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DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

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Informational Guideline Release

Bureau of Local Assessment
Informational Guideline Release (IGR) No. 16-405
November 2016

Supersedes IGR 00-403 and Inconsistent Prior Written Statements

SMALL COMMERCIAL EXEMPTION

Chapter 218, §§ 126 and 247 of the Acts of 2016
(Amending G.L. c. 59, § 5I)

This Informational Guideline Release (IGR) updates guidelines explaining the eligibility and operation of the small commercial exemption that local officials may grant as part of their annual property tax classification decisions. Section F of the guidelines has been revised to reflect a change made by the recent Municipal Modernization Act regarding the due date for applications for small commercial exemptions.

Topical Index Key:

Classification and Taxation by Use
Exemptions

Distribution:

Assessors
Selectboards/Mayors
City/Town Councils
City Solicitors/Town Counsels

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SUMMARY:

These guidelines explain the features and operation of the small commercial exemption and have been updated to reflect recent legislation amending the due date for applications for the exemption. G.L. c. 59, § 5I, as amended by St. 2016, c. 218, § 126.

The small commercial exemption is one of the property tax classification options available to communities when setting the annual property tax rate. Under that option, the Selectboard or Mayor, with the approval of the City Council, may exempt up to 10 percent of the value of Class Three, Commercial, parcels occupied by qualifying small businesses. G.L. c. 59, § 5I. The assessors apply the exemption to reduce the taxable valuation of the property before setting the tax rate, in the same manner the residential exemption option under G.L. c. 59, §5C is applied. The small commercial exemption lowers taxes on parcels occupied by small businesses and shifts those taxes to other commercial and industrial taxpayers.

Eligible small businesses are defined as those having an average annual employment of no more than ten persons at all locations during the prior calendar year. The Secretary of Labor and Workforce Development (Secretary) must certify that the business meets the employment criterion in an annual list provided to local assessors. G.L. c. 151A, § 64A. If a business that is a sole proprietorship or partnership does not appear on the list, the assessors may determine eligibility.

Under the recent amendment, eligible taxpayers will now have until April 1 to apply for the exemption if no reduction was made in their assessed valuations, unless the tax bills were mailed after January 1. G.L. c. 59, § 5I. In that case, taxpayers have three months from the date the bills are mailed to apply. This amendment took effect on November 7, 2016 and applies to applications for small commercial exemptions granted beginning in fiscal year 2017.

These guidelines supersede the guidelines issued when G.L. c. 59, § 5I was last amended in 2000 and any inconsistent prior written statements or documents. See Informational Guideline Release (IGR) No. 00-403, *Small Commercial Exemption*.

BUREAU OF LOCAL ASSESSMENT JOANNE GRAZIANO, CHIEF

GUIDELINES:

A. ANNUAL ADOPTION

The selectboard or mayor, with the approval of the city council, may decide before the tax rate is set whether or not to grant a small commercial exemption for the fiscal year. A small commercial exemption of up to 10 percent of the valuation of eligible Class Three, Commercial, parcels may be adopted. The small commercial exemption is in addition to the other local tax policy options available under the property tax classification law. It may be granted regardless of the residential factor selected and used with or without an open space discount or a residential exemption.

B. EXEMPTION QUALIFICATIONS

To receive a small commercial exemption granted for the fiscal year, a Class Three, Commercial, parcel must be occupied as of January 1 by a business with an average annual employment of no more than 10 people at all locations during the previous calendar year, and have a valuation of less than $1,000,000.

1. Occupancy

The commercial parcel must be occupied by an eligible business as of the January 1 assessment date for the fiscal year the exemption is granted. It does not have to be owned by the occupying business or any other eligible business.

If a parcel has multiple commercial occupants or tenants, all occupants must be eligible businesses. If a parcel is multiple use, such as a residential and commercial property, all occupants of the commercial portion must be eligible businesses.

