

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JOHN HELBERT

v. BOARD OF ASSESSORS OF THE  
TOWN OF WILMINGTON

Docket No. F347522

Promulgated:  
January 31, 2024

This is an appeal under the formal procedure<sup>1</sup> pursuant to G.L. c. 58A, § 6 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Wilmington (“assessors” or “appellee”) to grant an exemption under G.L. c. 59, § 5, Clause 22 (“Clause 22”) to John Helbert (“appellant”) for certain real estate located in Wilmington and owned by and assessed to the appellant for fiscal year 2022 (“fiscal year at issue”).

Chairman DeFrancisco and Commissioners Good, Elliott, and Bernier joined in the decision for the appellant on the appellant’s and the appellee’s cross-motions for summary judgment.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.<sup>2</sup>

*Gerald A. Griffin, Jr., Esq.*, for the appellant.

*Thomas W. McEnaney, Esq.*, for the appellee.

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<sup>1</sup> Pursuant to G.L. c. 58A, § 7, the appellee elected to transfer the appeal to the formal procedure within thirty days of receiving the notice of filing of the appellant’s statement under informal procedure.

<sup>2</sup> Reference is to the regulation in effect prior to January 5, 2024.

## **FINDINGS OF FACT AND REPORT**

Based on the cross-motions for summary judgment and the documents offered in support thereof, the Appellate Tax Board ("Board") made the following findings of fact.

### **I. Introduction and jurisdiction**

The appellant is a decorated veteran of the United States armed forces, beginning his service in March 1975 and ending with an honorable discharge in September 2013. He sustained service-related injuries during the course of his enlistment. The appellant resided in Massachusetts at least six months prior to entering service.

On March 16, 2017, the appellant and his wife purchased real property at 152 Chestnut Street ("domicile") in the Town of Wilmington, and they took title to the domicile as tenants by the entirety. Since the purchase, they have resided in the domicile up to and throughout dates relevant to the fiscal year at issue.

On August 18, 2020, the appellant and his wife conveyed the domicile by quitclaim deed to two revocable trusts as follows: to John F. Helbert and Christina Helbert, as co-trustees of The John F. Helbert Living Trust, as to an undivided one-half interest, and to John F. Helbert and Christina Helbert, as co-trustees of The Christina Helbert Living Trust, as to an undivided one-half interest, as tenants in common. The trustee certificates for each trust certify that the appellant and his wife have authority to

act with respect to real estate owned by each trust. The appellant is the sole life beneficiary of The John F. Helbert Living Trust, with "the right to have complete and unlimited, possession, use and control of any real property which may ever constitute an asset of the trust estate and which is occupied by [the appellant] for residential purposes." His wife possesses the correlative benefits under The Christina Helbert Living Trust.

The appellant had filed for and received the Clause 22 exemption for prior fiscal years and he timely filed his application for exemption by the April 1, 2022, due date to seek an exemption for the fiscal year at issue. The application for exemption was deemed denied by the assessors on May 27, 2022. The appellant filed a petition with the Board on August 15, 2022, within three months of the deemed denial. The parties subsequently filed cross-motions for summary judgment.

## **II. The parties' contentions**

The only issue before the Board was whether the appellant held a sufficient beneficial interest in the domicile to qualify for the Clause 22 exemption for the fiscal year at issue.

The appellant contended that he owned the same interest in the domicile as he did prior to the domicile being placed in the trusts - an undivided one-half interest. Specifically relying on the trust provision naming Christina Helbert as "the sole life beneficiary and the exclusive recipient of the economic benefit"

of The Christina Helbert Living Trust, the assessors contended that the appellant lacked a sufficient beneficial interest in the domicile because he lacked a sufficient beneficial interest in The Christina Helbert Living Trust.<sup>3</sup>

### **III. The Board's findings**

The Board found that no genuine disputes of material fact existed in this appeal and that the appellant was entitled to judgment as a matter of law. As discussed further in the Opinion, the Board found that the appellant possessed a sufficient beneficial interest in the domicile to qualify for the Clause 22 exemption for the fiscal year at issue. Accordingly, the Board issued a decision for the appellant.

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<sup>3</sup> The assessors denied the application for exemption on the basis that the appellant was not a trustee of The Christina Helbert Living Trust, but their motion acknowledged that they "misstated the reason for denial" and that the appellant is indisputably a co-trustee of The Christina Helbert Living Trust.

## OPINION

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.<sup>4</sup> Having considered the parties' cross-motions for summary judgment and the documents presented in support thereof, the Board found and ruled that this appeal presented no genuine disputes of material fact and that disposition of this appeal 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.").

Central to this appeal is Clause 22, which requires that an applicant establish four requisites to qualify for an exemption - residency, domicile, ownership, and service-connected disability. The statute states in pertinent part as follows:

Real estate of the following classes of persons who are legal residents of the commonwealth and who are veterans, as defined in clause Forty-third of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for 2 consecutive years next prior to date of filing for

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<sup>4</sup> Reference is to the regulation in effect prior to January 5, 2024.

exemptions under this clause, hereinafter referred to in this clause as soldiers and sailors, provided such real estate is occupied in whole or in part as his domicile by such person, and provided, further that if the spouse of the soldier or sailor is also a soldier or sailor each shall receive the amount of exemption provided in this clause to the same extent as if unmarried, to the amount of two thousand dollars of assessed taxable valuation or the sum of \$400, whichever would result in an abatement of the greater amount of actual taxes due.

