Massachusetts Department of Revenue *Division of Local Services*
Alan LeBovidge, Commissioner Gerard D. Perry, Deputy Commissioner

August 31, 2006

Peter M. Caron
Director of Assessing
City Hall
Lynn, MA 01901

Re: Personal Property Tax Obligations for General Electric Military Systems
Our File No. 2006-118

Dear Mr. Caron:

You have asked whether the personal property of General Electric Military Systems, a general partnership composed of two corporations, is fully taxable to the partnership, or whether the corporate partners are exempt from taxation on their interests in partnership property, under GL c. 59, §5, cl. 16. As more fully appears in the balance of this opinion, we conclude that the personal property of GEMS is subject to property tax and is not entitled to any corporate exemptions.

We start with the premise that all property in the commonwealth is subject to property tax unless otherwise exempt by law. GL c. 59, §2. No statutory exemption or common law exemption specifically applies to partnership property. Ordinarily, a partnership is taxable on all its personal property under GL c. 59, §2 and GL c. 59, §18(Sixth). The latter provides that:

> Partners, whether residing in the same or different towns, shall be jointly taxed under their firm name, for all tangible personal property belonging to the partnership, except ships and vessels used in or designed for use in carrying trade or commercial fishing, in the place where such property is situated. Each partner shall be liable for the whole tax. (emphasis added)

Corporations, on the other hand, are entitled to significant local property tax exemptions for their personal property under GL c. 59, §5, cl. 16.

No Massachusetts statute or case appears to have specifically addressed the issue of the application of the corporate exemptions to a corporate partner's interest in partnership property. In Nashoba Communications Limited Partnership v. Board of Assessors of Danvers, 429 Mass. 126 (1999), the court held that a limited partnership was taxable on its poles and wires over public ways under GL c. 59, §18(Sixth) and was not subject to GL c. 59, §18(Fifth), which did not authorize such taxation if such property

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was owned by a corporation. There was no discussion in the decision concerning the specific legal entities comprising the partners of the limited partnership.

The case of RCN-BecoCom, LLC v. Commissioner of Revenue, 443 Mass. 198 (2005) also did not clearly settle the issue, even though the LLC in that case filed a partnership return federally and was treated as a partnership for Massachusetts income tax purposes under GL c. 62, §17. The SJC declined to decide whether that LLC should be treated as a partnership under GL c. 59, §18(Sixth) for local tax purposes and decided the case based on the general authorization to tax personal property to the owner thereof in the town where the property is situated, under GL c. 59, §18(First). The court held that the corporate exemptions provided in GL c. 59, §5, cl. 16 did not apply to property owned by the LLC.

Even though no specific case has addressed the issue raised by GEMS, the general rule in Massachusetts is that exemption from property tax is considered a special privilege and must be clearly established in the law, not merely left to vague implication. Mahony v. Board of Assessors of Watertown, 362 Mass. 210 (1972); Milton v. Ladd, 348 Mass. 762 (1965). Exemption from property taxation is also strictly construed. Board of Assessors of Wilmington v. Avco Corp., 357 Mass. 704 (1970).

As previously indicated, corporations have specific statutory exemptions provided in GL c. 59, §5, cl. 16. In pertinent part, a business corporation or foreign corporation as defined in GL c. 63, §30 is entitled to an exemption on its machinery that is its "stock in trade"; i.e., its inventory. GL c. 59, §5, cl. 16(2). Boards of assessors are bound to follow the classification made by the Commissioner of Revenue that a company is such a business or foreign corporation under GL c. 59, §5, cl. 16(5). The classifications appear in an annual list of corporations posted online by the Commissioner, under the obligations imposed by GL c. 58, §2. GEMS is not one of the listed corporations. General Electric Company, a New York corporation, is so listed, as is GE Subsidiary 1969 Inc. and GE Subsidiary 1986 Inc., both of Delaware.

