



Informational Guideline Release

Bureau of Municipal Finance Law
Informational Guideline Release (IGR) No. 20-10
July 2020

(Supersedes IGR No. 92-206
And Prior Inconsistent Written Statements)

**APPLICATION FOR AUTHORITY FROM THE COMMISSIONER OF REVENUE
TO ABATE LOCAL TAXES AND CHARGES**

(General Laws c. 58, § 8)

Under [G.L. 58, § 8](#), the Commissioner of Revenue may authorize local assessors or other assessing officers to abate local taxes or charges in cases where they do not otherwise have authority to do so. This Informational Guideline Release explains the requirements and procedures for seeking abatement authority from the Commissioner.

Topical Index Key:
Abatement and Appeals

Distribution:
Assessors
Collectors

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(General Laws c. 58, § 8)

SUMMARY:

Under [G.L. c. 58, § 8](#), the Commissioner of Revenue (Commissioner) has discretion to authorize assessors or other local assessing officers to fully or partially abate taxes, assessments, rates or other charges, or any related interest or costs, assessed or imposed by them in situations where the assessor or other officer otherwise has no authority to do so. The Commissioner's discretionary power affords an administrative procedure whereby substantial inequities, which could not otherwise be remedied under the usual abatement process, may be rectified.

This procedure does not provide an alternative to the standard abatement procedures provided by [G.L. c. 59, § 59](#) or other applicable law. Instead, absent extraordinary circumstances, the procedures set out in [G.L. c. 59, § 59](#) for the abatement of real and personal property taxes constitute the remedy for an overassessment.

Three factors are relevant to the Commissioner's exercise of discretion in granting this abatement authority. First, the taxpayer was prevented by extraordinary or mitigating circumstances from seeking an abatement through the usual abatement process. Second, abatement of the tax or charge is supported by the facts. Third, granting abatement authority will correct a substantial inequity, cure a grievous hardship or provide a considerable public benefit.

In the case of a paid tax, there are additional requirements. In such cases, the Commissioner may issue abatement authority if the paid tax or charge:

- (1) was made no more than three fiscal years prior to the year when an application for abatement authority is made to the Commissioner; and
- (2) arose through an "obvious clerical error" in the valuation, assessment or collection process.

BUREAU OF MUNICIPAL FINANCE LAW PATRICIA HUNT, CHIEF

GUIDELINES:

I. ABATEMENT OF TAXES AND CHARGES

The Commissioner has determined the following three factors must be present to warrant approval of an application for authority to abate a tax or charge.

- i. The taxpayer was precluded by extraordinary or mitigating circumstances from seeking an abatement through the usual process;
- ii. Abatement of the tax or charge is supported by the facts; and
- iii. The granting of abatement authority will correct a substantial inequity, cure a grievous hardship or provide a public benefit.

A. Extraordinary or Mitigating Circumstances Justifying Taxpayer's Failure to Timely File for Abatement

1. Extraordinary or Mitigating Circumstances Justifying Taxpayer's Failure to Timely File for Abatement

The commissioner will not ordinarily grant authority to abate absent a showing that the taxpayer was prevented by extraordinary or mitigating circumstances from filing an abatement under the standard abatement process of [G.L. c. 59, § 59](#) or other applicable law.

Massachusetts courts have repeatedly maintained that a timely filed abatement application is critical for abatement relief. For example, the Appeals Court, in Guzman v. Board of Assessors of Oxford, 24 Mass. App. Ct. 118 (1987), stated, "As to the timeliness of abatement applications, the cases are severe and state the principle that failure timely to file for an abatement destroys the right."

The following are examples where the commissioner may find extraordinary or mitigating circumstances justifying taxpayer's failure to timely file for abatement.

Example 1 – Taxpayer, as a result of a medical condition such as dementia, fails to timely file an application for abatement or exemption.

Example 2 – A charitable organization failed to file its required Form 3ABC and was assessed a tax for otherwise exempt property. Non-filing of the required forms and the subsequent failure to apply for abatement were attributable to volunteer staff turnover.

2. Situations Where Commissioner May Grant Abatement Authority Absent Extraordinary or Mitigating Circumstances Justifying Taxpayer's Failure to Timely File for Abatement

The Commissioner may grant abatement authority absent extraordinary or mitigating circumstances justifying taxpayer's failure to timely file for abatement when the public interest, egregious error or substantial inequity outweigh the failure of the taxpayer to file for an abatement.

