

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

**BOARD OF ASSESSORS OF THE
CITY OF CAMBRIDGE**

v. COMMISSIONER OF REVENUE

and

**KENDALL GREEN ENERGY LLC
(INTERVENOR)**

Docket Nos. C344447
C345821
C349143

Promulgated:
January 30, 2026

These are appeals heard under the formal procedure pursuant to G.L. c. 58A, § 6 and G.L. c. 58, § 2, brought by the Board of Assessors of the City of Cambridge (“appellant” or “assessors”) to challenge the Commissioner of Revenue’s (“appellee” or “Commissioner”) classification of Kendall Green Energy LLC (“Intervenor” or “Kendall”) as a manufacturing corporation as of January 1, 2021, January 1, 2022, and January 1, 2023 (“tax years at issue”).

Chairman DeFrancisco heard the Intervenor’s Motion for Partial Summary Judgment (“Intervenor’s Motion”). Commissioners Good, Elliott, Metzger, and Bernier joined him in the order allowing the Intervenor’s Motion and in the decision that the Intervenor was entitled to classification as a manufacturing corporation.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.34.

Anthony M. Ambriano, Esq. for the appellant.

Celine E. de la Foscade-Condon, Esq. for the appellee.

Philip S. Olsen, Esq. for the Intervenor.

FINDINGS OF FACT AND REPORT

Based on the Intervenor's Motion, the Commissioner of Revenue's Motion in Support of the Intervenor's Motion for Partial Summary Judgment ("Commissioner's Motion in Support"), the Objection of the Board of Assessors of the City of Cambridge to Intervenor's Motion for Partial Summary Judgment ("assessors' Objection"), the statement of agreed facts signed by all parties, the documents provided by the parties, and the oral arguments presented at the hearing on the Intervenor's Motion, the Appellate Tax Board ("Board") made the following findings of fact.

I. Introduction and jurisdiction

On December 18, 2020, Kendall filed a Form 8832 Entity Classification Election with the U.S. Internal Revenue Service, electing to be taxed as a business corporation, effective December 31, 2020. Prior to the election, Kendall was a disregarded entity whose activities were reflected on its owner's federal tax return.

During relevant time periods, Kendall was a single-member limited liability company whose sole member was Vicinity Energy, Inc., a Delaware corporation that had neither applied for nor been classified as a manufacturing corporation by the Commissioner. Kendall's corporate headquarters was located at 100 Franklin Street in Boston, with a principal place of business located at 273 First Street in Cambridge.

On or about January 29, 2021, Kendall filed a Form 355Q Application for Manufacturing Classification with the Commissioner, and the Commissioner sent Kendall a Manufacturing Classification Approval Notice dated April 21, 2021, in which the Commissioner stated that Kendall would be classified as a manufacturing corporation for purposes of state and local taxation effective January 1, 2021.

By memorandum dated July 30, 2021, the Department of Revenue's Senior Deputy Commissioner of Local Services notified the various boards of assessors that the list of Corporations Subject to Taxation in Massachusetts ("List of Corporations") for 2021, issued pursuant to G.L. c. 58, § 2, was published on the Division of Local Services website on July 30, 2021. Kendall was included in the List of Corporations for 2021 as a manufacturing corporation effective January 1, 2021.

The Commissioner continued to classify Kendall as a manufacturing corporation effective January 1, 2022, and January 1, 2023.¹ Kendall was included in the List of Corporations for 2022, published on the Division of Local Services website on May 31, 2022, and in the List of Corporations for 2023, published on the Division of Local Services website on May 30, 2023.

The assessors timely filed petitions with the Board on August 17, 2021, June 8, 2022, and June 30, 2023, challenging the Commissioner's classification of Kendall as a manufacturing corporation effective January 1, 2021, January 1, 2022, and January 1, 2023, respectively. In each petition, the assessors claimed that they were aggrieved by the decision of the Commissioner and that the classification was erroneous on the facts and law. Based upon these facts, the Board found and ruled that it had jurisdiction over these appeals.

¹ The regulation at 830 CMR 58.2.1(8)(a) states that

A corporation classified as a manufacturing corporation must reapply for manufacturing corporation classification by filing a new application on Form 355Q on or before December 31 of the year in which it:

1. changes its name,
2. undergoes a merger or consolidation,
3. is revived as a corporation after dissolving, or
4. reregisters with the Secretary of State after withdrawing from Massachusetts under M.G.L. c. 181, § 16, or
5. undergoes a material change in its activities.

There was no allegation that the Intervenor should have reapplied for manufacturing classification.

Kendall filed motions to intervene on February 7, 2022, September 21, 2023, and September 11, 2023, on the basis that it had a significant interest in the outcome of the appeals. The Board allowed the motions to intervene by orders dated February 11, 2022, September 22, 2023, and September 12, 2023.

