Manufacturing corporations and telephone, insurance companies or financial

institutions that are corporations are treated separately from business corporations for local tax exemption purposes.

A business corporation must be more than a paper entity. It must be involved in an activity that occupies the time, attention and labor of workers for the purpose of livelihood, profit or gain. A nominal corporation is not entitled to the business corporation personal property exemptions if it employs no personnel of its own and is not in business to make a profit. See Brown, Rudnick, Freed & Gesmer v. Board of Assessors of Boston, 389 Mass. 298 (1983) (A corporation created by a partnership for the purpose of selling its assets to the corporation for lease-back to the partnership and that does not conduct a business separate from the partnership is not a business corporation for local tax purposes.)

A partnership, trust, association, limited liability company (LLC) or other non-corporate entity may be treated as a corporation for federal income tax purposes, either by federal default rules or by election of the entity. Any entity treated as a corporation for federal income tax purposes that carries on the same business as a business corporation is treated as a business corporation for personal property tax exemption purposes.

17. What is machinery for personal property tax purposes in Massachusetts?

Machinery is, generally speaking, a mechanical device with independent moving parts or electronic components designed to perform a specific function or functions. Examples of these devices described in court cases include electric generators, pumps, rotisserie toasters, air-conditioners, typewriters, refrigerators, calculators, movie projectors, electronic data drums and cable television converter boxes. Machinery does not include furniture, shelving, or simple tools or equipment, such as hand-held saws, hammers, bubble levels, and other non-motorized hand tools; and simple heating devices, even if electrical. However, machinery does include electrical tools with moving parts and other devices with electronic or programmable components.

18. What is machinery used in the conduct of business?

Business corporations are taxable on machinery used in the conduct of business, with some exceptions. G.L. c. 59, § 5, Clause 16(2). Taxable machinery used in the conduct of business includes machinery directly used by or capable of use by the corporation to carry out its business and profit-making operation. Specifically excluded, however, are stock in trade (inventory); and any machinery directly used in 1) laundering and dry cleaning; 2) refrigeration of goods and air-conditioning of premises; or 3) in any selling, purchasing, and accounting or administrative function for its own in-house purposes.

Stock in trade includes machinery that is sold or leased by a business corporation in the regular course of its business. Finance leases or installment sales are excluded from the stock in trade exemption, since the title to property is legally transferred to the lessee. Also excluded from the exemption are goods consigned to a business corporation, since ownership is retained by the consignor. In the latter case, the property is taxable to the owner unless another exemption applies.

Machinery that a business corporation truly leases to others is exempt as stock in trade if the corporation is principally engaged in leasing. Machinery used to sell goods is exempt, such as soda and candy vending machines. However, machinery used to provide entertainment or a service that the corporation is in business to provide, such as video game machines, pinball machines and juke boxes, is taxable.

Non-taxable accounting and administrative machinery serves in-house record keeping functions. This category includes copiers, typewriters, computers and FAX machines that are used for the corporation's internal functions. It also includes cash registers, Assessors of Haverhill v. J.J. Newberry Co., 330 Mass. 469 (1953), and credit card machines since they are used in a purchasing or selling function. If

machinery is used to provide a service to customers for a fee, however, it is taxable. For example, gasoline pumps at filling stations and computers used by tax preparers to produce tax returns for clients would be taxable.

Manufacturing and Research and Development Corporation FAQs

19. What is manufacturing?

Manufacturing is not defined in the general laws. However, cases have described manufacturing as a process that transforms raw or finished materials by hand or machinery, and through human skill and knowledge, into something with a new nature and name and adapted to a new use. For example, baking, publishing, cutting lumber from trees and the making of dairy products and other packaged and treated foods are considered manufacturing. Building construction, gravel making, the breeding of animals, and transmission of information are not considered manufacturing.

Many cases have been decided delineating the scope of manufacturing activity. Some of these cases have held that even processes commenced only at the very beginning or very end of a manufacturing process are considered manufacturing. For example, collecting, sorting, bundling and compacting of scrap metal for sale to other companies for manufacturing a finished product is considered a manufacturing process. However, the mere crushing of cars for resale to a scrap metal company is not considered manufacturing. In another case, mixing of pigment and base paint at a retail store location was considered manufacturing. In order to be a manufacturer, the manufacturing must occur in Massachusetts and be a substantial part of its business. *See G.L. c. 63, § 42B*; *See also 830 CMR 58.2.1(6)* for DOR's regulations that explain the qualifying factors for classification as a manufacturing corporation.

20. What is research and development?

Research and development includes experimental or laboratory activity having as its ultimate goal the development of new products, the improvement of existing products, the development of new uses for existing products and the development or improvement of methods for producing products. It does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys or other market research, advertising or promotional activities or research in connection with literacy, historical or similar projects. In order to qualify for classification as a research and development corporation, a company must meet certain income and expense minimums. *See G.L. c. 63, § 42B(b)*; *See also 830 CMR 64H.6.4* for DOR regulations that explain the qualifying factors for research and development status.