2. Eligible Business

An eligible business must have an average annual employment of 10 or fewer people during the calendar year before the January 1 assessment date for the fiscal year the exemption is granted. Average employment is determined for the business as a whole, not just at the location of the parcel or other parcels within the community.

a. Certification by Secretary of Labor and Workforce Development

Businesses certified by the Secretary of Labor and Workforce Development as having an average annual employment of 10 or fewer people at all locations during the prior calendar year qualify for the exemption. The Secretary will provide the assessors with a list of eligible businesses each year by July 1. G.L. c. 151A, § 64A.

The list of eligible businesses is <u>not</u> a public record. The assessors and their staff may use the list for the <u>sole</u> purpose of administering the small commercial exemption. Assessors or their staff who use the list for other purposes or disclose any of the listed businesses to people outside the assessors' office may be fined $100.

b. <u>Determination by Assessors</u>

If a <u>sole proprietorship or partnership</u> occupying the parcel on January 1 does not appear on the certified list, the assessors may determine whether it met the employment criterion for the previous calendar year. In <u>all other cases</u>, however, the assessors must rely <u>exclusively</u> on the Secretary's certification in determining whether a business meets the employment criterion.

Assessors will mostly be determining eligibility for sole proprietorships and partnerships that did not employ anyone other than the proprietor or a partner for more than 13 weeks during the previous calendar year. Sole proprietorships and partnerships that employed any other person for longer than that period are required to report to the Secretary and, therefore, they should appear on the certified list.

For purposes of consistency, assessors should calculate an average annual employment figure for the business using the same method as the Secretary. That method is as follows:

(1) Determine the total number of persons employed at all locations who worked during or received pay for the payroll period that includes the 12th of each month in the calendar year. *Do not include proprietors and partners.*

(2) Determine the total number of persons employed during <u>each</u> three month quarter of that calendar year.

(3) Determine the average number of persons employed for <u>each</u> quarter of that year by dividing the total from step (2) by 3. R*ound the result <u>down</u> to the nearest <u>whole</u> number.*

(4) Determine the average annual employment by adding the four quarter averages from step (3) and dividing by 4. R*ound the result <u>down</u> to the nearest <u>whole</u> number*. <u>This number must equal 10 or below for the business to meet the employment criterion.</u>

3. Valuation Limit

The Class Three, Commercial, parcel must have a valuation of less than $1,000,000 before application of the exemption. The exemption applies to a specific parcel occupied by an eligible business, not an eligible business. Therefore, if any particular eligible business occupies more than one parcel under $1,000,000 in value, each parcel would qualify for the exemption.

C. ASSESSED VALUATION AND TAX RATE

The assessors administer the small commercial exemption in the same manner as the residential exemption, i.e., by applying it before tax billing and without an application from the taxpayer. Unlike the residential exemption, however, the small commercial exemption is based on a percentage of an eligible parcel's valuation, rather than a fixed dollar amount. The assessors value all Class Three, Commercial, properties at their full and fair cash value and use the total full and fair cash value of the commercial class to compute the minimum residential factor and to determine the levy allocation under classification. If a small commercial exemption is granted, the assessors must then determine the eligible parcels, reduce their valuation by the selected exemption percentage and use the reduced taxable valuation of the commercial class to calculate the tax rate.

Any small commercial exemption granted is borne by other Class Three, Commercial, and Class Four, Industrial, real property, but not by personal property. The tax levy to be raised from commercial and industrial properties remains the same, but use of the reduced valuation in setting the tax rate results in a higher tax rate for the commercial and industrial classes than for personal property.

The attachment, "Impact of Small Commercial Exemption," shows how adoption of the exemption affects the calculation of the tax rate. Assessors may also refer to the Options Table in Gateway Online that allows them to see the impact on the rate.

D. OTHER EXEMPTIONS

The small commercial exemption may be applied to parcels that qualify for other property tax exemptions under G.L. c. 59, § 5. There is no minimum taxable valuation as is the case with the residential exemption.