In a memorandum dated March 22, 2006, William W. Booth, of Bingham McCutchen LLP indicates that GEMS, while organized as a partnership, elects to be treated as a corporation, because it files a federal income tax return on a consolidated basis with General Electric Company. He asserts the GEMS property and the income it generates are taken into account in determining the Massachusetts corporate excise payable by the corporate partners. He also points out that the partners are each liable for the property tax on GEMS under GL c. 59, §18(Sixth) & GL c. 108A, §15, and that the corporate partners are legally co-owners of partnership property under GL c. 108A, §25. The underlying argument made based on all these legal assertions is that to assess a personal property tax on GEMS, whose corporate partners are also liable for the property tax component of the corporate excise, would in effect be double taxation of the property, which the corporate exemptions were intended to avoid.

These arguments are not persuasive, as illustrated by the memorandum itself, which cites Fernandes Super Markets, Inc. v. State Tax Comm'n, 371 Mass. 318, 319 (1976) for the rule that the corporate property tax exemption is not a "true exemption," but rather "merely determines which governmental unit may impose a tax upon...particular property." When read in conjunction with GL c. 63, §§30.7, 32 & 39, taxation or exemption of property under GL c. 59 is determined first, and if the property is determined to be locally taxable, the value of such property is not included in the tangible personal property component of the corporate excise. There is no double taxation of the specific property under the alternate ad valorem systems. If the partnership personal property is taxable locally to GEMS, the corporate partners presumably do not have to include that tangible property in the tangible personal property component of their corporate excise returns. Collector of Taxes of Boston v. Cigarette Services Co., Inc., 325 Mass. 162, 166 (1950). To the extent that the corporate partners may have done so, the remedy would be to seek abatement of the corporate excise.

In addition, while the partners own a percentage interest in the partnership, as a tenant in partnership (GL c. 108A, §25), this property right is intangible. The tangible property contributed by the partners to the partnership, or acquired by the partnership in the partnership name, is partnership property, not that of the individual partners. GL c. 108A, §8. This is consistent with GL c. 59, §18(Sixth), which requires that partnership property be assessed in the partnership name. The intangible property interest as a tenant in partnership is not tangible personal property subject to property taxation. GL c. 59, §5, cl. 24 (intangible property specifically exempted).

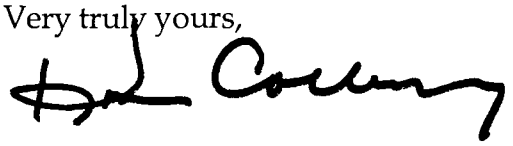
We note that the legislature has made accommodations to provide local corporate tax exemptions to other forms of legal entities, such as limited liability companies, that may have corporate members or may elect to be treated as corporations at the federal level, but no such accommodation has been made for partnerships whose partners may be corporations. GL c. 59, §5, cl. 16(2), GL c. 63, §30.1 & 30.2 & TIR-05-4 [LLCs that elect to be treated as corporations at the federal level and single member LLCs that file federally as disregarded entities and have S corporations as their single members will be treated as business or foreign corporations for excise and personal property tax purposes]; and GL c. 59, §5, cl. 16A [multi-member LLCs formed on or before January 15, 1996, made up entirely of incorporated members, engaged substantially in manufacturing in the commonwealth may qualify for manufacturing corporation exemptions in communities that have accepted the provisions of the section].

Finally, we point out that the determination of tax exemptions for business entities is intended to be facilitated by a bright line test the commissioner is to establish for the local assessors. Under GL c. 59, §5, cl. 16(5) the assessors not only may, but must

rely on the commissioner's classification of entities as specific classes of corporations so that they may apply the proper exemptions in particular cases. If the various boards of assessors were required to analyze the intricacies of multi-national companies with sophisticated organizations that have no or minimal public filing requirements, municipal tax assessments would always be in jeopardy. Therefore, we conclude that the partnership property of GEMS is subject to local personal property tax assessment to the partnership.

If there are further questions, please do not hesitate to contact us.

Very truly yours,



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KC/GAB