COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

480 MCCLELLAN LLC	**v.**	**BOARD OF ASSESSORS OF THE CITY OF BOSTON**
Docket No. F340469		Promulgated: December 12, 2023

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the City of Boston ("assessors" or "appellee") to abate taxes on certain real estate located in the City of Boston and assessed to 480 McClellan LLC ("appellant") for fiscal year 2020 ("fiscal year at issue").

This matter was before the Appellate Tax Board ("Board") on the appellee's First Motion in Limine ("Motion in Limine") and the appellant's Motion for Summary Judgment. Chairman DeFrancisco and Commissioners Good, Elliott, Metzer, and Bernier all joined in a decision for the appellee.

These findings of fact and report are promulgated pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Philip S. Olsen, Esq., and *Bernard F. Shadrawy, Jr.*, Esq., for the appellant.

Anthony M. Ambriano, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the appellee's Motion in Limine, the appellant's Motion for Summary Judgment, a Statement of Agreed Facts with associated exhibits, and all responses, documents, and memoranda offered in support thereof by the parties, the Board made the following findings of fact.

I. Jurisdiction

On January 1, 2019, the relevant date of valuation and assessment for the fiscal year at issue, the appellant was the lessee of a parcel of real estate owned by the Massachusetts Port Authority ("Massport") and located at 480 William F. McClellan Highway in East Boston, consisting of 222,230 square feet of land improved by a building containing a rentable area of approximately 140,967 square feet ("subject property").

The assessors valued the subject property at $22,340,300 for the fiscal year at issue and assessed a tax thereon, at the rate of $24.92 per $1,000 in the amount of $556,720.28, plus a Community Preservation Act surcharge in the amount of $5,542.28. The appellant's payments were timely in accordance with G.L. c. 59, § 64.

The appellant timely filed an abatement application with the assessors on January 27, 2020. The assessors denied the abatement application on March 11, 2020. The appellant timely

filed a petition with the Board on June 4, 2020.[1] Based on these facts the Board found and ruled that it had jurisdiction to hear and decide this matter.

II. Motions of the Parties and the Board's Order

The appellee filed its Motion in Limine on November 12, 2020, purporting to "frame for the Board's consideration a legal issue" and requesting that the Board rule that the only property tax exemption potentially available to the appellant with respect to the subject property was the exempt status of Massport property under St. 1956, c. 465, § 17 ("Section 17 of the Enabling Act"), and "that the undisputed facts prove that the [subject property] is not exempt under Section 17 [of the Enabling Act]." Under Section 17 of the Enabling Act, "lands acquired by the Authority which were subject to taxation on the assessment date next preceding the acquisition thereof, shall, if leased for business purposes, be taxed by the city or by any city or town in which the said land may be situated to the lessees thereof, respectively, in the same manner as the lands and the buildings thereon would be taxed to such lessees if they were the owners of the fee." St. 1956, c. 465, § 17.[2]

[1] The appellant's petition was stamped as received by the Board on June 23, 2020, but the petition was mailed in an envelope postmarked June 4, 2020. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

[2] The Board noted a publishing discrepancy between two legal research platforms, specifically that one legal research platform had incorporated a 1993 amendment to Section 17 of the Enabling Act, an amendment that neither party referenced in their motions and supporting documentation. Because the

Because the Motion in Limine – if allowed - would dispose of a significant issue in this matter, namely whether the subject property was exempt from taxation for the fiscal year at issue, the Board substantively treated the appellee's Motion in Limine as a motion for summary judgment.

On December 18, 2020, the appellant filed its Motion for Summary Judgment, in which it contended that "it is entitled to the property tax exemption afforded to Massport property, as set forth in Section 17 [of the Enabling Act], because it leases the [subject property] for a public purpose."