E. TAX BILLS

Tax bills for parcels that receive the small commercial exemption must show the following amounts: (1) the total full and fair cash valuation, (2) the small commercial exemption, and (3) the total taxable valuation to which the tax rate is applied. Model tax bills issued annually reflect these requirements.

F. EXEMPTION APPLICATIONS

An application for the small commercial exemption may be filed with the assessors if the exemption is not applied to reduce the assessed valuation of a qualified parcel. The application deadline is April 1, unless the actual tax bills for the fiscal year are mailed after January 1. In that case, taxpayers have three months from the date the bills are mailed to apply.

The taxpayer may use a form approved by the Commissioner for this purpose (“Application for Small Commercial Exemption,” State Tax Form 128 –5I). A regular abatement application (“Application for Abatement of Real/Personal Property Tax,” State Tax Form 128) filed within the deadline will also serve as an effective application. In that case, the assessors should then ask the taxpayer to complete State Tax Form 128-5I or otherwise provide the information needed to determine exemption eligibility.

IMPACT OF SMALL COMMERCIAL EXEMPTION

Tax Levy	$	5,000,000			
Full and Fair Cash Valuation					
Residential	$	150,000,000	75%	)	
Open Space		10,000,000	5%	)	(80%)
Commercial		20,000,000	10%	)	
Industrial		10,000,000	5%	)	(20%)
Personal		10,000,000	5%	)	
TOTAL	$	200,000,000	100%		

Eligible Class Three Parcels		
Full and Fair Cash Value	$	5,000,000
Exemption Percentage		10%
Exempt Valuation	$	500,000
Taxable Assessed Valuation	$	4,500,000

EXAMPLE 1
COMMUNITY ADOPTS A RESIDENTIAL FACTOR OF 1

Tax Rate Computation **Without** a Small Commercial Exemption

Class	Levy %	Levy	Tax Rate	
R & O	80%	$4,000,000	$25.00	($4,000,000 ÷ 160,000,000)
CIP	20%	$1,000,000	$25.00	($1,000,000 ÷ 40,000,000)

Tax Rate Computation **With** a Small Commercial Exemption

Class	Levy %	Levy	Tax Rate	
R & O	80%	$4,000,000	$25.00	($4,000,000 ÷ 160,000,000)
C & I	15%	$ 750,000	$25.42	(750,000 ÷ 29,500,000)
P	5%	$ 250,000	$25.00	(50,000 ÷ 10,000,000)

Tax Impact on Eligible and Non-eligible Parcel
Full and Fair Cash Valuation $500,000

	Without Exemption	With Exemption
Eligible	$12,500 ($500,000 x $25/1000)	$11,439 ($450,000 x $25.42/1000)
Non-eligible	$12,500 ($500,000 x $25/1000)	$12,710 ($500,000 x $25.42/1000)

EXAMPLE 2
COMMUNITY ADOPTS A SHIFT OF 150% ON CIP
ADOPTS A RESIDENTIAL FACTOR OF .875

Tax Rate Computation **Without** a Small Commercial Exemption

Class	Levy %	Levy	Tax Rate	
R & O	70%	$3,500,000	$21.88	($3,500,000 ÷ 160,000,000)
CIP	30%	$1,500,000	$37.50	(1,500,000 ÷ 40,000,000)

Tax Rate Computation **With** a Small Commercial Exemption

Class	Levy %	Levy	Tax Rate	
R & O	70.0%	$3,500,000	$21.88	($3,500,000 ÷ 160,000,000)
C & I	22.5%	$1,125,000	$38.14	(1,125,000 ÷ 29,500,000)
P	7.5%	$ 375,000	$37.50	(375,000 ÷ 10,000,000)

Tax Impact on Eligible and Non-eligible Parcel
Full and Fair Cash Valuation $500,000

	Without Exemption	With Exemption
Eligible	$18,750 ($500,000 x $37.50/1000)	$17,163 ($450,000 x $38.14/1000)
Non-eligible	$18,750 ($500,000 x $37.50/1000)	$19,070 ($500,000 x $38.14/1000)