Kendall filed the Intervenor's Motion on October 24, 2023. The Commissioner filed the Commissioner's Motion in Support on November 3, 2023. The assessors filed the assessors' Objection on December 8, 2023. The Board allowed the Intervenor's Motion. The assessors subsequently filed a letter dated October 22, 2024, by which they "waive[d] any claims as to the Commissioner's manufacturing classification of" Kendall for the tax years at issue "excepting only its claims that a limited liability company's entitlement to the tax exemption under G.L. c. 59, § 5, Clause Sixteenth (3)(i) is conditioned upon approval by the city or town in which the property is located." Accordingly, the Board issued a decision that the Intervenor was entitled to classification as a manufacturing corporation.

Thus, the only issue before the Board in these appeals - as presented in the Intervenor's Motion - was whether a single-member limited liability company that elected to be taxed federally as a business corporation and that was classified by the Commissioner as a manufacturing corporation was eligible for the property tax exemption under G.L. c. 59, § 5, Clause Sixteenth (3)(i).

II. The parties' contentions

A. The Intervenor's contentions

The Intervenor contended that a step-by-step review of the statutory scheme established that limited liability companies enjoy the benefits of the G.L. c. 59, § 5, Clause Sixteenth (3) exemption through two alternative means – by complying with Clause Sixteenth (3)(i) or by complying with Clause Sixteenth (3)(ii).² The Intervenor concluded that it was not a disregarded entity and thus could not come within the purview of G.L. c. 59, § 5, Clause Sixteenth (3)(ii), which is the only subsection requiring local approval.

The Intervenor contended that it was a business corporation and as such it was subject to taxation under G.L. c. 63, § 39, within the meaning of G.L. c. 63, §§ 30 and 42B, and eligible for the tax benefits associated with manufacturing classification, specifically the property tax exemption under G.L. c. 59, § 5, Clause Sixteenth (3)(i).

² In support of its contentions, the Intervenor cited to *Brayton Point Energy, LLC v. Assessors of Somerset*, Mass. ATB Findings of Fact and Reports 2021-180, *aff'd*, 101 Mass. App. Ct. 466 (2022), as well as Directive 00-4, in which the Commissioner states that a limited liability company taxed as a corporation under G.L. c. 63 can receive manufacturing corporation classification if it otherwise meets the requirements of 830 CMR 58.2.1. While the Appeals Court affirmed the decision of the Board in *Brayton Point Energy*, it - in response to the assessors' argument that "regardless of whether Brayton Point was a disregarded entity, it was not a business corporation because it was a limited liability company" – made clear that it "decline[d] to reach that question" *Brayton Point Energy*, 101 Mass. App. Ct. at 471 n.5 (2022).

Concerning Directive 00-4, the Board found it to be an outdated directive due to statutory amendments implemented subsequent to the directive's promulgation date of March 31, 2000, specifically amendments in 2008 that eliminated distinct tax regimes for domestic corporations under G.L. c. 63, § 32 and "foreign corporations" under G.L. c. 63, § 39. See St. 2008, c. 173. Likewise, G.L. c. 59, § 5, Clause Sixteenth (3) underwent amendments subsequent to the directive's promulgation date that eliminated the distinction between domestic and foreign corporations.

The Intervenor also cited to mandatory training courses established by the Commissioner, specifically language in a course module that states "a partnership, association, trust, limited liability company or other unincorporated legal entity that conducts a business that may be conducted by a manufacturing or research and development corporation, if so classified by the commissioner, and is treated as a corporation for federal income tax purposes, either under federal default rules or by election, is treated as a manufacturing or research and development corporation for purposes of local property taxation and exemption." However, the Board is bound to follow and rely upon statutory and case law, not the Commissioner's training courses.

B. The Commissioner's contentions

In support of the Intervenor's Motion, the Commissioner maintained that G.L. c. 59, § 5, Clause Sixteenth (3)(ii) did not apply because the Intervenor elected to be treated as a corporation and not a disregarded entity whose member was classified as a manufacturing corporation.

C. The assessors' contentions

The assessors interpreted G.L. c. 59, § 5, Clause Sixteenth (3)(ii) as the sole provision permitting a limited liability company to qualify for exemption, and maintained that the Intervenor could not qualify under this provision because it was not a disregarded entity, its sole member was not a manufacturing corporation, and the City of Cambridge has not accepted G.L. c. 59, § 5, Clause Sixteenth (3)(ii).

III. The Board's findings and rulings

The Board found and ruled that no genuine issue of material fact existed in these appeals and that these appeals were ripe for judgment as a matter of law. Based on the Intervenor's Motion, the Commissioner's Motion in Support, the assessors' Objection, the statement of agreed facts, the documents provided by the parties, and the oral arguments presented at the hearing on the Intervenor's Motion – and as discussed further in the Opinion, below – the Board found and ruled that a single-member limited liability company that elected to be taxed federally as a business corporation and that was classified by the Commissioner as a manufacturing corporation was eligible for the property tax exemption under G.L. c. 59, § 5, Clause Sixteenth (3)(i).

