

**GENERAL LAWS CHAPTER 40, SECTION 57
DENYING, REVOKING OR SUSPENDING LICENSES, PERMITS
DUE TO OUTSTANDING SUMS OWED A MUNICIPALITY**

Chapter 40, Section 57 of the General Laws of Massachusetts sets forth the authorization and process by which a municipality may deny, revoke or suspend licenses and permits when there are outstanding sums owed a municipality.

The Provisions of Chapter 40, Section 57

Chapter 40 Section 57, which must be accepted by the municipality, provides that any city or town which accepts the provisions of Section 57 may by by-law or ordinance:

- deny any application for, or
- revoke or suspend

a building permit, or any local license or permit including renewals and transfers issued by any board, officer, department for

- any person,
- corporation or
- business enterprise,

who has neglected or refused to pay any

- local taxes,
- fees,
- assessments,
- betterments or
- any other municipal charges, including amounts assessed under the provisions of section twenty-one D.

Section 57 also provides that any city or town which accepts the provisions of Section 57 may by by-law or ordinance:

- deny any application for, or
- revoke or suspend

a building permit, or any local license or permit including renewals and transfers issued by any board, officer, department with respect to

- any activity,
- event or
- other matter

which is the subject of such license or permit and which activity, event or matter

- is carried out or exercised or
- is to be carried out or exercised

on or about real estate whose owner has neglected or refused to pay any local taxes, fees, assessments, betterments or any other municipal charges.

A by-law or ordinances enacted by a municipality pursuant to its acceptance of the provisions of Section 57 must provide that:

- (a) The tax collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges (hereinafter "the tax collector") annually furnish to each department, board, commission or division (hereinafter "the licensing authority"), that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.

(b) The licensing authority may

- deny,
- revoke or
- suspend

any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the tax collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector;

provided, however, that written notice is given to

- the party and
- the tax collector, as required by applicable provisions of law,

and the party is given a hearing, to be held not earlier than fourteen days after said notice.

This list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party.

The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension.

Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension.

Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of issuance of said certificate.

- (c) Any party shall be given an opportunity to enter into a payment agreement with the municipality. Once a valid payment agreement has been executed the licensing authority shall issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement.

Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

- (d) The board of selectmen or city council may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in Chapter 268A, Section 1 in the business or activity conducted in or on said property.

Section 57 shall not apply to the following licenses and permits:

- open burning, G.L. Chapter 48, Section 13;
- bicycle permits, G.L. Chapter 85, Section 11A;
- sales of articles for charitable purposes, G.L. Chapter 101, Section 33;
- children work permits, G.L. Chapter 149, Section 69;
- clubs, associations dispensing food or beverage licenses, G.L. Chapter 140, Section 21E;
- dog licenses, G.L. Chapter 140, Section 137;
- fishing, hunting, trapping license, G.L. Chapter 131, Section 12;
- marriage licenses, G.L. Chapter 207, Section 28; and
- theatrical events, public exhibition permits, G.L. Chapter 140, Section 181.

A city or town may exclude any local license or permit from this section by by-law or ordinance.

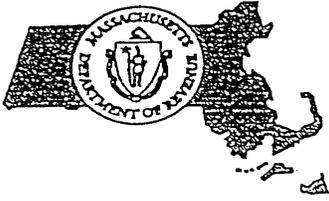
Important Points to Remember

1. The application of Section 57 is intentionally broad and not just confined to persons with record title to the property. The Superior Court has stated that this “reflects a legislative awareness that there is a wide variety of business, trust and personal entities that own or have substantial financial interests without appearing as recorded title owners”. ***Richard D. Matthews, et al v. The Town of Hanover***, Mass. Superior Ct 99-520A -Page 9 (1999). The Superior Court also noted that in light of this, the Legislature could appropriately consider the difficulties confronting towns and cities in actually collecting real estate taxes from the parties with the controlling financial interests. ***Id.***

The Massachusetts Department of Revenue has also stated that the intent of the broad language is to eliminate the necessity that the delinquent taxpayer be the same legal entity as the party holding or seeking the permit or license. ***See Letter of Harry M. Grossman, October 2, 1995.***

2. The waiver provisions of Chapter 40, Section 57(d) are very narrow. The waiver power does not include the power to review whether the applicant is a person or entity who has “neglected or refused” to pay local taxes or fees. ***Matthews***, Page 13.
3. Section 57 can be especially helpful in collecting personal property tax since there is no lien automatically created by unpaid personal property tax (as opposed to a Tax Title). However, current tenants and property owners can not be held liable for unpaid personal property taxes of their predecessors in title or tenancy. ***See Letter of Harry M. Grossman, September 27, 1995.***

As with any such matter, Treasurers & Collectors should discuss the issues raised by this paper with their Tax Title Attorney and Town Counsel, City Solicitor or Corporation Counsel.



MASSACHUSETTS DEPARTMENT OF REVENUE
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MITCHELL ADAMS
Commissioner

ROBERT H. MARSH
Deputy Commissioner

October 2, 1995

C.W. Doane
Tax Collector
Main St.
P.O. Box 214
Hubbardston, MA 01452

Re: Enforcement of Delinquent Property Tax Bills
Our File No.95-974

Dear Ms. Doane:

This is in reply to your two letters of September 28, 1995 asking about the collection of delinquent corporate property taxes through the use of G.L. Ch.60 §93 and Ch.40 §57.

In our earlier letter to your predecessor (Our File No.92-597) we emphasized that a personal liability of a corporation's officers or stockholders could not be offset against a refund or other money owed to the corporation, since a corporation is a legal person distinct from its officers or shareholders. But if the corporation itself is delinquent in the payment of taxes which were assessed in its name, §93 may be used to set-off any refund owed the corporation against its outstanding tax liability to the town.

The remedy under G.L. Ch.40 §57 to deny, revoke or suspend licenses or permits is broader than the remedy under Ch.60 §93. Under §57, licenses or permits may be denied or revoked not only to an applicant who is a delinquent taxpayer, but also

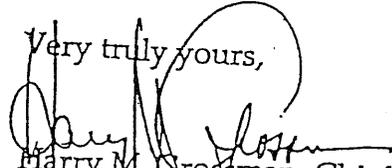
"...with respect to any activity, event or other matter which is the subject of the license or permit and which activity... is to be carried out or exercised on or about the real estate whose owner has neglected to pay any local taxes, fees, assessments, betterments or other municipal charges." Emphasis added.

The intent of this broad language is to eliminate the necessity that the delinquent taxpayer be the same legal entity as the party holding or seeking the permit or license. The scope of §57 was expanded at the end of 1993, and the section is a local option law requiring the adoption of a local bylaw ordinance to put it into effect. You should therefore check Hubbardston's

bylaws to see whether they take advantage of the increased scope of §57 since the amendment.

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

Very truly yours,


Harry M. Grossman, Chief
Property Tax Bureau