THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board
100 Cambridge Street
Suite 200
Boston, Massachusetts 02114

Docket Nos. F334706 through F334713,
F334772 through F334778,
F339718, F339719,
F341308, F341309, &
F342198 through F342203

AKAMAI TECHNOLOGIES, INC.,
Appellant
v.

BOARD OF ASSESSORS OF THE CITY OF CAMBRIDGE,
Appellee

Docket No. C341712

BOARD OF ASSESSORS OF THE CITY OF CAMBRIDGE,
Appellant
v.

COMMISSIONER OF REVENUE,
Appellee

Docket No. C337558

AKAMAI TECHNOLOGIES, INC.,
Appellant
v.

COMMISSIONER OF REVENUE,
Appellee

DECISION WITH FINDINGS

I. INTRODUCTION

Akamai Technologies, Inc. ("Akamai") brought three motions ("Motions") before the Appellate Tax Board ("Board") – a Motion for Summary Judgment (Docket Nos. F334706-F334713, F334772-F334778, F339718, F339719, F341308, F341309, F342198-F342203);[1] a Motion to Intervene and for Summary

[1] These dockets concern the refusal of the Board of Assessors of the City of Cambridge ("assessors") to abate property tax assessments against Akamai's machinery for fiscal years 2016 through 2021.

Judgment (Docket No. C341712);[2] and a Motion for Summary Judgment (Docket No. C337558).[3] Collectively the twenty-seven appeals ("present appeals") underlying the Motions encompass calendar years 2015 through 2020 ("years at issue"), which impact fiscal years 2016 through 2021 ("fiscal years at issue") for purposes of the property tax exemption under G.L. c. 59, § 5, clause 16(3) ("Clause 16(3)").

The present appeals all involve the same issue: whether Akamai should be classified as a manufacturing corporation for the years at issue. Akamai contends that the Board addressed and decided this issue in its favor in related proceedings involving the same parties at ***Akamai Technologies, Inc. v. Commissioner of Revenue and Board of Assessors of the City of Cambridge***, Docket Nos. C332360, C334907, and C336909 ("***Akamai I***"). As a consequence, Akamai argues that it is entitled to summary judgment in the present appeals, is properly classified as a manufacturing corporation, and is entitled to the property tax exemption under Clause 16(3) for the fiscal years at issue.

Based upon the Motions, objections and replies to the Motions, and the documents submitted in support thereof, as well as the hearing held upon the Motions, the Board made the following findings and rulings.

II. PRIOR PROCEEDINGS

On July 1, 2020, the Board issued an Order Under Rule 33 in ***Akamai I*** in which it found and ruled that Akamai "was engaged in manufacturing activities, which were substantial, and therefore [Akamai] qualified as a manufacturing corporation and should have been classified as such effective January 1, 2015, pursuant to G.L. c. 63, §§ 38 and 42B, and G.L. c. 58, § 2."

Subsequent to the filing and hearing of the Motions, the Board issued findings of fact and report in ***Akamai I***. In ***Akamai Technologies, Inc. v. Commissioner of Revenue and Board of Assessors of the City of Cambridge***, Mass. ATB Findings of Fact and Reports 2021-410, the Board "found and ruled that for the periods at issue, the revenues from [Akamai's] CDN business units were derived from the development and sale of standardized

[2] This docket concerns the assessors' appeal pursuant to G.L. c. 58, § 2 from the Commissioner of Revenue's ("Commissioner") classification of Akamai as a manufacturing corporation in his 2020 List of Corporations Subject to Taxation in Massachusetts. The assessors assessed tax on Akamai's machinery for fiscal year 2021, and Akamai seeks to intervene on the basis that it is impacted by the outcome of Docket No. C341712, which intervention the Board allows without further discussion.

[3] This docket concerns Akamai's appeal pursuant to G.L. c. 58, § 2 from the refusal of the Commissioner to classify Akamai as a manufacturing corporation in his 2019 List of Corporations Subject to Taxation in Massachusetts.

computer software within the meaning of G.L. c. 63, § 42B, the use of which was by remote access." ***Id.*** at 2021-467.[4]

III. FISCAL YEARS 2016 THROUGH 2019 PROPERTY TAX APPEALS

In ***Akamai I***, based on findings as to the source of Akamai's revenues, the Board concluded that Akamai was entitled to classification as a manufacturing corporation beginning January 1, 2015 through 2018, effective for fiscal years 2016 through 2019. However, the Board's decision in ***Akamai I*** does not exist in isolation, and the decision affects disposition of the present appeals. In addition to setting out the jurisdictional requisites for filing an "application" with the Board for any person aggrieved by a classification made by the Commissioner, G.L. c. 58, § 2 provides that the Board must give notice of its decision on the application within ten days and "[t]he decision of the board shall be binding upon the parties to any proceeding pending or brought before it which involves a tax for the year to which the decision is applicable."