As a single-member limited liability company that elected to be taxed federally as a business corporation and that was classified by the Commissioner as a manufacturing

corporation, the Intervenor thus was entitled to the property tax exemption under G.L. c. 59, § 5, Clause Sixteenth (3)(i). Accordingly, the Board granted the Intervenor’s Motion.

OPINION

I. Summary Judgment

Pursuant to Rule 22 of the Board’s Rules of Practice and Procedure, as in effect at the time that the Intervenor filed the Intervenor’s Motion, “[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 1.22.³ The Board found and ruled that these appeals presented no genuine issue of material fact. Accordingly, the Board ruled that disposition of these appeals by summary judgment was appropriate. 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.”).

II. Local property exemption under G.L. c. 59, § 5, Clause Sixteenth (3)(i)

The Commissioner is required to forward to the boards of assessors a list of all corporations known to be liable to tax as of January 1 of that year, indicating on the list which corporations have been classified by the Commissioner as manufacturing corporations. See G.L. c. 58, § 2.

A corporation that is classified as a manufacturing corporation - upon applying for classification and establishing that it is in existence and engaged in manufacturing – “may use certain tax benefits outlined in 830 CMR 58.2.1(4).” 830 CMR 58.2.1(3). The tax benefits allowed to classified manufacturing corporations are:

³ Citation to the version of the Board’s Rules of Practice and Procedure in effect prior to January 5, 2024.

- (a) a property tax exemption under M.G.L. c. 59, § 5(16)(3),
- (b) an investment tax credit under M.G.L. c. 63, § 31A, and
- (c) an exemption from sales and use tax for the sale or use of certain property used in research and development under M.G.L. c. 64H, § 6(r) and (s) and 830 CMR 64H.6.4.

830 CMR 58.2.1(4).

Relevant to these matters and the Intervenor's Motion is the property tax exemption under G.L. c. 59, § 5, Clause Sixteenth (3):

In the case of (i) a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63, or (ii) a limited liability company that; (a) has its usual place of business in the commonwealth; (b) is engaged in manufacturing in the commonwealth and whose sole member is a manufacturing corporation as defined in section 42B of chapter 63 or is engaged in research and development in the commonwealth and whose sole member is a research and development corporation as defined in said section 42B; and (c) is a disregarded entity, as defined in paragraph 2 of section 30 of chapter 63, all property owned by the corporation or the limited liability company other than real estate, poles and underground conduits, wires and pipes

General Laws c. 59, § 5, Clause Sixteenth (3)(i) applies to “a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63.”⁴ Relevant here is whether the Intervenor is a manufacturing corporation as defined in section 42B, which states in pertinent part as follows:

Every business corporation subject to taxation under section 39 that has a usual place of business in the commonwealth, and is engaged in manufacturing in the commonwealth . . . shall, for the purposes of this chapter, be considered to be a manufacturing corporation

⁴ While placement of the phrase “as defined in section 42B” might lend to ambiguity as to whether it applies only to “a research and development corporation” or to both “a manufacturing corporation” and “a research and development corporation,” G.L. c. 59, § 5, Clause Sixteenth (3)(ii) uses the phrase “whose sole member is a manufacturing corporation as defined in section 42B of chapter 63.” It would be incongruous for G.L. c. 59, § 5, Clause Sixteenth (3)(i) to not also define “manufacturing corporation” by the phrase “as defined in section 42B.” See *Plymouth Retirement Board v. Contributory Retirement Appeal Board*, 483 Mass. 600, 605 (2019) (“Beyond plain language, [c]ourts must look to the statutory scheme as a whole’ . . . ‘so as’ to produce an internal consistency’ within the statute . . .”).

G.L. c. 63, § 42B(a). The preamble to G.L. c. 63, § 30 states that “[w]hen used in this section and in sections 31 to 52, inclusive, the following terms shall have the following meanings, and the [term] ‘business corporation,’ . . . defined in [paragraph 1] of this section, shall, unless otherwise provided, also have the following [meaning] and effect for purposes of all sections of this chapter.” The statute defines the term “business corporation” as

any corporation, or any “other entity” as defined in section 1.40 of chapter 156D, whether the corporation or other entity may be formed, organized, or operated in or under the laws of the Commonwealth or any other jurisdiction, and whether organized for business or for non-profit purposes, that is classified for the taxable year as a corporation for federal income tax purposes.

G.L. c. 63, § 30. The term “other entity” as defined in G.L. c. 156D, § 1.40 “includes, without limitation, . . . limited liability companies . . .” As the Intervenor is an “other entity” classified as a corporation for federal income tax purposes,⁵ it falls squarely within the statutory definition of a “business corporation.”

