

# The Holiday Bagful of Goodies

## .....A Year End Topical Review



Bristol County Assessors Association  
Annual Meeting  
December 1, 2022

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# A Year End Topical Review



- Exemption Eligibility When Property is Held in Trust;
- Dual Use Solar;
- Chapterland Changes – Chapter 268 of the Acts of 2022.





# A Year End Topical Review



- Exemption Eligibility –Trust Owned Property
  - Chapter 59, Section 5 contains the majority of the personal and real estate property tax exemptions
  - Chapter 59, Section 5C provides an exemption equal to not more than 35 per cent of the average assessed value of all Class One residential properties.
    - Only applies to the principal residence as used for income tax purposes.





# A Year End Topical Review



- Exemption Eligibility –Trust Owned Property
  - In April of 2022, DLS issued Local Finance Opinion # LFO-2022-2 which sought to clarify some of the confusion regarding when a taxpayer qualified for an exemption if the property was held in Trust.
  - Before we discuss the Local Finance Opinion and its applicability, let's review some of the basics of a Trust.





# A Year End Topical Review



Exemption Eligibility – Trust Basics

Trusts are like a cup of coffee

Res

Trustee

Trust







# A Year End Topical Review



- Exemption Eligibility –More Trust Basics
  - Nominee Trusts are not true trusts:
    - The Trustee can also be the Beneficiary;
    - The Trustee lacks the power to act except as directed by the Beneficiary;
    - Nominee Trusts can have “reserved powers”.





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- Exemption Eligibility –Trust Owned Property
  - The Supreme Judicial Court has held that, for property placed in trust, the ownership requirement for a personal exemption is satisfied only when the applicant possesses a record legal interest in the subject property.

*Kirby v. Board of Assessors of Medford, 350 Mass. 386 (1966),*





# A Year End Topical Review



- Exemption Eligibility –Trust Owned Property
  - In *Kirby*, the Court spoke of a “sufficient beneficial interest” in the trust property in dicta.
  - *Kirby*, did not decide the issue of beneficial interest, but DLS read the decision as requiring ownership of both “legal interest” and the “beneficial interest” in the trust property.







# A Year End Topical Review



- Exemption Eligibility –Trust Owned Property
  - According to DLS –

“The legal requirement is met when an applicant for a personal or residential exemption on a domicile which has been placed in a trust is a trustee (legal interest) and is a beneficiary of that trust (beneficial interest).”
  - The operative word is “a”.





# A Year End Topical Review



- Exemption Eligibility –Trust Owned Property
  - General Laws 184, Section 35 eliminated the requirement that the names of the beneficiaries be recorded.
  - DLS takes the position that sufficient beneficial interest can be inferred from actually occupying the property or having an express right to live in property.
  - *Kirby* does not say this...this is DLS' opinion.





# A Year End Topical Review



- Exemption Eligibility –Trusts/Life Estates
  - A person who retains a Life Estate, but conveys the remainder interest to a Trust satisfies the ownership requirement.
  - A life estate contained in a Declaration of Trust satisfies the ownership interest.
  - Again, *Kirby* does not say this...this is DLS' opinion.





# A Year End Topical Review



- Exemption Eligibility –Trust Owned Property
  - These rules apply to:
    - Chapter 59, Section 5, Clause 17, 17C, 17C<sup>1</sup>/<sub>2</sub>, 17D, 41, 41B, 41C, 41C<sup>1</sup>/<sub>2</sub>, 42, and 43.
  - If the municipality accepts the provisions of General Laws Chapter 59, Section 5, Clause 22G, these rules don't apply to:
    - Chapter 59, Section 5, Clause 22, 22A, 22B, 22C, 22D, 22E and 22F.





# A Year End Topical Review



## Dual Use Solar

- On August 11, 2022, Governor Baker signed Chapter 179 of the Acts of 2022 (the “Clean Energy Act”).
- Section 42 of the Clean Energy Act amends Chapter 61A, Section 2A.
- Takes what was originally intended to be a benefit for an agricultural operation and extends it to an energy generation company.







# A Year End Topical Review



## Dual Use Solar

- Chapter 61A, Section 2A(b) now provides that Chapter 61A protected land could also be used to site a “renewable energy generating source” that qualifies as an ASTGU under the DOER Guideline.
- Chapter 61A, Section 2A(c) now expressly states that the agricultural land under the ASTGU shall be “deemed to be in agricultural use” pursuant to Chapter 61A, even though it is simultaneously being used as the site of a renewable energy source.





# A Year End Topical Review



## Dual Use Solar

- Chapter 61A, Section 2A(d) provides that ASTGUs are now protected under the agricultural protections in Chapter 40A, Section 3.
  - A 5 MWDC ASTGU is no longer subject to solar special permit requirements.
- The rollback period on Dual Use Solar parcels has now been extended from five years to ten years.





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## Dual Use Solar

- Must now develop an “agricultural plan” in consultation with UMass Clean Energy Extension and this plan must be submitted as part of the ASTGU application.
- In light of this, the Dual Use provisions will not apply until applications filed in FY2024 for FY2025.
- A Commission will be created “to investigate and make recommendations to remove barriers to further development of agrivoltaic projects.”





# A Year End Topical Review



## Chapter 268 of the Acts of 2022

- Amends deadline to file annual Chapterland Applications from October 1<sup>st</sup> to December 1<sup>st</sup>.
- Did not change the three month period within which application can be reviewed, and approved or denied.
- Therefore, the decision relates back to January 1 preceding the tax year for which the application was filed and taxation as Chapterland will commence with the tax year.







# A Year End Topical Review



## Chapter 268 of the Acts of 2022

- Effective as of January 1, 2023.
- Applies to applications for FY2025 which must now be submitted prior to December 1, 2024.
- Chapter 268 of the Acts of 2022 should be reviewed with your local Municipal Counsel since it also has provisions that affect Chapter 61 and Chapter 61B.







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## Happy Holidays!!



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