21. How does a corporation become classified as a manufacturing or research and development corporation?

A business corporation that is engaged substantially in manufacturing must apply to the Department of Revenue and be classified as a manufacturer by the Department in order to receive the manufacturing corporation exemptions. In addition, a corporation must be classified as a research and development corporation in order to receive the research and development corporation exemptions in a city or town that has accepted the local option for that exemption.

Application for classification as a manufacturer must be made on or before January 31 in order to be classified as of the prior January 1, the fiscal year assessment date. For example, an application for manufacturing classification filed November 1, 2018 may be approved for the January 1, 2019 assessment date. An application for classification filed January 15, 2019 may be approved for January 1,

2019 as well. However, an application for classification filed February 15, 2019 may be approved as of the January 1, 2020 assessment date. Application is made on Form 355Q. Foreign and domestic corporations may qualify for manufacturing corporation status. Taxpayers and assessors may appeal the denial or approval of the classification. See G.L. c. 58, § 2; See also 830 CMR 58.2.1 for DOR's regulations that explain the procedure for classification as a manufacturing corporation.

Application for classification as a research and development corporation must also be made on or before January 31 in order to be classified as of the prior January 1, the fiscal year assessment date. Application is made on Form 355RD.

Annual Return FAQs

22. What are the reporting requirements for locally taxable personal property in Massachusetts?

Generally, an owner of taxable personal property on January 1 must file an annual personal property return, known as the Form of List (State Tax Form 2), with the board of assessors of the city or town in which the property is situated on that date. G.L. c. 59, § 29. An owner of household furnishings and effects at a residential property in Massachusetts that is not the owner's domicile, such as at a summer or second residence, must file State Tax Form 2HF listing those furnishings and effects. Cellular and mobile wireless telecommunications companies must file State Tax Form 2MT.

In the return, the owner must list and describe all taxable personal property situated in the community on the January 1 assessment date. Information that must be provided about the listed property includes the make and year of manufacture, and the purchase price or original cost and year of purchase. The owner

does not have to include an estimate of value. If an estimate is provided, it is not binding on the assessors as they determine the fair cash valuation of property for local tax purposes. G.L. c. 59, § 38.

The return is signed under oath. The property listing in the return is confidential. It can only be disclosed to the taxpayer, the taxpayer's designated representative, persons who need to see the information to perform duties in the office of the assessors and the Department of Revenue and anyone else specifically authorized by court order. G.L. c. 59, § 32.

Some communities have accepted a local option that lets them exempt property of an owner if the total value of the personal property account is less than a minimum amount, which can be no more than \$10,000. G.L. c. 59, § 5, Clause 54. In those communities, the owner must still file an annual return so that the board of assessors can determine the value of the property and whether the exemption applies in that year. However, if a person or entity owns no taxable personal property as of January 1, no return is required for the year.

Charitable and veteran organizations claiming exemption of their real and personal property must file a return of that property on State Tax Form 3ABC. G.L. c. 59, § 5, Clauses 3(b), 5, 5A, 5B and 5C.

Property of telephone and pipeline companies subject to central valuation is reported to the Department of Revenue. The Department centrally values pipelines of natural gas and oil companies that are over 25 miles in length, and the machinery, poles, wires, underground conduits, wires and pipes of telephone companies and certifies the values to the boards of assessors and companies. G.L. c. 59, §§ 38A and 41.

23. When is the personal property return due?

Forms of List filed with the board of assessors (State Tax Forms 2., 2HF, 2MT and 3ABC) are due on or before March 1 prior to the fiscal year to which the tax relates. The assessors may extend the filing deadline if the owner makes a written request and provides a reasonable excuse for not filing on time. The latest the assessors can extend the deadline is the last day for applying for abatement of the tax for the fiscal year to which the return relates. G.L. c. 59, § 29. For example, the return for personal property taxable as of January 1, 2018 for fiscal year 2019, which begins on July 1, 2018 and ends on June 30, 2019, is due March 1, 2018. The March 1 deadline can be extended to any date on or before the date fiscal year 2019 abatement applications are due.

Returns filed with the Department of Revenue by pipeline companies are due January 31. G.L. c. 59, § 38A. Telephone company returns are due March 1. G.L. c. 59, § 41.

24. Who must report leased personal property?

The lessor of personal property subject to a true lease is the owner of the property and if taxable, must report it. A true lease is one in which the lessee must return the property at the end of the lease or may purchase the property at fair market value at the end or at any time during the course of the lease. The lessee of taxable property subject to a finance lease (installment sale) is ordinarily considered the owner for reporting purposes. A finance lease is generally one where the property is leased for a period of time less than the useful life of the item and is or may become the property of the lessee at the end of the lease for a nominal amount.