In turn, G.L. c. 63, § 39 provides, in pertinent part, that

[e]xcept as otherwise provided in this section, every business corporation, organized under the laws of the commonwealth, or exercising its charter or other means of legal authority, or qualified to do business or actually doing business in the commonwealth, or owning or using any part or all of its capital, plant or any other property in the commonwealth, shall pay, on account of each taxable year, the excise provided in subsection (a) or (b), whichever is greater

⁵ See also 830 CMR 63.30.3 (stating that “Chapter 173 of the Acts of 2008 . . . has changed the way unincorporated businesses are classified and treated . . . resulting in general conformity with federal entity classification and filing rules”); Technical Information Release 08-11 (“summarizes the major corporate tax reform provisions of . . . St. 2008, c. 173,” which “generally eliminates the differences between Massachusetts and federal entity classification rules. For tax years beginning on or after January 1, 2009, the filing status for business entities in Massachusetts must conform to their filing status for federal tax purposes . . . For Massachusetts purposes, these federal rules will apply to partnerships, LLCs, corporate trusts, and other unincorporated associations.”).

Returning to G.L. c. 63, § 42B, the Intervenor was a business corporation subject to taxation under G.L. c. c. 63, § 39⁶ and it was determined by the Commissioner to be engaged in manufacturing in the commonwealth. Through application of this statutory analysis, the Intervenor was “a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63” as required by G.L. c. 59, § 5, Clause Sixteenth (3)(i), and thus eligible for a property tax exemption.

The Intervenor could not qualify under G.L. c. 59, § 5, Clause Sixteenth (3)(ii). It was not a disregarded entity and its sole member - Vicinity Energy, Inc. – was neither a manufacturing corporation nor allegedly a research and development corporation. These facts removed the Intervenor from qualification under this provision. While G.L. c. 59, § 5, Clause Sixteenth (3) contains language to the effect of requiring approval by a city or town, this approval requirement is limited:

This clause as it applies to a research and development corporation, as defined in section 42B of said chapter 63, and as it applies to a limited liability company that is a disregarded entity and whose sole member is a manufacturing corporation or a research and development corporation shall take effect only upon its acceptance by the city or town in which the real estate, poles and underground conduits, wires and pipes are located.

G.L. c. 59, § 5, Clause Sixteenth (3). The Intervenor was not alleged to be a research and development corporation and it was not a disregarded entity. Consequently, there was no requirement for acceptance of G.L. c. 59, § 5, Clause Sixteenth (3) by the assessors under the facts of these appeals.

As previously noted, the assessors contended that G.L. c. 59, § 5, Clause Sixteenth (3)(ii) was the sole avenue for a limited liability company to seek exemption,

⁶ The provisions of G.L. c. 63, § 68C recognize that “[i]n general, a business corporation as defined in section 30 is subject to an excise under section 39,” but that “[n]otwithstanding this general rule or any other provision of this chapter, the excise under section 39 shall not apply in the case of” certain business corporations, such as a financial institution, as defined in section 1, that is subject to excise under section 2 or 2B, and other types of entities not factually relevant in these appeals.

but this interpretation of G.L. c. 59, § 5, Clause Sixteenth (3) applies a constrained reading not supported by the statutory language.

The provisions of G.L. c. 59, § 5, Clause Sixteenth (3)(ii) specify the means by which a certain category of limited liability companies may seek a property tax exemption, namely a limited liability company that, among other requisites, is a disregarded entity. The language of G.L. c. 59, § 5, Clause Sixteenth (3)(ii) does not constrain a limited liability company from seeking exemption under another provision. There is no language stating that only limited liability companies meeting the requisites of G.L. c. 59, § 5, Clause Sixteenth (3)(ii) may seek the property tax exemption. Likewise, the provisions of G.L. c. 59, § 5, Clause Sixteenth (3)(i) do not state that if a limited liability company otherwise qualifies definitionally for manufacturing classification, it is nevertheless excluded from taking the exemption. See G.L. c. 59, § 5, Clause Sixteenth (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 as aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business.”).

III. Conclusion

Based upon the above, the Intervenor’s Motion, the Commissioner’s Motion in Support, the assessors’ Objection, the statement of agreed facts, the documents provided by the parties, and the oral arguments presented at the hearing on the Intervenor’s Motion, the Board ruled that Kendall, as a single-member limited liability company that elected to be taxed federally as a business corporation and that was classified by the Commissioner as a manufacturing corporation, was entitled to the

property tax exemption under G.L. c. 59, § 5, Clause Sixteenth (3)(i). Accordingly, the Board granted the Intervenor's Motion.

THE APPELLATE TAX BOARD

By: 
Mark J. DeFrancisco, Chairman

A true copy,

Attest: 
Clerk of the Board