

**COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT**

Suffolk, ss.

SJC 2013-P-0393

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NEW ENGLAND FORESTRY FOUNDATION, INC.

Appellant

v.

BOARD OF ASSESSORS OF THE TOWN OF HAWLEY

Appellee

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On Appeal from a Final Decision of the Appellate Tax  
Board, No. F306063

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**BRIEF OF APPELLANT  
NEW ENGLAND FORESTRY FOUNDATION, INC.**

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## TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF ISSUES PRESENTED FOR REVIEW .....	1
STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS .....	8
SUMMARY OF ARGUMENT .....	18
ARGUMENT .....	21
I. THE FOREST IS EXEMPT FROM PROPERTY TAXES PURSUANT TO G. L. c. 59, § 5, THIRD, BECAUSE NEFF HAS A TRADITIONAL "CHARITABLE" PURPOSE AND "OCCUPIES" THE FOREST IN A MANNER CONSISTENT WITH ITS CHARITABLE CONSERVATION GOALS.....	21
A. NEFF is a "charitable organization" within the meaning of G. L. c. 59, § 5.....	23
1. NEFF's dominant mission of protecting and conserving New England's forests is a traditional and long-recognized charitable purpose.....	24
2. NEFF's activities benefit a large and fluid group of beneficiaries and evince the traditional hallmarks of charity.....	27
B. NEFF "occupies" the Forest within the meaning of G. L. c. 59, § 5.....	33
1. NEFF "occupies" the Forest by appropriating it to the immediate uses of its charitable cause and purposes.....	34
2. The ATB's requirement that conservation charities allow an ATB-prescribed level of "public access" to their land lacks any basis in law and should be disavowed by the Court.....	37

II. NEFF'S ENTITLEMENT TO EXEMPTION PURSUANT TO G. L. C. 59, § 5, THIRD, IS NOT AFFECTED BY THE EXISTENCE OF OTHER REDUCED TAXATION SCHEMES. ....	42
CONCLUSION .....	47

## TABLE OF AUTHORITIES

	<b>Page (s)</b>
 <b>CASES</b>	
<u>Animal Legal Defense Fund, Inc. v. Fisheries &amp; Wildlife Bd.</u> , 416 Mass. 635 (1993) .....	9
<u>Animal Rescue League of Boston v. Assessors of Bourne</u> , 310 Mass. 330 (1941) .....	21
<u>Assessors of Dover v. Dominican Fathers Province</u> , 334 Mass. 530 (1956) .....	34, 38, 39
<u>Babock v. Leopold Morse Home For Infirm Hebrews &amp; Orphanage</u> , 225 Mass. 418 (1917) .....	33
<u>Board of Assessors of Boston v. The Vincent Club</u> , 351 Mass. 10 (1966) .....	33, 34
<u>Boston Symphony Orchestra, Inc. v. Assessors of Boston</u> , 294 Mass. 248 (1936) .....	23, 27
<u>Brady v. Brady</u> , 380 Mass. 480 (1980) .....	45
<u>Bridgewater State Univ. Found. v. Board of Assessors of Bridgewater</u> , 463 Mass. 154 (2012) passim	
<u>Brookline Conservation Land Trust v. Board of Assessors of Town of Brookline</u> , 2008 WL 2368711 (Mass. App. Tax. Bd. 2008) .....	26, 37, 42
<u>D.S.M. Realty, Inc. v. Bd. of Assessors of Andover</u> , 25 Mass. App. Ct. 945 (1988) .....	43, 44
<u>Forges Farm, Inc. v. Board of Assessors of Town of Plymouth</u> , 2007 WL 3038003 (Mass. App. Tax. Bd. 2007) .....	26, 37, 42
<u>Harvard Community Health Plan, Inc. v. Assessors of Cambridge</u> , 384 Mass. 536 (1981) .....	32
<u>Little Miami, Inc. v. Kinney</u> , 428 N.E.2d 859 (Ohio 1981) .....	30

<u>Martha's Vineyard Land Bank Commn. v. Board of Assessors of W. Tisbury</u> , 62 Mass. App. Ct. 25 (2005) .....	22
<u>Mary Ann Morse Healthcare Corp. v. Assessors of Framingham</u> , 74 Mass. App. Ct. 701 (2009) .....	passim
<u>Massachusetts Medical Society v. Assessors of Boston</u> , 340 Mass. 327 (1960) .....	24
<u>Nature Preserve, Inc. v. Board of Assessors of Town of Pembroke</u> , 2000 WL 33656051 (Mass. App. Tax. Bd. 2000) .....	34
<u>New Boston Garden Corp. v. Assessors of Boston</u> , 383 Mass. 456 (1981) .....	21, 22
<u>New England Legal Foundation v. City of Boston</u> , 423 Mass. 602 (1996) .....	24, 25
<u>New Habitat, Inc. v. Tax Collector of Cambridge</u> , 451 Mass. 729 (2008) .....	24, 25, 27, 29
<u>Pecos River Open Spaces, Inc. v. County of San Miguel</u> , 2013 WL 309847 (N.M. Ct. App. 2013) ...	30, 39
<u>Pyle v. Sch. Comm. of South Hadley</u> , 423 Mass. 283 (1996) .....	44
<u>State Street Nominee Trust v. Board of Assessors of Carlisle</u> , 70 Mass. App. Ct. 853 (2007) .....	22, 43
<u>Town of Franklin v. Wyllie</u> , 443 Mass. 187 (2005) .....	43
<u>Turner v. Trust for Public Land</u> , 455 So. 2d 1124 (Fla. Dist. Ct. App. 1984) .....	39
<u>Western Mass. Lifecare Corp. v. Board of Assessors of Springfield</u> , 434 Mass. 96 (2001) .....	24

Wing's Neck Conservation Foundation, Inc. v.  
Assessors of Bourne,  
 2003 WL 21663986 (Mass. App. Tax. Bd. 2003) ... 26, 37

## **CONSTITUTIONAL PROVISIONS AND STATUTES**

Massachusetts Constitution, Article 97 ..... passim  
 General Laws c. 59, § 5 ..... passim  
 General Laws c. 61 ..... passim  
 General Laws c. 61A ..... passim  
 General Laws c. 61B ..... passim

## **OTHER AUTHORITIES**

Energy and Environmental Affairs, 2011 Land  
Protection Report (2012) ..... 10

Energy and Environmental Affairs, Land Protection  
under the Patrick-Murray Administration 2007-  
2010 (2011) ..... 11

Energy and Environmental Affairs, Massachusetts  
Climate Change Adaptation Report (2011) ..... 29

Energy and Environmental Affairs, Strategic Plan  
2013-2015 (Jan. 17, 2013) ..... 10

James N. Levitt & Leigh Youngblood, Report of the  
Massachusetts Commission on Financing Forest  
Conservation (2011) ..... 8

National Land Trust Census Report -  
 Massachusetts ..... 31

Report of the United Nations Conference on  
 Environment and Development (June 1992) ..... 11

### STATEMENT OF ISSUES PRESENTED FOR REVIEW

The following issues are presented for review:

- I. Whether conservation of forestland and open space constitutes a traditionally charitable activity, pursuant to G. L. c. 59, § 5, Third, in the Commonwealth of Massachusetts.
- II. Whether a conservation organization "occupies" land, pursuant to G. L. c. 59, § 5, Third, through its efforts to preserve the open and natural character of the land.
- III. Whether conservation land is ineligible for tax exemption pursuant to G. L. c. 59, § 5, Third, because of the availability of tax reduction pursuant to G. L. c. 61, 61A, or 61B.

### STATEMENT OF THE CASE

General Laws, Chapter 59, § 5, Third, provides that real estate owned by a "charitable organization and occupied by it or its officers for the purposes for which it is organized" is exempt from taxation. The Massachusetts Appellate Tax Board (ATB) held that Appellant New England Forestry Foundation, Inc. (NEFF) -- one of the oldest and largest nonprofit forestland conservation organizations in New England -- does not engage in traditionally "charitable" work. App. 83-84.<sup>1</sup> The ATB further held that, in order to "occupy" conservation land within the meaning of the tax

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<sup>1</sup> Citations contained herein (referenced as "App. \_\_\_\_") are to the Joint Appendix.

exemption, it is not enough that a conservation organization manage the land to preserve its open and natural character but, rather, it must actively ensure a degree of "public access" to the land. App. 86-90. NEFF appeals from this erroneous decision of the ATB.

On February 16, 2009, NEFF submitted a "Form 3ABC Charitable Tax Return" to Appellee Board of Assessors of the Town of Hawley (Assessors), requesting a fiscal year 2010 charitable tax exemption, G. L. c. 59, § 5, Third, for a 134-acre forested property located within the town of Hawley (the Forest). App. 1016-17. At the time, the Forest was classified as forestland entitled to reduced taxation pursuant to G. L. c. 61, § 1. App. 436. In its Form 3ABC, NEFF summarized its charitable purposes as including, among other things, "the conservation and sound management of the region's private and municipal forestlands." App. 1016.

On November 4, 2009, the Assessors asked NEFF to file a Form 1B-3 Application for Statutory Exemption "specifically provid[ing] information showing that [the Forest] is actively being used for [NEFF's] stated charitable purposes." App. 1025. NEFF submitted a Form 1B-3 to the Assessors on November 11, explaining that it occupied the Forest for, among



other purposes, "protection, development, and marketing [of] forest resources and products" and "forestland use and management." App. 1026.<sup>2</sup>

On December 1, 2009 and February 26, 2010, the Assessors again requested further information regarding NEFF's use and occupation of the Forest. App. 1028-30.<sup>3</sup> On March 31, 2010, NEFF responded in writing to both requests. App. 445-46. NEFF provided the Assessors with a copy of its Articles of Organization and explained that its ongoing charitable activities include: (1) "protecting forest land throughout New England for the purposes of saving open space and advancing the science of silviculture"; (2)

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<sup>2</sup> NEFF further indicated in its Form 1B-3 that it utilizes all corporate income and profits "[f]or the purpose of furthering [its] educational and land conservation work and to maintain the forest in a healthy condition." App. 1027.

<sup>3</sup> In their letter of December 1, 2009, the Assessors informed NEFF that "[a]n organization that owns land and is formed to conserve open space, protect wildlife and its habitat, protect watershed, provide areas for communion between man and environment, provide education programs and promote outdoor recreation must show that it is actively using the land to accomplish those purposes . . . . We need to know how the property is being actively used on an ongoing, regular basis . . . . Simply preserving property in its natural state as a habitat for native species is not enough to satisfy the requirement of 'occupying' the property within the meaning of [G. L. c. 59, § 5]." App. 1028-29.

"educating the public about the benefits of providing clean water, wildlife habitats, and recreational opportunities through forest-land conservation"; and (3) "educating the public about the benefits of sustainable woodlot management by demonstrating harvesting methods and wildlife habitat creation and maintenance." App. 446.

On April 7, 2010, the Assessors transmitted to NEFF notice that its application for exemption had been denied. The Assessors concluded that NEFF did not occupy the Forest on an "active and ongoing basis," that the Forest was insufficiently "accessible to the public," and that NEFF's conservation efforts were not sufficient to support exemption. App. 1011-1012.

NEFF timely appealed the determination of the Assessors to the ATB. G. L. c. 58A, § 7. On October 19, 2010, an evidentiary hearing was held before ATB Commissioner Nancy Egan. App. 1044. NEFF argued that it was a traditionally charitable land conservation organization and that the Forest was held and managed as charitable conservation land. App. 11-15, 1050. On April 26, 2011, the ATB issued a Notice of Decision in favor of the Assessors. App. 44. On May 9, 2011,

the ATB allowed NEFF's Request for Findings of Fact and Report. App. 57; G. L. c. 58A, § 13. On July 22, 2011, the ATB gave notice that it required an additional three-month period to issue findings. App. 58. Eighteen months later, on January 28, 2013, the ATB issued its Findings of Fact and Report. App. 58-93.

The ATB held that land conservation is not a traditionally charitable purpose within the meaning of G. L. c. 59. § 5. According to the ATB, "NEFF's purposes and activities . . . [do] not fit into the established realm of traditional charities according to Massachusetts case law." App. 84. Although the ATB acknowledged that "the preservation of nature may be a laudable goal," the ATB determined that "simply keeping land open and allowing its natural habitat to flourish is not sufficiently charitable [to warrant exemption]." App. 88. (internal citations and quotations omitted). For this reason, the ATB ruled that the Forest was not entitled to exemption.

The ATB further held that NEFF does not "occupy" the Forest within the meaning of G. L. c. 59. § 5, because NEFF does not ensure "a sufficiently active appropriation of the subject property to achieve a

public benefit." App. 88. Relying on a line of its own decisions, the ATB explained that, in order to demonstrate "occupancy," NEFF needed to show that it had ensured a requisite degree of "public access" to the Forest. App. 87-90. "[T]he absence of public access to land has consistently proven fatal to a landowner's claim of charitable exemption." App. 87 (quoting Wing's Neck Conservation Foundation, Inc. v. Assessors of Bourne, 2003 WL 21663986 at \*6 (Mass. App. Tax. Bd. 2003)). Because NEFF did not, in the ATB's view, adequately "alert[] the public to [the Forest's] availability for public usage," or "prove that it had made sufficient effort to inform the public that the subject property was open for public recreation," NEFF did not satisfy the "public access" requirement. App. 75, 86.<sup>4</sup> Thus, for this additional

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<sup>4</sup> In finding that NEFF did not meet ATB standards for "public access," the ATB emphasized that one entrance to the Forest is "at the end of a dirt road that passed between a private house and barn"; that the "lack of a paved driveway specifically discouraged public usage"; that another entrance to the Forest through the Department of Conservation and Recreation's Kenneth Dubuque State Forest was gated; that the Forest's "public availability was not well marked with signs"; that information regarding the Forest "was not disseminated to the public on any wide scale"; and that NEFF's website happened to be experiencing a glitch at the time of hearing. App. 69, 75-76, 86. Compare App. 413-417, 421-429

reason, the ATB ruled that the Forest was not entitled to exemption.

On February 12, 2013, NEFF noticed this appeal from the ATB's April 26, 2011 decision and January 28, 2013 Findings of Fact and Report. App. 93A. On March 25, 2013, NEFF and the Assessors filed separate applications for direct appellate review in this Court. On April 24, 2013, this Court allowed the parties' applications for direct appellate review.

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(photographs depicting entrances to the Forest and signage at entrances to Forest); App. 352 (printout of NEFF's website for Forest at time of ATB hearing).

## STATEMENT OF FACTS

### Conservation in the Commonwealth of Massachusetts

Massachusetts has a well-deserved reputation as a national leader in the field of conservation.<sup>5</sup> The Commonwealth's list of conservation achievements is long and storied: Massachusetts is the home to the first public park in the English-speaking world (Boston Common, 1634), the nation's first conservation advocacy group (Appalachian Mountain Club, 1876), the nation's oldest continuously studied scientific forest (Harvard Forest, 1907) and, most pertinent here, the nation's first private statewide conservation organization (The Trustees of Reservations, 1891).<sup>6</sup>

The Massachusetts Constitution provides clear evidence of Massachusetts' status as a conservation leader. Article 97, for example, guarantees the people's "right to clean air and water . . . and the natural, scenic, historic, and esthetic qualities of [the] environment," and further states that "[t]he protection of the people in their right to the

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<sup>5</sup> See James N. Levitt & Leigh Youngblood, Report of the Massachusetts Commission on Financing Forest Conservation, at 1 (2011), <http://www.mass.gov/eea/docs/eea/land/forest-consv-financing-rpt-jul15-2011.pdf>.

<sup>6</sup> See id.

conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose." Mass. Const. Art. XCVII.<sup>7</sup> Article 97 protects and preserves "the right of the people to enjoy the natural resources of the Commonwealth." Animal Legal Defense Fund, Inc. v. Fisheries & Wildlife Bd., 416 Mass. 635, 641 n.5 (1993).

Spurred by the same environmental policy concerns animating Article 97, the Massachusetts legislature has implemented numerous statutory schemes designed to promote land conservation, protect native flora and wildlife habitats, and sustain the Commonwealth's natural beauty. See, e.g., G. L. c. 132, § 40 ("[T]he public welfare requires the rehabilitation, maintenance, and protection of forest lands."); G. L. c. 40, § 8C (governing creation of local conservation commissions); G. L. c. 184, § 31 (governing conservation restrictions); G. L. c. 132A, § 11 ½ (establishing grant program to assist G. L. c. 180

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<sup>7</sup> Article 97 was ratified in 1972. It replaced former Article 49, ratified in 1918, which provided similarly that "conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the commonwealth are public uses."

charitable organizations "in acquiring interests in lands suitable for purposes of conservation or recreation"); G. L. c. 131, § 40 (establishing protections for Massachusetts wetlands). The legislature has also created the Executive Office of Energy and Environmental Affairs (EEA) and charged it with, among other purposes, "promot[ing] the perpetuation, extension, and proper management of the public and forest lands of the commonwealth." G. L. c. 21A, §§ 1-2.<sup>8</sup> In advancement and promotion of land conservation efforts, the Massachusetts legislature expended \$51,114,405 in FY2011 to protect 7,999 acres of conservation land through grants, fee purchases, and conservation restrictions.<sup>9</sup> In FY2010, the

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<sup>8</sup> Conservation of open space and working landscapes is a central focus of the EEA. Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs, Strategic Plan 2013-2015, at 10 (Jan. 17, 2013). "Through land acquisitions, and multiple programs like the Agricultural Preservation Restriction, Wildlands Stamp, and Conservation Restriction and grant programs, EEA and its agencies are working to permanently protect our open space and natural resources." Id.

<sup>9</sup> Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs, 2011 Land Protection Report, at 2 (2012).



legislature expended \$53,170,965 to protect 11,657 acres.<sup>10</sup>

**New England Forestry Foundation, Inc.**

NEFF is a charitable institution organized pursuant to G. L. c. 180, recognized as a 501(c)(3) tax-exempt organization under the Internal Revenue Code, and dedicated to the conservation, oversight, and sustainable use of New England forestland. App. 482-86. Founded in 1944, NEFF today conserves more forestland in New England than any other nonprofit organization. App. 492. NEFF's charitable mission centers on protecting forestland and providing education about conservation, forestry, forest science, and "sustainable forest management."<sup>11</sup> App.

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<sup>10</sup> Executive Office of Energy and Environmental Affairs, Land Protection under the Patrick-Murray Administration 2007-2010, at 16 (2011).

<sup>11</sup> "Sustainable forest management" is a stewardship ethic integrating the productive growing and harvesting of trees with the goal of conserving the biological integrity, natural beauty, and long-term viability of land. See Report of the United Nations Conference on Environment and Development (June 1992), <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> (observing that sustainable forest management is necessary to meet the ecological needs of future generations). In Massachusetts, our legislature has mandated that all public forestland held by the Division of State Parks and Recreation be managed in accordance with sustainable forestry practices. G. L. c. 21, § 2F.

493. NEFF's charitable purposes, as described in its Articles of Organization, include:

- Fostering and supporting land conservation and open space preservation;
- Promoting, supporting, and practicing forest management techniques designed to increase the production of timber in an ecologically and economically prudent manner;
- Providing education services and programs to woodland owners;
- Educating the public about forest management and environmental best practices, and supporting and advancing scientific understanding of environmental issues; and
- Lessening the burdens of government to protect, manage, and conserve open space and forestland.

App. 484. In FY2010, NEFF expended over \$1,200,000 on conservation and education efforts, and employed nine full-time staff members. App. 145, 148. In FY2009, NEFF expended over \$2,100,000 on conservation and education efforts. App. 145.

Like many conservation organizations throughout the Commonwealth, NEFF actively acquires forestland and other open spaces to protect the land from development and to steward the natural resources and scenic beauty present on the land.<sup>12</sup> App. 123-28, 484-

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<sup>12</sup> NEFF is a member of the Massachusetts Land Trust Coalition, Inc., a nonprofit organization that provides support services to Massachusetts' nonprofit land conservation organizations. App. 748-51, 784-87.

