Massachusetts Department of Revenue *Division of Local Services*
Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

March 30, 2010

Cranberry Valley Golf Course Committee
Town of Harwich
183 Oak Street
Harwich, MA 02645

Re: Golf Course Revenues
Our File No. 2010-56

Dear Committee Members:

This is in reply to your letter regarding golf course revenues. You claim "excess earnings" are being used by the town for non-golf course purposes. We understand that the town currently budgets all course revenues in the general fund so that the committee's annual operating appropriation is made from the levy ("raise and appropriate"). By excess earnings, we assume you mean the estimated revenue from fees and other receipts generated by the course that exceed the course's annual appropriations.

You requested that the Department of Revenue direct the town to cease its current practice of accounting for golf course revenues. We are not aware of any law that prohibits the town from accounting for golf course fees and other revenues in the general fund. On the contrary, the revenues belong to the general fund, G.L. c. 44, § 53, unless the town has opted to use one of several special revenue funds that allow it to segregate and separately account for them. See, e.g., G.L. c. 40, § 5F; c. 44, §§ 53D, 53E; 53E½ and 53F½.

With respect to the town practice of setting golf course fees to recover a payment in lieu of taxes, the Department of Revenue does not have any regulatory authority over municipal fees and therefore, we cannot direct the town to cease this practice either. Under state law, cities and towns have broad authority to impose fees. In most cases, as here, communities may set and collect a particular fee without approval of any state agency. Those aggrieved by the imposition of the fee would have to bring a legal action to challenge its validity.

You noted that one of the characteristics of a fee that distinguishes it from a tax is that it is collected to compensate the governmental entity for its costs, not to raise revenue generally. *Emerson College v. City of Boston*, 391 Mass. 415 (1984). However, depositing a charge in a municipality's general fund instead of a special purpose fund is not decisive in determining whether the charge meets that legal standard. The courts look at whether the charge is reasonably designed to compensate the municipality for its anticipated costs in providing the service. *Silva v. Attleboro,* 454 Mass. 165 (2009). In that regard, the municipality may set fees to recover all anticipated direct and indirect costs, not just those found in any particular annual budget of the department responsible for the service. From an accounting perspective, a payment in lieu of taxes is considered a proper expense for a municipal proprietary service, such as operating a golf course. The appropriate amount depends on the type and amount of property used to provide the service. As a legal matter, however, it is not yet known whether the courts would regard such a payment as part of the cost of providing the service.

If you have further questions, please do not hesitate to contact me again.

Very truly yours,

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

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Post Office Box 9569, Boston, MA 02114-9569, Tel: 617-626-2300; Fax: 617-626-2330