



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Supporting a Commonwealth of Communities

Entity Classification

**Worcester County Assessors
March 22, 2018**

Entity Status and Personal Property Tax Exemptions

■ Topics

- Corporations
 - Business
 - Manufacturing
 - Financial, Insurance, & Telephone
- Personal Property Taxable and Exempted
- LLC's
- Other Non-Corporate Entities
- Disregarded Entities
- Investigating Corporate Status
 - Corps Book
 - Discovery
 - Personal Property Audit
 - Abatement Process
- Assessing Entities of Unknown Status
- Correcting Errors

Entity Status Classifications

- **Form of ownership entity relevant to taxability of personal property**
- **Corporations receive specific personal property tax exemptions dependent on type of corporation**



Entity Status Classifications

- **Some non-corporate entities are treated as corporations for federal income tax filing purposes**
- **Massachusetts adopts the federal tax treatment of entities for purposes of allocating exemptions**



Corporations

- **3 categories of corporations:**
 - **Business corporations taxable under G.L. c. 63, § 39; see G.L. c. 59, § 5, Clause Sixteenth (2)**
 - **Classified manufacturing (M) corporations; see G.L. c. 59, § 5, Clause Sixteenth (3)**
 - **Telephone/insurance/financial institutions; see G.L. c. 59, § 5, Clause Sixteenth (1)**



Corporations (cont'd.)



- Personal property tax exemptions vary according to type of corporation
- Exemptions are part of integrated scheme of corporation taxation under G.L. c. 59, § 18 and c. 63

Property Taxable to All Corporations

- Poles, wires, underground conduits and pipes taxable to all corporations (59:5(16))
- Business, electric and gas distribution corps taxable on network poles and wires over public ways (giant machines)
- Poles/wires over public ways are taxable to incorporated telephone and cable companies (59:18(5))

Exemptions for Business Corporations (59:5(16)(2))

- **Exempt except poles, wires, underground conduits, pipes and machinery used in the conduct of business**



Exemptions for Business Corporations (59:5(16)(2)) (cont'd.)

- **Machinery Used in Conduct of Business yet excluded from taxability:**
 - **Stock in trade**
 - **Used directly in laundering and dry cleaning**
 - **Used directly in refrigeration of goods and air conditioning premises**
 - **Used directly in selling, purchasing, accounting or administrative functions**

Exemptions for Business Corporations (59:5(16)(2)) (cont'd.)

- **Stock in trade means sold or leased in usual course of business and excludes financed sale and consignment goods**
- **Machinery used to sell goods are exempt, but not those providing entertainment or service**
- **Accounting and administrative functions means in-house/record keeping**

Exemptions for Business Corporations (59:5(16)(2)) (cont'd.)

- Exemptions apply to foreign and domestic corporations and non-corporate business entities treated as corporations for federal income tax purposes
- Machinery is a mechanical device with independent moving parts or its electronic equivalent
- Need not be actually in use if it is capable of use in the business

Exemptions for Business Corporations (cont.)

- **Business corporation must be an endeavor of labor for profit or gain**
- **Corporation formed to lease personal property to a partnership which had no clients except an affiliated entity not entitled to corporate personal property tax exemptions**

Exemptions for Telephone Corporations, Financial Institutions and Insurance Corporations (59:5(16)(1))

- Exempt **except** for real estate, poles, wires, underground conduits, pipes and machinery used in manufacture or supply/distribute water
- Financial institution includes mortgage companies, subsidiaries

Exemptions for Telephone, Financial Institution and Insurance Corporations (cont.)

- **Foreign insurance corporations get exemption only if reciprocity**
- **Exemptions apply to unincorporated telephone, financial institution or insurance companies treated as corporations for federal income tax purposes**

Exemptions for M Corporations (59:5(16)(3))

- **Manufacturing corps exempt for personal property, including machinery**
- **M classification requires application to DOR on or before 1/31 (Form 355Q)**
- **Manufacturing transforms raw or finished materials through human skill/knowledge into something with a new nature/name/use**

Exemptions for M Corporations (59:5(16)(3)) (cont'd.)