85. In total, NEFF owns more than 23,000 acres of New England forestland, including 7,400 acres in Massachusetts. App. 347, 492. NEFF's property in Massachusetts includes forty-eight publicly accessible community forests spread across the Commonwealth. App. 347. NEFF manages all of its forests in accordance with sustainable forest management principles. App. 502-510. As such, NEFF endeavors to grow and harvest high-quality timber at sustainable yields while simultaneously conserving the biological integrity, natural beauty, and long-term viability of the land.<sup>13</sup> App. 502-510. All NEFF properties are open to the public to explore and enjoy at no cost. App. 446. Hunting and fishing is permitted at most NEFF properties in accordance with State law, also at no cost. App. 446.

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NEFF also works independently with several other charitable organizations to advance forest conservation and sustainable forestry practices. App. 141, 840.

<sup>13</sup> NEFF's timber production generates modest operating revenue, all directed to continuing NEFF's conservation work. In FY 2010, NEFF had \$2,700,000 in revenue, with \$427,000 coming from timber sales. App. 145. The bulk of NEFF's funding comes from charitable contributions and grants from the government, corporations, or other donors. App. 145, 516-17.

In addition to land held in fee, NEFF protects over one million additional acres in seven states through ownership, monitoring, and enforcement of conservation restrictions. App. 128, 492. Many of NEFF's conservation restrictions are Massachusetts easements held pursuant to G. L. c. 184, §§ 31-33. In 2010, NEFF coordinated a joint easement aggregation project involving several nonprofit conservation organizations, leading to the successful protection of 10,400 acres of privately-held forestland in Western Massachusetts. App. 141. NEFF continues to expand its easement aggregation efforts throughout New England and aims to protect an additional 120,000 acres through conservation easements.<sup>14</sup> App. 141.

To fulfill its goal of providing educational services to private woodland owners and the general public, NEFF operates all of its forestland as "demonstration forests" -- working models of sustainable forestry and land conservation. App. 503. When appropriate and feasible, NEFF hosts tours, walks, and school events. App. 499, 505. Before a

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<sup>14</sup> In 2001, NEFF acquired the largest conservation easement in United States history -- the 762,192 acre Pingree Forest Easement in northern and western Maine. App. 520, 608-23, 773.

harvest on any property, NEFF invites town officials, property abutters, and the public to join NEFF staff for a pre-harvest tour to explain the harvest. App. 446, 519, 539. Where there is interest, NEFF also conducts postharvest walkthroughs to discuss the results. App. 446, 539.

### **The Hawley Forest Property**

NEFF purchased the Forest in 1999 from Muriel Shippee and Ed Phelps, who wished to protect the property from development. App. 360. The Forest is a 134-acre wooded lot located on Stetson Road in the Town of Hawley. App. 349. The Forest abuts a privately-owned open field that is subject to a conservation restriction held by NEFF. App. 362. The Forest is bordered on two sides by the Department of Conservation and Recreation's Kenneth Dubuque State Forest. Access to the Forest from the west is by a woods road that runs through the State Forest. App. 220-21, 351, 361, 428-29. The Forest creates a buffer between the State Forest and abutting private land uses, and benefits the wildlife of the State Forest through creation of a larger continuous forested block. App. 349, 351.

Access to the Forest from the east is by Stetson Road, a paved public way. App. 421-26. Historic stone walls and a stone bridge are scattered throughout the Forest. App. 362, 409-10. Fuller Brook flows through the Forest emptying into the Chickley and Deerfield Rivers. App. 361, 405.

NEFF operates the Forest in accordance with a Forest Management Plan (Plan) prepared by a state-licensed professional forester.<sup>15</sup> App. 355-402. The Plan is designed to further NEFF's regional sustainable forestry objectives and to: (1) protect the natural beauty of the Forest; (2) maintain and enhance the wildlife habitats on the Forest; (3) produce income from periodic timber harvests; and (4) manage the Forest's timber resources so as to maximize the long-term production of high quality and defect-free logs. App. 360. The Plan notes the Forest's importance as a sustainable demonstration forest and a wildlife habitat. App. 360, 362. The Plan calls for an operating interval of approximately fifteen years

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<sup>15</sup> Massachusetts foresters must be licensed pursuant to G. L. c. 132, § 47 and 302 C.M.R. § 14. A forester is one who engages in "the science, the art, and the practice of conserving and managing for human benefit the natural resources, including trees, other plants, animals, soil and water, that occur on, and in association with, forest lands." 302 C.M.R. § 14.02.

between harvest returns, with a harvest occurring once every seven-and-a-half years on half the Forest. App. 362. These harvests involve the cutting of only certain carefully selected and marked trees consistent with the sustainable forestry objectives of the Plan. App. 362. In 1999, NEFF clearcut five acres of the Forest to create increasingly scarce early successional habitat for local wildlife species dependent on young forest growth and shrubland. App. 362.

The Forest has been fully open to the public since its purchase by NEFF in 1999. App. 360-62. NEFF maintains welcoming signs at the Stetson Road entrance stating that NEFF "invite[s] respectful public visits," and that NEFF owns and manages the Forest for "Forest Products, Wildlife Habitat, Biological Diversity, [and] Educational Opportunities." App. 415-16. The Forest is used by members of the public for hiking, hunting, and snowmobiling. App. 362. NEFF publicizes the Forest through its Community Forest Booklet (which includes descriptions and directions to all NEFF properties) and through a dedicated section of the NEFF website

(which includes directions to and a detailed map of the Forest). App. 220-21, 352.<sup>16</sup>

### SUMMARY OF ARGUMENT

NEFF, one of the largest and oldest environmental nonprofits in New England, owns and occupies the Forest for the purpose of protecting the natural beauty, biological integrity, recreational availability, and long-term viability of the land. This purpose -- forestland conservation -- has long been recognized as a charitable activity in the Commonwealth. Because NEFF actively manages the Forest consistent with its conservationist purpose, the Forest is exempt from property taxes. The ATB erred in holding to the contrary.

NEFF satisfies both statutory requisites for exemption set forth in G. L. c. 59, § 5, Third:

First, NEFF easily qualifies as a "charitable organization" within the meaning of G. L. c. 59, § 5.

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<sup>16</sup> NEFF's website, which was undergoing maintenance at the time of the ATB hearing, includes a searchable index of and directions to all NEFF's community forests. See <http://www.newenglandforestry.org/find-a-forest.html>. The website describes NEFF's conservation and sustainable forestry efforts, lists details for upcoming education and public outreach events, and facilitates online donations. See <http://www.newenglandforestry.org/>



Our Constitution and General Laws affirm the "traditionally charitable" nature of conservation. And there can be no serious doubt that conservation lessens the burdens of government; directly advances the conservation interests espoused by Article 97 of the Massachusetts Constitution; and provides all citizens with improved air and water quality, recreational opportunities, natural beauty, and effective stewardship of natural resources. The ATB's stubborn refusal to recognize land conservation as charitable is unmoored from fact, law, and history.

Second, NEFF "occupies" the Forest by protecting it from development, and actively managing it in accordance with an ecologically-sustainable and conservation-oriented Forest Management Plan. NEFF need not show that it facilitated "public access" to the Forest. The ATB's "public access" requirement lacks any discernible basis in case law or statute, and reflects an impermissible intrusion by the ATB into the management of charitable conservation organizations. A "public access" requirement of the kind and extent demanded by the ATB is often antithetical to the goals of charitable organizations like NEFF which aim, in significant part, to protect

and preserve delicate and geographically remote habitats in their natural state.

Finally, NEFF's entitlement to full charitable exemption is not affected by the existence of other reduced taxation schemes applicable to forestland. The plain text of G. L. c. 59, § 5 expressly contemplates and allows for the simultaneous availability of tax reduction for land held for certain uses, G. L. c. 61, 61A, 61B, and full exemption for such properties if, in addition, they are owned and occupied by charitable organizations, G. L. c. 59, § 5, Third.

## ARGUMENT

I. THE FOREST IS EXEMPT FROM PROPERTY TAXES PURSUANT TO G. L. c. 59, § 5, THIRD, BECAUSE NEFF HAS A TRADITIONAL "CHARITABLE" PURPOSE AND "OCCUPIES" THE FOREST IN A MANNER CONSISTENT WITH ITS CHARITABLE CONSERVATION GOALS.

General laws c. 59, § 5, Third, provides that real estate owned by a "charitable organization and occupied by it or its officers for the purposes for which it is organized" is exempt from taxation. Accordingly, to be exempt, real property must be: (1) owned by an organization with charitable purposes; and (2) occupied by the organization for such purposes. Animal Rescue League of Boston v. Assessors of Bourne, 310 Mass. 330, 337 (1941).

This Court reviews the ATB's findings of fact to determine whether, based on the entire record, they are supported by substantial evidence. New Boston Garden Corp. v. Assessors of Boston, 383 Mass. 456, 466 (1981). "[S]ubstantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" Id., quoting Boston Edison Co. v. Selectmen of Concord, 355 Mass. 79, 92 (1968). The Court is "not required to affirm the board merely on a finding that the record contains evidence from which a rational mind might draw the desired

inference." Id. The ATB's application of G. L. c. 59, § 5, Third, to these facts and its interpretation of the relationship between G. L. c. 59, § 5, Third and other statutory provisions are legal conclusions the Court reviews de novo. Mary Ann Morse Healthcare Corp. v. Assessors of Framingham, 74 Mass. App. Ct. 701, 702-03 (2009). See State Street Nominee Trust v. Board of Assessors of Carlisle, 70 Mass. App. Ct. 853, 860 (2007) ("We accord no deference to a decision of the board that is based on an error of law."); Martha's Vineyard Land Bank Commn. v. Board of Assessors of W. Tisbury, 62 Mass. App. Ct. 25, 27 n.3 (2005) ("[A]n appellate court has plenary power of de novo review of all questions of law . . . including questions of law involving statutory construction.").

In applying G. L. c. 59, § 5, Third, the Court must "not adopt a literal construction . . . if the consequences of such construction are absurd or unreasonable." Bridgewater State Univ. Found. v. Board of Assessors of Bridgewater, 463 Mass. 154, 158 (2012) (interpreting G. L. c. 59, § 5, Third). The proper interpretation of G. L. c. 59, § 5, Third, must take into account "the general intent of the exemption

for property owned by charitable organizations." Id.  
at 160.

In this case, the Court must conclude that the ATB's findings and statutory construction are unsupportable. Conservation is a long-recognized charitable purpose in the Commonwealth and NEFF occupies the Forest consistent with and in furtherance of that purpose.

**A. NEFF is a "charitable organization" within the meaning of G. L. c. 59, § 5.**

Contrary to the ATB's finding, NEFF easily qualifies as a charitable organization under Massachusetts law. A charitable organization is "a literary, benevolent, charitable or scientific institution or temperance society." G. L. c. 59, § 5. "A charity, in the legal sense, may be more fully defined as a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, or otherwise lessening the burdens of government." Boston Symphony Orchestra, Inc. v. Assessors of Boston, 294 Mass. 248, 254-255 (1936).

Simply put, "[t]he test for charitable nature is whether the organization works for the good of society." New England Legal Foundation v. City of Boston, 423 Mass. 602, 610 (1996). The term "charity" contemplates a "wide[] field of activity for the improvement and happiness of man." Massachusetts Medical Society v. Assessors of Boston, 340 Mass. 327, 331 (1960). See Western Mass. Lifecare Corp. v. Board of Assessors of Springfield, 434 Mass. 96, 103 (2001) ("[T]he potential list of activities that may qualify as charitable in nature is very broad.").

**1. NEFF's dominant mission of protecting and conserving New England's forests is a traditional and long-recognized charitable purpose.**

The most important factor in determining whether an organization is "charitable" within the meaning of G. L. c. 59, § 5 is how closely the organization's work comports to "traditional[]" notions of charity. New Habitat, Inc. v. Tax Collector of Cambridge, 451 Mass. 729, 733, 736 (2008). Other factors are "less significant the closer [the organization's] dominant purposes and methods are to traditionally charitable." Id. at 736-37. See Mary Ann Morse, 74 Mass. App. Ct. at 703 ("New Habitat emphatically conditions the

importance of previously established factors on the extent to which 'the dominant purposes and methods of the organization' are traditionally charitable.")

NEFF's dominant mission of protecting and conserving New England's forestland is a traditional activity with deep historical roots in the Commonwealth. Massachusetts is the American birthplace of private conservation organizations and conservation advocacy. See supra at pp. 8-11. Our Constitution and General Laws affirm the public benefits of conservation and the people's right to those benefits. See id.; Mass. Const. Art. XCVII (declaring as a "public purpose" the "protection of the people in their right to the conservation" of forestland and other natural resources). The Massachusetts legislature spends tens of millions of dollars each year in furtherance of conservation. See supra pp. 10-11.

The conservation of land's natural beauty and character is a gift for the benefit of the entire Commonwealth. See New Habitat, 451 Mass. at 732. It is work long-recognized in Massachusetts as serving the "good of society." See New England Legal Foundation, 423 Mass. at 610. The ATB held that land

conservation, while a "laudable goal," is not a traditionally charitable purpose. App. 88.<sup>17</sup> This was error. Land conservation is a traditional and well-recognized charitable purpose, embraced by our laws since the beginning of the Commonwealth.

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<sup>17</sup> The ATB stated that "NEFF's purposes and activities . . . [do] not fit into the established realm of traditional charities according to Massachusetts case law." App. 84. In recent years, the ATB has rendered a series of decisions, culminating with the decision below, holding that land conservation is not alone a sufficiently charitable activity to permit exemption. See Brookline Conservation Land Trust v. Board of Assessors of Town of Brookline, 2008 WL 2368711 at \*11 (Mass. App. Tax. Bd. 2008) ("[T]he Legislature has determined that . . . conservation land . . . should be subject to tax and not exempt as a charitable organization."); Forges Farm, Inc. v. Board of Assessors of Town of Plymouth, 2007 WL 3038003 at \*5 (Mass. App. Tax. Bd. 2007) ("[The legislature intended] that owners of land kept in its open and natural state receive a significant tax benefit, but not a total exemption from tax.). These decisions are not only wrong, but also distinguishable from the present case. None of the organizations at issue in this line of ATB cases were, like NEFF, bona fide land conservation organizations holding land in furtherance of an active conservation plan. See, e.g., Brookline Conservation Land Trust, 2008 WL 2368711 at \*6, \*10 (Brookline Conservation Land Trust received the subject property from "neighbors who wished to prevent development in their neighborhood" and held the property to protect neighbors' interest in "the seclusion and protection against development in the neighborhood"); Forges Farm, 2007 WL 3038003 at \*4 (Forges unable to prove it engaged in any of the conservationist activities listed in its charter); Wing's Neck, 2003 WL 21663986 at \*6 ("Foundation's primary purpose was in fact to benefit a limited class of individuals" made up of the organization's officers and nearby landowners).



**2. NEFF's activities benefit a large and fluid group of beneficiaries and evince the traditional hallmarks of charity.**

Against the backdrop of NEFF's traditionally charitable work, the Court may consider several additional factors as bearing on NEFF's status as a charitable organization. See New Habitat, 451 Mass. at 733 ("The closer an organization's dominant purposes and methods are to traditionally charitable . . . the less significant these factors will be."). These relevant factors include whether NEFF benefits a large or fluid group of beneficiaries, see New Habitat, 451 Mass. at 732; whether NEFF benefits individuals from all walks of life, see id.; NEFF's treatment as a charity under Federal tax law, see id. at 738; how NEFF distributes its profits, see Boston Symphony Orchestra, 294 Mass. at 254; and whether NEFF's work lessens the burdens of government, id. at 254-55. Consideration of each of these additional factors further demonstrates that NEFF is a charitable organization.

**Community benefit.** An organization that benefits a large and indefinite class of beneficiaries from all walks of life provides a "public benefit sufficiently broad to justify the public support that tax exemption

represents." Mary Ann Morse, 74 Mass. App. Ct. at 703-04.

As correctly found by the ATB, "NEFF's dominant purpose [is] to maintain forest land." App. 83. NEFF's activities in support of that purpose, both as practiced and as specified in its charter, work to improve the environment and confer a broad benefit on the public. NEFF manages and protects over 7,400 acres of Massachusetts forestland held in fee. App. 347, 492. All of this land is open for the public to enjoy and explore at no cost and much of it is open for hunting and fishing. App. 446. NEFF protects more than one million additional acres throughout the Northeast through conservation easements, including several thousand acres of Massachusetts easements held pursuant to G. L. c. 184, §§ 31-33. App. 128.

This network of conservation land provides all citizens of the Commonwealth, present and future, with improved air and water quality, recreational opportunities, natural beauty, and effective stewardship of natural resources. In addition to its more tangible benefits, land conservation also helps

combat and mitigate the effects of climate change.<sup>18</sup> The overall benefits from this expansive conservation effort extend beyond the impact of any one parcel of conserved land.<sup>19</sup> The benefits of NEFF's work are diffuse and lasting, and flow to all residents of the Commonwealth. In improving the quality of life for all in Massachusetts, NEFF's conservation efforts provide a service at no cost to a large, fluid group of beneficiaries from all walks of life. See New

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<sup>18</sup> In response to the growing effects of climate change, the EEA's Climate Change Adaptation Advisory Committee has discussed as an effective strategy "the acquisition or conservation of large forest blocks that would minimize stressors, and provide ecosystem resilience, while also serving as a carbon sink." Executive Office of Energy and Environmental Affairs, Massachusetts Climate Change Adaptation Report, at 26 (2011).

<sup>19</sup> The ATB's approach to evaluating the public benefit of conservation land -- examining each parcel individually and apart from its larger network of protected land -- makes little sense. See App. 82-85. No single parcel can provide on its own all the benefits of land conservation. "[W]ithout action at a landscape scale, the conservation gains made over the past 150 years could be permanently lost to hardscape development that threatens regional water supplies, wildlife habitat and sustainable development prospects that shape the exceptional quality of life in the state's 352 cities and towns." Levitt & Youngblood, supra, at 2.

Habitat, 451 Mass. at 732-33; Mary Ann Morse, 74 Mass. App. Ct. at 703-04.<sup>20</sup>

**Lessening the burdens of government.** By preserving the natural character of forestland as part of its state-wide conservation efforts, NEFF significantly alleviates the conservation burden shouldered by state government.<sup>21</sup> Massachusetts spent more than \$50 million per year in FY2010 and FY2011 on land conservation. See supra at pp. 10-11. By aligning its land conservation efforts with those of the Commonwealth, see App. 145, 347, 492, NEFF takes on a sizable portion of this statewide financial expense. Indeed, NEFF's shouldering of the burdens of government is particularly clear here, where the Forest creates a buffer between the State Forest and abutting private land uses, and benefits the wildlife

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<sup>20</sup> See also Pecos River Open Spaces, Inc. v. County of San Miguel, 2013 WL 309847 at \*3-5 (N.M. Ct. App. 2013) (conservation of land "in its natural and undeveloped state generally benefits the public" and is a "charitable use" that "provides a substantial benefit to the public"); Little Miami, Inc. v. Kinney, 428 N.E.2d 859, 860 (Ohio 1981) (restoring land "to its natural state and . . . working toward its continued preservation . . . is in furtherance of [a] charitable purpose").

<sup>21</sup> The ATB erroneously held that "no burden of government was alleviated and no other charitable purpose was achieved by means of NEFF's occupation" of the Forest. App. 91.

of the State Forest through creation of a larger continuous forested block. App. 349, 361-62.

NEFF's efforts to lessen the burdens of government must also be considered in the wider context of private land conservation in the Commonwealth. Massachusetts is home to over 150 nonprofit land conservation organizations which collectively protect over 333,000 acres of land -- about 5% of the entire state.<sup>22</sup> By comparison, the Massachusetts Department of Conservation and Recreation manages approximately 285,000 total acres of State Forests and Parks.<sup>23,24</sup> Without the efforts of private conservation organizations, the Commonwealth would either achieve less of its conservation goals or

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<sup>22</sup> See Land Trust Alliance, 2010 National Land Trust Census Report - Massachusetts, available at <http://www.landtrustalliance.org/land-trusts/land-trust-census/national-land-trust-census-2010/state-factsheets/massachusetts-fact-sheet>.

