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OML FAQ: Applications For Tax Abatement or Exemption

Applications For Tax Abatement or Exemption

When considering applications for tax abatement or exemption, must a Board of Assessors list the names and addresses of applicants in its meeting notice?

No, the Board does not need to list applicants' names or addresses in the Board's meeting notice, and the Department of Revenue's Division of Local Services has stated that Boards may be legally prohibited from doing so. Applications for abatement or exemption are confidential under G.L. c. 59, § 60. Although certain information about the application, such as the name or title in which the tax stands assessed, must be made public once an abatement or exemption has been granted, the Board is not required to release that information before that time. It is therefore sufficient for the meeting notice to state that the Board is considering applications for abatement or exemption. Boards may also wish to include the number of applications under consideration in their meeting notices. This provides the public with additional detail about the topic to be discussed without compromising applicant confidentiality.

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May a Board of Assessors meet in executive session to discuss applications for tax abatement or exemption?

A Board of Assessors may enter executive session to discuss and vote on applications for tax abatement or exemption. Massachusetts General Laws state that applications for tax abatement or exemption may only be disclosed to a select group of public officials, though certain information about the application must be made public if it is granted. G.L. c. 59, § 60. If a Board of Assessors plans to discuss the content of an application for tax abatement or exemption, therefore, the Board may convene in executive session under Purpose 7, "to comply with, or act under the authority of, any general law," citing G.L. c. 59, § 60 as the statute requiring confidentiality. See G.L. c. 30A, § 21(a)(7). The Board may also wish to discuss tax returns, health records, and other sensitive material that is often submitted along with applications for tax exemption in executive session, and may do pursuant to Purpose 7 by citing the statutory right to privacy, G.L. 214, § 1B, or any other statute requiring confidentiality of these records. See id. If the Board believes it can effectively discuss an application for tax abatement or exemption and supporting documents without revealing protected information, it may hold the discussion in open session. However, Boards should be aware that any document that is "used" during an open session meeting is no longer exempt from disclosure pursuant to any of the exemptions to the Public Records Law. See G.L. c. 30A, § 22(e). If a Board has questions about how to comply with the confidentiality requirements of other statutes in that situation, it should consult municipal counsel.

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Does an applicant for tax abatement or exemption have a right to be present and participate in a Board of Assessors' discussion regarding his or her request?

If a Board of Assessors chooses to discuss an application for tax abatement or exemption in executive session, the applicant does not have a right to be present or to speak during the executive session, though he or she may attend and participate at the discretion of the Board. In contrast, all members of the public have a right to attend any open session meeting of a public body; therefore, an applicant for tax abatement or exemption may be present during any

open session discussion by a Board of Assessors of his or her application. See G.L. c. 30A, § 20(a). The Open Meeting Law does not require that a public body allow public participation, however, even during an open session meeting. The Open Meeting Law states that "[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent." G.L. c. 30A, § 20(f). Public bodies should consult with municipal counsel about whether any other law requires that a member of the public be permitted to speak during a meeting.

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Must a public body list in its minutes all applications for tax abatement or exemption that are considered during a meeting?

Yes. The Open Meeting Law requires that the minutes of a public body's meetings contain "a list of documents and other exhibits used at the meeting," thus if a specific application and supporting documents are discussed by the body during a meeting, those documents should be identified in the minutes. G.L. c. 30A, § 22(a). However, the minutes of an executive session and all documents used at the session may be withheld from disclosure to the public as long as publication may defeat the lawful purposes of the executive session. G.L. c. 30A, § 22(f). Therefore, if a Board discusses an application in executive session under Purpose 7, "to comply with, or act under the authority of, any general law," citing G.L. c. 59, § 60 as the statute requiring confidentiality, the minutes may be withheld as long as that statute's confidentiality restrictions apply. Similarly, tax returns, health records, and other sensitive material discussed in executive session along with an application for tax exemption may also be withheld as long as a statute requiring their confidentiality applies. See G.L. c. 30A, § 21(a)(7); G.L. c. 30A, § 22(f). While the Open Meeting Law requires that a public body release executive session minutes once the executive session purpose has expired, a public body may still redact or withhold minutes subject to the exemptions to the Public Records Law contained within clause twenty-sixth of G.L. c. 4, § 7, or where discussions may be protected by the attorney/client privilege. See G.L. c. 30A, § 22(f). If an application for tax abatement or exemption and supporting documentation are used during an open session meeting, however, neither those documents nor the minutes identifying them are exempt from disclosure pursuant to any of the exemptions to the Public Records Law. See G.L. c. 30A, § 22(e). If a Board has questions about how to comply with the confidentiality requirements of other statutes in that situation, it should consult municipal counsel.

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