- Court's broadly interpret term "manufacturing"
- Activities deemed manufacturing
 - Logging
 - Recycling junk
 - Publishing a book
 - Chopping lettuce into a chilled salad
 - Making a pizza
 - Developing a blueprint for manufacture of a product or prototype

Exemptions for M Corporations

(59:5(16)(3)) (cont'd.)

- **Construction, breeding, information processing, and crushing rocks are not considered manufacturing**
- **Manufacturing activities must be substantial**
- **Exemptions apply to foreign and domestic corporations and non-corporate manufacturing entities treated as corporations for federal income tax purposes (59:5(16)(3))**

Exemptions – Local Option R&D Corp (59:5(16)(3))

- **Cities and towns may adopt local option exemptions for research and development (R&D) corps by 7/1**
- **If accepted, M corp exemptions apply to R&D corps**
- **R&D includes experimental and lab activities to develop new and improve existing products**

Exemptions – Local Option R&D

Corp (cont.)

- **2/3 Receipts or 2/3 Expenditures**
- **Classified by DOR (Form 355RD)**
- **Must Notify DOR of Acceptance**

Limited Liability Companies

- **LLC with one member may be treated as a “disregarded entity”**
- **LLC treated as partnership or disregarded entity for federal income tax purposes is taxable on all personal property**
- **Except for telephone company, financial institution or insurance company, LLC that elects to be treated as corporation for federal income tax purposes is taxable as a business or M corp as the case may be**

Limited Liability Companies (cont.)

- Telephone, financial institution or insurance company LLC is taxable only on machinery used in manufacture or in supplying or distributing water
- Single member LLC treated as a disregarded entity for federal income tax purposes is taxable on all personal property, even if parent is a corporation (but see local option below)
- LLC's are treated as partnerships by default

Other Non-corporate Entities

- **Rules of the previous two slides apply to other unincorporated entities electing to be treated as corporations for federal income tax purposes**
- **Includes partnerships, associations and trusts**

Exemptions – Local Option Disregarded Entity M or R&D Corp (59:5(16)(3))

- **Municipalities may also adopt local option M corp exemption for single member LLCs filing federally as disregarded entities**
- **If accepted M corp exemptions apply to those LLCs, provided:**
 - **LLC has usual place of business in MA**
 - **LLC engaged in M or R&D in MA**
 - **Sole member is an M or R&D corp**

Investigating Entity Status

Tools available to assessors

- **Corps Book**
- **Discovery**
- **Personal Property Audit**
- **Abatement Process**

Corporations Book

- **Commissioner publishes website list styled the “Corporations Book”**
- **List designates M corps and separately lists financial institutions and insurance companies**
- **Form 8832 puts IRS and DOR on notice of whether entity is taxable as a corporation, a partnership, or a “disregarded entity”**

Annual Certification of Entity Tax Status

- **2012 – introduced new Annual Certification of Entity Tax Status (ACETS) requirement (IRS Form 8832)**
- **Form 8832 puts IRS and DOR on notice of whether entity is taxable as a corporation, a partnership, or a “disregarded entity”**

Entity Classification Election

Department of the Treasury
Internal Revenue Service

► Information about Form 8832 and its instructions is at www.irs.gov/form8832.

Type or Print	Name of eligible entity making election	Employer identification number
	Number, street, and room or suite no. If a P.O. box, see instructions.	
	City or town, state, and ZIP code. If a foreign address, enter city, province or state, postal code and country. Follow the country's practice for entering the postal code.	

► Check if: Address change Late classification relief sought under Revenue Procedure 2009-41
 Relief for a late change of entity classification election sought under Revenue Procedure 2010-32

Part I Election Information

- 1 Type of election** (see instructions):
 - a** Initial classification by a newly-formed entity. Skip lines 2a and 2b and go to line 3.
 - b** Change in current classification. Go to line 2a.

- 2a** Has the eligible entity previously filed an entity election that had an effective date within the last 60 months?
 - Yes.** Go to line 2b.
 - No.** Skip line 2b and go to line 3.

- 2b** Was the eligible entity's prior election an initial classification election by a newly formed entity that was effective on the date of formation?
 - Yes.** Go to line 3.
 - No.** Stop here. You generally are not currently eligible to make the election (see instructions).