<sup>23</sup> See Department of Conservation and Recreation, Forestry, available at <http://www.mass.gov/dcr/stewardship/forestry/> (last visited May 16, 2013).

<sup>24</sup> As of 2010, there were approximately 943,000 acres of permanently protected forestland in Massachusetts. Of that total, the Commonwealth of Massachusetts owned approximately 573,000 acres, and conservation organizations and land trusts owned approximately 118,000 acres. Cretaz et al., An Assessment of the Forest Resources of Massachusetts, at 16, 34, 115 (Massachusetts Department of Conservation and Recreation June 2010).

need to spend vastly more taxpayer dollars in support of land conservation than it already does.<sup>25</sup>

**Treatment under Federal tax law.** NEFF is recognized as a 501(c)(3) tax-exempt organization. As this Court has emphasized, "the requirements for exemption under I.R.C. § 501(c)(3) are virtually identical to those under G. L. c. 59, § 5, Third." Harvard Community Health Plan, Inc. v. Assessors of Cambridge, 384 Mass. 536, 538 n.3 (1981).

**Distribution of profits.** NEFF's timber production generates modest operating revenue, all directed to continuing NEFF's conservation work. App. 145, 498. NEFF's generation of income from periodic timber harvests -- which both enhance the long-term viability of forestland and provide income to support NEFF's conservation efforts -- is entirely consistent with NEFF's charitable purposes. See 3 Op. of the Attorney General 1909 at 247-48.<sup>26</sup>

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<sup>25</sup> "[Conservation organizations and land trusts] and their local counterparts foster the conservation and stewardship of forest ecosystems through a wide range of management, research, and education programs. They are an enormous ecological, educational, and socioeconomic asset to the Commonwealth." Id. at 115.

<sup>26</sup> "[I]n my judgment, woodland used [by Harvard University] in the teaching of forestry is . . . exempt from taxation . . . . It appears that the sales of lumber from the woodland are considerable in

**B. NEFF "occupies" the Forest within the meaning of G. L. c. 59, § 5.**

NEFF also meets the second prerequisite to charitable exemption -- occupancy -- which requires an appropriation of the charity's property "to the immediate uses of the charitable cause for which the owner was organized." Board of Assessors of Boston v. The Vincent Club, 351 Mass. 10, 14 (1966). "The nature of the occupation must be such as to contribute immediately to the promotion of the charity and physically to participate in the forwarding of its beneficent objects." Babcock v. Leopold Morse Home For Infirm Hebrews & Orphanage, 225 Mass. 418, 421-422 (1917). "[W]hat lands are reasonably required, and what uses of land will promote the purposes for which the institution was incorporated, must be determined by its own officers. So long as they act in good faith and not unreasonably in determining how to occupy and use the real estate of the corporation their determination will not be interfered with by the

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amount, but this fact does not deprive the university of its exemption, if such sales are merely incidental to the main use of the woodland as a place and means of instruction." 3 Op. of the Attorney General 1909 at 248.

courts." Assessors of Dover v. Dominican Fathers Province, 334 Mass. 530, 541 (1956).

1. **NEFF "occupies" the Forest by appropriating it to the immediate uses of its charitable cause and purposes.**

NEFF's charitable mission is to provide for the conservation and ecologically sound management of privately owned forestlands in New England. App. 493. By protecting the Forest from development, and managing it in accordance with an ecologically-sustainable and conservation-oriented Forest Management Plan, NEFF appropriates the Forest in a way that directly and immediately contributes to its charitable purposes.<sup>27</sup> See The Vincent Club, 351 Mass. at 14.

No Massachusetts appellate precedent addresses the application of the "occupancy" requirement to charitable land conservation organizations (a class of charity that, by its nature, seeks to limit or, in some circumstances, eliminate human activity on the land). This Court's recent opinion in Bridgewater

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<sup>27</sup> The ATB has held that "simply keeping . . . land open . . . is not enough to satisfy the requirement of 'occupying' the property within the meaning of the statute." Nature Preserve, Inc. v. Board of Assessors of Town of Pembroke, 2000 WL 33656051 at \*5 (Mass. App. Tax. Bd. 2000).



State University Foundation v. Board of Assessors of Bridgewater, 463 Mass. at 154, strongly suggests, however, that an organization like NEFF may "occupy" conservation land simply through its efforts to preserve the natural character of the land, provided that doing so furthers the organization's charitable purpose.

Bridgewater addressed the question whether the charitable Bridgewater State University Foundation "occupied" certain property that it made available to Bridgewater State University for its educational purposes. Id. at 154-156. Three of the properties at issue were undeveloped open land used by students for recreation. Id. at 156. This Court held that the foundation "occupied" all the property at issue, notwithstanding the foundation's delegation of physical use to the University or the fact that some of the space was undeveloped. Id. at 159-161. Further, this Court adopted a "functional approach" to assessing an organization's "occupancy": because there was "no question that the uses to which the [foundation's] properties were put" were "fully congruent with the purpose for which the foundation was organized," and consistent with the "general

intent of the exemption," the foundation was entitled to exemption. Id. at 159-60 & n.10.

Thus, in Bridgewater, this Court made clear that the requirement of "occupancy" must be construed by reference to the nature of the property, the nature of the organization's charitable purposes, and the nature of the charitable tax exemption. See id. Viewed through this lens, NEFF's use of the Forest satisfies the occupancy requirement of G. L. c. 59, § 5.

NEFF holds the Forest specifically to preserve its beauty and natural character, and to ensure the productive and sustainable utilization of its resources. See supra at pp. 13-17. In particular, NEFF plans and maintains the conservation of the natural character of the Forest through a Forest Management Plan prepared by a state-licensed professional forester. See id. at pp. 16-17. At intervals commensurate with the nature of its charitable work, NEFF takes steps to harvest the Forest's timber and enhance the Forest's hospitability to wildlife. See id. NEFF keeps the Forest fully open to members of the public who enjoy the Forest recreationally through hiking, hunting, and snowmobiling. See id. at 17.

By holding the Forest for bona fide land conservation purposes, NEFF "occupies" the Forest within the meaning of the statute and consistent with its own charitable mission. See Bridgewater, 463 Mass. at 154-156.

**2. The ATB's requirement that conservation charities allow an ATB-prescribed level of "public access" to their land lacks any basis in law and should be disavowed by the Court.**

In the decision below, as in recent decisions regarding the eligibility of conservation land for tax exemption, the ATB imposed a requirement of "public access" to the land.<sup>28</sup> App. 87. According to the ATB, conservation land is "occupied" for a charitable purpose only when the land itself is sufficiently open for "public access" and the organization undertakes affirmative efforts to facilitate such "public access." See Brookline Conservation Land Trust, 2008 WL 2368711 at \*9; Forges Farm, 2007 WL 3038003 at \*4-5. As to the Forest, the ATB found that "NEFF held

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<sup>28</sup> See Wing's Neck, 2003 WL 21663986 at \*6 ("[T]he absence of public access to land has consistently proven fatal to a landowner's claim of charitable exemption."); Forges Farm, 2007 WL 3038003 at \*4 ("This Board has consistently ruled that where public access is restricted, the subject property is being held primarily for the benefit of organization members, and not the public.").

the subject property in a seemingly closed manner and failed to demonstrate a sufficiently active appropriation of the subject property to achieve a public benefit." App. 88. This subjective "public access" requirement reflects an improper attempt by the ATB to superintend the management decisions of charitable conservation organizations. See Dominican Fathers Province, 334 Mass. at 541 ("[W]hat uses of land will promote the purposes for which the institution was incorporated, must be determined by its own officers."). Even worse, the requirement has no discernible basis in, or connection to, G. L. c. 59, § 5. This Court should disavow the ATB's unjustified and counterproductive imposition of a "public access" requirement.

To begin with, the ATB's "public access" requirement has the potential to undermine the charitable purposes of conservation organizations. Land conservation organizations like NEFF aim, in significant part, to protect and preserve fragile ecosystems and endangered plants and animals. These goals are often inconsistent with heavy human presence and pollution. Where an organization aims principally to preserve a sensitive habitat in its natural state

(or as nearly as possible thereto), the greatest public good may be achieved by doing nothing at all with respect to public access or by affirmatively placing limits on access to the land. For NEFF and organizations like it, the ability to restrict access is often a necessity. Even where access is not affirmatively limited, the types of steps envisioned by the ATB as necessary to demonstrate "public access" may be inconsistent with a conservation purpose.<sup>29</sup> The ATB's indiscriminate requirement of "public access" penalizes NEFF for performing a function at the core of its mission, and hinders the ability of conservation organizations to carefully and deliberately appropriate the use of the land that they aim to protect. See Dominican Fathers Province, 334 Mass. at 541; Mary Ann Morse, 74 Mass. App. Ct. at 706.<sup>30</sup>

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<sup>29</sup> For example, the ATB's strict "public access" test contemplates no exceptions for conservation land containing rare or fragile animal or plant habitats, landlocked conservation land, farmland, or geographically remote properties such as wetlands, mountainsides or islands, some of which are not readily accessible.

<sup>30</sup> See also Pecos River, 2013 WL 309847 at \*7 ("Whether property is in use is completely dependent upon what the proposed use is . . . . [T]he way conservation benefits the public is through maintaining the Property for the public's benefit in its natural,

Repudiation of the "public access" requirement will not preclude assessors from distinguishing between bona fide charitable conservation land, such as the Forest, and open space held for non-charitable purposes. To determine whether a charitable organization commits property to publicly beneficial conservation efforts consistent with the general intent of the charitable exemption, see Bridgewater, 463 Mass. at 159-60, assessors could look to any number of illustrative factors. Assessors could, for example, look to the implementation of and compliance with a forest, wetlands, or other conservation management plan. See supra at p. 16. Assessors could look to other affirmative actions such as the preservation or reestablishment of a wildlife habitat, the protection of a nature sanctuary, the management of reforestation efforts, or the study of the ecological balance on the property. If a conservation organization appropriates and protects conservation land through attentive planning and management

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pristine state without any particular human activities or construction."); Turner v. Trust for Public Land, 455 So. 2d 1124, 1126 (Fla. Dist. Ct. App. 1984) (charitable conservation land "serves the greatest public good if left in its natural state").

consistent with its conservationist mission, it "occupies" the land pursuant to G. L. c. 59, § 5.

That the ATB found inadequate "public access" on this record demonstrates how demanding a standard of public use the ATB intends to impose on conservation organizations. The record demonstrates that the Forest is not closed to the public and, in fact, that NEFF publicizes its forests and encourages their use in numerous ways, including through welcoming signage. See supra at pp. 17-18. Such evidence is more than sufficient to dispel any notion that NEFF's charitable activities do not benefit residents of the Commonwealth (beyond the benefits created simply by conserving the Forest). The kind of intensive public access that the ATB seems to demand -- paving a roadway into the Forest and a parking lot, installing more obvious signage on better trafficked roads, removing gates to allow vehicular access, and informing the public of the Forest's availability on a "wide scale," see supra note 4 -- would diminish the Forest's essential character as conservation land.<sup>31</sup>

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<sup>31</sup> Notably NEFF does not own and therefore has no right to remove the gate at the entrance from the Kenneth Dubuque State Forest. App. 350, 413-414. Nor does

The ATB's illogical "public access" requirement has no basis in law and should not stand. As underscored by Bridgewater, the legislature intended G. L. c. 59, § 5, Third, to be flexible, and to require only that charitable property be appropriated to the charitable purposes for which it is held. 463 Mass. at 159-61. Imposing a rigid "public access" requirement -- applicable even to a charitable conservation organization whose very aims may in some cases be harmed by public access -- is antithetical to a flexible, functional approach. This Court should disavow the ATB's "public access" requirement, and act to curb the ATB's increasing hostility toward conservation efforts in the Commonwealth.

**II. NEFF'S ENTITLEMENT TO EXEMPTION PURSUANT TO G. L. c. 59, § 5, THIRD, IS NOT AFFECTED BY THE EXISTENCE OF OTHER REDUCED TAXATION SCHEMES.**

As an alternative ground in support of its decision, the ATB held that "[t]he fact that Chapter 61A offers a reduction in real estate tax, as opposed to a full exemption, indicates that the Legislature did not intend to exempt forest land completely from tax, but only to provide a reduced tax burden." App.

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NEFF have a right to install signage on Stetson Road, a public way. App. 61.



91-92.<sup>32</sup> A parcel of forestland may, however, be simultaneously entitled to tax reduction based on the type of use under G. L. c. 61<sup>33</sup>, 61A<sup>34</sup>, 61B<sup>35</sup> and

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<sup>32</sup> As with the "public access" analysis, the ATB's alternative taxation scheme analysis has been a common refrain in recent ATB opinions regarding the taxation of conservation land. See, e.g., Brookline Conservation Land Trust, 2008 WL 2368711 at \*11 ("[Other] statutory schemes pertaining to the taxation of conservation land evidence a legislative intent that such land be treated as taxable, albeit at a reduced rate."); Forges Farm, 2007 WL 3038003 at \*5 ("Private owners who wish to conserve land in its natural state are afforded property tax relief under statutes other than G. L. c. 59, § 5, Third.")

<sup>33</sup> Chapter 61 provides that "forest land," defined as "land devoted to the growth of forest products," may, upon application, be assessed at "the value that the land has for forest production purposes." G. L. c. 61, §§ 1-3. Chapter 61 allows property owners "to voluntarily apply for and receive a forest land classification for eligible property devoted to the growth of forest products, thus making land so classified subject to lower property tax rates." State Street Nominee Trust, 70 Mass. App. Ct. at 854.

<sup>34</sup> Chapter 61A applies to land devoted to agricultural or horticultural use, including land "primarily and directly used in raising forest products under a certified forest management plan." G. L. c. 61A, § 2. Chapter 61A permits such property to be "assessed on the basis of its value for agricultural purposes only, and not on its value as judged by the 'highest and best use' standard under which real property customarily is assessed." Town of Franklin v. Wyllie, 443 Mass. 187, 194 (2005).

<sup>35</sup> Chapter 61B applies to recreational land "retained in substantially a natural, wild, or open condition . . . or in a managed forest condition under a certified forest management plan . . . in such a manner as to allow to a significant extent the preservation of wildlife and other natural resources." G. L. c. 61B,

entitled to full tax exemption under G. L. c. 59 § 5 because it is additionally owned and occupied for a charitable purpose. The ATB erred in holding to the contrary.

The preamble to G. L. c. 59, § 5 expressly specifies that sixteen of its more than fifty enumerated categories of property cannot receive multiple exemptions or reductions under section 5.<sup>36</sup> But the only clauses possibly at issue here -- clauses Twenty-Sixth, Forty-Eighth, and Forty-Ninth, governing land discounted under Chapters 61, 61A, and 61B<sup>37</sup> --

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§ 1. As with Chapters 61 and 61A, Chapter 61B offers a reduction in tax rate for qualifying forested land. G. L. c. 61B, § 2. See D.S.M. Realty, Inc. v. Bd. of Assessors of Andover, 25 Mass. App. Ct. 945, 945 (1988).

<sup>36</sup> See G. L. c. 59, § 5, Preamble ("[A]ny 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.").

<sup>37</sup> See G. L. c. 59, § 5, Twenty-Sixth ("Land classified under chapter sixty-one [is exempt], except from the taxes provided for in said chapter."); G. L. c. 59, § 5, Forty-Eighth ("Land classified under chapter sixty-one B [is exempt], except from taxes provided for in said chapter."); G. L. c. 59, § 5, Forty-Ninth ("Land classified under chapter sixty-one A [is

are not among the sixteen categories made ineligible by the preamble for multiple reductions or exemptions.<sup>38</sup>

"Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent." Pyle v. Sch. Comm. of South Hadley, 423 Mass. 283, 285 (1996). Further, "a statutory expression of one thing is an implied exclusion of other things omitted from the statute." Brady v. Brady, 380 Mass. 480, 484 (1980) (internal quotations and citations omitted). The language of G. L. c. 59, § 5 clearly and unambiguously shows that the legislature did not intend for forestland classified under chapters 61, 61A, or 61B to be ineligible for other exemptions listed in chapter 59, § 5. Had the legislature intended to provide forestland with reduced tax rates, but never full charitable exemption, the legislature would have listed clauses Twenty-sixth, Forty-eighth, and Forty-ninth in the preamble to chapter 59, § 5, along with the other clauses it stated would be ineligible for multiple

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exempt], except from taxes provided for in said chapter.").

<sup>38</sup> See id.

reductions or exemptions. The absence of these clauses in the preamble plainly evinces the legislature's choice to allow a property owner entitled to a reduced tax burden under chapters 61, 61A, or 61B to avail itself, if appropriate, of full charitable exemption pursuant to G. L. c. 59, § 5, Third.

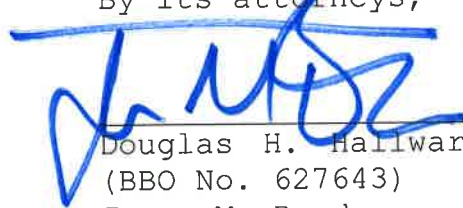
Reading G. L. c. 59, § 5, Third, to encompass forestland held by charitable conservation organizations does not render the other provisions relating to forestland superfluous. By its terms, G. L. c. 59, § 5, Third, applies only to land held by a charitable organization. In contrast, G. L. c. 61, 61A, and 61B include no restrictions on the type of organization holding the land, focusing instead on the character of the land and its use. Under G. L. c. 61, 61A, and 61B, any entity, including for-profit entities, may seek reduction for their qualifying forestland, agricultural land, and recreational land. The taxation scheme for charitable exemption and the pertinent taxation schemes for reduction operate independently of one another. A property owner that qualifies for both charitable exemption and reduction may avail itself of either, without the character of

its land negating the tax benefits that flow from its charitable status and use.

**CONCLUSION**

For the foregoing reasons, the April 26, 2011 Notice of Decision and January 28, 2013 Findings of Fact and Report of the ATB should be REVERSED.

Respectfully submitted,  
NEW ENGLAND FORESTRY  
FOUNDATION, INC.  
By its attorneys,

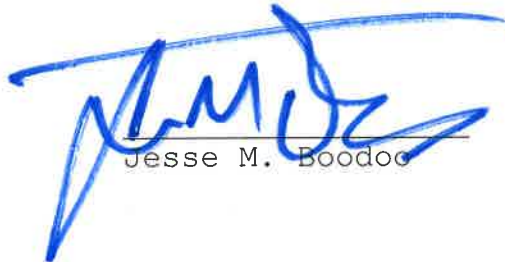


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Dated: May 21, 2013

**CERTIFICATE OF SERVICE**

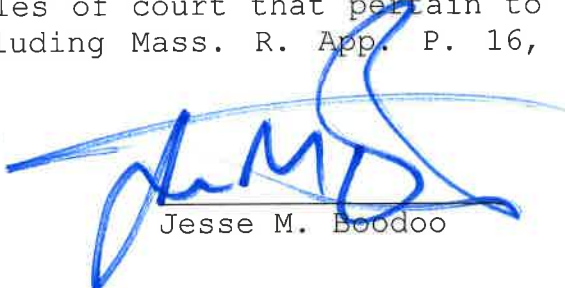
I, Jesse M. Boodoo, attorney for Appellant New England Forestry Foundation, Inc. certify that I served two copies of the foregoing brief on counsel for Appellee by First Class Mail on May 21, 2013.



Jesse M. Boodoo

**CERTIFICATION OF COMPLIANCE WITH MASS. R. APP. P.**

I, Jesse M. Boodoo, certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including Mass. R. App. P. 16, 18, and 20.