By order dated June 22, 2023, the Board allowed the appellee's Motion in Limine concerning the issue of exemption and denied the appellant's Motion for Summary Judgment. The Board held that the subject property was not exempt under Section 17 of the Enabling Act and that the appellant was not entitled to seek exemption of the subject property under any provisions other than Section 17 of the Enabling Act. Subsequently, the appellant withdrew its challenge to the valuation of the subject property for the fiscal year at issue

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1993 amendment, if correct, impacted the statutory language directly relevant to this matter, the Board disclosed its finding to the parties and allowed them the opportunity to submit memoranda. Upon review, the Board concluded that Section 17 of the Enabling Act was not amended in 1993 and the version of Section 17 of the Enabling Act, as referenced and relied upon by the parties in their motions and supporting documentation, was the correct version.

and requested a final decision in this matter, reserving all exemption arguments raised in its petition.[3]

III. Ownership and Leasing of the Subject Property; PILOT Agreement

Harvard Square Motor Hotel, Inc. conveyed the subject property to Massport by deed dated January 30, 1990. As of the January 1 preceding the fiscal year at issue, and as of July 1 of the fiscal year at issue, Massport owned the subject property. The assessment date next preceding the date that the subject property was acquired by Massport was January 1, 1990. Though the subject property did not exist as a separate taxable parcel until fiscal year 2017, the subject property was subject to taxation on January 1, 1990. The appellee's Motion in Limine acknowledges that the subject property had not been taxed prior to fiscal year 2017.

Massport leased the subject property to Logan 480 Company, LLC by a ground lease dated as of May 27, 2003 ("ground lease") and Logan 480 Company, LLC assigned its interest in the ground lease to the appellant by an assignment and assumption of the lease agreement dated as of April 8, 2005 ("assignment"). The appellant paid $7,000,000 for the ground lease, assuming all

[3] The Board's order encompassed the present matter, as well as appeals for fiscal years 2017, 2018, and 2019, for the subject property. As of the date of promulgation for these findings of fact and report, the appellant has not withdrawn a valuation challenge for fiscal years 2017, 2018, and 2019, and those appeals are still pending before the Board.

obligations and responsibilities and terms of the ground lease. The appellant and Massport also entered into an amendment to the ground lease dated as of April 8, 2005, by Massport and the appellant ("lease amendment") (ground lease, assignment, and lease amendment collectively "lease documents"). No further amendments were effected during the times relevant here.

Prior to entering into the assignment of the ground lease, the appellant secured a letter from Massport dated March 16, 2005, which stated "Massport's position that cargo facilities on Massport's property, such as the project described in the [ground lease], are essential supporting facilities to the operations of the Port of Boston and Logan International Airport, and constitute an essential governmental function provided by Massport."

The appellant is a for-profit limited liability company organized under the laws of Delaware on February 4, 2005, and registered to do business in Massachusetts on March 7, 2005. As of the January 1 preceding the fiscal year at issue and as of July 1 of the fiscal year at issue, the appellant was the lessee of the subject property under the lease documents. During all times relevant to this appeal, the appellant leased the subject property from Massport and subleased portions of the subject

property to various businesses.[4] The subtenants' rights and obligations were subject to and subordinate to the ground lease. The appellant paid base rent and additional rent as defined in the lease documents to Massport. Leases to the subtenants provided that the subtenants would reimburse the appellant for the subtenants' pro rata share of operating expenses with respect to the subject property, including taxes, as defined in the subleases.

Relevant terms of the lease documents required the appellant to make certain "improvements" to the unimproved parcel of land, including construction of a warehouse and freight forwarding facility, office space, vehicle parking, landscaping, removal of debris, clearing and leveling of the premises, and construction of vehicular access from McClellan Highway to the premises. Massport was not liable for loss, damages, or injury. The appellant was responsible for: all permits, including cost and expense; all utilities; all repairs, maintenance, cleaning, property insurance, loss of rent insurance, builder's risk insurance, employer's liability insurance, liability insurance, boiler insurance, and comprehensive crime insurance; and all taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges, whether the charges were

[4] The parties do not contend that any subtenants are charitable organizations.

made directly to the appellant or in the name of Massport, but specifically excluding any payment in lieu of taxes ("PILOT") pursuant to any agreement entered into by Massport.

