



Informational Guideline Release

Bureau of Municipal Finance Law
Informational Guideline Release (IGR) No. 21-21
July 2021

(Supersedes IGR 02-206, in part, IGR 02-207 & *Bulletin* 2002-07B)

TAX AGREEMENTS FOR AFFORDABLE HOUSING DEVELOPERS & “BROWNFIELDS”

[G.L. c. 58 § 8C](#) & [G.L. c. 59 § 59A](#)

This Informational Guideline Release (IGR) is to advise local officials about tax collection and tax abatement agreements with developers of affordable housing, including changes made by the Municipal Modernization Act in 2016. It also includes standards and procedures for tax agreements and accepting and implementing a local option law that permits tax agreements in connection with the cleanup of contaminated sites or “Brownfields.”

Topical Index Key:

Abatements and Appeals
Collection Procedures

Distribution:

Assessors
Collectors
Treasurers
Clerks
Accountants/Auditors
Mayors/Selectmen
Managers/Administrators/Exec. Secys.
Finance Directors
City Solicitors/Town Counsels

(Supersedes IGR 02-206, in part, IGR 02-207 & *Bulletin 2002-07B*)

TAX AGREEMENTS FOR AFFORDABLE HOUSING DEVELOPERS & “BROWNFIELDS”

[G.L. c. 58 § 8C](#) & [G.L. c. 59 § 59A](#)

SUMMARY:

Cities and towns that accept the local option may enter into agreements with developers of affordable housing for the payment of outstanding property taxes, including abatement of an amount that makes developing the site economically feasible. [G.L. c. 58 § 8C](#). A municipality that accepts the statute must first adopt an implementation by-law or ordinance. Abatements are limited to 75% of outstanding real estate taxes and 100% of accrued interest and collection costs.

Additionally, the “Brownfields Bill” enacted in 1998 made a number of significant changes in the state’s environmental laws to help remove financial impediments to the cleanup and redevelopment of abandoned contaminated properties. [Chapter 206 of the Acts of 1998](#). Specifically, the bill created certain protections for new owners and lenders in order to encourage them to redevelop these properties. Various financial incentives, including tax credits, loans and grants, were also provided to promote cleanup activities.

These guidelines supersede IGR 02-207, Bulletin 02-07B, IGR 02-206, in part, and inconsistent prior written statements. Changes made by the Municipal Modernization Act allow local implementation of affordable housing tax agreements in the same manner as brownfield agreements and no longer require prior approval of the Division of Local Services.

GUIDELINES:

I. STATUTORY PROVISIONS

A. Statute Acceptance

1. Affordable Housing

To make affordable housing tax agreements, a city or town must first accept [G.L. c. 58 § 8C](#). Acceptance is by majority vote of town meeting or town/city council subject to applicable charter provisions. [G.L. c. 4 § 4](#).

The city or town clerk should notify the Municipal Databank if the statute is accepted. (See attached “Notification of Acceptance”).

2. Brownfields

The local option provision allows cities and towns to make agreements regarding the payment of outstanding real estate taxes, interest and penalties, including the abatement of those amounts needed to make a cleanup and redevelopment project economically feasible. [G.L. c. 59 § 59A](#).

B. Implementation By-law/Ordinance

Municipalities that accept these statutes must also adopt an implementation by-law or ordinance before any agreements can be made. The by-law or ordinance must specify the method for negotiating and approving the agreements. This would include, at a minimum, the following:

- The officer(s) authorized to negotiate an agreement on behalf of the city or town. This authority may be given to a particular officer, or some combination of officers.
- The process for approving any agreement negotiated. The legislative body may retain the power to approve all or some agreements, *e.g.*, those including tax abatements over a certain dollar amount, or it may establish another approval process.
- The officer(s) authorized to sign an agreement on behalf of the city or town. This authority may or may not be given to the same officer(s) authorized to negotiate the agreement.

Municipalities may also include policies regarding the circumstances under which agreements may be made, as well as any parameters regarding the terms of the agreement.

C. Statute Revocation

The municipality may revoke its acceptance, but it must wait at least three years after the acceptance is effective to do so. Revocation is also by majority vote of town meeting or town/city council subject to applicable charter provisions. [G.L. c. 4 § 4B](#).

