

City and Town

Amy Pitter, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



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That's Nobody's Business: Sham Corporation Denied Personal Property Exemption

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Last year, the Appeals Court ruled that the Appellate Tax Board (ATB) properly denied a personal property tax exemption to a leasing corporation formed by a wireless communications provider which had transferred equipment to a subsidiary and subsequently leased it back. The Appeals Court held that the leasing corporation did not engage in business and was created solely for the purpose of avoiding taxes. According to the court, the formation of the leasing corporation was a sham transaction, and tax benefits should not be afforded to the entity. The case is MASSPCSCO v. Board of Assessors of Woburn, 80 Mass. App. Ct. 398 (2011).

Sprint Spectrum, L.P. (Sprint) was formed as a Delaware limited partnership to provide wireless telecommunications services to United States customers. For fiscal years 2000 to 2003 inclusive, Sprint operated in the Commonwealth and filed telephone company returns (Form 5941) with the Commissioner of Revenue pursuant to M.G.L. Ch. 59 Sec. 41. For these fiscal years most of Sprint's assets, including towers, antennas and switching equipment, were considered to be exempt from local tax. In January 2003, however, the Commissioner advised telephone filers of a change in interpretation. Beginning in fiscal year 2004, entities engaged as partnerships or limited liability companies would be required to list all their personal property as taxable on Form 5941. The Commissioner's announcement was in accordance with an ATB order in RCN-BecoCom, LLC v. Commissioner of Revenue. The ATB had ruled that all of RCN's personal property was taxable locally since RCN as a limited liability company did not enjoy any corporate exemption. The Supreme Judicial Court later unanimously upheld the ATB decision at 443 Mass. 198 (2005). As a result, Sprint's taxable personal property valuation in Massachusetts soared about one hundred times higher than its certified value for FY 2003.

Upon the advice of a national public accounting firm, MASSPCSCO was established as a Delaware statutory trust and all of Sprint's network personal property in Massachusetts was transferred to the new entity. Sprint and MASSPCSCO then executed a lease agreement concerning the personal property. By this arrangement, Sprint paid a monthly rental fee for the personal property and it was anticipated that MASSPCSCO would receive a stock in trade exemption on its leased equipment without any effect on Sprint's federal income taxes. The assessors in the cities of Woburn and Springfield, however, denied the stock in trade exemption under M.G.L. Ch. 59 Sec. 5 Cl. 16(2) on the theory that MASSPCSCO, though being in the form of a corporation, did not actually engage in any business other than tax avoidance for its parent entity. On appeal, the ATB upheld the taxes and MASSPCSCO then appealed to the Appeals Court.

The Appeals Court recognized that the burden of proof is on the taxpayer to demonstrate eligibility for exemption. At issue in this case was whether the ATB properly applied the sham transaction doctrine and the engaged in business analysis which the Supreme Judicial Court had earlier relied upon in Brown, Rudnick, Freed & Gesmer v. Board of Assessors of Boston, 389 Mass. 298 (1983). In Brown, Rudnick a law firm had created a subsidiary corporation and transferred all its personal property to the subsidiary in return for stock shares and a promissory note. The subsidiary then leased the personal property back to the law firm. When an exemption from personal property taxes

was claimed, the Supreme Judicial Court denied the exemption on the ground the subsidiary was merely a sham to avoid taxation. According to the Supreme Judicial Court, a corporation seeking a stock in trade exemption from personal property taxes under M.G.L. Ch. 59 Sec. 5 Cl. 16(2) must show, not merely that it satisfies the statutory definition of a corporation, but also that it is engaged in business, defined as an activity which occupies the time, attention and labor of men for the purpose of livelihood, profit or gain. Quoting from Judge Learned Hand, the Supreme Judicial Court held that Escaping taxation is not business in the ordinary meaning.

Under the sham transaction doctrine, where there has been a business reorganization, a taxpayer will be eligible for tax advantages if the taxpayer demonstrates that the reorganization brings about a viable business entity which is formed for a substantial business purpose or actually engages in substantive business activity. In the case at hand, the Appeals Court observed that MASSPCSCO had no employees; failed to keep separate bank accounts; did not independently make investments; did no business with other parties except where it was incidental to leasing equipment to the parent; did not lease property to third parties; could not act independently; did not purchase equipment or be responsible for debt incurred in conjunction with said purchases. Under the facts presented, it appeared to the Appeals Court that MASSPCSCO was formed for tax avoidance purposes and MASSPCSCO did not act independently from Sprint. Consequently, the Appeals Court ruled, in agreement with the ATB, that the business reorganization which led to the creation of MASSPCSCO was purely a sham transaction. The Appeals Court also rejected MASSPCSCO's claim the Brown, Rudnick decision should be limited to Massachusetts domestic corporations. According to the Court, it did not matter whether the corporation was domestic or foreign (formed outside Massachusetts) since there was no evidence the Massachusetts Legislature intended to treat foreign corporations differently from local Massachusetts corporations.

As a result, where MASSPCSCO was formed through a purely tax avoidance sham transaction, the Appeals Court agreed that the assessors properly denied stock-in-trade exemptions.

DLS Technical Assistance Section Nears Three Decades of Service

Joe Markarian, Technical Assistance Section Director

The year was 1984 and Ronald Reagan was re-elected President over Walter Mondale, the country was coming out of depression years in 1981 and 1982, when the prime rate reached an unfathomable 20.5 percent, and Ghostbusters was the year's top grossing movie with Amadeus winning the Academy Award for Best Picture.