26. Is there a penalty for failure to file a personal property return, or filing a late return?

Assessors must identify, value and assess all taxable personal property in the community even if owners fail to file returns or file returns late. If an owner of taxable personal property does not file a return for the fiscal year, the assessors must estimate the value of the owner's property based on their best information and belief and they cannot abate for overvaluation of the assessed property. G.L. c. 59, §§ 36, 37, fil. and 64. However, if the owner files the form late, i.e., after its due date or after the date of any extension to file, the assessors, or the Appellate Tax Board if appealed, can abate, but only if the owner shows a reasonable excuse for the late filing or the tax assessed is more than 150% of the amount that would have been assessed had the return been filed on time. G.L. c. 59, §§ 61 and 64.

An individual who fails to file a return is still entitled to an abatement on personal property exempt from taxation as household furnishings and effects at their domiciles, tools of trade of a mechanic, farming utensils and wearing apparel. G.L. c. 59, § 5, Clause 20.

Abatement FAQ

27. What procedures exist for contesting the assessed valuation or tax on personal property?

For locally valued and assessed personal property, the taxpayer generally must apply for abatement with the local board of assessors within a relatively short period of time after the actual tax bill is issued. The actual tax bill is issued after the tax rate has been set for the fiscal year and will state the assessed valuation of the property, the tax rate and tax due for the year.

An abatement application is made on State Tax Form 128 which must be filed with the assessors by the due date of the first installment payment of the actual tax bill. G.L. c. 59, § 59. In a community issuing quarterly tax bills, the first installment of the actual bill is usually due February 1. In a community issuing semi-annual bills, the payment due date for the actual bill is usually 30 days after that bill is issued. The due date should be specifically stated on the front of the bill. An extended deadline applies

for omitted and revised assessments. See State Tax Form 128 for a more detailed description of the abatement process.

The assessors have three months to act on the application by granting or denying the abatement. If they do not act on the application within three months of the date the application was filed, the application is deemed denied. If the taxpayer is still aggrieved by the assessors' action on the application, or the deemed denial, the taxpayer may appeal to the Appellate Tax Board (ATB). The appeal must be filed with the ATB within three months of the date the application was granted, denied or deemed denied. At least half the personal property tax must be paid for the ATB to act on the appeal. See G.L. c. 59, § 64.

Personal Property Audit FAQs

28. How can the assessors verify that a property owner has reported its taxable personal property accurately and completely?

Under G.L. c. 59, § 31A, assessors may conduct a personal property audit. The assessors begin the audit by issuing a summons to the taxpayer for production of books, papers, records and other data. Any person or entity required to file a form of list is subject to an audit. The summons must be served in the same manner as summonses for witnesses in criminal cases issued on behalf of the Commonwealth. Documents and other data within the scope of a personal property audit might include fixed asset

listings, financial statements, federal tax returns, lease agreements for personal property at the business location, receipts for purchases of goods made during the audit period and inventory records.

29. How is a summons for a personal property audit served?

A personal property audit summons may be served by mailing a copy to the taxpayer at the taxpayer's last known address. A summons may also be served by any officer authorized to serve process such as a constable by delivering a copy to the taxpayer at the taxpayer's residence or usual place of abode. If the summons is left for the taxpayer at the taxpayer's last known address, it must be left with a person of suitable age or discretion who lives there.

The assessors should retain some proof that service of the summons was made. Assessors may find it useful to send a mailed summons by certified mail so as to reflect its receipt by the taxpayer. Assessors should consult with municipal counsel to ensure that an audit summons is served in accordance with law.

30. What are possible reasons for conducting a personal property audit?

Reasons to conduct a personal property audit include the non-filing of a form of list by a taxpayer which has filed in prior years; the filing of a form of list without required documentation; a filing reporting large increases and decreases in the value of personal property accounts; a new filing reporting old equipment; a review of personal property accounts with values over a particular threshold; and a review of personal property accounts of taxpayers in a particular line of business.

31. How far back can the request for books and records go?

Assessors may request books and records from fiscal years for which the required form of list was filed or due to be filed, whichever is later, within the 3 previous years. The "look back" period is 3 years, measured from the later of the actual filing date or filing due date for the fiscal year in question. For example, forms of list for fiscal year 2020 were due March 1, 2019. If the taxpayer filed on February 15,

2019, the assessors would have until March 1, 2022 to conduct the audit. If the taxpayer was given an extension and filed on February 1, 2020, the assessors would have until February 1, 2023.

32. What is the procedure to follow if unreported or underreported personal property is identified during a personal property audit?

