



BY IN-HAND DELIVERY AND EMAIL (SNYDERGE@DOR.STATE.MA.US)

June 24, 2025

Geoffrey E. Snyder
Commissioner of Revenue
100 Cambridge Street
Boston, MA 02114

Re: City of Boston's Unauthorized and Unconstitutional Assessment of An Additional Property Tax on Taxpayers Who Exercise Their Statutory Right to Seek an Abatement before the Appellate Tax Board

Dear Commissioner Snyder,

A fundamental mission of the Pioneer New England Legal Foundation (PNELF) is to preserve the rule of law and to protect economic justice. In this connection, certain real estate owners in Boston have informed PNELF that the City of Boston's Tax Assessment Department (the "City") has been engaging in the unauthorized and unconstitutional practice of *increasing* the assessed property value for those taxpayers who exercise their statutory right of appeal to the Commonwealth's Appellate Tax Board (ATB) for an abatement of their real estate tax, under G. L. c. 59, §§ 64-65. In so doing, the City has unlawfully increased those taxpayers' tax burden by as much as hundreds of thousands of dollars. Accordingly, PNELF has copied the City on this letter.

The value of commercial real estate in post-pandemic Boston has been generally declining. Despite the City's current general reduction of property assessments on commercial real estate by approximately 3%, the City's assessments still substantially exceed the fair market value of those properties. As a result, commercial real estate taxpayers have pursued their statutory right to seek an abatement of their real estate taxes, by appearing before the City, under G. L. c. 59, § 59 and, if unsuccessful, by filing an appeal with the ATB, under §§ 64-65. (If unsuccessful before the ATB, the taxpayer has the statutory right to judicial review, under G. L. c. 58A, § 13.)



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However, the City is secretly penalizing those commercial real estate taxpayers who pursue their right of appeal to the ATB. Without providing the taxpayer *any* notice in its property tax statement, the City has been increasing the taxpayers' assessed property values for the next fiscal year, *solely* because of the taxpayers' pending ATB appeals. In fact, the City has expressly noted in writing, on certain taxpayers' property record cards, that the commercial property in question is subject to an additional assessment due to an "ATB dispute" or to an "override. open appeal."¹ Those real estate owners have also determined, in examining property record cards, that other commercial properties on which an appeal to the ATB is pending are subject to the same additional assessment, but without *any* written notification. Moreover, those same real estate taxpayers have also informed PNELF that the City has *removed* the notation for "ATB dispute" or "override. open appeal," which appeared on certain taxpayers' preliminary property record records, when the City released the final version of those property record cards.

As a result of the City's "ATB dispute" assessment practice, those taxpayers who have filed an appeal with the ATB are unlawfully subject to an increase in the assessed value of their property in as much as millions of dollars, *in addition to* the City's already existing overvaluation of the property. This, in turn, requires taxpayers to pay an additional and unlawful real estate tax of as much as hundreds of thousands of dollars. Moreover, c. 59 requires the taxpayer to pay the disputed tax before it can appeal the validity of that tax to the ATB, an appellate process that can take years. *See Mount Auburn Hosp. v. Bd. of Assessors of Watertown*, 55 Mass. App. Ct. 611, 616 (2002) ("[T]imely payment by the [taxpayer] is required for the board to have jurisdiction to hear the appeal" under G. L. c. 59, § 64).

There is no legal authority for the City to impose this additional, hidden real estate tax. Nor could there be. Indeed, this "ATB dispute" assessment is unconstitutional and statutorily impermissible for numerous reasons. It suffices for PNELF to identify the most prominent of those reasons in this letter. Essentially, the City is imposing an additional, concealed real estate tax in *retaliation* for taxpayers' exercise of their statutory right of appeal to the ATB. Such a tax

¹ Apparently, the City calls this additional assessment an "override" because it overrides the *higher* amount by which the City would have otherwise reduced the property's assessed value, but for the taxpayer's appeal to the ATB.

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plainly violates due process and the taxpayers' inviolable right, under both the First Amendment and the cognate provision of the Massachusetts Constitution, to petition the courts and the quasi-judicial administrative agencies to redress their grievances against the government.² “[T]he First Amendment prohibits government officials from subjecting individuals to *retaliatory actions* after the fact for having engaged in protected speech.” *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 474 (2022) (cleaned up) (emphasis added). See also *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 387 (2011) (“[T]he Petition Clause [of the First Amendment] protects the right of [parties] to appeal to *courts and other forums* established by the government for resolution of legal disputes.”) (emphasis added); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 542 (2001) (First Amendment applies to “the advocacy by the attorney to the courts.”).

