



**Municipal Client Advisory
January 2012**

**Three Ways to Found Money:
Maximize Municipal Recovery of Funds**

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1. Withholding Permits and Licenses

M.G.L. c. 40, § 57, allows municipalities to withhold permits and licenses for the non-payment of local taxes, fees, assessments, betterments or any other municipal charges. The statute is recognized as an effective enforcement mechanism to collect real estate taxes and other municipal debts. This statute has a broad scope of enforcement which includes debts owed by individuals, corporations or business enterprises. Although a municipality may have a number of options to achieve enforcement, M.G.L. c. 40, § 57 is an enforcement statute which is independent of other statutory remedies available to a municipality.

The municipality must accept the statute and enact a by-law or ordinance which would allow the municipality to deny any application for, or revoke, or suspend a building permit, any local license or permit including renewals and transfers issued by any board, officer, or department.¹

The tax collector or other designated municipal official must furnish a list of delinquent payers to other municipal departments. A delinquent taxpayer may be identified as a “business enterprise” where an individual or corporate taxpayer share business interest even if not as record title holders. *Matthews v. Hanover*, 11 Mass L. Rptr. 4 (1999) (Exhibit 2). The list is prima facie evidence for denial, revocation or suspension of a municipal license or permit. Such by-law or ordinance must provide the delinquent payer with due process including a right to a hearing before the licensing authority in order to

¹ It is important to note that there is some limitations placed upon the reach of M.G.L. c.40 § 57. This statute does not apply to following licenses and permits: open burning, bicycle permits, sales of articles for charitable purposes, children work permits, clubs, associations dispersing food or beverage licenses, dog licenses, fishing hunting and trapping licenses, marriage licenses, and theatrical events, public exhibition permits. Additionally, a municipality may exclude any other local license or permit from the application of the by-law or ordinance.



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rebut the prima facie finding of the tax collector. The mechanisms of a tax hearing are outlined in the statute. The “licensing authority” (most typically a building department, zoning board, planning board or board of selectmen) notices a hearing to take evidence from the tax collector and the delinquent payer, resulting in findings of fact to support or deny the license revocation.

2. Recovering Medical and Disability Payments

M.G.L. c. 41, § 111F and M.G.L. c. 152, § 15 allows self-insured municipalities to recover wages and benefits paid, including health insurance premiums, to a police officer or firefighters injured in the line of duty. Under the relevant statute, the municipality has direct recovery rights against the person who is legally responsible for causing injury to the police officer, firefighter or municipal employee. Most commonly, in the case of an automobile accident where the municipal officer or self-insured employee suffers injury, medical and disability payments made by the municipality are recoverable from the responsible third party or their insurer. A civil action may be filed by either the municipality or the injured employee. The sum recoverable by a municipality in such an action is to reimburse the municipality for the compensation paid to the injured employee. Additionally, a claim may be brought for court costs, interest and the cost of replacing an injured employee. Aggressive lien enforcement of third-party liability cases will no doubt result in revenue not otherwise available to the municipality.

3. Recovery of Abandoned Property

In the current economic climate it is strongly advisable that municipalities use the mechanism located in the Massachusetts Abandoned Property Act to credit unclaimed monies to its general fund. Otherwise, this money is subject to reporting and must be turned over to the State Treasurer for handling. As a starting point, the municipality must accept M.G.L. c. 200A, § 9A, as it was amended in 2010. Next, the specific procedures that must be followed depend upon the amount of the fund deemed abandoned.

For each fund deemed abandoned with a value of less than one hundred (\$100.00) dollars, a municipality must:

- Mail written notice to the last known address of each apparent owner via first class mail, OR post the notice conspicuously on the website for not less than 60 days;
AND
- If the apparent owner fails to respond within 60 days after the mailing or posting of



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the notice, the treasurer must publish a notice of the fund in a newspaper of general circulation in the county in which the municipality is located.

If the money remains unclaimed after the completion of these two steps, the municipality may credit any amount deemed abandoned to its general fund.

For each fund deemed abandoned with a value of one hundred (\$100.00) dollars or more, a municipality must:

- Follow the two steps outlined above; AND
- The treasurer must publish an additional notice in a newspaper of general circulation in the county or district where the municipality is located including an extended deadline of 1 (one) year from the date of publication for the funds to be claimed.

If no claim is made after all of the above time periods have run, a municipality may retain any funds deemed abandoned and credit that amount to its general fund.

These are three brief examples of the effective use of select Massachusetts statutes to maximize the recovery of funds owed to your municipality. There are others, and each requires vigorous enforcement which will result in “found” money repaid to your municipality.

Murphy, Hesse, Toomey & Lehane, LLP, is a full-service law firm with offices in Quincy, Boston, and Springfield, Massachusetts. The firm represents a wide range of public entities throughout the Northeast. For questions about this alert and other legal issues, interested parties should contact David A. DeLuca at 617-479-5000, or contact the attorney assigned to your account.

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