Example 1 – Invalid tax. A tax bill is sent to a developer for land that has become part of the common area of a condominium he developed. The developer does not pay the bill, nor does he file for an abatement. He finds out later about the invalid assessment and notifies the assessor. The assessors apply to the commissioner for authority to abate the invalid tax. Notwithstanding that the taxpayer should have known to timely file for an abatement, the commissioner may approve authority to abate in this case because the public interest in abating an invalid tax outweighs the taxpayer's failure to follow the regular abatement process.

Example 2 – Invalid tax. A tax bill is sent to the owner of a solar facility that is also the subject of a PILOT agreement under [G.L. c. 59, § 38H](#). (See [IGR 17-26](#).) The taxpayer does not timely file for an abatement assuming the bill was just a mistake as taxpayer is current on its PILOT payments. After receiving a demand from the collector to pay the invalid tax, taxpayer contacts the assessors' office after the period for filing an abatement has expired. Notwithstanding that the taxpayer should have known to timely file for an abatement, the commissioner may approve authority to abate in this case because the public interest in abating an invalid tax outweighs the taxpayer's failure to follow the regular abatement process.

Example 3 – Egregious Error. An error on the property record card doubled the value of the property. Taxpayer does not file for an abatement, but later finds out about the error and complains to the assessors. The commissioner may approve authority to abate because the substantial inequity resulting from the egregious overassessment outweighs the taxpayer's failure to follow the regular abatement process in this case.

B. Abatement of the Tax or Charge is Warranted by the Facts.

The Commissioner may grant abatement authority if abatement of the tax or charge is warranted. For example, in the case of an overassessment, the assessors must demonstrate that the assessment exceeded the value of the property on the relevant January 1 assessment date.

Example 1 – Assessors request authority to abate a tax stating that the property was overassessed because it was subject to an affordable housing restriction. In support of such an application, the assessors must provide a copy of the recorded affordability restriction on file at the registry of deeds as of the relevant January 1 assessment date.

Example 2 – Assessors request authority to abate a tax claiming the property was overassessed due to a broken water pipe causing mold and water damage. Assessors must submit documentation regarding the reduction in value resulting from such mold and water damage as of the relevant January 1 assessment date.

C. Substantial Inequity, Grievous Hardship or Public Benefit

The Commissioner may grant abatement authority where the granting of abatement authority will correct a substantial inequity, cure a grievous hardship or provide a public benefit.

Example 1 - A property owner who has received tax exemptions in the past unintentionally fails to file seasonably for such exemption during the most recent year

involved, due to disability, illness or some other mitigating cause. In this case, the granting of abatement authority would correct a substantial inequity and cure a grievous hardship.

Example 2 - A new owner of deteriorated property of relatively low value seeks a partial abatement of a delinquent tax in return for obligating himself to an immediate rehabilitation of the property to make it more tax productive for the municipality. There is a clear showing that the abatement is essential to the economic feasibility of the project. In this case, the granting of abatement authority would provide a public benefit.

Example 3 - A charitable nonprofit corporation that has received property tax exemptions in the past fails to timely file for an exemption or abatement due to high turnover in the volunteers serving in its administrative offices. The charity provides services to low-income families or other benefits to the community and the payment of taxes will severely impact its budget. In this case, the granting of abatement authority would correct a substantial inequity, cure a grievous hardship and provide a public benefit.

II. ABATEMENT OF PAID TAXES AND CHARGES

A. Additional Requirements When Tax Has Been Paid

Under [G.L. c. 58, § 8](#), there are two specific restrictions on the Commissioner's power to authorize the abatement of a paid tax or charge. The Commissioner may authorize an abatement of a paid tax or charge, only if the tax or charge:

1. Was assessed no more than three fiscal years prior to the year when an application for abatement authority is made to the Commissioner, and
2. Arose through an "obvious clerical error."

As a result, an application for authority to abate a paid tax must satisfy the three requirements for abating an unpaid tax, plus the above two additional requirements to abate a paid tax.

B. Time Limitation

The Commissioner cannot approve any request to abate a paid tax or charge that was assessed prior to the three fiscal years preceding the year of the request. For example, if a request were submitted on May 15, 2022 (during Fiscal Year 2022), the Commissioner may authorize abatement only if the underlying assessment was regarding FY19 or later.

C. Clerical Error

1. Definition

Because "clerical" pertains to a clerk, copyist, or writer, or to a writing, a "clerical error" is a mistake in copying, writing, recording and processing information. Such an error occurs when a person intends to enter some fact or detail, but unintentionally enters

some other fact or detail. For example, if an assessor believes that a home is heated with forced hot water, but mistakenly marks forced hot air on the property record card, the assessor has committed a clerical error. If, on the other hand, that home is, in fact, heated with forced hot water but the assessor believes it is heated with forced hot air and enters forced hot air on the property record card, the assessor has not committed a clerical error.