If the assessors discover that the taxpayer owned taxable personal property for the fiscal year and failed to report it entirely, an omitted assessment can be made for the unreported personal property. If the assessors discover the taxpayer did not include all taxable personal property owned in the form of list returned for the year, a revised assessment can be made for the underreported personal property. In both instances, the omitted or revised assessments for a particular fiscal year must be made no later than 3 years and 6 months after the form of list for the fiscal year was filed or due to be filed, whichever is later. G.L. c. 59, §§ 75 and 76.

Personal Property Tax Collection FAQs

33. What remedies may be used to collect delinquent personal property taxes?

Local tax collectors must enforce the personal liability of the assessed owner in order to collect delinquent personal property taxes. The reason is that a municipality or district does not have a lien on

taxable personal property to secure the payment of the assessed tax. This means that a personal property item that is taxed, *e.g.*, a valuable work of art, cannot be taken and sold to satisfy the tax obligation. Collectors have several remedies available to collect from the assessed owner. The most commonly used are (1) civil suit, (2) set-off and (3) license and permit denial, revocation, suspension or non-renewal. Collectors are not limited to using just one of these available remedies. They may use any or all remedies available under state law in order to collect taxes owed the municipality or district.

34. When can a municipality sue to collect delinquent personal property taxes?

The collector may file a civil suit against the assessed owner within six years of the due date of the personal property tax. G.L. c. 60, § 35. As a result of changes made by the 2016 Municipal Modernization Act, the collector may bring all such actions in the Small Claims Session of the District Court. Ordinarily, there is a \$7,000 limit on the value of claims that may be litigated in a Small Claims Session. G.L. c. 218, § 21. However, tax collection suits can now be brought in this session regardless of the amount of the tax owed. The small claims procedure is designed for individuals not represented by counsel and is a fast-tracked, practical, and inexpensive process to resolve a tax delinquency. Tax collectors who obtain a judgment for a tax deficiency may then be able to collect on the judgment by levying against the delinquent taxpayer's assets.

35. When can a municipality withhold money it owes to a taxpayer to apply to unpaid personal property taxes?

Under G.L. c. 60, § 93, money owed by a municipality to a delinquent taxpayer may be withheld in order to set off the tax delinquency. The municipal treasurer may set-off monies owed to the taxpayer on his or her own initiative and must do so upon the tax collector's request. There is no time limit or statute of limitation on the use of set-off as a collection remedy. *Decola v. Stoughton*, 23 Mass. App. 618 (1987). This remedy might be used, for example, where the taxpayer is owed an abatement refund or payment for goods or services provided to the city or town under a contract.

36. When can a municipality use license or permit denial, revocation, suspension or non-

renewal to collect delinquent personal property taxes?

Under G.L. c. 40, § 57, a municipality may deny, revoke, suspend or not renew certain local licenses and permits to applicants who are delinquent in payment of their local taxes or charges. In order to use this collection remedy, however, the municipality must accept G.L. c. 40, § 57 and adopt an implementation by-law or ordinance. Acceptance is by vote of the legislative body subject to charter. G.L. c. 4, § 4. Tax collectors then provide their licensing and permitting boards and departments annually, or on the more frequent period established in the implementation by-law or ordinance, with the names of delinquent taxpayers. A taxpayer has a right to a hearing with the licensing or permitting authority and opportunity to enter into a payment agreement in order to obtain the license or permit.

37. What does the collector do when personal property taxes cannot be collected after diligent collection efforts?

The collector cannot on his or her own authority write-off a tax committed for collection. Uncollectible personal property receivables are cleared from the books by the assessors abating the tax, with the abated tax charged to the overlay. Therefore, if after diligent collection efforts, the tax collector finds that a personal property tax is uncollectible, the collector can follow one of two procedures to have the assessors abate the tax. The abatement procedure followed depends on the reason the taxes are uncollectible.

A personal property tax may be uncollectible because the assessed owner is dead, is unable to pay due to bankruptcy, poverty or other reason, or has relocated out of state or otherwise disappeared. In that case, under G.L. c. 59, § 71, the collector gives a written notice to the assessors, who have 30 days to process the abatement. The assessors may inquire about the reasons during that 30 day period, but the collector decides that the taxes are uncollectible. The assessors abate within 30 days and certify the abatement to the collector, who is then no longer obligated to collect the tax. State Tax Form 380/166 is used for this procedure.

If a personal property tax is uncollectible for some other reason, the collector may ask the assessors to obtain authority to abate the tax using the procedure under G.L. c. 58, § 8. Under that statute, the Commissioner of Revenue may authorize the assessors to abate in circumstances where they do not have jurisdiction. The primary purpose it was enacted was to enable local tax collectors to clear uncollectible receivables from the books and protect them on their bonds. Although it is within the assessors' sole discretion to use the so-called "8 of 58" procedure to obtain authority to abate, they should use this procedure in order to abate personal property taxes that will never be collected.