- 3** Does the eligible entity have more than one owner?
 - Yes.** You can elect to be classified as a partnership or an association taxable as a corporation. Skip line 4 and go to line 5.
 - No.** You can elect to be classified as an association taxable as a corporation or to be disregarded as a separate entity. Go to line 4.

- 4** If the eligible entity has only one owner, provide the following information:
 - a** Name of owner ► _____
 - b** Identifying number of owner ► _____

- 5** If the eligible entity is owned by one or more affiliated corporations that file a consolidated return, provide the name and employer identification number of the parent corporation:
 - a** Name of parent corporation ► _____
 - b** Employer identification number ► _____

Discovery Procedures

- **Written return of information under G.L. c. 59, § 38F**
 - Pre-assessment stage
 - Applies to “such information as may reasonably be required ... to determine the actual fair cash valuation of ...property”
 - Taxpayer gets 60 days to respond
 - Penalties for failure to provide information, including automatic dismissal of an ATB appeal
- **Testimony under oath under G.L. c.59, § 38G**
 - Opportunity to ask questions about response to § 38D information requests
 - Available in pre-assessment stage and following application for abatement

Discovery Procedures (cont'd.)

- **Testimony under oath under G.L. c.59, § 38G**
 - Opportunity to ask questions in writing about response to § 38D information requests
 - Available in pre-assessment stage and following application for abatement



Personal Property Audit Authority

(59:31A & 42A)

- **Assessors may audit books and records of locally valued taxpayers up to 3 years after return is due or filed, whichever is later**
- **Audit is initiated by assessors by issuing a summons specifying books and records sought to be examined**
- **Assessors may apply to Superior Court for order compelling production of books and records**

Personal Property Audit Authority (59:31A & 42A)(cont'd.)

- If untaxed personal property accounts are detected, omitted taxes may be assessed up to 3 years and 6 months after the return is due or filed, whichever is later
- If undertaxed personal property accounts are detected, revised taxes may be assessed up to 3 years and 6 months after the return due or filed, whichever is later

Personal Property Audit Summons **(59:31A & 42A)**

The Commonwealth of Massachusetts

[City][Town] of _____

Board of Assessors

In the matter of the personal property tax liability of
XYZ Corporation Inc.

TO:

Keeper of the Records

XYZ Corporation Inc.

123 Main Street

Anytown, MA 12345

Personal Property Audit Summons (59:31A & 42A)

You are hereby summonsed to produce to [Name][Title] of the [City][Town] Board of Assessors at [Office Address and Room Number], with the following books, papers, records, and other data by [Due Date]

[Description of Requested Documents]

Failure to comply with this summons will render you liable to enforcement proceedings in the Supreme Judicial Court or Superior Court of the Commonwealth of Massachusetts. This summons is issued pursuant to the authority vested in the BOARD OF ASSESSORS by G.L. c. 59, § 31A, this ____ day of [Month][Year].

Personal Property Audit Authority (59:31A & 42A)(cont'd.)

- **Records to request for examination**
 - Fixed asset listing
 - Financial statements, e.g. detailed balance sheet and income statement
 - Federal tax returns including depreciation schedules and attachments
 - Detailed trial balance which reflects the ending account balances for the audit location
 - Lease agreements in effect for personal property at the audit location
 - Receipts for purchases of goods made during the audit period
 - Inventory records
 - Image files of items of personal property at the audit location

Personal Property Audit Authority (59:31A & 42A)(cont'd.)

- **Access to premises to inspect personal property may be requested, but not clear that it can be compelled**



Assessing Entities of Unknown Status

- If entity status is uncertain at time of commitment, assessors should deny corporate personal property tax exemptions and seek information about entity status in connection with abatement process



Abatement

- **Fact-finding permitted during the abatement process**
- **Abatement process allows additional time to further investigate entity status**



Correcting Errors

- **If eligible entity has been assessed without allowing for corporate exemptions, use the abatement process to factor in the value after exemptions**
- **If ineligible entity mistakenly allowed corporate exemptions, issue a revised assessment by June 20th, 10 days before the end of the fiscal year. See G.L. c. 59, § 76.**