Akamai I involved the same parties that are litigating the present appeals. Further, ***Akamai I*** specifically addressed Akamai's qualification for the manufacturing exemption applicable to fiscal years 2016 through 2019, which are at issue in the present appeals. The assessors intervened in ***Akamai I*** because the issue of classification impacted whether Akamai would be entitled to the exemption under Clause 16(3) for property tax purposes. The Board's decision in ***Akamai I*** is therefore binding on the parties in the fiscal year 2016 through 2019 property tax appeals under G.L. c. 58, § 2, and summary judgement is granted for those appeals, because the Board's decision In ***Akamai I*** dictates Akamai's property tax liability for those fiscal years. *See* G.L. c. 59, § 5, clause 16(5) ("The classification by the commissioner or the appellate tax board of a corporation as a business corporation, manufacturing corporation or research and development corporation, as respectively defined aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business."); *see also* ***Directive*** 12-5 ("[T]he classification by the Commissioner of Revenue or, after appeal, by the Appellate Tax Board as to whether or not an entity qualifies as a *manufacturing corporation* must be followed in the assessment of property tax of machinery used in the conduct of business.") (emphasis in original).

---

[4] The parties agreed in ***Akamai I*** that "if the revenues derived by [Akamai] from its CDN business unit solutions were found by the Board to derive from the sale of standardized, remotely-accessed computer software, then during the periods at issue: (i) [Akamai] was engaged in manufacturing activities; (ii) those manufacturing activities were substantial; and (iii) [Akamai] qualified as a manufacturing corporation and should have been classified as such pursuant to G.L. c. 58, § 2 and G.L. c. 63, §§ 38 and 42B, entitling it to use a single sale factor apportionment formula for purposes of the Massachusetts corporate excise and to local property tax treatment under Clause 16(3)." ***Akamai Technologies***, Mass. ATB Findings of Fact and Reports at 2021-448-49.

IV. REMAINING PROPERTY TAX AND CLASSIFICATION APPEALS

Once an entity is classified as a manufacturing corporation, it generally does not reapply for classification in the absence of some triggering event, such as a name change or a "material change in its activities." 830 CMR 58.2.1(8). *See also* ***Assessors of Holyoke v. State Tax Commission***, 351 Mass. 394, 400 (1966) 351 Mass. at 400 ("Changes in the facts affecting a particular corporation's classification are not likely to take place from year to year."). In the absence of a dramatic reduction in its manufacturing activities,[5] Akamai is entitled to remain classified as a manufacturing corporation as the Board determined in ***Akamai I*** for 2015 through 2018. Summary judgment in favor of Akamai in the remaining property tax appeals for fiscal years 2020 and 2021, as well as the two classification appeals, therefore depends on whether there is any genuine issue of material fact concerning Akamai's manufacturing activities as of January 1, 2019 and January 1, 2020. S*ee* ***Zero Waste Solutions, LLC v. Commissioner of Revenue,*** Mass. ATB Findings of Fact and Reports 2021-283, 287 ("Although the Board does not specifically adopt Rule 56 of the Massachusetts Rules of Civil Procedure, it does look to Rule 56 for guidance when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law."); s*ee also* 831 CMR 1.22 ("[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.");.

In support of its Motions, Akamai offered the affidavit of Laura Howell ("Ms. Howell"), its vice president of corporate finance and one of its witnesses in ***Akamai I***. In the affidavit, dated May 27, 2021, Ms. Howell attested to her knowledge of Akamai's business activities, revenue streams, and financial situation. She stated that the activities of Akamai's CDN business "were substantially similar" to those described by its witnesses in the proceedings for Akamai I, emphasizing that "[f]or each year following the periods at issue in [Akamai I], including 2019, 2020, and through today, the revenues derived from the development and sale of standardized computer software through Akamai's CDN business, including its web experience, media, and enterprise business units, continued to be significantly more than 25% of Akamai's total and Massachusetts revenues."

Both the assessors and the Commissioner argued that summary judgment in favor of Akamai is inappropriate in the absence of discovery, but neither party identified a genuine dispute of material fact that discovery would resolve. A "[b]are assertion[] made in the nonmoving party's opposition will not defeat a motion for summary judgment." ***Barron Chiropractic & Rehabilitation, P.C. v.***

[5] The parties did not contest substantiality in ***Akamai I***. *See* footnote 4. Indeed, for the periods at issue in ***Akamai I***, which are either included in or immediately precede those at issue in the present appeals, Akamai's revenues to determine substantiality were more than three times the 25% threshold.