Jesse M. Boodoo

# ADDENDUM

Appellate Tax Board Findings of Fact and  
Report, January 28, 2013.....Add. 1

Map of the Forest and Surrounding Area.....Add. 36

Text of G. L. c. 59, § 5.....Add. 37

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

NEW ENGLAND FORESTRY  
FOUNDATION, INC.

v.

BOARD OF ASSESSORS OF  
THE TOWN OF HAWLEY

Docket No. F306063

Promulgated:  
January 28, 2013

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the appellee, Board of Assessors of the Town of Hawley ("assessors" or "appellee"), to abate a tax on certain real estate located in the Town of Hawley owned by and assessed to New England Forestry Foundation, Inc. ("NEFF" or "appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2010.

Commissioner Egan heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose and Mulhern joined her in the decision for the appellee.

These findings of fact and report are made pursuant to the appellant's request under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Ray Lyons, Esq.* for the appellant.

*Richard Desmarais*, assessor, for the appellee.

ATB 2013-63



## **FINDINGS OF FACT AND REPORT**

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2009, the relevant assessment date for fiscal year 2010 ("fiscal year at issue"), NEFF was the assessed owner of a single lot of land located in the Town of Hawley ("subject property"). For the fiscal year at issue, NEFF timely filed a Form 3ABC with the assessors on February 25, 2009. The appellee nonetheless valued the subject property at \$11,800 and assessed a tax thereon, at the rate of \$14.65 per \$1,000, in the total amount of \$172.87. The appellant timely paid the tax due. On November 18, 2009, the appellant applied in writing for abatement to the appellee. On February 18, 2010, the appellant's abatement request was deemed denied. On May 18, 2010, the appellant seasonably filed a Petition Under Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction over the instant appeal.

The subject property is a 120-acre parcel of forest land, located at the end of Stetson Road, a dead-end road, identified on the assessors Map 10 as Lot 3 and known as the Stetson-Phelps Memorial Forest. The subject property

**ATB 2013-64**

is primarily forested and bordered on two sides by the Commonwealth of Massachusetts Department of Conservation and Recreation's Kenneth Dubuque State Forest. The subject property was originally part of a larger 134-acre tract of property. In 1999, the prior owners, Muriel Shippee and Edward Phelps, sold the subject property to NEFF and sold the remaining portion of the 134-acre tract, consisting of a house, barns and approximately 20 acres of vacant land, to private owners. NEFF has a conservation restriction on the vacant land, currently owned by Stephen and Susan Kimball, to prevent future development of the property.

There are two points of access to the subject property: from the east by Stetson Road, a paved single-lane, public way; and from the west by a gated, wooded road that runs from the Kenneth Dubuque State Forest. NEFF maintains a 10-year Forest Management Plan for the subject property, through to the year 2016, which states that the public access to the subject property is by Stetson Road. The appellant initially applied for and received classification of the subject property under G.L. c. 61 as forest land. Starting with the fiscal year at issue, NEFF claimed that it owned and managed the subject property in furtherance of its charitable purpose and thus applied for tax-exempt status for the subject property.

**ATB 2013-65**

NEFF presented its case-in-chief through the testimony of Christopher Pryor, its Conservation Monitor and Forester, and of Whitney Beals, its Director of Land Protection, and through the submission of exhibits. The appellee presented its case-in-chief through the testimony of Richard Desmarais, its chairman, and of Virginia Gabert, its administrative assistant, and through the submission of exhibits.

NEFF of Littleton, Massachusetts is a nonprofit corporation organized pursuant to G.L. c. 180. NEFF is a member of the Massachusetts Land Trust Coalition, Inc., a nonprofit organization that provides support services to nonprofit conservation land organizations across Massachusetts. Founded in 1944, NEFF has a corporate and charitable purpose and mission that centers upon the protection of forest lands, providing information to private forest owners about managing their forest responsibly and to the general public about forestry and forest science. According to its Restated Articles of Organization, NEFF's purposes are as follows:

- promoting, supporting and practicing forest management policies and techniques to increase the production of timber in an ecologically and economically prudent manner;

**ATB 2013-66**

- providing educational services and programs to woodland owners;
- supporting and advancing scientific understanding of environmental issues;
- educating the public about forest management, including providing practical demonstrations to enhance, protect, develop, and market forest resources and forest products and habitat and water resources protection; and
- protecting, managing, and conserving open space and forest lands.

At all relevant times, NEFF held and enforced conservation restrictions on 41 properties in Massachusetts, covering about 3,000 acres in 30 towns. NEFF also raised and maintained an endowment fund for the funding of its monitoring and enforcement of its conservation restrictions. NEFF claimed that it owned and managed the subject property for the same purposes that the Commonwealth of Massachusetts Department of Fish and Game and Department of Conservation and Recreation held its properties, and in this manner, NEFF maintained that it reduced the burden on government.

Mr. Pryor testified to NEFF's charitable purposes, which he described as: to demonstrate sustainable forestry

**ATB 2013-67**

practices to other private landowners, what he termed "forest stewardship"; to protect wildlife habitat; to protect water quality; to educate the public about sustainable forestry practices; and to provide scientific research about sustainable forestry practices. He testified that the public receives a benefit from sustainably managed forests through the wood products that are produced, as well as the protection of wildlife habitat, recreational opportunities and the protection of scenic areas.

Mr. Pryor next testified to NEFF's management of the subject property. He explained that NEFF purchased the subject property in 1999 and that NEFF included it in its booklet of foundation forests, the so-called NEFF Community Forest booklet, which it updated in 2008. He testified that this booklet is distributed to all NEFF members "as well as any member of the public that may ask for one." Mr. Pryor then explained that the subject property was under a management plan, and NEFF's primary goal in this plan was to demonstrate sustainable forestry practices to other private landowners in the area. In furtherance of this goal, Mr. Pryor stated that NEFF managed timber and collected some income from the harvesting of the timber from the subject property, which it added to its endowment.

**ATB 2013-68**

Mr. Pryor testified that, between calendar years 2000 and 2009, NEFF collected about \$24,000 from the sale of timber products from the subject property.

Mr. Pryor further testified that, starting in 2005, NEFF began to hold a so-called "precut educational walk" through some of its properties before it harvested its timber. It was unclear from his testimony how many walks occurred at the subject property, but he mentioned only one scheduled walk. He stated that notice of this walk was expected to be mailed to all abutters of the subject property, as well as members of NEFF "in the immediate area" of the subject property, and that notice of the walk would be posted on NEFF's website and in a local newspaper. Mr. Pryor testified that between zero to twenty people typically attended an NEFF precut educational walk on one of NEFF's properties, and that they usually lasted between one and two hours, depending on questions posed by attendees and how far they wanted to walk.

Mr. Pryor next testified to the public's usage of the subject property. He testified that the subject property was open for public recreation. He stated that a group called the Kanary Kats maintained an active snowmobile trail through the subject property. He further testified that members of the public also used the subject property

**ATB 2013-69**

for hiking and hunting. A photograph was entered as an exhibit, which Mr. Pryor testified depicted a sign posted on a tree at the Stetson Road entrance of the subject property. The sign in the photograph identified the subject property as the Stetson-Phelps Pine Ridge Farm and specified that it was owned and managed by NEFF for the following purposes: "Forest Products; Wildlife Habitat; Biological Diversity; [and] Educational Opportunities." Another sign, which Mr. Pryor testified was located at the entrance to the subject property, identified NEFF as the owner of the property and stated: "We invite respectful public visits."

Mr. Pryor contended that NEFF's ownership and management of the subject property brought many benefits to the general public. He maintained that these benefits included recreational and scenic opportunities, as well as improved water quality. When asked about scenic opportunities, Mr. Pryor admitted that those would be limited to hikers on the trails through the subject property. Another benefit Mr. Pryor cited was the public's education on sustainable forestry practices. He further testified that NEFF's use and management of the subject property supported numerous wildlife species, because the various forest types, including hardwood and softwood,

**ATB 2013-70**

provided a diversity of habitats to one area. He also testified that the subject property served as a buffer to the abutting Dubuque Forest, because some wildlife species required larger forested blocks for their habitat.

Mr. Pryor further testified that another of NEFF's goals was the protection of water and air quality, wildlife habitat, and scenic and recreation values. NEFF contended that maintaining the subject property in its "natural" condition was an important part of NEFF's charitable purposes, because it protected the water resources and land for the public's enjoyment, including recreational opportunities for hunters and hikers.

Photographs were entered into evidence depicting the entrance to the subject property from Stetson Road. These photographs showed the end of the paved portion of Stetson Road and its continuation into what Mr. Pryor called "a dirt or gravel road," covered in leaves, which lead into the subject property. Another picture depicted Stetson Road as it passed through the Ken Dubuque State Forest; there was a gate across the road. Mr. Pryor testified that the gate was installed to limit vehicular access along the subject property's roads, so as to prevent rutting and erosion and the consequent negative impacts to water quality. Another picture showed a grassy parking area with

**ATB 2013-71**



one parked car. Mr. Pryor testified that NEFF did not maintain a larger paved or groomed parking area because, first, a larger parking area was already maintained at nearby Ken Dubuque State Forest and NEFF "didn't feel that [the subject] property had enough public use to warrant improving our parking area here," and second, NEFF had encountered problems with public access: "A lot of our remote properties with parking areas invite dumping of trash, kids going in and partying and leaving trash behind, and other vandalism, in terms of - you know, cutting down trees and other things like that."

Mr. Pryor testified that the subject property was closed to the public during a timber harvesting, which typically occurred at NEFF's properties "maybe on[c]e every ten to twenty years; sometimes more often, sometimes less, depending on the condition of the property." He testified that a timbering operation could last three to six months.

Finally, Mr. Pryor testified to the information on the subject property disseminated by NEFF. In addition to the NEFF Community Forest booklet, the appellant submitted into evidence a printout of an NEFF website page that showed information on the subject property, including directions to the property and a map. Mr. Pryor addressed a pamphlet entered into evidence concerning a property owned by NEFF

**ATB 2013-72**

in Vermont. The pamphlet described the "interpretive points" along the trail, installed by NEFF, to educate visitors about the forest and sustainable forestry practices. He testified that NEFF had not prepared a similar report for the subject property, explaining that, when NEFF receives a grant for this type of project, it chooses properties that receive a lot of public usage "so we could reach more people and get more bang from our buck in terms of education."

On cross-examination, Mr. Pryor explained that membership into NEFF is a minimum of \$40, and that there were approximately a thousand members total in NEFF; he did not have information as to how many of those members were from Massachusetts. Mr. Pryor also admitted that NEFF's webpage conveying information about NEFF's properties, including the subject property, was not functioning as of the time of the hearing, explaining that the webpage was experiencing "one big glitch" that NEFF staff was trying to fix. The missing information included maps depicting hiking trails through the subject property. Mr. Pryor testified that a map of the subject property depicting trails was on display at the Town Hall offices. Finally, Mr. Pryor admitted that "active forest management" often appears to be inactive: "We do not manage or have an

**ATB 2013-73**

activity on the property every year or maybe even every ten years. You know, the realities of forest management are so that you may go long periods of time with perceived inactivity, but that is actually just all part of our forest management plan and our intent of managing the property."

Next, NEFF presented the testimony of Mr. Beals, its Director of Land Protection. Mr. Beals testified to NEFF's charitable purposes. He first described the educational programs engaged in by NEFF. Mr. Beals identified newsletters previously published by NEFF that listed stewardship activities engaged in by NEFF, including public talks, Community Forest Discovery Days, and the establishment of a network of volunteer forest stewards. He further testified to some of NEFF's educational publications that NEFF made with funds obtained through grants, including a pamphlet on invasive exotic plants that was funded through the U.S. Department of Agriculture. Mr. Beals further testified to NEFF's involvement in initiatives with other charitable foundations, including the Aggregation Project, which he explained was a partnership with seven other Massachusetts land trusts whereby they pooled various conservation restrictions on private properties that private landowners had either

**ATB 2013-74**

donated or sold for no more than 75% of the appraised value. Another initiative mentioned was the North Quabbin Woods project funded by the Ford Foundation, whereby the organizations promoted sustainable forestry in local economically depressed areas. Mr. Beals testified that foresters, as well as the University of Massachusetts and other state agencies, turned to NEFF as a resource for conservation projects throughout the state.

Mr. Beals stated that NEFF realized a total of \$281,436 from the sale of timber during 2008 from all of its properties, which was a typical amount of yearly timber income for NEFF. Mr. Beals testified that this income funded approximately 20 to 30 percent of NEFF's operating budget.

Next, the assessors presented their case-in-chief. Virginia Gabert, an administrative assistant with the assessors, first presented a statement on behalf of the appellee. She testified that no evidence had been provided to the assessors from the appellant indicating that NEFF occupied and used the subject property in an active and ongoing basis in order to fulfill its mission to educate, through practical demonstration, conservation and sound management of forest lands. She also testified that no evidence had been provided to the assessors to indicate

**ATB 2013-75**

that NEFF's use of the subject property benefited a large and indefinite class of beneficiaries. She cited the lack of signage on the property and the lack of active links on NEFF's website indicating how the public could access the property.

Ms. Gabert then offered several items of correspondence between her office and NEFF regarding the assessors' requests for further information as to the purportedly charitable occupation and use of the subject property by NEFF. By a letter dated November 4, 2009, Ms. Gabert explained to NEFF that no application for exemption for NEFF was on file. Ms. Gabert enclosed a copy of an application with the letter, and requested that NEFF "specifically provide information showing that the property is actively being used for your stated charitable purposes." NEFF responded by remitting a copy of an application for exemption, which the assessors received on November 24, 2009, in which NEFF described its corporate purposes, generally, as being to increase the production of timber through its practices of forest management; to educate the public, through practical demonstration, on forestland use and management; and to promote better methods in the protection, development and marketing of forest resources and products. By letter dated December 1,

**ATB 2013-76**

2009, the assessors explained to NEFF that the information contained in its application for exemption was not sufficient to demonstrate its entitlement to an exemption. In particular, NEFF needed to provide them with Forms 3 ABC, 990 and PC, its articles of incorporation and its charter or organization by-laws, as well as information proving that an ongoing, charitable use was the principal use of the subject property: "the organization can not just passively own the land." By a third letter, dated February 26, 2010, the assessors acknowledged receipt of NEFF's Forms 3ABC, 990 and PC for the subject property, but reminded NEFF that it still had not received the other information requested by its December 1, 2009 letter, including NEFF's articles of organization, charter or organization by-laws, as well as a description of the charitable activities and NEFF's regular, active use of the property.

Finally, by letter dated March 31, 2010, NEFF responded to the assessors' requests for additional documentation. NEFF classified its charitable purposes as (1) to educate the public about the benefits of providing clean water, wildlife habitats, and recreational opportunities through its conservation activities; (2) to educate the public about the benefits of sustainable forest

**ATB 2013-77**

management by demonstrating its harvesting methods; and (3) protecting forest lands for the purposes of saving open space "and advancing the science of silviculture." The letter noted that the next timber harvest at the subject property was "planned for some time between 2010 and 2012." Before the harvest, NEFF would invite town officials, abutters and the public for a pre-harvest tour to explain the operation and why it is being performed, then "[i]f there is sufficient interest, we also conduct post-harvest tours to discuss the results."

Ms. Gabert testified that the assessors had requested information regarding how NEFF was publicizing that the subject property was open to the public. Ms. Gabert explained that the subject property is located at the end of a dead end road, "just beyond a privately owned parcel that occupies both sides of the road and gives the appearance that the road is their driveway" as Stetson Road approaches and passes between the Kimball's house and garage. Ms. Gabert testified that there were no signs along the road indicating a public access to the subject property.

On the basis of its subsidiary findings, the Board ultimately found little evidence to support a charitable exemption for the subject property. As will be explained

**ATB 2013-78**

in the Opinion, the Board found that forest management was not a traditionally charitable endeavor; therefore, the Board was required to examine whether NEFF's ownership and occupation of the subject property served a sufficiently large or fluid class of beneficiaries and did not merely benefit a limited class of beneficiaries.

The Board first looked to whether NEFF occupied the subject property for its stated charitable purposes. While Mr. Beal testified to large initiatives occurring across the country involving other charitable foundations, he offered little detail as to NEFF's particular work in those areas. NEFF presented at best vague testimony of what it deemed "active management" of the subject property, with evidence of only one public activity, a precut educational walk, which would be publicized merely to abutters of the subject property and NEFF members "in the immediate area." The Board thus found that NEFF did not occupy the subject property in furtherance of its stated charitable purpose.

The Board next looked to how available the subject property was to the public. The appellant failed to prove that it had made sufficient effort to inform the public that the subject property was open for public recreation. The subject property's entrance was at the end of a dirt road passing between private buildings, which appeared to

**ATB 2013-79**



be an extension of a private driveway. Moreover, the subject property's public availability was not well marked with signs; in fact, the gate across its access along Stetson Road and the lack of a paved driveway specifically discouraged public usage. The Board found that inclusion in NEFF's narrowly distributed Community Forest booklet did not sufficiently publicize the subject property's availability for public usage, and as admitted by NEFF, there was no information on NEFF's website on the subject property's existence and its availability for usage by the community. The Board thus found that the subject property did not appear to be open for public usage, it was not easily accessible to the public, and NEFF failed to sufficiently inform the public that the subject property was available for general usage.

On the basis of these findings of fact, the Board found that the subject property was not owned and occupied by a charitable organization in furtherance of a charitable purpose under the exemption at issue. As a result, the Board found and ruled that the subject property was not exempt from real estate tax. The Board therefore issued a decision for the appellee in this appeal.

**ATB 2013-80**

## OPINION

All property, real and personal, situated within the Commonwealth is subject to local tax, unless expressly exempt. G.L. c. 59, § 2. General Laws c. 59, § 5 lists the classes of property which shall be exempt from taxation. Specifically, § 5, Clause Third, exempts from taxation all "personal property of a charitable organization, . . . and real estate owned by . . . and occupied by it or its officers for the purposes for which it is organized . . . ." G.L. c. 59, § 5, Clause Third (hereinafter "Clause Third"). While public policy permits reasonable tax exemptions, "taxation is the general rule" and therefore "statutes granting exemptions from taxation are strictly construed." *Animal Rescue League of Boston v. Assessors of Bourne*, 310 Mass. 330, 332 (1941).

In the instant appeal, the appellant is recognized as a charitable corporation pursuant to G.L. c. 180. However, the Board has repeatedly found that an organization's charitable-exemption status "is not dispositive in determining whether its property qualifies for the Massachusetts property tax exemption." *Jewish Geriatric Services, Inc. v. Assessors of Longmeadow*, Mass. ATB Findings of Fact and Reports 2002-337, 358-9, *aff'd*, 61 Mass. App. Ct. 73 (2004) (citing *H-C Health Services v.*

ATB 2013-81

*Assessors of South Hadley*, 42 Mass. App. Ct. 596, rev. denied, 425 Mass. 1104 (1997)). "The mere fact that the organization claiming exemption has been organized as a charitable corporation does not automatically mean that it is entitled to an exemption for its property. . . . Rather, the organization 'must prove that it is in fact so conducted that in actual operation it is a public charity.'" *Western Massachusetts Lifecare Corp. v. Assessors of Springfield*, 434 Mass. 96, 102 (2001) (quoting *Jacob's Pillow Dance Festival, Inc. v. Assessors of Becket*, 320 Mass. 311, 313 (1946)). "The burden of establishing entitlement to the charitable exemption lies with the taxpayer." *Western Massachusetts Lifecare Corp.*, 434 Mass. at 101 (citing *New England Legal Foundation v. Assessors of Boston*, 423 Mass. 602, 609 (1996)). "Any doubt must operate against the one claiming a tax exemption." *Boston Symphony Orchestra v. Assessors of Boston*, 294 Mass. 248, 257 (1936).