II. TAX AGREEMENTS

Affordable housing tax agreements must meet the minimum requirements explained in this section.

A. Property

1. Current Use

The site covered by the agreement may contain one or more taxable parcels. The parcels may be vacant or improved.

2. Developed Use

The site must be developed for (1) affordable housing use only or (2) mixed affordable housing and commercial use.

a. Affordable Housing

Affordable housing is housing (1) owned by or rented to families or individuals with household income at time of initial occupancy that meets certain income standards, and (2) subject to a recorded affordable housing restriction of at least 45 years, including resale restrictions imposed to maintain its affordability on a long-term basis. [G.L. c. 60 § 1](#).

Household income cannot exceed 120 percent of the area wide median income determined by the United States Department of Housing and Urban Development (HUD) as adjusted for family size. Subsequent owners and renters must also meet that income standard at initial occupancy.

Mixed-Use Affordable Housing

(1) Primary Use

Affordable housing must be the primary use of any mixed-use development. The site may include commercial uses, but not market-rate housing. Primary use means that more than 50% of the floor space of the improvements on the site must be devoted to affordable housing. This condition and definition of primary use must be included in the agreement, along with plans showing the percentage of floor space devoted to affordable housing use. Common areas, such as floor space used for heating, air conditioning or storage, are to be prorated and allocated to the affordable housing and other uses.

(2) Compliance

No agreements covering a mixed-use development may be made unless:

- (a) The municipality's implementation by-law or ordinance provides that no building permits or certificates of occupancy may be issued unless the building inspector determines that the development of the site conforms to the primary use requirement set forth in these guidelines.
- (b) The municipality's implementation by-law or ordinance and the agreement provide, at a minimum, that if the development

later becomes non-conforming during the period covered by the agreement, or within 20 years of its effective date, whichever period is shorter, the certificates of occupancy for the commercial space must be revoked, unless the amount of real estate taxes abated according to the agreement are repaid.

b. Brownfields

(1) Under the statute, these agreements must:

- (a) Cover a property contaminated with oil or hazardous material and zoned for commercial or industrial use.
- (b) Be entered into with an eligible owner under [G.L. c. 21E § 2](#). Eligible owners did not cause or contribute to the release of oil or hazardous material from or at the site and did not own or operate the site at the time of the release.
- (c) Specify the details agreed to regarding payment of any outstanding obligations, including the amount owed, rate of interest to accrue if any, amount of monthly payments, payment schedule, late penalties and other terms.
- (d) Be signed by the chair of the city council or board of selectmen and the property owner, and notarized and attested to by the city or town clerk. Copies must be provided to the state Department of Environmental Protection and federal Environmental Protection Agency, in addition to the property owner and city council or board of selectmen.
- (e) Communities that accept the statute may enter into agreements without Department of Revenue review or approval. Acceptance is by vote of town meeting, town council or city council. [G.L. c. 4 § 4](#).

B. Developer

The agreement is with the person or entity planning to develop the site as affordable housing or for affordable housing and commercial purposes, *i.e.*, the developer. The developer may or may not own the site at the time the agreement is made, but cannot be personally liable for any of the outstanding real estate taxes that are the subject matter of the agreement, *i.e.*, cannot be the owner assessed the taxes.

The developer must also meet the same standards that apply to purchasers of tax possession property. [G.L. c. 60 § 77B](#). This means the developer cannot be delinquent on any property taxes, or have had any arson or insurance fraud convictions, and must submit an affidavit of compliance with these standards at the time the agreement is made.

C. Scope

1. Outstanding Taxes

The agreement may cover the payment and abatement of municipal real estate taxes outstanding at the time the agreement is made, or the developer acquires title, whichever occurs first. This means unpaid installment payments of the city or town real estate tax assessed for any fiscal year that are overdue, *i.e.*, installments on which interest has accrued by law. It also includes all accrued interest and collection costs (such as demand charges and recording and advertising costs for tax takings) on those taxes, as of the agreement or acquisition date, whichever applies.