A clerical error does not involve the exercise of any judgment or discretion. Any assessment error regarding the grade, use, classification, quality of construction, or other element of a property which involves the exercise of an assessor's opinion in the valuation process is not a "clerical error."

2. Person Who Commits Obvious Clerical Error

It does not matter which municipal official or agent committed the error, provided the error was made in the execution of a clerical or data processing function and pertained to the valuation, assessment, or collection process. The mistake might have been made by an assessor, revaluation company employee or tax collector. However, an error made by a taxpayer or other party does not qualify.

D. Examples of Applications for Authority to Abate Paid Tax or Charge

Example 1 - A property is substantially overassessed due to a typographical error on a tax bill or on some other assessment or billing record. The tax was paid, but taxpayer was prevented from timely filing for abatement by illness. The Commissioner may grant authority to abate paid tax or charge.

Example 2 – A property was substantially overassessed due to a recording or processing error, such as a transposition of numbers on an assessment or billing record, that resulted in any of the following – (i) the assessment of a non-existent structure or a tax-exempt property, (ii) the issuance of duplicate bills for the same property or (iii) the addition of a water charge (or some other charge) to the tax bill for the wrong property. The tax was paid, but taxpayer was prevented from timely filing for an abatement due to illness. The Commissioner may grant authority to abate paid tax or charge.

Example 3 – Assessors' staff did not obtain a copy of a Tax Increment Financing (TIF) agreement under [G.L. c. 40, § 59](#) as required by the assessors' office procedures. ([See IGR 19-13](#) for more information on TIF agreements.) As a result, the assessors failed to apply the exemption amount required by the agreement and assessed property taxes at fair cash value. Taxpayer paid the bill and did not file for an abatement, misunderstanding the schedule and implementation of the exemption. The assessors' staff person's failure to obtain the agreement was an obvious clerical error. And, notwithstanding that the taxpayer should have known to timely file for an abatement, the commissioner may approve authority to abate because the public interest in implementing an approved TIF agreement outweighs the taxpayer's failure to follow the regular abatement process. (See Section I-A above.)

Example 4 – Due to a coding error, a tax bill is sent to a developer for land that has also been assessed as part of the common area of a condominium he developed. The developer pays both tax bills and does not apply for an abatement. He later realizes the error and notifies the

assessors who admit their clerical error resulted in the duplicate (and invalid) assessment. Notwithstanding that the taxpayer should have known to file for an abatement, the commissioner may approve authority to abate because the inequity that would result from failing to abate an invalid assessment outweighs the taxpayer's failure to follow the regular abatement process. (See Section I-A above.)

Example 5 - The parties to a purchase and sale agreement for an affordable housing unit neglect to record at the registry of deeds an affordability restriction limiting the resale price to an under-market value. As a result, on the January 1 assessment date for the fiscal year, the property is not restricted according to the registry records and it is assessed at full and fair cash value. The taxpayer pays the tax but does not file for an abatement due to illness. Because the tax is paid, abatement authority cannot be granted unless there is an obvious clerical error that resulted in the overassessment. In this case, although someone made an error in not recording the affordable housing restriction before the January 1 assessment date, it was an error by a third party. As a result, abatement authority will not be approved.

III. ABATEMENT AUTHORITY NOT AUTHORIZED

The Commissioner will not generally authorize an abatement under [G.L. c. 58, § 8](#), whether or not the tax or charge has been paid in the following situations.

A. Granting an Abatement Will Result in Unwarranted Benefit to Third Party

For example, the taxpayer contracted dementia and failed to pay taxes or apply for abatement for five consecutive fiscal years. However, a new owner has acquired the property which is subject to the tax liability. Abatement of the unpaid taxes would result in an unwarranted benefit to someone other than the taxpayer and will generally be denied.

B. Another Remedy is Available for City/Town to Abate

Example 1 - Acquisition of a taxable parcel by city or town. The commissioner will not authorize abatement of taxes attributed to the ownership of the city/town during or after the acquisition year because those taxes should be abated by the assessors under [G.L. c. 59, § 72A](#). Upon acquisition, the city/town is required under section [72A](#), to adjust the taxes as of the date that title passes and collect same from the grantor for the period of the grantor's ownership.

Example 2 - Foreclosure of tax titles. The commissioner will not authorize abatement of taxes on the collector's books or in the tax title account when a tax title foreclosure decree is entered. The taxes are to be transferred to the tax possession or tax foreclosure account pending a final disposition of the property. In addition, if taxes are inadvertently assessed for a fiscal year after the year in which the foreclosure decree is issued, they should also be certified by the collector to the treasurer and accounting officer and transferred to the tax possession account.