Traditionally, in determining whether a charitable organization's occupation of a parcel of property qualified for the Clause Third exemption, Massachusetts courts and the Board have focused on several factors, which include, but are not limited to: "whether the organization provides low-cost or free services to those unable to pay[;] whether

it charges fees for its services and how much those fees are[;] whether it offers its services to a large or 'fluid' group of beneficiaries and how large and fluid that group is[;] whether the organization provides its services to those from all segments of society and from all walks of life[;] and whether the organization limits its services to those who fulfill certain qualifications and how those limitations help advance the organization's charitable purposes." **New Habitat, Inc. v. Tax Collector of Cambridge**, 451 Mass. 729, 732-33 (2008) (citing **Mary Ann Morse Healthcare Corp. v. Assessors of Framingham**, 74 Mass. App. Ct. 701, 703 (2009)).

In **New Habitat, Inc.**, the Supreme Judicial Court offered a new "interpretive lens" through which to view Clause Third exemption claims. **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 703. Specifically, **New Habitat, Inc.** "conditions the importance of [the above] previously established factors on the extent to which 'the dominant purposes and methods of the organization' are traditionally charitable." *Id.* (quoting **New Habitat, Inc.**, 415 Mass. at 733). In other words, "[t]he closer an organization's dominant purposes and methods are to traditionally charitable purposes and methods, the less significant these factors will be in [the] interpretation

of the organization's charitable status . . . [t]he farther an organization's dominant purposes and methods are from traditionally charitable purposes and methods, the more significant these factors will be." **Mary Ann Morse Healthcare Corp.**, 74 Mass. App. Ct. at 705.

The court in **New Habitat, Inc.**, quoting a long-standing charitable-exemption precedent, characterized the "traditional objects and methods" of a Clause 3 charity as follows:

"A charity in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either **by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.**"

**New Habitat, Inc.**, 451 Mass. at 732 (quoting **Jackson v. Phillips**, 96 Mass. 539, 14 Allen 539, 556 (1867) (emphasis added)).

NEFF maintained that it provided "educational" activities to the public, by means of distributing information and inviting the public to come and learn about sustainable forestry at the subject property. "'[A]n educational institution of a public charitable nature falls within'" the exemption provided by Clause Third. **Lasell**

*Village, Inc. v. Assessors of Newton*, 67 Mass. App. Ct. 414, 419 (2006) (quoting *Cummington Sch. of the Arts, Inc. v. Assessors of Cummington*, 373 Mass. 597, 602 (1977)). In order to be exempt under Clause Third as an educational institution, the organization: (1) must "make a contribution to education;" and (2) education or the advancement of education must be the institution's "dominant activity." *Cummington Sch. of the Arts, Inc.*, 373 Mass. at 603. A contribution to education may include providing a general benefit to society. See, e.g., *Boston Symphony Orchestra*, 294 Mass. at 255 (recognizing that fulfilling a general purpose to educate the public in the knowledge of music might well be charitable by advancing the culture); *Molly Varnum Chapter, D.A.R. v. Lowell*, 204 Mass. 487, 493 (1910) (recognizing preservation of historical data concerning Revolutionary War for education of the public is a charitable purpose); *Massachusetts Society for the Prevention of Cruelty to Animals v. Boston*, 142 Mass. 24, 27 (1886) (recognizing education of public on issues of animal cruelty as charitable).

A contribution to education may also include providing education to a relatively small class of individuals, so long as those receiving the benefit are drawn from an indefinite class of persons. *Assessors of Dover v.*

**Dominican Fathers Province of St. Joseph**, 334 Mass. 530, 539 (1956) (recognizing that seminary for training of priests that provided study of theology, Scripture and Latin, although not a specific benefit to the public at large, was charitable because education provided to an indefinite class of persons who change from year to year); **Assessors of Boston v. Garland School of Home Making**, 296 Mass. 378, 386-89 (1936) (ruling that providing education in the principles of home making -- including courses on psychology, home nursing, literature, drama and current events - "is clearly educational" and, although not of benefit to the public at large, benefitted an indefinite class of persons).

Under the facts of the instant appeal, NEFF's purportedly educational endeavor consisted of promoting sustainable forestry practices to a limited class of beneficiaries - owners of forest lands and nearby property owners. The means by which NEFF purported to accomplish this education at the subject property was by hosting a one-time pre-cut walk, notice of which was reportedly to be disseminated to a very limited class of NEFF members "in the immediate area" and abutters of the subject property. The Board found that this education endeavor, offered on such a limited basis to such a limited class of

beneficiaries, was not sufficient in scope such that it could reasonably be considered to be of benefit to the public and not sufficiently akin to the activities specifically recognized as "education" in the above-cited cases.

Moreover, because the harvesting of timber occurred so infrequently at the subject property, the Board found that educating about sustainable forestry practices was not the dominant purpose of NEFF. Rather, the Board found that NEFF's dominant purpose was to maintain forest land, and any "educational" activities it provided were "minimal and at best ancillary to its primary purpose." **Massachusetts Youth Soccer Ass'n, Inc. v. Assessors of Lancaster**, Mass. ATB Findings of Fact and Reports 2012-660, 678 (citing **Lasell Village, Inc.**, 67 Mass. App. Ct. at 421-22; **Harvard Community Health Plan, Inc. v. Assessors of Cambridge**, 384 Mass. 536, 544 (1981)). Accordingly, for all of the above reasons, the Board ruled that the activities of NEFF at the subject property did not qualify as a "contribution to education" and thus were not traditionally charitable under the relevant Massachusetts case law.

The Board therefore ruled that, while promoting sustainable forestry practices may provide some public benefit, the activities of NEFF did not "bring the minds or



hearts [of persons] under the influence of education or religion," "reliev[e] their bodies from disease, suffering or constraint," "assist[] them to establish themselves in life," or "erect[] or maintain[] public buildings or works." *Id.* Therefore, NEFF's purposes and activities, though laudable, did not fit into the established realm of traditional charities according to Massachusetts case law.

"The more remote the objects and methods are from traditionally charitable purposes and methods the more care must be taken to preserve sound principles and to avoid unwarranted exemptions from the burdens of government.'" *New Habitat, Inc.*, 451 Mass. at 733 (quoting *Boston Chamber of Commerce v. Assessors of Boston*, 315 Mass. 712, 718 (1944)); see also *Massachusetts Medical Society v. Assessors of Boston*, 340 Mass. 327, 331-2 (1960). Therefore, in determining whether NEFF's activities at the subject property were in fact charitable for Clause Third purposes, the Board considered other factors, including whether NEFF's benefits were readily available to a sufficiently inclusive segment of the population, *Jewish Geriatric Services, Inc.*, Mass. ATB Findings of Fact and Reports at 2002-359 (citing *Western Massachusetts Lifecare Corp.*, 434 Mass. at 105), and whether NEFF's ownership and occupation of the subject property "'perform[s] activities

which advance the public good, thereby relieving the burdens of government to do so.'" *Home for Aged People in Fall River v. Assessors of Fall River*, Mass. ATB Findings of Fact and Reports 2011-370, 400 (quoting *Sturdy Memorial Foundation v. Assessors of North Attleborough*, Mass. ATB Findings of Fact and Reports 2002-203, 224, *aff'd*, 60 Mass. App. Ct. 573 (2004)).

The facts of this appeal are similar to those of *Brookline Conservation Land Trust v. Assessors of Brookline*, Mass. ATB Findings of Fact and Reports 2008-679. In that appeal, the Brookline Conservation Land Trust, a recognized § 501(c)(3) organization, held three tracts of land, purportedly on behalf of the town for conservation purposes, namely the preservation of open space, which was reported to be an issue of high priority for the citizens. *Id.* at 682. The facts revealed, however, that the Brookline Conservation Land Trust was holding the properties in a very closed manner:

Contrary to appellant's contention, the subject properties do not appear to be open to the general public. The parcels are, in large part, barricaded with walls, fences, and chains, and "private" and "no trespassing" signs appear along the periphery of the subject properties. While portions of the property may not be completely barricaded, they are still not easily accessible by the public.

*Id.* at 692-93. Based on the closed manner in which the taxpayer maintained the property, the Board found that it held the properties "for the primary benefit of the immediate neighborhood in which the three parcels are located," as opposed to the public good. *Id.* at 692-93. Therefore, "[d]espite the fact that appellant was recognized as a supporting organization of the Town, and that the preservation of open space may have been recognized by the Brookline Conservation Commission as an important goal for the citizens of the Town," the Board ruled that the properties did not qualify for the Clause Third exemption. *Id.* at 695.

In the instant appeal, while there may be no "Private" or "No Trespassing" signs as there were in **Brookline Conservation Land Trust**, the subject property nonetheless did not appear to be open to the general public. The subject property lacked sufficient signage alerting the public to its availability for public usage. Information was not disseminated to the public on any wide scale; its inclusion on a very narrowly distributed Community Forest booklet and a broken link on a website did not constitute sufficient dissemination to the public of the subject property's availability.

Moreover, the subject property was not easily accessible. It was situated at the end of a dirt road that passed between a private house and barn, and thus its entry had the appearance of being a driveway within a private property. The gate across an access along Stetson Road prohibiting vehicular access, coupled with the lack of a paved driveway, which, as testified to by Mr. Beals, were specifically to discourage public usage, contributed to the subject property's perceived inaccessibility. "[T]he absence of public access to land has consistently proven fatal to a landowner's claim of charitable exemption." *Wing's Neck Conservation Foundation, Inc. v. Assessors of Bourne*, Mass. ATB Findings of Fact and Reports 2003-329, 343 (citing *Animal Rescue League v. Assessors of Pembroke*, Mass. ATB Findings of Fact and Reports 2000-96, *aff'd*, 54 Mass. App. Ct. 1113 (2002) and *Nature Preserve, Inc. v. Assessors of Pembroke*, Mass. ATB Findings of Fact and Reports 2000-796).

Finally, while the appellant contended that it publicized the public availability of the subject property and its pre-cut educational walk, the Board found that its efforts fell short of the publication necessary for a Clause Third property. "Merely listing the subject properties on a map as conservation land owned by appellant

is not an open invitation to the public to enter the properties," nor are invitations to a one-time event, targeted to immediate abutters and nearby members of NEFF as opposed to the community at large. **Brookline Conservation Land Trust**, Mass. ATB Findings of Fact and Reports at 2008-694.

NEFF countered that its involvement in the subject property promoted an environmental benefit, namely, the preservation of a habitat for diverse species. However, while the preservation of nature may be a laudable goal, "simply keeping land open and allowing its natural habitat to flourish is not sufficiently charitable. Appellant must demonstrate 'an **active appropriation** to the immediate uses of the charitable cause for which the owner was organized.'" (quoting **Assessors of Boston v. The Vincent Club**, 351 Mass. 10, 14 (1966) (emphasis added) (also citing **Babcock v. Leopold Morse Home for Infirm Hebrews & Orphanage**, 225 Mass. 418, 421 (1917))). Here, the evidence established that NEFF held the subject property in a seemingly closed manner and failed to demonstrate a sufficiently active appropriation of the subject property to achieve a public benefit.

The instant appeal is also akin to **Forges Farm, Inc. v. Assessors of Plymouth**, Mass. ATB Findings of Fact and

Reports 2007-1197. That appeal pertained to land purported to be held for conservation purposes, specifically to reduce "use pressure" on a river watershed, which the taxpayer believed to be threatened by a nearby sewer treatment plant. As in the instant appeal, the assessors there maintained that the ownership of the property at issue did not benefit a sufficiently large and indefinite class of beneficiaries but merely benefitted the taxpayer and other surrounding landowners. The Board there made key findings similar to those made in the instant appeal:

[B]y Forges' own admission . . . the subject property was not accessible to the public. Rather, . . . [members of the public] would have to contact the officers of Forges Farm, Inc. in order to gain access. Although Forges claimed that it would allow access to those who contacted its officers, the land is not marked with any sort of sign indicating that access can be attained in this manner, and Forges has not made any other attempt to inform the public that the subject property is accessible.

***Forges Farm, Inc.***, Mass. ATB Findings of Fact and Reports at 2007-1201, 1202.

The Board here similarly found that there was a lack of signage along Stetson Road, the public entry to the subject property, notifying the public that the subject property was open to public access, and its website also lacked information about the subject property. Further,

**ATB 2013-93**

the taxpayer in Forges Farm offered no evidence of active appropriations at the subject property that furthered its organization's charitable purpose, including educational classes, the maintenance of trails or research conducted at that property. **Forges Farm, Inc.**, Mass. ATB Findings of Fact and Reports at 2007-1202. Here, NEFF offered minimal evidence of active appropriations, including testimony regarding just one precut educational walk, which was reportedly advertised very minimally to abutters and neighboring NEFF members. As in **Forges Farm, Inc.**, NEFF's lack of publicity and active appropriations of the subject property were fatal to the appellant's claim to a Clause Third exemption.

A factor to be considered in determining if an organization is operating as a public charity is "'whether it perform[s] activities which advance the public good, thereby relieving the burdens of government to do so.'" **Home for Aged People in Fall River**, Mass. ATB Findings of Fact and Reports at 2011-400 (quoting **Sturdy Memorial Foundation**, Mass. ATB Findings of Fact and Reports at 2002-224). "The fact that an organization provides some service that would, in its absence, have to be provided by the government, 'is frequently put forward as the fundamental reason for exempting charities from taxation.'" **Western**

**Massachusetts Lifecare Corp.**, 434 Mass. at 102 (quoting **Cunningham Foundation**, 305 Mass. at 418). In the instant appeal, however, the Board found that NEFF failed to prove how its actions "advance[d] the public good, thereby relieving the burdens of government to do so." **Home for Aged People**, Mass. ATB Findings of Fact and Reports at 2011-403. While there may be some laudable benefits to educating landowners on sustainable forestry practices, no burden of government was alleviated and no other charitable purpose was achieved by means of NEFF's occupation of the subject property. "Thus, although many activities and services are commendable, laudable and socially useful, they do not necessarily come within the definition of 'charitable' for purposes of the exemption." **Western Massachusetts Lifecare Corp.**, 434 Mass. at 103. See also **Skating Club of Boston v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2007-193, 211 (ruling that the property of a figure skating club with a mission "to foster good feeling among its members and promote interest in the art of skating" and whose activities focused on developing elite skaters was not entitled to the Clause Third exemption).

Finally, G.L. c. 61A provides for favorable tax treatment for forest land that is maintained in accordance



with a forest management plan. The fact that Chapter 61A offers a reduction in real estate tax, as opposed to a full exemption, indicates that the Legislature did not intend to exempt forest land completely from tax, but only to provide a reduced tax burden.

### **Conclusion**

"[A]lthough many activities and services are commendable, laudable and socially useful, they do not necessarily come within the definition of 'charitable' for purposes of the exemption." ***Western Massachusetts Lifecare Corp.***, 434 Mass. at 103. Particularly when an organization holds real estate for purposes that are more "remote" from the more traditionally charitable purposes, the Board must "avoid unwarranted exemptions from the burdens of government." ***New Habitat, Inc.***, 451 Mass. at 733 (quoting ***Boston Chamber of Commerce***, 315 Mass. at 718); see also ***Skating Club of Boston***, Mass. ATB Findings of Fact and Reports at 2007-211 (ruling that the property of a figure skating club with a mission "to foster good feeling among its members and promote interest in the art of skating" and whose activities focused on developing elite skaters was not entitled to the Clause Third exemption).

On the basis of all of the evidence and its findings of fact, the Board ultimately found and ruled that the appellant failed to meet its burden of proving that it occupied and used the subject property in furtherance of a traditional or an otherwise accepted charitable purpose within the meaning of Clause Third.

Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: 

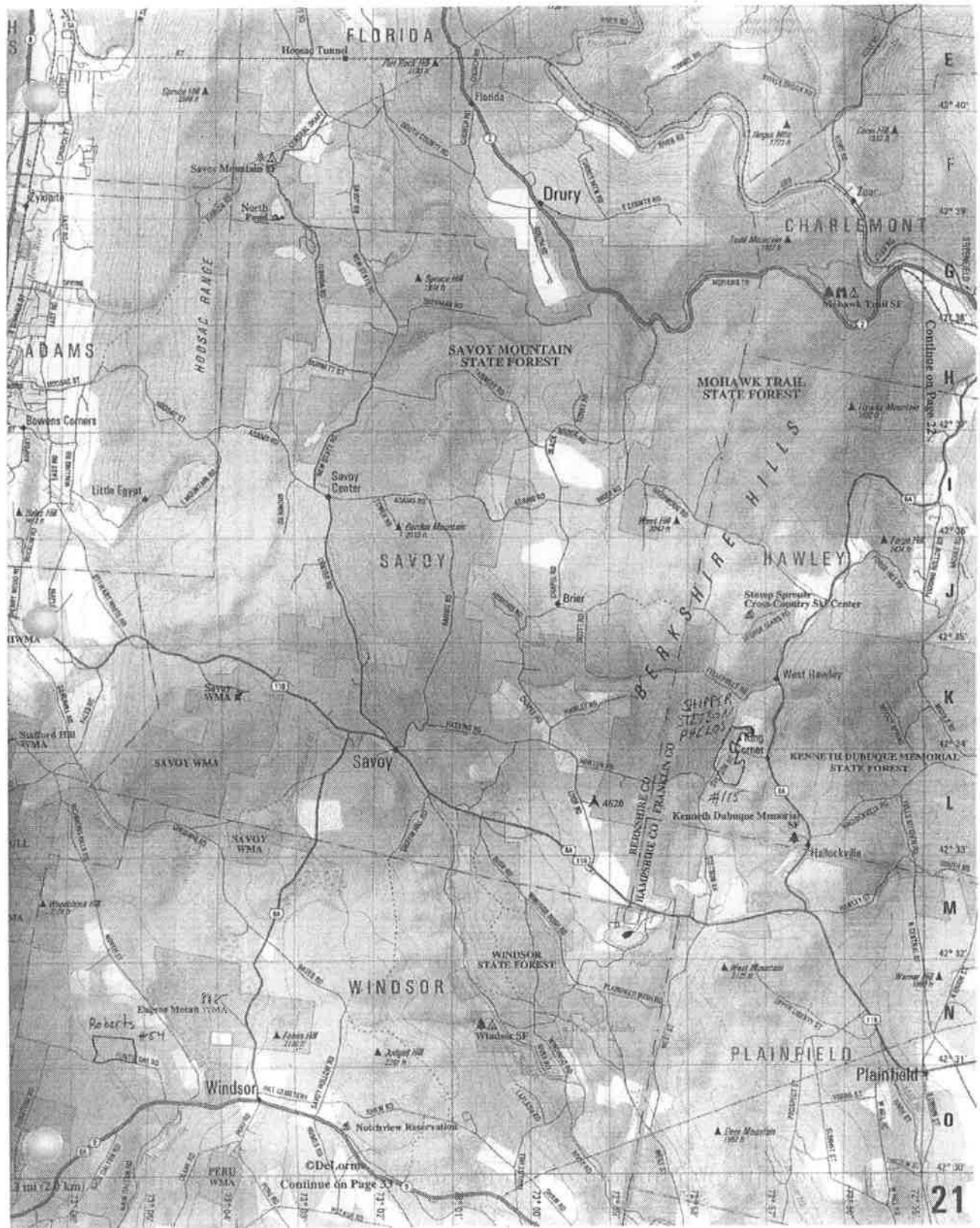
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: 

*Act.* Clerk of the Board

ATB 2013-97





**Effective: May 31, 2012**

Massachusetts General Laws Annotated Currentness

Part I. Administration of the Government (Ch. 1-182)

▣ Title IX. Taxation (Ch. 58-65C)

▣ Chapter 59. Assessment of Local Taxes (Refs & Annos)

→→ § 5. Property; exemptions

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.

First, Property owned by the United States so far as the taxation of such property is constitutionally prohibited, excepting property which the Congress of the United States has permitted to be subject to local taxation.

Second, Property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage for condition broken, lands in Boston known as the commonwealth flats, if leased for business purposes, lands and flats lying below high water mark in Provincetown harbor, belonging to the commonwealth and occupied by private persons by license of the department of environmental protection together with all wharves, piers and other structures which have been built thereon subsequent to the twenty-second day of May, nineteen hundred and twenty, and those which may hereafter be built on said lands and flats, in conformity with permits or licenses, buildings erected by lessees under section twenty-six of chapter seventy-five, structures erected on land in state forests, parks and reservations by persons occupying such land under authority conferred by the commissioner of environmental management, property taxable under chapter five hundred and seventy-five of the acts of nineteen hundred and twenty, and real estate taxable under section three A.