The agreement may not apply to the payment and abatement of unpaid:

- a. Municipal real estate tax installment payments that first accrue interest after the agreement or acquisition date, whichever applies, and interest and collection costs that accrue on those taxes.
 - (1) Where the developer has acquired the site before the agreement is made, the developer must have timely paid all post-acquisition installment payments. If not, the developer is considered delinquent on property taxes and therefore, is not eligible to enter into an agreement.
 - (2) Where the developer is acquiring the site after the agreement is made, the developer must pay any post-agreement installment payments, including accrued interest and collection costs, at the time the property is acquired. No abatement may be granted unless and until these post-agreement taxes have been paid.
- b. District real estate taxes.
- c. Municipal and district charges that are liens on the site, *e.g.*, unpaid water or sewer betterments or user charges.

2. Minimum Terms

The agreement must specify at a minimum:

- The number of affordable housing units to be developed, including the percentage of floor space devoted to affordable housing in any mixed-use development.
- The amount owed by fiscal year and by taxes, interest and collection costs.
- The amount to be abated by fiscal year and by taxes, interest and collection costs.
- The balance to be paid by the developer.

- The monthly or other schedule for paying the balance.
- The final payment date.
- The rate of interest that will accrue, if any, on the unpaid balance.
- The penalty for late payments, if any.

D. Signature

The agreement must be signed by the local official(s) designated in the implementation by-law or ordinance (the municipal signatory) and the developer and notarized. The city or town clerk must attest that the official(s) signing on behalf of the municipality is the signatory designated by the by-law or ordinance.

A copy of the signed agreement must be provided to the (1) developer, (2) city council or board of selectmen, (3) Department of Housing and Community Development (DHCD).

III. TAX ABATEMENTS

A. Standards

1. Maximum Abatement

For affordable housing agreements, the proposed abatement cannot exceed 75% of the outstanding real estate taxes and 100% of the outstanding interest and collection costs for both. For brownfield agreements, the proposed abatement cannot exceed 100% of the outstanding real estate taxes and 100% of the outstanding interest and collection costs for both. If the site consists of more than one parcel, these limits apply to the total amount owed for all parcels.

2. Payment of Unabated Taxes

The developer must pay the amount of unabated outstanding taxes, interest and collection costs in accordance with the repayment terms and conditions contained in the agreement. The obligation and lien for unabated taxes remains subject to those provisions.

IV. ABATEMENT PROCEDURES

A. Procedure

Affordable housing abatements should be processed in the same manner and using the same forms as other abatements of real estate taxes. The assessors' records should cite [G.L. c. 58 § 8C](#) or [G.L. c. 59 § 59A](#), as applicable, as the authority under which the abatement is granted.

Abated taxes are charged to the overlay. Accrued interest and collection costs that are waived under the agreement are simply unrealized revenue.

B. Recordkeeping

Assessors must retain all supporting documentation.

(City/Town)

**NOTIFICATION OF ACCEPTANCE
General Laws Chapter 59 §59A
("Brownfields" Tax Agreements)**

The Commissioner of Revenue is hereby notified that the City/Town of _____, by action of _____ (town meeting/city council), on _____, _____, has accepted the provisions of General Laws Chapter 59 §59A.

(City/Town Clerk)

(Date)

PLEASE ATTACH A CERTIFIED COPY OF THE VOTE AND SUBMIT TO:

Municipal Databank/Local Aid Unit
Division of Local Services
E-mail databank@dor.state.ma.us

(City/Town)

NOTIFICATION OF ACCEPTANCE

**General Laws Chapter 58 §8C
(Affordable Housing Tax Abatement Agreements)**

The Commissioner of Revenue is hereby notified that the City/Town of _____, by action of its legislative body on _____, _____, has accepted General Laws Chapter 58 §8C, which authorizes agreements for the payment and abatement of outstanding property taxes on sites to be developed as affordable housing.

(City/Town Clerk)

(Date)

PLEASE ATTACH A CERTIFIED COPY OF THE VOTE AND SUBMIT TO:

Municipal Databank/Local Aid Unit
Division of Local Services
E-mail databank@dor.state.ma.us