Norfolk & Dedham Group, 469 Mass. 800, 804 (2014). Further, "the opposing party cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment." ***LaLonde v. Eissner***, 405 Mass. 207, 209-10 (1989) (citations omitted) (holding that the "motion judge did not err in concluding that the plaintiffs failed to 'allege specific facts which establish that there is a genuine, triable issue' which would defeat summary judgment"); *see also* ***Chiodini v. Target Marketing Group, Inc.***, 58 Mass. App. Ct. 376, 379-80 (2003) ("The plaintiff's opposition to the defendants' motion for a protective order to stay discovery failed to identify what specific facts the plaintiff hoped to glean from discovery that would counter the defendants' summary judgment submissions"); ***Norwood v. Adams-Russell Co.***, 401 Mass. 677, 683 (1988) (party moving for summary judgement "need not prove that ***no*** factual disputes exist, only that there is no ***genuine*** dispute of ***material*** fact") (emphasis in original).

As the nonmoving parties, the assessors and the Commissioner could not merely rely on speculative assertions of potentially discoverable issues of material fact. Yet such assertions comprised the sum and substance of their opposition. In particular, references to nonspecific acquisitions, mergers, and consolidations by Akamai, and speculation that such events could impact substantiality, did not identify and were insufficient to create a genuine issue of material fact. Moreover, the Commissioner's classification of Akamai as a manufacturing corporation as of January 1, 2020 undermines the notion that there was a dispositive change in the substantiality of Akamai's manufacturing activities after the years at issue in ***Akamai I.***

In sum, the Board found that both the assessors and the Commissioner failed to provide more than mere assertions of potentially disputed facts. Conversely, the Board found Ms. Howell's affidavit - which was uncontroverted and wholly consistent with the testimony in ***Akamai I*** - to be credible, and that it established the lack of material changes in Akamai's manufacturing activities and substantiality from 2015 through 2020. *See* 830 CMR 58.2.1(8)(b). Thus, no genuine issue of material fact exists regarding Akamai's qualification for manufacturing classification as of January 1, 2019 and January 1, 2020, and the Board finds and rules that Akamai is entitled to judgment as a matter of law on the issue of manufacturing classification for the remaining property tax and classification appeals.

V. FINALITY OF *AKAMAI I*

The assessors argued that summary judgment is not appropriate in the present appeals because ***Akamai I*** is not a final decision until findings of fact and report, as well as appellate review of the Board's decision, are complete. The plain language of G.L. c. 58, § 2 contradicts this argument. As previously noted, under G.L. c. 58, § 2, the Board must provide written notice of its decision on a classification appeal within ten days, and the decision is "binding upon the parties

to any proceeding pending or brought before it which involves a tax for the year to which the decision is applicable." Given the short time frame for notice and the binding effect of the decision, it is difficult to argue that G.L. c. 58, § 2 envisions the type of finality requirement suggested by the assessors. Further, the Board has issued its findings of fact and report in ***Akamai I*** and both the assessors and Commissioner have filed a notice of appeal. Both the assessors and Commissioner may similarly pursue an appeal of the Board's decision in the present appeals.

The assessors' reliance on ***Verizon New England Inc. v. Assessors of Newton***, 81 Mass. App. Ct. 457, 462 (2012) also provides no support for their argument. ***Verizon*** addressed "the appropriate construction of the term 'final decision' as it appears in G.L. c. 59, § 39," specifically "the power of the assessors to make an assessment . . . after the [B]oard issues a decision altering the commissioner's valuation [of a telephone company's personal property] but before the time for taking an appeal from that decision has expired." ***Id.*** at 459-60. Concepts of finality in the context of the central valuation of telephone company property are not transferrable to classification determinations under G.L. c. 58, c. 58, § 2. *See* ***Assessors of Holyoke***, 351 Mass. at 400 ("We conclude that c. 58, § 2, and related sections should not be narrowly interpreted by analogy to cases under different statutes . . . long since changed and clarified, which relate to the very special problem of consistent local taxation of the tangible property of telephone systems.").

Finally, G.L. c. 62C, § 32(e)(3) undercuts the notion that a Board decision is not "final" until findings of fact and report and appellate review are completed, as it provides that the Commissioner may collect the amount of tax in dispute within thirty days of a Board decision in favor of the Commissioner, and that the date of the decision "shall be determined without reference to any later issuance of finding of facts and report by the [B]oard or to any request for a finding of facts and report."

[This space intentionally left blank.]

VI. CONCLUSION

Based upon the above, the Board rules that no genuine issue of material fact exists in the present appeals and that Akamai is entitled to classification as a manufacturing corporation for all the years at issue as a matter of law, including as of January 1, 2019 and January 1, 2020. Consequently, Akamai is entitled to the property tax exemption under Clause (16)(3) for fiscal years 2016 through 2021.

APPELLATE TAX BOARD

/s/ Patricia M. Good Commissioner

/s/ Steven G. Elliott Commissioner

/s/ Patricia Ann Metzer Commissioner

/s/ Mark J. DeFrancisco Commissioner

Attest: /s/ William J. Doherty
Clerk of the Board

Date: March 10, 2022

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with the Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.