During the lease term, title to the appellant's improvements vested in the appellant, and the appellant was entitled to any depreciation deductions and investment tax credits. The lease was a "net lease," with rent being "absolutely net" to the landlord and the appellant paying all costs, charges, and expenses of every kind and nature whatsoever against or in connection with the construction, development, use, and operation of the premises. The lease was not a partnership or a joint venture, but rather it was understood by the parties that the relationship was at all times that of landlord and tenant. The appellant was entitled to seek a reduction in the valuation of the premises or its leasehold interest assessed for tax purposes and to contest by appropriate proceedings at the appellant's expense, the amount or validity in whole or in part of any imposition. Massport was not required to furnish any facilities or services of any kind. The appellant indemnified and held Massport harmless from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses imposed upon or incurred by or assessed against Massport for a litany of occurrences. The appellant agreed to use the subject property for permitted uses - (i) construction,

development, licensing, and operation of an intermodal freight, office, and warehousing facility, (ii) office space, (iii) exterior parking, and additional uses consistent with and not interfering with or detracting from the permitted uses. The appellant was required to deliver a construction deposit to Massport in the amount of $1,000,000 as security for the performance by the appellant of each and every obligation under the lease.

Pursuant to Chapter 332 of the Massachusetts Acts of 1978, Massport entered into a PILOT agreement with the City of Boston dated July 1, 1978, with subsequent annual amendments dated as of June 30, in each of the calendar years 1979 through 1985. An amended and restated PILOT agreement was dated as of March 14, 1995, and a first amendment to this amended and restated PILOT agreement was dated as of December 20, 2005. The amounts payable to the City of Boston by Massport pursuant to the 1995 PILOT agreement and the 2005 PILOT agreement were not reduced in fiscal years 2017 through 2020 on account of the real estate taxes assessed to the appellant.

IV. The Board's Findings

Based upon the above and as discussed further in the Opinion, below, the Board found that the subject property was land acquired by Massport on January 30, 1990, and that it was subject to taxation on January 1, 1990, the assessment date next

preceding the date when the subject property was acquired by Massport. The Board also found that the subject property was leased for business purposes by the appellant, a for-profit entity that paid $7,000,000 to assume a lease with extensive rights and responsibilities, and delivered a $1,000,000 construction deposit as security, and that the appellant would not expend such funds and place itself in a position of widespread accountability in the absence of seeking to earn profit from its lease of the subject property. The Board was not swayed by the existence of a PILOT agreement or by the lack of assessments on the subject property prior to fiscal year 2017. Neither fact was relevant to the imposition of taxation pursuant to the pertinent language of Section 17 of the Enabling Act, nor was Massport's letter to the appellant opining the public purpose of the subject property. Further, the Board found that the Enabling Act precluded the appellant from seeking exemption under any other general or special laws.

Accordingly, on the basis of the above findings and as discussed further in the Opinion, the Board found that there were no material facts at issue in this matter and that the appellee was entitled to judgment as a matter of law.

OPINION

"The purpose of a motion in limine is to prevent irrelevant, inadmissible or prejudicial matters from being admitted in evidence . . . and in granting such a motion, a judge has discretion similar to that which he has when deciding whether to admit or exclude evidence." ***Commonwealth v. Hood***, 389 Mass. 581, 594 (1983). *See* ***145 Sumner Avenue, L.P. et al. v. Assessors of Springfield***, Mass. ATB Findings of Fact and Reports 2010-315, 328 (holding that the "Board therefore allowed the appellee's Motion in Limine and declined to permit the appellants to introduce evidence relating to their disproportionate assessment claims"). If allowed, the appellee's Motion in Limine functionally disposes of the issue of exemption of the subject property from taxation. Consequently, the Board treated the Motion in Limine as a motion for summary judgment.