Moreover, the City’s assessment practice violates the “fair cash valuation” and proportionality requirements of c. 59 and the Massachusetts Constitution. First, this added assessment is entirely unrelated to, and therefore, by definition, exceeds the fair cash value of the property. However, “[i]n this Commonwealth it is *both a constitutional and statutory requirement* that real property be assessed at its full and fair cash value[, under] Part II, c. 1, § 1, art. 4, of the Constitution of the Commonwealth[;] Art. 10 of the Declaration of Rights[; and] G. L. c. 59, §§ 38, 52.” *Bd. of Assessors of Weymouth v. Curtis*, 375 Mass. 493, 498-99 (1978) (emphasis added). See also G. L. c. 59, § 2a (“The assessors of each city and town shall determine the fair cash valuation of such real property for the purpose of taxation”); § 38 (“The assessors of each city and town shall . . . make a fair cash valuation of all the estate, real and personal, subject to taxation therein, and such determination shall be the assessed valuation of such estate.”); § 59 (taxpayer is “aggrieved” when subject to “an assessment of any of his

² The First Amendment, as applied to the Commonwealth and its political subdivisions through the Fourteenth Amendment, provides, in relevant part, that “Congress shall make no law . . . abridging the freedom of speech, . . . or . . . the right of the people . . . to petition the Government for a redress of grievances.” U.S. Const., amend. 1.

Similarly, the Massachusetts Constitution provides:

Every subject of the commonwealth ought to find, a certain remedy, *by having recourse to the laws*, for all injuries and wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without denial; promptly, and without delay; conformably to the laws.

Mass. Const., Part I, Art. XI (emphasis added).



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property in excess of its fair cash value”); *Bos. Edison Co. v. Bd. of Assessors of Watertown*, 393 Mass. 511, 514 (1984) (“Fair cash valuation,’ as our cases have stated repeatedly, means fair market value.”).

Second, this added assessment imposes a *disproportionate* tax burden on those commercial and residential real estate taxpayers who exercise their statutory right of appeal to the ATB, in clear violation of both the Massachusetts Constitution and c. 59. *See* Mass. Const. amend. Art. CXII (authorizing Legislature to “classify real property according to its use . . . and to assess, rate and tax such property differently in the classes so established, but *proportionately in the same class*”) (emphasis added); G. L. c. 59, § 59 (taxpayer is “aggrieved” when required to pay “more than his just proportion”).

For these reasons, PNELF is hereby providing the Commissioner with written notice of the City’s unauthorized and unconstitutional property assessment practice. PNELF urges the Commissioner to exercise his broad powers and duties, under G. L. c. 58, § 1A, to investigate the matter and compel the City to cease and desist this unlawful assessment practice, and to provide a tax refund to all affected taxpayers. We expect that the Commissioner and his Department will act swiftly to remedy the City’s unconstitutional conduct. In this regard, we would be most appreciative if the Commissioner, or one of his designated officers, would contact us within **30 days** of receipt of this letter, to inform us of the steps that the Department is taking to end the City’s “ATB dispute” property assessment, and to ensure that all affected taxpayers will be made whole.

However, if neither the Commonwealth nor the City takes any action and fails to respond to this letter within the 30 days, PNELF expects to take other necessary steps to remedy the situation. *See* G. L. c. 249, § 5 (action in nature of mandamus). *See also Leto v. Bd. of Assessors of Wilmington*, 348 Mass. 144, 148 (1964) (broad declaratory and injunctive relief available, apart from statutory abatement remedy, when, among other things, “basic facts exist showing essentially a deliberate and substantial violation of the constitutional and statutory requirements



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that property tax valuations shall be proportional.”); *Bennett v. Bd. of Assessors of Whitman*, 354 Mass. 239, 241 (1968) (taxpayers entitled to injunction to end tax assessment practices that were not at full and fair cash value of property); *Bettigole v. Assessors of Springfield*, 343 Mass. 223, 236 (1961) (“Where every [disputed] assessment has been made on a wrong basis, the defects in the scheme cannot be cured by the sporadic correction of individual assessments” under abatement remedy).

Sincerely,

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