Third, Personal property of a charitable organization, which term, as used in this clause, shall mean (1) a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth, and (2) a trust for literary, benevolent, charitable, scientific or temperance purposes if it is established by a declaration of trust executed in the commonwealth or all its trustees are appointed by a court or courts in the commonwealth and if its principal literary, benevolent, charitable, scientific or temperance purposes are solely carried out within the commonwealth or its literary, benevolent, charitable, scientific or temperance purposes are principally and usually carried out within the commonwealth; and real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization

or organizations; and real estate purchased by a charitable organization with the purpose of removal thereto, until such removal, but not for more than two years after such purchase; provided, however, that:--

(a) If any of the income or profits of the business of the charitable organization is divided among the stockholders, the trustees or the members, or is used or appropriated for other than literary, benevolent, charitable, scientific or temperance purposes or if upon dissolution of such organization a distribution of the profits, income or assets may be made to any stockholder, trustee or member, its property shall not be exempt; and

(b) A corporation coming within the foregoing description of a charitable organization or trust established by a declaration of trust executed in the commonwealth and coming within said description of a charitable organization shall not be exempt for any year in which it omits to bring in to the assessors the list, statements and affidavit required by section twenty-nine and a true copy of the report for such year required by section eight F of chapter twelve to be filed with the division of public charities in the department of the attorney general, nor shall it be exempt for that athletic property or portion thereof for the part of the year which the assessors have determined to be utilized for other than literary, educational, benevolent, temperance, charitable, or scientific purposes in direct competition with a person engaged in the same activity and subject to the tax imposed by this chapter on properties so used. In the case of the exemption of property from tax for a part of the year, the tax imposed shall bear the same proportion to the tax which would be applicable to such property if it were subject to tax for the entire year as the time such property is employed in such use bears to the total time during which such property is available for use during the year.

(c) Real or personal property of a charitable organization occupied or used wholly or partly as or for an insane asylum, insane hospital, or institution for the insane, or principally for the treatment of mental diseases or mental disorders, shall not be exempt unless at least one fourth of all property so occupied or used, wholly or partly, on the basis of valuation thereof, and one fourth of the income of all trust and other funds and property held for the benefit of such asylum, hospital or institution and not actually occupied or used by it for such purposes, is used and expended entirely for the treatment, board, lodging or other direct benefit of indigent insane persons, or indigent persons in need of treatment for mental diseases, as resident patients, without any charge therefor to such persons either directly or indirectly, except that a charitable organization conducting an insane asylum, insane hospital or institution for the insane to which persons adjudged insane by due process of law may be committed shall be exempt from taxation on personal property and buildings so occupied or used, but shall be subject to taxation on the fair cash value of the land owned by it and used for the purposes of such asylum, hospital or institution; and

(d) Real estate acquired after May fourth, nineteen hundred and eleven, by any association or private corporation formed or incorporated for the care of the insane, shall not be exempt under paragraph (c) unless the city council of the city, or the inhabitants of the town, in which it is situated, have by vote lawfully taken consented to the acquisition of such real estate, to be so exempt; nor shall real estate of a trust coming within the foregoing description of a charitable organization, if occupied or used wholly or partly as or for an insane asylum, insane hospital, or institution for the insane, or principally for the treatment of mental diseases or mental disorders, be exempt under paragraph (c) unless the city council of the city, or the inhabitants of the town, in which it is situated, have by vote lawfully taken consented to such exemption; and

(e) Real and personal property of an educational institution coming within the foregoing description of a charitable organization which is occupied or used wholly or principally as residences for officers of such institutions and which is not part of or contiguous to real estate which is the principal location of such institution shall not be exempt.

In any city or town which accepts the provisions of this paragraph, the provisions of subsection (c) shall not apply to any charitable non-residential mental health facility, organized under chapter one hundred and eighty which provides clinical, therapeutic, diagnostic and counseling services to persons with mental disorders. In any city or town that accepts this paragraph, any real estate owned by, or held in trust for, a charitable organization for the purpose of creating community housing, as defined in section 2 of chapter 44B, that was purchased from an entity that acquired the property pursuant to section 14 of chapter 244 shall be exempt until such real estate is leased, rented or otherwise disposed of, but not for more than 7 years after such purchase.

Fourth, That portion of the real estate and buildings of incorporated horticultural societies used for their offices, libraries and buildings.

Fourth A, Real and personal estate of incorporated agricultural societies; provided, that if the whole or any part of any such real estate is used for other than agricultural exhibition purposes and if the society derives any income from such use, such real estate, or part, as the case may be, shall not be exempt; and provided further, that if such society has not held an agricultural exhibition on such land for a period of three years or more, such real estate shall not be exempt.

Fifth, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of two hundred thousand dollars, if actually used and occupied by such association, and if the net income from said property is used for charitable purposes; but it shall not be exempt for any year in which such association or the trustees holding for the benefit of such association wilfully omit to bring in to the assessors the list and statement required by section twenty-nine.

Fifth A, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of four hundred thousand dollars, if actually used and occupied by such association, and if the net income from said property is used for charitable purposes; but it shall not be exempt for any year in which such association or the trustees holding for the benefit of such association wilfully omit to bring into the assessors the list and statement required by section twenty-nine. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Fifth shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement, if any, granted to such city or town under said clause Fifth for the most recent fiscal year in which it received such reimbursement.

Fifth B, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of seven hundred thousand dol-

lars, if used and occupied by such association, and if the net income from said property is used for charitable purposes; provided, however, that such estate shall not be exempt for any year in which such association or the trustees holding for the benefit of such association wilfully omit to file with the assessors the list and statement required by section twenty-nine. This clause shall take effect upon its acceptance by any city or town. In a city or town which accepts the provisions of this clause, the provisions of clause Fifth and Fifth A shall not be applicable.

Fifth C, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of \$1,500,000, if used and occupied by such association, and if the net income from the property is used for charitable purposes, but the estate shall not be exempt for any year in which the association, or the trustees holding for the benefit of the association, willfully fails to file with the assessors the list and statement required by section 29. This clause shall take effect upon its acceptance by any city or town. In a city or town which accepts this clause, clauses Fifth, Fifth A and Fifth B shall not be applicable.

Sixth, Real estate owned by or held in trust for a regiment, corps, company or other organized unit of the volunteer militia and used exclusively for military purposes, and tangible personal property owned by such an organized unit of the volunteer militia and used by it or its members exclusively for military purposes, for any year in which the trustee or a competent officer of the organization owning such property brings in to the assessors the list and statement required by section twenty-nine.

Seventh, Personal property of a fraternal society, order or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing life, sick, accident or other benefits for the members of such society, order or association, or their dependents.

Eighth, Personal property of any retirement association exempted by section nineteen of chapter thirty-two.

Ninth, Property of any annuity, pension or endowment association exempted by section forty-one of said chapter.

Tenth, Personal property owned by or held in trust within the commonwealth for religious organizations, whether or not incorporated, if the principal or income is used or appropriated for religious, benevolent or charitable purposes.

Eleventh, Notwithstanding the provisions of any other general or special law to the contrary, houses of religious worship owned by, or held in trust for the use of, any religious organization, and the pews and furniture and each parsonage so owned, or held in irrevocable trust, for the exclusive benefit of the religious organizations, and including the official residences occupied by district superintendents of the United Methodist Church and the Christian and Missionary Alliance and of the Church of the Nazarene, and by district executives of the Southern New England District of the Assemblies of God, Inc., Unitarian-Universalist Churches and the Baptist General Conference of New England, and the official residence occupied by the president of the New England Synod of

the Lutheran Church in America, Inc., and the official residence occupied by a person who has been designated by the congregation of a Hebrew Synagogue or Temple as the rabbi thereof, but such exemption shall not, except as herein provided, extend to any portion of any such house of religious worship appropriated for purposes other than religious worship or instruction. The occasional or incidental use of such property by an organization exempt from taxation under the provisions of 26 USC Sec. 501(c)(3) of the Federal Internal Revenue Code shall not be deemed to be an appropriation for purposes other than religious worship or instruction.

Twelfth, Cemeteries, tombs and rights of burial, so long as dedicated to the burial of the dead, and buildings owned by religious nonprofit corporations and used exclusively in the administration of such cemeteries, tombs and rights of burial.

Thirteenth, Personal property held by cities, towns, religious societies and cemeteries, whether incorporated or unincorporated, or by the commonwealth or by any corporation, for the perpetual care of graves, cemetery lots and cemeteries, for the placing of flowers upon graves, for the care or renewal of gravestones, monuments or tombs, and for the care and maintenance of burial chapels; but this exemption shall not apply to any such personal property held by a cemetery corporation which distributes any of the income or profits of its business among its stockholders or members, nor shall such property be exempt for any year in which the holder thereof, other than the state treasurer, omits to bring in to the assessors the list and statement required by section twenty-nine.

Fourteenth, Any real or personal property of a water company whose charter exempts such property from taxation, but not of any other water company unless exempted by clause sixteenth.

Fifteenth, Property other than real estate owned by a credit union incorporated under chapter one hundred and seventy-one; also the capital stock thereof.

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.

<[ Paragraph (3) of clause Sixteenth effective for tax years beginning on or after January 1, 2011. See 2010, 240, Sec. 200.]>

(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.

Seventeenth, Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviv-

ing spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than ten years; provided, that the whole estate, real and personal, of such spouse, person or minor does not exceed in value the sum of twenty thousand dollars, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first and exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Where the whole estate, real and personal, of such spouse, person or minor exceeds in value the sum of eight thousand dollars, exclusive of property otherwise exempt as aforesaid and exclusive of the value of the mortgage interest as aforesaid, this exemption shall be borne by the commonwealth, and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this clause.

<[ There is no clause Seventeenth A or Seventeenth B.]>

Seventeenth C, Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviving spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than ten years; provided, that the whole estate, real and personal, of such spouse, person or minor does not exceed in value the sum of forty thousand dollars, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first, exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate and exclusive of the first sixty thousand dollars in value of real estate occupied by such person as his domicile. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this clause. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Seventeenth shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement granted to such city or town under said clause Seventeenth for the most recent fiscal year in which it received such reimbursement.

Seventeenth C 1/2. Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and

seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviving spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than ten years; provided, however, that the whole estate, real and personal of such spouse, person or minor does not exceed in value the sum of forty thousand dollars, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first, exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate and exclusive of the first one hundred and fifty thousand dollars in value of real estate occupied by such person as his domicile. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this clause. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Seventeenth shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement granted to such city or town under said clause Seventeenth for the most recent fiscal year in which it received such reimbursement.

Seventeenth D, Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviving spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than five years; provided, that the whole estate, real and personal, of such spouse, person or minor does not exceed in value the sum of forty thousand dollars provided that the real property occupied by such person as his or her domicile shall not be included in computing the whole estate, except for any portion of said real property which produces income and exceeds two dwelling units, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first, exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate.

No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this clause. This clause shall take effect in any city or town upon its acceptance by such city or town for fiscal years commencing on or after July first, nineteen hundred and eighty-six, or for fiscal years commencing on or after such later July first as the city or town may elect. In those cities and towns which accept the provisions of this clause, the provisions of clauses Seventeenth and Seventeenth C shall not be applicable; provided, however, that the state treasurer shall annually reimburse the city or town an amount equal to the reimbursement granted

to such city or town under said clause Seventeenth for the most recent fiscal year in which it received such reimbursement.

Seventeenth E. The amount of the whole estate, real and personal, as set forth in clauses Seventeenth, Seventeenth C, Seventeenth C 1/2 and Seventeenth D, shall be increased annually by an amount equal to the increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for such year. The department of revenue shall annually inform each city or town that accepts this clause of the amount of this increase. This clause shall take effect in a city or town upon its acceptance by such city or town. Acceptance of this clause by a city or town shall not increase its reimbursement by the commonwealth under this section.

Eighteenth, Any portion of the estates of persons who by reason of age, infirmity and poverty, or financial hardship resulting from a change to active military status, not including initial enlistment are in the judgment of the assessors unable to contribute fully toward the public charges.

Eighteenth A. Real property, to an amount determined as hereinafter provided, of a person who by reason of poverty, or financial hardship resulting from a change to active military status, not including initial enlistment is in the judgment of the assessors unable to contribute fully toward the public charges and which property is owned and occupied by him as his domicile or owns the same jointly with a spouse or jointly or as a tenant in common with a person not a spouse and is occupied by him as his domicile provided, that such person has been domiciled in the commonwealth for the preceding 10 years.

Any such person may, on or before December 15 of each year to which the tax relates or within 3 months after the date on which the bill or notice is first sent, whichever is later, apply to the board of assessors for an exemption of such real property from taxation during such year; provided, however, that in the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the exemption shall not exceed that proportion of total valuation which the amount of his interest in such property bears to the whole tax due. The board of assessors may grant such exemption provided that the owner or owners of such real property have entered into a tax deferral and recovery agreement with the board of assessors on behalf of the city or town. The agreement shall provide:--

(1) that no sale or transfer of such real property may be consummated unless the taxes which would otherwise have been assessed on such portion of the real property as is so exempt have been paid, with interest at the rate of 8 per cent per annum or such lesser rate as may be determined by the legislative body of the city or town, subject to its charter, not later than the beginning of the fiscal year to which the tax relates;

(2) that the total amount of such taxes due, plus interest, thereon, does not exceed 50 per cent of the owner's proportional share of the full and fair cash value of such real property;

(3) that upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to said real property by paying in full the total taxes which would otherwise have been due, plus in-

terest; provided, however, that if such heir-at-law, assignee or devisee in a surviving spouse who enters into a tax deferral and recovery agreement under this clause, payment of the taxes and interest due shall not be required during the life of such surviving spouse. Any additional taxes deferred, plus interest, on said real property under a tax deferral and recovery agreement signed by a surviving spouse shall be added to the taxes and interest which would otherwise have been due, and the payment of which has been postponed during the life of such surviving spouse, in determining the 50 per cent requirement of clause (2);

(4) that if the taxes due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such taxes and interest shall be recovered from the estate of the owner; and

(5) that any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written approval shall be made a part of such agreement; and

(6) that the tax deferral and recovery agreement shall not exceed 3 tax years, that the total amount of the taxes due, plus interest, shall be paid in 5 equal payments over a 5-year period, and that the first payment shall be due 2 years after the last day of the tax deferral.

In the case of each tax deferral and recovery agreement entered into between the board of assessors and the owner or owners of such real property, the board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such agreement for such taxes as have been assessed under this chapter, plus interest as provided hereinafter.

A lien filed pursuant to this section shall be subsequent to any liens securing a reverse mortgage, excepting shared appreciation instruments. The statement shall name the owner or owners and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for such statement shall be paid by the city or town and shall be added to and become a part of the taxes due.

In addition to the remedies provided by this clause, the recorded statement of the assessors provided for in this clause shall have the same force and effect as a valid taking for nonpayment of taxes under the provisions of section 53 of chapter 60, except that: (1) interest shall accrue at the rate provided in this clause until the conveyance of the property or the death of the person whose taxes have been deferred, after which time interest shall accrue at the rate provided in section 62 of said chapter 60; (2) no assignment of the municipality's interest under this clause may be made pursuant to section 52 of said chapter 60; (3) no petition under section 65 of said chapter 60 to foreclose the lien may be filed before the expiration of 6 months from the conveyance of the property or the death of the person whose taxes have been deferred.

Nineteenth, Merchandise, machinery and animals owned by inhabitants of this commonwealth but situated in another state.

Twentieth. The wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount; his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse kept and maintained under chapter one hundred and five or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, and which is the place of his domicile; and, to an amount not exceeding a total value of ten thousand dollars, in respect to boats, fishing gear and nets owned and actually used by him in the prosecution of his business if engaged exclusively in commercial fishing; provided, that failure to comply with the provisions of sections twenty-nine and sixty-one relative to the filing of a list of his personal estate with the assessors shall not be a bar to an abatement of the tax, if any, imposed upon such personal estate.

Twenty-first. Mules, horses and neat cattle less than one year old; swine, sheep and goats less than six months old; domestic fowl not exceeding fifteen dollars in value; mules, horses, neat cattle, swine, sheep, goats and domestic fowl subject to an excise imposed by section eight A; neat cattle which are less than three years old and held for the personal use and consumption of the owner.

Twenty-second. Real estate of the following classes of persons who are legal residents of the commonwealth and who are veterans, as defined in clause Forty-third of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemptions under this clause, hereinafter referred to in this clause as soldiers and sailors, provided such real estate is occupied in whole or in part as his domicile by such person, and provided, further that if the spouse of the soldier or sailor is also a soldier or sailor each shall receive the amount of exemption provided in this clause to the same extent as if unmarried, to the amount of two thousand dollars of assessed taxable valuation or the sum of \$400, whichever would result in an abatement of the greater amount of actual taxes due. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to a soldier or sailor or to the spouse, surviving spouse, father or mother of a soldier or sailor to evade taxation.

(a) Soldiers and sailors who, as a result of disabilities contracted while in the line of duty, have a disability rating of ten per cent or more as determined by the Veterans Administration or by any branch of the armed forces. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been allowed, unless the disability rating determined by the Veterans Administration or any branch of the armed forces is reduced to less than ten per cent; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted.

(b) Soldiers and sailors who served in the military or naval service of the United States in the Spanish War, in the Philippine Insurrection or in the Chinese Relief Expedition and were discharged or released in any manner other than dishonorably therefrom.

(c) Soldiers and sailors who have been awarded the decoration of the Purple Heart. No evidence of disability shall be required under this paragraph. After the assessors have allowed an exemption under this paragraph, no further evidence of the receiving of the Purple Heart shall be required in any subsequent year in the city or town in which the exemption has been so allowed.

(d) Spouses of soldiers and sailors entitled to exemption under this clause and the surviving spouse of soldiers or sailors described in this clause who at the time of their death were entitled to exemption or who lost their lives while serving in said war or in said Insurrection or said Relief Expedition, so long as they remain unmarried.

(e) Fathers and mothers of soldiers or sailors who lost their lives in such service, provided that only two thousand dollars of the taxable valuation of real property or the sum of \$400, whichever would result in an abatement of the greater amount of actual taxes due, of the real estate of any such father or mother held jointly by them shall be exempted; provided, further, that the words "father and mother" as appearing in this paragraph, shall be construed to include natural fathers and mothers, and fathers and mothers by adoption and persons who stood in loco parentis to such soldiers and sailors.

(f) Surviving spouses of soldiers or sailors who served in the armed forces of the United States between April sixth, nineteen hundred and seventeen and November eleventh, nineteen hundred and eighteen, or who were awarded the World War I Victory Medal; provided such spouses have remained unmarried and have resided in the commonwealth for five consecutive years next prior to the date of filing for exemption under this section; and provided, further, that the whole estate, real and personal, of such spouse does not exceed in value the sum of twenty thousand dollars, exclusive of the value of the mortgage interest held by persons other than such spouse in such mortgaged real estate as may be included in such whole estate. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this paragraph will be required in any subsequent year in the city or town in which the exemption has been so allowed, except that the assessors may require an annual statement that such spouse has remained unmarried; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted.

(g) For the purposes of this clause, \$2,000.00 of this exemption or up to the sum of \$175.00, whichever basis is applicable shall be borne by the city or town; the balance, up to the sum of \$225 shall be borne by the commonwealth.