Pursuant to Rule 22 of the Board's Rules of Practice and Procedure, "[i]ssues sufficient in themselves to determine the decision of the Board or to narrow the scope of the hearing may be separately heard and disposed of in the discretion of the Board." 831 CMR 1.22. Having considered the appellee's Motion in Limine and the appellant's Motion for Summary Judgment, the Board found and ruled that this appeal presented no genuine issues of material fact and that disposition of this appeal by summary judgment was appropriate pursuant to 831 CMR 1.22. *See*

Correllas v. Viveiros, 410 Mass. 314, 316 (1991) ("The purpose of summary judgment is to decide cases where there are no issues of material fact without the needless expense and delay of a trial followed by a directed verdict.").

While generally exempting Massport property from taxation, Section 17 of the Enabling Act states in relevant part that

> lands of the Authority, except lands acquired by the commonwealth under the provisions of chapter seven hundred and five of the acts of nineteen hundred and fifty-one situated in that part of the city called South Boston and constituting a part of the Commonwealth Flats,[5] and lands acquired by the Authority which were subject to taxation on the assessment date next preceding the acquisition thereof, shall, if leased for business purposes, be taxed by the city or by any city or town in which the said land may be situated to the lessees thereof, respectively, in the same manner as the lands and the buildings thereon would be taxed to such lessees if they were the owners of the fee.

St. 1956, c. 465, § 17.

An entity seeking an exemption bears the burden of establishing that it comes within that general exemption. *See* ***Willowdale LLC v. Assessors of Topfield***, 78 Mass. App. Ct. 767, 769 (2011); ***New Habitat, Inc. v. Tax Collector of Cambridge***, 451 Mass. 729, 731 (2008). To qualify for an exemption, the

[5] "Through St. 1951, c. 705, the Legislature authorized the Port of Boston Authority to obtain from the Federal government the land known as Castle Island Terminal Facility in South Boston and further declared, notwithstanding the provisions of G.L. c. 59, § 5, that the conveyance be exempt from taxation even if leased for business purposes. St. 1951, c. 705, §§ 1-2. The property at issue here was not a part of the Castle Island Terminal Facility." ***AMB Fund III v. Assessors of Boston***, 82 Mass. App. Ct. 1123 n.5 (2012) (decision under Rule 1:28). The subject property also is not part of the Castle Island Terminal Facility.

appellant bore the burden of establishing that the subject property had not been subject to taxation on the assessment date next preceding its acquisition by Massport, and that the subject property had not been leased by Massport for business purposes. Here, the appellant failed to establish these criteria.

Harvard Square Motor Hotel, Inc. conveyed the subject property to Massport on January 30, 1990, and the subject property was subject to taxation on January 1, 1990, the assessment date next preceding that acquisition date. During times relevant to this matter, the appellant – a for-profit entity - leased the property from Massport for business purposes in accordance with the lease documents, paying $7,000,000 for the right to assume the lease from Logan 480 Company, LLC, delivering a $1,000,000 construction deposit, and taking on all the rights and responsibilities of the ground lease. But for the opportunity to generate a profit, no for-profit entity would enter such a lease of the subject property. *See* ***Sherwin-Williams Co. v. Commissioner of Revenue***, 438 Mass. 71, 85 n.8 (2002) (equating "business purpose" with a "bona fide profit-seeking business"); ***AMB Fund III v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2011-969, 981, *aff'd*, 82 Mass. App. Ct. 1123 (2012) (decision under Rule 1:28) (finding "that the subject property was leased for business purposes because AMB was a for-profit entity which leased the subject property for

business purposes"); ***Outfront Media LLC v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2022-176, 186 (finding that the taxpayer's signs were used in connection with a business conducted for profit), *appeal pending* at No. SJC-13489.

The existence of a PILOT agreement and letter from Massport, as well as the lack of assessments on the subject property until fiscal year 2017, "provided no support for the appellant's position that the subject property was exempt from tax. The plain language of Section 17 and the applicable legal precedent established that the subject property was taxable during the fiscal years at issue, and the Board so found and ruled." ***AMB Fund III***, Mass. ATB Findings of Fact and Reports at 2011-992. *See also* ***AMB Fund III***, 82 Mass. App. Ct. at 1123 n.9 (holding that "we give little weight to evidence of Massport's continued PILOT payments, which were not reduced during the fiscal years at issue, and Massport's treatment of the property as exempt under its own interpretation of § 17 [and that] '[w]hen a prior determination has been proved wrong, a taxpayer's reliance on the error will not prevent the commissioner from correcting a mistake of law and assessing a tax that is otherwise lawfully due'") (citations omitted).