In Massachusetts, Michael Dukakis was Governor and John Kerry was Lieutenant Governor. Thomas W. McGee was in his last year as Speaker of the House and William M. Bulger was in the middle of his run as Senate President. Proposition 2½ was only in its third year of implementation and 18 municipalities voted on 25 override questions, of which 14 passed. The Division of Local Services was directed by Deputy Commissioner Edward J. Collins. The Red Sox finished 18 games out of first place and the Patriots were five losses behind the Dolphins. The Bruins climbed to first in the conference, but were bumped from the playoffs, while the Larry Bird-led Celtics won the NBA Championship. Doug Flutie's Hail Mary pass fell into the arms of Gerard Phelan and delivered a victory for Boston College in the famous Miracle in Miami.

It was among these events and circumstances that Deputy Commissioner Collins sought to expand the DLS mission with the creation of the Technical Assistance Section (TA). TA was paired with the Data Management/Local Aid section of DLS, which together became the Municipal Data Management/Technical Assistance Bureau. Today, MDM/TAB is one of five bureaus in DLS, sharing floor space with the Bureau of Accounts, Bureau of Local Assessment, the Municipal Finance Law Bureau and the Information Technology Bureau. In this mix, some DLS bureaus have a regulatory function, but Deputy Commissioner Collins envisioned a different role for TA. Its sole mandate was, and is, to serve as an advisor and a resource for Massachusetts cities, towns and counties in their efforts to improve local government.

In its first year, TA completed a financial analysis for 14 cities and eight towns. Since that time, TA has provided consultant-type services, at no cost, to 244 of 351 Massachusetts municipalities and one county - returning to many

multiple times. Eight separate reports have been completed for the City of Lawrence and six for the City of New Bedford. The cities of Chelsea and Fitchburg and the towns of Hadley, Southamptton and Swampscott have taken advantage of TA services on five separate occasions each. Assignments have taken TA project managers as far west as Pittsfield and east to Wellfleet, to Amesbury to the north and Martha's Vineyard to the south.

Among over 470 assignments, TA has completed 193 financial management reviews; 33 city or town financial analyses; 50 fiscal impact studies for proposed regional school districts; 40 revenue & expenditure forecasts; ten charter reviews and meetings with local government study committees; 25 financial analyses for the State Joint Labor Management Commission. Many other reports, more limited in scope, have focused on individual finance departments or specific problems, addressed water, sewer or light operations or provided a variety of cost analyses.

Smaller towns of Massachusetts have been primary beneficiaries of TA expertise through the years. Of the 244 municipalities which have received TA services, 115 or almost half have a population under 10,000 people and 64 have fewer than 5,000 residents. TA reports have prompted action to create efficiencies, protect reserves, enhance fiscal controls and generally improve municipal operations. The insights offered by TA project managers have helped guide local efforts to reorganize government through regionalization initiatives and the adoption of new charters.

There have also been high profile reports. In 2000, an analysis completed in Pittsfield for the Joint Labor Management Commission revealed serious, previously undetected financial issues that demanded immediate attention. A 2002 report on the condition of the City of Springfield influenced the Administration's decision to propose a finance control board for the city. The 2009 Hamilton and Wenham Merger and Enhanced Regionalization Study represented the first comprehensive look at what would happen if two Massachusetts towns combined into one.

Today, whether in meetings, by telephone, email or in written reports, TA continues to provide independent, objective and highly professional advice and recommendations to communities on all aspects of local government. A wide range of resources is also made available online to assist local officials at the Technical Assistance website (<http://www.mass.gov/dor/local-officials/municipal-data-and-financial-management/financial-mgt-assistance/>). For more information or to talk about or request services, please contact Rick Kingsley, MDM/TAB Bureau Chief, at (617) 626-2376 or kingsleyf@dor.state.ma.us.

January and February Municipal Calendars

JANUARY

January 1: Assessors

Property Assessment Date: this is the effective date (not for exemption purposes) for statewide assessed value for all property for the following fiscal year.

January 31: DESE

Notifies Communities/Districts of Estimated Net School Spending Requirements for the Next Year
As soon as the Governor releases the ensuing year's budget, DESE notifies communities/districts of the estimated NSS requirements. These figures are subject to change based on the final approved state budget.

FEBRUARY

February 1: Taxpayer Deadline for Payment of 3rd Quarterly Tax Bill Without Interest

According to M.G.L. Ch. 59, Sec. 57C, this is the deadline for receipt of the 3rd Quarter actual tax payment without interest, unless the actual tax bills were mailed after December 31. If mailed after December 31, the actual tax is due as a single installment on May 1, or 30 days after the bills were mailed, whichever is later.

February 1: Taxpayer Quarterly Tax Bills Application Deadline for Property Tax Abatement

According to M.G.L. Ch. 59, Sec. 59, applications for abatements are due on Feb. 1 unless actual tax bills were mailed

after December 31. In that case they are due May 1, or 30 days after mailing, whichever is later.

February 15: Treasurer 2nd Quarter Reconciliation of Cash

February 28: Finance Committee Continue Budget Review and Develop Recommendations

This date will vary depending on dates of town meeting.

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