Twenty-second A, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans, as defined in clause forty-three of section seven of chapter four and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, who according to the records of the Veterans Administration or of any branch of the armed forces of the United States by reason of injury received or disease contracted while in such service and in the line of duty, lost or have suffered permanent loss of use of one foot at or above the ankle or lost or have suffered permanent loss of use of one hand at or above the wrist, or who according to the records of the Veterans Administration by reason of injury received or

disease contracted while in such service, is receiving a statutory award from the Veterans Administration for such loss or loss of sight of one eye, or who have been awarded the congressional medal of honor, the distinguished service cross, the navy cross or the air force cross, to the amount of four thousand dollars of the taxable valuation of real property or the sum of \$750 whichever would result in an abatement of the greater amount, of actual taxes due, in the case of each person, provided that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house, then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of \$750, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been granted; provided, however, that the assessors may refuse to grant an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such disabled veteran as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

<[ Second paragraph of clause Twenty-second A effective until May 31, 2012. For text effective May 31, 2012, see below.]>

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable shall be borne by the city or town; the balance, up to two thousand dollars of exemption or up to the sum of \$575, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

<[ Second paragraph of clause Twenty-second A as amended by 2012, 108, Sec. 7A effective May 31, 2012. For text effective until May 31, 2012, see above.]>

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable shall be borne by the city or town; the balance, up to two thousand dollars of exemption or up to the sum of \$575, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance. No person who has received an exemption under this clause shall be denied the benefit of the exemption because the person returns to active service.

Twenty-second B, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans, as defined in clause forty-three of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to the date of filing for exemption under this clause, who according to the records of the Veterans Administration or of any branch of the armed forces by reason of such service in the armed forces of the United States have suffered in the line of duty the loss or permanent loss of use of both



feet at or above the ankle, or loss or permanent loss of use of both hands at or above the wrist or loss or permanent loss of use of one foot at or above the ankle and one hand at or above the wrist, or the loss of sight of both eyes as prescribed and certified by the Veterans Administration to the amount of eight thousand dollars of the taxable valuation of real property or the sum of \$1,250, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of \$1,250 whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such disabled veteran, as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been so allowed; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance up to six thousand dollars of exemption or up to the sum of \$1,075, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Twenty-second C, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth who are veterans, as defined in clause forty-three of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, and who according to the records of the Veterans Administration by reason of such service in the armed forces of the United States have suffered in the line of duty permanent and total disability, and who by reason of such disability have received assistance in acquiring "specially adapted housing" under laws administered by the Veterans Administration to the amount of ten thousand dollars of the taxable valuation of real property or the sum of \$1,500, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of \$1,500, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such a disabled veteran, as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has

been so allowed; provided, however, that the assessors may refuse to allow an exemption in any subsequent year if they become aware that the soldier or sailor did not satisfy all of the requisites of this clause at the time the exemption was first granted.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance up to eight thousand dollars of exemption or up to the sum of \$1,325, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

<[ Clause Twenty-second D applicable as provided by 2006, 260, Sec. 17.]>

Twenty-second D, Real estate to the full amount of the taxable valuation of real property of the surviving spouses of soldiers and sailors and members of the National Guard whose death occurred as a proximate result of an injury sustained or disease contracted in a combat zone, or who are missing in action with a presumptive finding of death, as a result of combat as members of the armed forces of the United States, if the real estate is occupied by the surviving spouse as a domicile, and if the surviving spouse has been domiciled in the commonwealth for 5 consecutive years next before the date for filing for exemption under this clause or the soldier or sailor or member of the National Guard was domiciled in Massachusetts for at least 6 months before entering service.

<[ Second paragraph of clause Twenty-second D effective until May 31, 2012. For text effective May 31, 2012, see below.]>

Such exemption shall be available until such time that the surviving spouse dies or remarries; provided, however, that in no case shall the abatement amount exceed the sum of \$2,500 in any fiscal year following the fifth fiscal year of receipt of the abatement.

<[ Second paragraph of clause Twenty-second D as amended by 2012, 108, Sec. 8 effective May 31, 2012. For text effective until May 31, 2012, see above.]>

Such exemption shall be available until such time that the surviving spouse dies or remarries.

No real estate shall be so exempt which has been conveyed to the surviving spouse to evade taxation. The amount of the exemption shall be borne by the commonwealth, and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected for this exemption.

Twenty-second E, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans as defined in clause forty-three of section seven of chapter four. and who, as a result of disabilities contracted while in such service and in the line of duty. have a disability rating of one hundred

per cent as determined by the Veterans Administration, and who were domiciled in the commonwealth for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, to the amount of six thousand dollars of the taxable valuation of real property or the sum of \$1,000, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person; and provided further, that if said property be greater than a single-family house, then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of \$1,000, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such disabled veteran as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

After the assessors have allowed an exemption under this clause, the assessors shall require an annual statement certifying that the disability rating as determined by the Veterans Administration has not been reduced to less than one hundred per cent.

No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such soldier or sailor to evade taxation.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance, up to four thousand dollars of exemption or up to the sum of \$825, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Notwithstanding the provisions of this section, in any city or town which accepts the provisions of this paragraph, said exemptions available under clauses twenty-second, twenty-second A, twenty-second B, twenty-second C, twenty-second D and twenty-second E may be granted to otherwise eligible persons who have resided in the commonwealth for one year prior to the date of filing for exemptions under the applicable clause.

<[ There is no clause Twenty-third.]>

Twenty-fourth, All intangible personal property.

<[ There is no clause Twenty-fifth.]>

Twenty-sixth, Land classified under chapter sixty-one, except from the taxes provided for in said chapter.

<[ There are no clauses Twenty-seventh to Thirty-fourth.]>

Thirty-fifth, Motor vehicles and trailers subject to taxation or exempted from taxation under the provisions of chapter sixty A, irrespective of the date of registration thereof under chapter ninety.

Thirty-sixth, Manufactured homes located in manufactured housing communities subject to the monthly license fee provided for under section thirty-two G of chapter one hundred and forty and mobile homes deemed, by section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, [FN1] not to be located or present in or have a situs in such city or town for the purposes of taxation in respect to personal property, and for the purposes of this clause, a manufactured or mobile home shall include, but not be limited to, normal repairs and domiciliary additions and that repairs and domiciliary additions shall include, but not be limited to, repair or replacement of existing masonry, addition or replacement of new ceiling, wall floor surfacing, air conditioning installation or any domiciliary attachment.

Thirty-seventh, Real property, to the amount of five thousand dollars of the taxable valuation of real property, or the sum of four hundred and thirty-seven dollars and fifty cents, whichever would result in an abatement of the greater amount of actual taxes due, of a blind person who is a legal resident of the commonwealth, whether such property is owned by him separately or jointly or as a tenant in common; provided, that such property is occupied by such person as his domicile. No real property shall be so exempt which has been conveyed to such blind person to evade taxation.

Four thousand dollars of this exemption or the sum of three hundred and fifty dollars, whichever basis is applicable, shall be borne by the city or town, the balance up to one thousand dollars of exemption or eighty-seven dollars and fifty cents, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Thirty-seventh A, The sum of five hundred dollars of the actual taxes due, of a blind person who is a legal resident of the commonwealth, whether such property is owned by him separately or jointly or as a tenant in common; provided, that such property is occupied by such person as his domicile. No real property shall be exempt which has been conveyed to such blind person to evade taxation. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause thirty-seventh shall not be applicable; provided, however, the sum of eighty-seven dollars and fifty cents of this exemption shall be borne by the commonwealth, and the state treasurer shall annually reimburse the city or town for the amount thereof.

Thirty-eighth, In determining the valuation, for city and town tax purposes, of any privately-owned airport, the value of any improvements on or to the landing area shall not be included so long as the owner grants free use of the landing area to the general public for the landing, taking off and taxiing of aircraft; provided, however, that the airport shall meet the minimum requirements set forth by the aeronautics division in rules and regulations issued pursuant to section 39 of chapter 90 and is certified by the aeronautics division to be included within the needs of civil aeronautics as established by the state airport plan prepared pursuant to section 39A of said chapter 90 and is approved for commercial operation by the aeronautics division.

<[ There is no clause Thirty-ninth.]>

Fortieth, Air-raid, bomb or fall-out shelters constructed under standards established by the Massachusetts emergency management agency of the commonwealth or the United States in or in connection with residential dwellings so long as such shelters shall be used exclusively for air-raid, bomb or fall-out protection.

Forty-first, Real property, to the amount of four thousand dollars of the taxable valuation of real property or the sum of five hundred dollars, whichever would amount in an abatement of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an abatement is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday prior to the fiscal year for which an abatement is sought and occupied by them as their domicile, or of a person who has reached his seventieth birthday prior to the fiscal year for which an abatement is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided; (A) that such person (1) has been domiciled in the commonwealth for the preceding ten years (2) has so owned and occupied such real property or other real property in the commonwealth for five years, or (3) is a surviving spouse who inherits such real property and has occupied such real property or other real property in the commonwealth for five years and who otherwise qualifies under this clause; (B) that such person had, in the preceding year, gross receipts from all sources of less than six thousand dollars, or, if married, combined gross receipts with his spouse of less than seven thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses, and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such gross receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (C) that such person had a whole estate, real and personal, not in excess of seventeen thousand dollars, or if married, not in excess of twenty thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income, provided however that a taxpayer may, at his option, elect to include the value of real property occupied as his domicile in computing the value of his whole estate. If such real property is included in the whole estate, the value of the whole estate shall not exceed forty thousand dollars, or if married, forty-five thousand dollars. Household furnishings and property already exempt under the twelfth, twentieth, twenty-first, and thirty-fifth clauses of this section shall not be included in computing the whole estate. In the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of four thousand dollars valuation or the sum of five hundred dollars, whichever would result in an abatement of the greater amount of taxes due, which the amount of his interest in such property bears to the whole tax due; provided that no exemption shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than six thousand dollars or, if married, the combined gross receipts from all sources whatsoever of each joint tenant or tenant in common and his spouse is less than seven thousand dollars and unless the combined whole estate, real and personal, of each joint tenant or tenant in common is less than twelve thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant in common and his spouse does not

exceed fifteen thousand dollars; and provided, further, that no proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. In determining the total period of ownership of an applicant for exemption under this clause, the time during which the same property was owned by a husband or wife individually shall be added to the period during which such property was owned by said husband and wife jointly. Where a portion of the real property occupied as a domicile of an applicant under this clause is located within a municipality other than the municipality in which the applicant is domiciled, and where the value of said property, or the taxes, assessed by the municipality in which such applicant is domiciled would result in his receiving less than the maximum exemption provided by this clause, that part of the property of such applicant within such other municipality shall be exempt to a value, or to an amount of tax, sufficient to grant the applicant the total maximum exemption provided by the clause. Any person who receives an exemption under the provisions of this clause shall not receive an exemption on the same property under any other provision of this section except clause Eighteen.

Any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause, clause Forty-first B, clause Forty-first C, and clause Forty-first C 1/2 shall be distributed as hereinafter provided. The commissioner of revenue shall divide said sum by the number of exemptions under this clause, clause Forty-first B, clause Forty-first C and clause Forty-first C 1/2 granted in the preceding fiscal year and distribute to each city and town a pro rata share of said sum based upon the number of such exemptions granted in each city and town. If a city or town has elected to grant exemptions under clause Forty-first B, clause Forty-first C or clause Forty-first C 1/2 in lieu of this clause, the number of exemptions granted in such city or town, for purposes of this computation, shall not exceed the number of exemptions granted under this clause in such city or town in the most recent fiscal year in which such exemptions under this clause were granted. If a city or town has elected to grant exemptions under clause Forty-first C 1/2 in lieu of this clause, the value of exemptions granted, for purposes of this exemption, shall not be greater than \$500 per residence for which an exemption is granted.

Forty-first A, Real property, to an amount determined as hereinafter provided, of a person sixty-five years of age or over and occupied by him as his domicile, of a person who owns the same jointly with his spouse, either of whom is sixty-five years of age or over, and occupied as their domicile, or of a person who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided, that such person has been domiciled in the commonwealth for the preceding ten years and

(1) has so owned and occupied as his domicile such real property or other real property in the commonwealth for five years; or

(2) is a surviving spouse who inherits such real property and has occupied such real property or other real property in the commonwealth as his or her domicile for five years and who otherwise qualifies under this clause; and provided further that such person, and such person and his spouse, if married, had, during the preceding year, gross receipts from all sources not in excess of twenty thousand dollars. Any city or town may also, by vote of its legislative body, adopt a higher maximum qualifying gross receipts amount for the purposes of this section; provided, however, that such maximum qualifying gross receipts amount shall not exceed the amount of income determined by the commissioner of revenue for the purposes of subsection (k) of section 6 of chapter 62, for a single person who is not a head of household.

In determining the total period ownership of an applicant for exemption under this clause, the time during which the same property was owned by a husband or wife individually shall be added to the period during which such property was owned by said husband and wife jointly. In computing the gross receipts of such an applicant or of such an applicant and his spouse, if married, ordinary business expenses and losses may be deducted but not personal and family expenses.

Any such person may, on or before December fifteenth of each year to which the tax relates or within three months after the date on which the bill or notice is first sent, whichever is later, apply to the board of assessors for an exemption of all or part of such real property from taxation during such year; provided, however, that in the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the exemption shall not exceed that proportion of total valuation which the amount of his interest in such property bears to the whole tax due. The board of assessors shall grant such exemption provided that the owner or owners of such real property have entered into a tax deferral and recovery agreement with said board of assessors on behalf of the city or town. The said agreement shall provide:

(1) that no sale or transfer of such real property may be consummated unless the taxes which would otherwise have been assessed on such portion of the real property as is so exempt have been paid, with interest at the rate of eight per cent per annum or such lesser rate as may be determined by the legislative body of the city or town, subject to its charter, no later than the beginning of the fiscal year to which the tax relates;

(2) that the total amount of such taxes due, plus interest, for the current and prior years does not exceed fifty per cent of the owner's proportional share of the full and fair cash value of such real property;

(3) that upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to said real property by paying in full the total taxes which would otherwise have been due, plus interest; provided, however, if such heir-at-law, assignee or devisee is a surviving spouse who enters into a tax deferral and recovery agreement under this clause, payment of the taxes and interest due shall not be required during the life of such surviving spouse. Any additional taxes deferred, plus interest, on said real property under a tax deferral and recovery agreement signed by a surviving spouse shall be added to the taxes and interest which would otherwise have been due, and the payment of which has been postponed during the life of such surviving spouse, in determining the fifty per cent requirement of subparagraph (2);

(4) that if the taxes due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such taxes and interest shall be recovered from the estate of the owner; and

(5) that any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written approval shall be made a part of such agreement.

In the case of each tax deferral and recovery agreement entered into between the board of assessors and the owner or owners of such real property, said board of assessors shall forthwith cause to be recorded in the registry of

deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such agreement for such taxes as have been assessed under the provisions of this chapter, plus interest as hereinafter provided. A lien filed pursuant to this section shall be subsequent to any liens securing a reverse mortgage, excepting shared appreciation instruments. The statement shall name the owner or owners and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for such statement shall be paid by the city or town and shall be added to and become a part of the taxes due.

In addition to the remedies provided by this clause, the recorded statement of the assessors provided for in this clause shall have the same force and effect as a valid taking for nonpayment of taxes under the provisions of section fifty-three of chapter sixty, except that: (1) interest shall accrue at the rate provided in this clause until the conveyance of the property or the death of the person whose taxes have been deferred, after which time interest shall accrue at the rate provided in section sixty-two of chapter sixty; (2) no assignment of the municipality's interest under this clause may be made pursuant to section fifty-two of chapter sixty; (3) no petition under section sixty-five of chapter sixty to foreclose the lien may be filed before the expiration of six months from the conveyance of the property or the death of the person whose taxes have been deferred.

Forty-first B, Real property, to the amount of four thousand dollars of taxable valuation or the sum of five hundred dollars, whichever would amount in an exemption of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by them as their domicile, or for a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided: (A) that such person (1) has been domiciled in the commonwealth for the preceding ten years, (2) has so owned and occupied such real property or other real property in the commonwealth for five years, or (3) is a surviving spouse who inherits such real property and has occupied such real property in the commonwealth five years and who otherwise qualified under this clause; (B) that such person had, in the preceding year gross receipts from all sources of less than ten thousand dollars, or if married, combined gross receipts with his spouse of less than twelve thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses, and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such gross receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (C) that such person had a whole estate, real and personal, not in excess of twenty thousand dollars, or if married, not in excess of twenty-three thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income. In the case of real property owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of four thousand dollars valuation or the sum of five hundred dollars,



whichever would result in an exemption of the greater amount of taxes due, which the amount of his interest in such property bears to the whole tax due; provided: (A) that no exemption shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than ten thousand dollars or, if married, the combined gross receipts from all sources whatsoever of each joint tenant or tenant in common and his spouse is less than twelve thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses, and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (B) that the combined whole estate, real and personal, of each joint tenant or tenant in common is less than twenty thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant or tenant in common and his spouse does not exceed twenty-three thousand dollars, provided that real property occupied as their domicile shall not be included in computing the whole estate except for any portion of said property which produces income. No proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. Household furnishings and property already exempt under the twelfth, twentieth, thirty-first, and thirty-fifth clauses of this section shall not be included in computing the whole estate for purposes of this section. Where a portion of the real property occupied as a domicile of an applicant under this clause is located within a municipality other than the municipality in which the applicant is domiciled, and where the value of said property, or the taxes, assessed by the municipality in which such applicant is domiciled would result in his receiving less than the maximum exemption provided by this clause, that part of the property of such applicant within such other municipality shall be exempt to a value, or to an amount of tax, sufficient to grant the applicant the total maximum exemption provided by the clause. This clause shall take effect upon its acceptance by any city or town. In those cities and towns which accept the provisions of this clause, the provisions of clause Forty-first shall not be applicable; provided, however, that any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause and clause Forty-first shall be distributed as provided in said clause Forty-first.

Forty-first C, Real property, to the amount of four thousand dollars of taxable valuation or the sum of five hundred dollars, whichever would amount in an exemption of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by them as their domicile, or for a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided: (A) that such person (1) has been domiciled in the commonwealth for the preceding ten years, (2) has so owned and occupied such real property or other real property in the commonwealth for five years, or (3) is a surviving spouse who inherits such real property and has occupied such real property in the commonwealth five years and who otherwise qualified under this clause; (B) that such person had, in the preceding year gross receipts from all sources of less than thirteen thousand dollars, or if married, combined gross re-

ceipts with his spouse of less than fifteen thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses; and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such gross receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (C) that such person had a whole estate, real and personal, not in excess of twenty-eight thousand dollars, or if married, not in excess of thirty thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income and exceeds two dwelling units. A city, by vote of its council and approval of its mayor, or a town, by vote of town meeting, may adjust the following factors contained in these provisions by: 1) reducing the requisite age of eligibility to any person age 65 years or older; 2) increasing either or both of the amounts contained in the first sentence of this clause, by not more than 100 per cent; 3) increasing the amounts contained in subclause (B) of said first sentence whenever they appear in said subclause from \$13,000 to not more than \$20,000 and from \$15,000 dollars to not more than \$30,000; 4) increasing the amounts contained in subclause (C) of said first sentence whenever they appear in said subclause from \$28,000 dollars to not more than \$40,000 and from \$30,000 to not more than \$55,000; and 5) by further excluding from the determination of whole estate up to 3 dwelling units. In the case of real property owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of four thousand dollars valuation or the sum of five hundred dollars, whichever would result in an exemption of the greater amount of taxes due, which the amount of his interest in such property bears to the whole tax due, provided: (A) that no exemption shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than thirteen thousand dollars or, if married, the combined gross receipts from all sources whatsoever, of each joint tenant or tenant in common and his spouse is less than fifteen thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses; and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from an annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (B) that the combined whole estate, real and personal, of each joint tenant or tenant in common is less than twenty-eight thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant or tenant in common and his spouse does not exceed thirty thousand dollars, provided that real property occupied as their domicile shall not be included in computing the whole estate except for any portion of said property which produces income and exceeds two dwelling units. No proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. Household furnishings and property already exempt under the clauses Twelfth, Twentieth, Thirty-first, and Thirty-fifth shall not be included in computing the whole estate for purposes of this section. Where a portion of the real property occupied as a domicile of an applicant under this clause is located within a municipality other than the municipality in which the applicant is domiciled, and

where the value of said property, or the taxes, assessed by the municipality in which such applicant is domiciled would result in his receiving less than the maximum exemption provided by this clause, that part of the property of such applicant within such other municipality shall be exempt to a value, or to an amount of tax, sufficient to grant the applicant the total maximum exemption provided by the clause. This clause shall take effect in any city or town upon its acceptance by such city or town for fiscal years commencing on or after July first, nineteen hundred and eighty-six, or for fiscal years commencing on or after such later July first as the city or town may elect. In those cities and towns which accept the provisions of this clause, the provisions of clause Forty-first and Forty-first B shall not be applicable; provided, however, that any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause, clause Forty-first and clause Forty-first B shall be distributed as provided in said clause Forty-first.