Section 17 of the Enabling Act requires no finding by the Board of a public purpose, only that the subject property was leased for business purposes. Conversely, for instance, G.L. c.

59, § 2B specifically contemplates public purpose in its provisions, stating in relevant part that "[e]xcept as otherwise provided in section three E, real estate owned in fee or otherwise or held in trust for the benefit of the United States, the commonwealth, or a county, city or town, or any instrumentality thereof, if used in connection with a business conducted for profit or *leased or occupied for other than public purposes*, shall for the privilege of such use, lease or occupancy, be valued, classified, assessed and taxed annually as of January first to the user, lessee or occupant in the same manner and to the same extent as if such user, lessee or occupant were the owner thereof in fee, whether or not there is any agreement by such user, lessee or occupant to pay taxes assessed under this section" and "[t]his section shall not apply to a use, lease or occupancy which is *reasonably necessary to the public purpose* of a public airport, port facility, Massachusetts Turnpike, transit authority or park, which is available to the use of the general public or to easements, grants, licenses or rights of way of public utility companies." G.L. c. 59, § 2B (emphasis added). *See* ***Cabot v. Assessors of Boston***, 335 Mass. 53, 60 (1956) (recognizing that "[w]ith respect to public property, the Legislature has broad authority to make it taxable in whole or in part if it desires to do so").

Having failed to sustain its burden of establishing that the subject property was exempt under Section 17 of the Enabling Act, the appellant is precluded from seeking exemption elsewhere. Section 29 of the Enabling Act states that "[a]ll other general or special laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this act." St. 1956, c. 465, § 29. *See* ***Cape Cod Shellfish & Seafood Co. v. City of Boston***, 2009 Mass. App. Unpub. LEXIS 638 (2009) (decision under Rule 1:28), *rev. denied by*, 455 Mass. 1101 (2009) ("Moreover, other sections of the statutes buttress the judge's conclusion. Chapter 91 App., § 1-29, inserted by St. 1956, c. 465, § 29, provides that with exceptions not here applicable, '[a]ll other general or special laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this act.'").

Boston v. U.N.A. Corp., 11 Mass. App. Ct. 298, 301 (1981), concerned whether or not certain property was part of Commonwealth Flats for purposes of Section 17 of the Enabling Act, but significantly, once the property was found to be so, the court found that Section 17 "permits no other reading than that parts of Pier 5 which are leased for business purposes are taxable by the city to the lessee." The court did not indicate any other statutory provisions under which exemption could be sought.

In ***AMB Fund III***, Mass. ATB Findings of Fact and Reports at 2011-972, the taxpayer "originally asserted several grounds for its exemption claim . . . but later conceded that [Section 17] . . . alone controlled the taxation of the subject property, and abandoned its other arguments for exemption." In the appeal at ***AMB Fund III***, 82 Mass. App. Ct. at 1123 n.9, the court found that "a statute specifying the tax treatment of particular land controls over more general tax statutes such as G.L. c. 59, § 2B and G.L. c. 59, § 5, Clause Second." *See also* ***Beacon South Station Associates, LSE v. Assessors of Boston***, 85 Mass. App. Ct. 301, 307 (2014) (holding that the specific MBTA exemption statute controls over the general tax law); ***TBI, Inc. v. Board of Health of North Andover***, 431 Mass. 9, 18 (2000) (holding that "[i]t is a basic canon of statutory interpretation that 'general statutory language must yield to that which is more specific'").

Accordingly, the Board found and ruled that there were no material facts at issue in this matter and that the appellee was entitled to judgment as a matter of law.

THE APPELLATE TAX BOARD

By: /S/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,
Attest: /S/ William J. Doherty
Clerk of the Board