Example 3 - Assessment to incorrect person / entity. The commissioner will not authorize abatement where it is determined that a property has been assessed to the wrong person. In that case, the assessors should reassess the tax to the correct owner under [G.L. c. 59, § 77](#). There is no time limit on a reassessment. However, if there have been multiple conveyances of the property after the invalid assessment(s), the lien securing the payment of that year's taxes under

[G.L. c. 60, § 37](#) may have expired. If so, and if the six-year statute of limitations period for a contract action to collect the reassessed tax has expired, the Commissioner may, upon a demonstration that the tax is not collectible by other legal means, authorize abatement. [G.L. c. 60, § 35](#). Otherwise, reassessment is the appropriate remedy and the Commissioner will not authorize abatement.

Example 4 – Uncollectible Personal Property Tax. Under [G.L. c. 59, § 71](#), if a collector is satisfied that a personal property tax is uncollectible by reason of the death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay, he shall notify the assessors thereof in writing, on oath, stating why such tax cannot be collected. The assessors must act on such notification within thirty days and may abate such tax or any part thereof.

IV. OTHER SITUATIONS WHERE COMMISSIONER MAY GRANT AUTHORITY TO ABATE

A. Uncollectible Property Tax

The Commissioner may grant authority to abate an uncollectible personal property tax that does not fall within [G.L. c. 59, § 71](#) as described in Example 4, Section III-B above.

The Commissioner may also abate an uncollectible real property tax. For example, the lien that secures payment of a real property tax is expired under [G.L. c. 60, § 37](#). The statute of limitations has also expired for the commencement of a civil action to collect the tax under [G.L. c. 60, § 35](#). The offsetting provisions of [G.L. c. 60, § 93](#) also do not apply and the taxpayer has no licenses or permits to which [G.L. c. 40, § 57](#) could apply. The assessors must demonstrate that there is no remedy available to collect the tax. See Example 3, Section III-B above, for an example of an uncollectible tax where the Commissioner may grant authority to abate.

B. Abatement of Interest on Unpaid Tax

The commissioner may grant authority to abate the interest accrued on a property tax in cases where the abatement of the tax itself is not warranted if the tax was unpaid due to disability of the taxpayer or similar compelling reason. For example, the taxpayer has not paid real property taxes due to dementia, but the abatement of the tax itself is not warranted. In this case, the commissioner may exercise discretion to authorize abatement of the interest on the unpaid tax.

V. SUBMISSION OF APPLICATIONS UNDER [G.L. c. 58, § 8](#)

A request for abatement authority can be submitted to the Commissioner only by the assessors or the municipal officer who assessed the underlying tax or charge. Requests and supporting documentation like the Schedule 58:8 must be submitted by email to:

DLSLaw@dor.state.ma.us.

The subject line of emails making requests for authority to abate should read “Application for Abatement Authority Under [G.L. c. 58, § 8](#).” Paper submissions will not be accepted.

An application for abatement authority under [G.L. c. 58, § 8](#) should include a detailed letter with supporting documentation to address the Commissioner's exercise of discretion. The letter should fully discuss the reasons why the assessors (or officer assessing the charge) believe an abatement is warranted. A fully completed Schedule 58.8 must be submitted for each parcel for which abatement authority is requested. (Note – the Schedule 58.8 is available on the Division of Local Services' website. The Schedule should not be altered – all information on the Schedule is required.) In addition, the letter, attachments, and other documents required should provide the following specific information:

- A. The name and address of the current assessed owner(s). If that owner is other than an individual, the principals or officers of the entity must be listed. If the property was owned by a different party during the period that the taxes became delinquent, that owner must be similarly identified.
- B. If the owner failed to timely file an application for abatement (or exemption) for any of the tax years in question, an explanation for that failure.
- C. If the current assessed owner or prospective purchaser is planning on developing or rehabilitating the subject property, all relevant details, including plans and drawings of the work to be done, itemized copies of expenses, copies of financial arrangements and completion dates.
- D. If the current assessed owner intends to convey or otherwise dispose of the subject property, all relevant details of this transaction.
- E. If any assessor, or member of his or her family, has an interest in the subject property, a thorough description of that interest.
- F. If the application is based upon an allegation of financial hardship of the taxpayer, all relevant information, including but not limited to income and expense statements, copies of income tax returns for the most recent year, copies of bank statements.
- G. The Commissioner may require that the assessing officers provide additional specific information relating to the application. Failure to supply required information within 30 days, or longer if an extension is given, shall result in denial of the application without prejudice.
- H. If the application is being filed by the assessors, but they were not the assessing authority for the charge, a letter must be submitted by the assessing authority stating that the assessors are filing the application on the assessing authority's behalf.