Forty-first C 1/2, Real property, of an amount equal to 5 per cent of the average assessed value of all Class one parcels within the city or town of the principal residence of a taxpayer as used by the taxpayer for income tax purposes of a person who has reached his seventieth birthday before the beginning of the fiscal year for which an exemption is sought and occupied by the person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday before the beginning of the fiscal year for which an exemption is sought and occupied by them as their domicile, or of a person who has reached his seventieth birthday before the beginning of the fiscal year for which an exemption is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile if: (A) the person: (1) has been domiciled in the commonwealth for the preceding 10 years; (2) has owned and occupied the real property or other real property in the commonwealth for 5 years, or (3) is a surviving spouse who inherits the real property and has occupied this real property in the commonwealth for 5 years and who otherwise qualified under this clause; and (B) the taxpayer's gross receipts from all sources do not exceed the dollar amount calculated to be the income limits on a taxpayer's total income for a single individual who is not the head of a household for the purposes of paragraph (3) of subsection (k) of section 6 of chapter 62 for the most recently completed state tax year, as determined by the commissioner of revenue.

A city or town, by vote of its legislative body, subject to its charter, may adjust the exemption contained in this clause by: (1) increasing the amount of the exemption to as much as 20 per cent of the average assessed value of all Class one parcels within the city or town; (2) reducing the requisite age of eligibility to any person age 65 years or older; and (3) reducing the residency requirements to not less than 5 years; and (4) utilizing income limits on a household basis rather than on a single applicant basis for real estate tax exemptions.

This clause shall take effect in any city or town that votes to accept its terms at the next regularly scheduled municipal election for any fiscal year commencing on or after July 1, 2006. The question appearing on the official ballot shall be in the following form:

“Shall section \_\_\_\_ of the acts of \_\_\_\_ granting real estate property tax reductions to qualifying senior citizens be accepted?”

If a majority of the votes cast in answer to this question is in the affirmative, the clause shall take effect, but not otherwise.

In those cities and towns that accept this clause, clauses Forty-first, Forty-first B and Forty-first C shall not apply but any amount of money annually appropriated by the commonwealth for the purpose of reimbursing cities and towns for taxes abated under this clause, clause Forty-first, clause Forty-first B and clause Forty-first C shall be distributed as provided in said clause Forty-first.

Forty-first D, The amounts of the gross receipts and whole estate, real and personal, as set forth in clauses Forty-first, Forty-first B and Forty-first C, shall be increased annually by an amount equal to the increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics, for such year. The department of revenue shall annually inform each city or town that accepts this clause of the amount of this increase. This clause shall take effect in a city or town upon its acceptance by such city or town. Acceptance of this clause by a city or town shall not increase its reimbursement by the commonwealth under this section.

Forty-second, Real estate of the surviving spouse, until remarried, of a police officer or firefighter killed in the line of duty as such police officer or firefighter; provided that such real estate is owned, and occupied by such surviving spouse as a domicile, and provided, further, that no real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse to evade taxation.

Forty-third, Real estate of the surviving minor children, including adopted children, of a police officer or firefighter killed in the line of duty as such police officer or firefighter; provided that such real estate is owned and occupied by such children as their domicile, and provided, further, that no real estate shall be so exempt which the assessors shall adjudge has been conveyed to such children to evade taxation.

Forty-fourth, Any structure, building, device, appliance, machinery, equipment or other property, whether consisting of real or tangible personal property, or a combination of both, which is constructed, installed or placed in operation, in whole or in part, for the purpose of eliminating industrial waste or reducing such waste to a level of toxicity that is not injurious to fish, fowl, animal life or aquatic vegetation and thereby abating or preventing the pollution of the waters of the commonwealth or for the purpose of abating, preventing or eliminating industrial pollution of the atmosphere of the commonwealth. This exemption shall apply to facilities for the treatment, neutralization or stabilization of industrial waste or industrial air pollution from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable. The term "industrial waste" and the term "industrial air pollution", as used in this section, shall mean any liquid, gaseous, solid or waste substance, or a combination thereof, resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the waters or the atmosphere of the commonwealth.

If any such structure, building, device, appliance, machinery, equipment or other property is used solely and in its entirety for the elimination or control of water or air pollution, the exemption granted hereunder shall be total; if, however, only a portion of such structure, building, device, appliance, machinery, equipment or other property is used for the elimination or control of water or air pollution, the exemption shall be prorated as fol-

lows: for structures and buildings, the ratio which the area or volume, as applicable, thereof used solely for pollution control bears to the entire area or volume; for devices, appliances, machinery, equipment or other property, the ratio which the operating time devoted solely to pollution control bears to the total operating time.

No exemption shall be granted under this clause unless the department of environmental protection certifies to the assessors of the city or town involved that such structure, building, device, appliance, machinery, equipment or other property is effective in eliminating or reducing pollution to an acceptable level. No exemption shall be granted under this clause to any hazardous waste facility sited under the provisions of said chapter twenty-one D, which is maintained principally for the treatment of hazardous waste produced by other persons and transported to the facility for treatment and disposal.

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.

Forty-fifth A. Any hydropower facility, the construction of which was commenced after January first, nineteen hundred and seventy-nine; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of completion of the construction of such facility; and provided further, that such facility shall be exempt only if the owner thereof has entered into an agreement with the city or town, wherein it is located, to make a payment in lieu of taxes which shall be at least five per cent of its gross income in the preceding calendar year. For the purposes of this clause, hydropower facility shall mean any real property used in the production of energy from the water power of an existing dam, including land, all rights, easements and other interests appurtenant thereto, excluding transmission lines from such facilities, and all buildings and other improvements situated thereon, and any personal property situated upon such real property.

Forty-sixth. Real estate, owned by an economic development corporation whose purpose is to retain and expand job opportunities and which is organized under chapter one hundred and eighty, from the date of said real estate's acquisition until such real property is leased, rented, or otherwise disposed of; provided said exemption for such real property should not extend beyond a total period of seven years; and provided, further, that if the whole or any part of any such real estate is used for other than the purpose of said corporation and derives any income from such use, such real estate or part thereof, as the case may be, shall not be exempt.

Forty-seventh. Real property subject to taxation under section ten of chapter one hundred and twenty-one A.

Forty-eighth. Land classified under chapter sixty-one B, except from taxes provided for in said chapter.

Forty-ninth. Land classified under chapter sixty-one A, except from taxes provided for in said chapter.

Fiftieth. the increased value of residential real property as a result of alterations or improvements thereto, not to exceed five hundred dollars of taxes due; provided, however, that said alterations or improvements are made to

provide housing for a person who is at least sixty years old and who is not the owner of the premises; provided further, that any such alterations or improvements must be made to a house, consisting of no more than three units prior to such alterations or improvements and which is owned and occupied by the applicant as his domicile; and provided, further, that the applicant shall annually furnish to the assessors a statement under oath that the alterations or improvements were made to provide housing for a person who is at least sixty years old. This exemption shall terminate when the premises are no longer occupied by any such elderly person. No person shall receive more than one exemption under the provisions of this clause in any fiscal year. This clause shall take effect upon its acceptance by any city or town and shall apply only to alterations or improvements made on or after the date of such acceptance by such city or town.

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.

Fifty-second. (a) Notwithstanding any other provision of this section, any elderly homeowner who meets the criteria described in subsection (c) shall receive an abatement of an amount equal to the difference between any increase in property taxes attributable to the provisions of paragraph (n) of section twenty-one C and the amount by which the applicant's water and sewer bill would be higher if the amount of said increase in property taxes were recovered in water and sewer charges, which difference shall be calculated by the board or officer responsible for fixing water and sewer charges, and certified to the board of assessors; provided, however, that said abatement shall not be greater than two hundred dollars.

(b) The commonwealth shall annually appropriate the amount necessary fully to reimburse cities and towns for taxes abated under this clause. Subject to said appropriation, the commissioner of revenue shall distribute to each city and town its full reimbursement amount based on the number and amount of such abatements granted.

(c) The criteria for eligibility for this abatement shall be as follows. The property for which the abatement is sought must be owned by a person sixty-five years of age or over and occupied by him as his domicile, or owned jointly with his spouse, either of whom is sixty five years of age or over, and occupied as their domicile, or by a person who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile. No abatement shall be granted unless said owner had, in the preceding year, gross receipts from all

sources of less than fifteen thousand dollars, or, if married, combined gross receipts of less than eighteen thousand dollars; provided, however, that in computing the gross receipts of an applicant under this clause, ordinary business expenses and losses may be deducted, but not personal or family expenses; provided, further, that no abatement shall be granted unless in the preceding year, such owner had a whole estate, real and personal, not in excess of twenty thousand dollars, or, if married, a combined estate not in excess of twenty-five thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income. In the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of the amount described in subsection (a) which the amount of his interest in the property bears to the whole value of the property; provided that no abatement shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than fifteen thousand dollars, or, if married, the combined gross receipts from all sources whatsoever of each joint tenant or tenant in common and his spouse is less than eighteen thousand dollars and unless the combined whole estate, real and personal, of each joint tenant or tenant in common is less than [FN2] twenty thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant in common with his spouse does not exceed twenty-five thousand dollars; and provided, further, that no proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. Notwithstanding any provision of this section, or any other general or special law to the contrary, this abatement shall be available in addition to any other abatement which a homeowner may receive.

Fifty-third. Residential real estate that uses a septic system or cesspool and is not connected to the municipal sewer system in a city or town that has accepted the provisions of paragraph (n) of section twenty-one C shall receive an exemption equal to the difference between any increase in property taxes attributable to the provisions of said paragraph (n) and the amount by which the water bills for the property would have been higher if the amount of said increase in property taxes were recovered in water charges, which difference shall be calculated by the board or officer responsible for fixing water and sewer charges and certified to the board of assessors, provided that said exemption shall not exceed three hundred dollars. Notwithstanding any other provisions of this section, an owner eligible for another exemption under this section may receive an exemption under this clause in addition to such other exemption. This clause shall take effect in any city or town upon its acceptance.

Fifty-fourth. Personal property, if less than an amount established by the city or town, but not in excess of \$10,000 of value. This clause shall take effect upon its acceptance by a city or town, which shall establish a minimum value of personal property subject to taxation and may modify the minimum value by vote of its legislative body.

Fifty-fifth. With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter 157B, that portion which is occupied by a member pursuant to a proprietary lease as the member's domicile shall be deemed to be real property owned by such member for the purposes of this section, provided, that such portion of the real estate is represented by the member's share or shares of stock in the cooperative corporation and the percentage of such portion to the whole is determined by the percentage of the member's shares to the total outstanding stock of the corporation, including shares owned by the corporation. Such portion of such real prop-

erty shall be eligible for any exemption provided in this section if such member meets all requirements for such exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation; provided, however, that the reduction in taxes realized thereby shall be credited by the cooperative corporation against the amount of such taxes otherwise payable by or chargeable to such member. Nothing in this clause shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but shall apply to the land on which such manufactured home or mobile home is located if all other requirements of this clause are met. This clause shall take effect in a city or town upon its acceptance by the city or town.

Notwithstanding any provision of general or special law to the contrary, an abatement granted pursuant to clause Seventeenth, Seventeenth C, Seventeenth C 1/2 or Seventeenth D may be increased annually in the discretion of a city or town by an amount not to exceed the increase in the cost of living as determined by the Consumer Price Index for such year. This paragraph shall take effect in a city or town upon its acceptance by such city or town.

Fifty-sixth. Upon the acceptance of this section by a city or town, the board of assessors may grant, real and personal property tax abatement up to 100 per cent of the total tax assessed to members of the Massachusetts National Guard and to reservists on active duty in foreign countries for the fiscal year they performed such service subject to eligibility criteria to be established by the board of assessors.

The authority to grant abatements under this section shall expire after 2 years of acceptance unless extended by a vote of the city or town.

Fifty-seventh. Upon the acceptance of this section by a city or town, the board of assessors may appropriate monies for and grant property tax rebates in an amount not to exceed annually the amount of the income tax credit set forth under subsection (k) of section 6 of chapter 62.

#### CREDIT(S)

Amended by St.1933, c. 198, § 1; St.1935, c. 294; St.1936, c. 81; St.1936, c. 362, § 1; St.1937, c. 132; St.1938, c. 47; St.1938, c. 317; St.1939, c. 24, § 2; St.1939, c. 451, §§ 19, 20; St.1941, c. 227, §§ 1, 2; St.1941, c. 467; St.1941, c. 482; St.1945, c. 627, § 1; St.1946, c. 579; St.1947, c. 83, § 1; St.1947, c. 310; St.1947, c. 612, § 1; St.1948, c. 560; St.1948, c. 644, §§ 1, 2; St.1949, c. 206; St.1949, c. 534, § 1; St.1949, c. 732; St.1951, c. 640, § 1; St.1951, c. 667, § 2; St.1951, c. 275; St.1952, c. 232, § 1; St.1952, c. 583, § 2; St.1953, c. 231; St.1953, c. 347; St.1953, c. 379; St.1953, c. 654, § 28; St.1954, c. 245; St.1954, c. 341; St.1954, c. 351; St.1954, c. 435, § 1; St.1954, c. 683, §§ 1, 2; St.1955, c. 312; St.1955, c. 403, § 3; St.1956, c. 381, §§ 1 to 3; St.1956, c. 384; St.1956, c. 400, § 1; St.1956, c. 651; St.1956, c. 690, § 3; St.1957, c. 444, § 2; St.1957, c. 500, § 1; St.1957, c. 525, §§ 1 to 4; St.1957, c. 541; St.1958, c. 282, §§ 1, 2; St.1959, c. 88, § 2; St.1959, c. 233, § 1; St.1959, c. 444, § 1; St.1960, c. 18; St.1960, c. 414, § 1; St.1960, c. 764, § 1; St.1960, c. 811, §§ 1, 2; St.1962, c. 439; St.1962, c. 644, § 2; St.1962, c. 666, §§ 1 to 3; St.1963, c. 160, §§ 8, 10; St.1963, c. 345; St.1963, c. 808, § 1; St.1964, c. 69; St.1964, c. 285, § 1; St.1964, c. 354, § 1; St.1964, c. 681, § 1; St.1964, c. 715, § 1; St.1965, c. 212, § 1; St.1965, c. 267, §§ 1, 2; St.1965, c. 398; St.1965, c. 615, § 1; St.1965, c. 620, §§ 1, 2; St.1965, c. 881; St.1966,



c. 216, § 1; St.1966, c. 262; St.1966, c. 294, § 1; St.1966, c. 359, §§ 1 to 3; St.1966, c. 371; St.1966, c. 419; St.1966, c. 700, § 2; St.1966, c. 728; St.1967, c. 212, § 1; St.1968, c. 464, § 1; St.1969, c. 129; St.1969, c. 292, §§ 1 to 3; St.1969, c. 884, § 4; St.1970, c. 179, § 1; St.1970, c. 219, § 1; St.1970, c. 234, § 1; St.1970, c. 270, §§ 1, 2; St.1970, c. 456, § 1; St.1970, c. 600, § 1; St.1971, c. 449, § 1; St.1971, c. 1110, §§ 1 to 6, 8 to 10; St.1971, c. 1069, § 1; St.1972, c. 144, § 1; St.1972, c. 186, § 1; St.1972, c. 707, § 2; St.1973, c. 696, §§ 1, 2; St.1973, c. 872, § 1; St.1974, c. 287, § 1; St.1974, c. 347, § 1; St.1974, c. 811, §§ 1, 2; St.1974, c. 823; St.1974, c. 831, §§ 1 to 3; St.1975, c. 283; St.1975, c. 706, §§ 112, 113; St.1975, c. 734, § 1; St.1975, c. 734, § 2; St.1976, c. 89; St.1976, c. 263, § 1; St.1977, c. 889, §§ 2 to 5; St.1977, c. 964; St.1977, c. 967, § 1; St.1977, c. 992, § 2; St.1978, c. 258; St.1978, c. 388; St.1978, c. 435, § 1; St.1978, c. 514, §§ 73, 74; St.1978, c. 580, §§ 17 to 22, 24 to 29; St.1978, c. 581, § 3; St.1979, c. 339, § 1; St.1979, c. 367; St.1979, c. 713, § 3; St.1979, c. 777, § 1; St.1980, c. 411, § 1; St.1981, c. 743, § 1; St.1982, c. 258; St.1982, c. 319; St.1982, c. 634, § 7; St.1982, c. 653, §§ 1 to 5; St.1983, c. 72, § 3; St.1983, c. 540, § 2; St.1983, c. 670, § 1; St.1984, c. 189, § 53; St.1985, c. 489; St.1985, c. 727; St.1986, c. 73, §§ 1 to 3; St.1986, c. 112; St.1986, c. 200, § 1; St.1986, c. 361, §§ 1, 2; St.1986, c. 407; St.1986, c. 557, §§ 68, 68A; St.1987, c. 499, § 1; St.1987, c. 758, §§ 1, 2, 4; St.1988, c. 42, § 3; St.1988, c. 292, § 1; St.1989, c. 494; St.1989, c. 614, § 2; St.1990, c. 177, § 132; St.1991, c. 7, § 1A; St.1991, c. 138, §§ 126, 381; St.1991, c. 405, § 1; St.1991, c. 481, § 8; St.1992, c. 286, § 131; St.1993, c. 19, § 14; St.1993, c. 110, §§ 110, 111; St.1995, c. 38, 63; St.1995, c. 181, § 1; St.1996, c. 373, § 1; St.1996, c. 426, § 1; St.1997, c. 88, §§ 12 to 17, 20 to 22; St.1997, c. 164, § 70; St.2000, c. 159, §§ 109 to 114; St.2000, c. 380, §§ 1, 2; St.2002, c. 184, § 51; St.2002, c. 470; St.2003, c. 26, § 190, eff. July 1, 2003; St.2003, c. 46, §§ 43 to 48, eff. July 31, 2003; St.2004, c. 149, § 105, eff. July 1, 2004; St.2004, c. 178, §§ 2, 3, eff. July 1, 2004; St.2004, c. 352, §§ 24, 25, eff. Sept. 17, 2004; St.2005, c. 136, § 1, eff. Nov. 20, 2005; St.2006, c. 123, §§ 42 to 48, eff. June 24, 2006; St.2006, c. 139, § 41, eff. July 1, 2006; St.2006, c. 260, §§ 1 to 8, 9A to 11, eff. July 1, 2006; St.2006, c. 260, § 9, eff. Nov. 12, 2006; St.2006, c. 310, § 8, eff. Nov. 12, 2006; St.2008, c. 61, eff. June 17, 2008; St.2008, c. 173, §§ 2 to 6, eff. July 3, 2008; St.2008, c. 182, § 14, eff. July 1, 2008; St.2009, c. 25, § 66, eff. July 1, 2009; St.2010, c. 188, §§ 39 to 42, eff. July 27, 2010; St.2010, c. 240, §§ 108, 109, eff. Aug. 1, 2010; St.2010, c. 258, § 1, eff. Aug. 7, 2010; St.2012, c. 108, §§ 7A, 8, eff. May 31, 2012.

[FN1] 50 App. U.S.C.A. § 574.

[FN2] So in original; probably should read "less than".

Current through Chapter 10 of the 2013 1st Annual Session

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