(a) Soldiers and sailors who, as a result of disabilities contracted while in the line of duty, have a disability rating of ten per cent or more as determined by the Veterans Administration or by any branch of the armed forces. . . .

G.L. c. 59, § 5, Clause 22. These requisites must be established as of July 1 of the relevant fiscal year. See G.L. c. 59, § 5. The parties do not dispute that the appellant established the criteria for residency, domicile, and service-connected disability. The question at issue was whether the appellant satisfied the ownership criteria - whether the domicile was the "[r]eal estate of" the appellant for the fiscal year at issue.

The Supreme Judicial Court has held that statutes providing property tax exemptions require the applicant to hold both legal title to and a sufficient beneficial interest in the property. In ***Kirby v. Assessors of Medford***, the Court interpreted G.L. c. 59, § 5, Clause Forty-First ("Clause Forty-First"), which provides an exemption for real property "of" a person seventy years of age or over and occupied by that person as their domicile, "as requiring not only ownership of a sufficient beneficial property interest,

but also ownership of a record legal interest, as a condition of obtaining the exemption.” 350 Mass. 386, 391 (1966). The property was held in trust, and the trustee was not the applicant. *Id.* at 387. The Court declined to find that the applicant was entitled to the exemption, stressing that the applicant “has voluntarily chosen to hold his property in a form which separates the legal title and the beneficial ownership.” *Id.* at 390.

In *Rheault v. Assessors of Oxford*, Mass. ATB Findings of Fact and Reports 2014-245, 248, the Board relied upon *Kirby* in considering whether an applicant was entitled to an exemption under Clause 22. The property was held in trust, with the applicant’s mother serving as the trustee. *Rheault*, Mass. ATB Findings of Fact and Reports at 2014-247. The Board held that “[u]nder the facts of this appeal, the trustee of the 94 Fort Hill Road Realty Trust, not the appellant, was the legal title holder and assessed owner of the subject property. Therefore, because the veteran held only a beneficial interest in the subject property, the assessors correctly denied the appellant’s Clause Twenty-Second claim.” *Rheault*, Mass. ATB Findings of Fact and Reports at 2014-250.

Neither *Kirby* nor *Rheault* defined the parameters of a “sufficient beneficial interest.” Both cases turned on whether the applicant had a legal interest in the property. In the present matter, there was no dispute that the appellant held legal title to the domicile during all relevant times. The quitclaim deed

explicitly conveyed legal title of the domicile to the appellant and his wife in their capacity as co-trustees of both The John F. Helbert Living Trust and The Christina Helbert Living Trust. See **Kirby**, 350 Mass. at 389 (“A revocable trust, of course, transfers to the trustees legal title to the property, subject to the terms of the trust instrument.”).

The appellant and his wife, in their capacity as co-trustees, held the domicile as a tenancy in common. “When property is owned by tenants in common, each cotenant has an undivided fractional interest and the right to possession and use of the entire property.” **Brady v. City Council of Gloucester**, 59 Mass. App. Ct. 691, 695 (2003). As the sole beneficiary of The John F. Helbert Living Trust, the appellant’s beneficial interest in the domicile was consequently an undivided fractional interest and the right to possession and use of the entire property. The Board found this beneficial interest in the domicile - which existed as of July 1, 2021 - to be comparable to the interest that the appellant held with his wife as a tenant by the entirety prior to conveyance of the domicile to the trusts,<sup>5</sup> and sufficient to meet the beneficial

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<sup>5</sup> While survivorship rights differ between a tenancy by the entirety and a tenancy in common, the Board’s only concern in this matter was whether a sufficient beneficial interest existed as of July 1, 2021. See G.L. c. 59, § 5. See also **Aquino v. United Property & Casualty Company**, 483 Mass. 820, 834 (2020) (“A tenancy in common does not, however, have the incidence of survivorship: when one tenant in common dies, his fractional interest in the right to possession and use of the entire property passes to his or her heirs at law - not the other tenant in common.”); **Bakwin v. Mardirosian**, 467 Mass. 631, 636 (2014) (holding that “each holder of a tenancy by the entirety has an indestructible right of survivorship”).

interest requisite for the Clause 22 exemption for the fiscal year at issue.

In support of their positions, both parties cited to Question No. 9 in the Massachusetts Department of Revenue's Division of Local Services' Local Finance Opinion 2022-2 (April 2022) ("LFO 2022-2") - the appellant to distinguish the facts of this matter and the assessors to reinforce their rationale that the appellant required a sufficient beneficial interest in each trust. Question No. 9 in LFO 2022-2 states as follows:

9. What if an individual establishes multiple trusts concerning the same property? As noted above, to fulfill the ownership requirement for property held in trust, an individual must possess both legal title and sufficient beneficial interest in the particular trust in which the domicile is held. Therefore, if an individual established more than one trust, retaining legal title to their domicile under one trust, but transmitting the full beneficial interest in that domicile to a different trust, the individual does not qualify for a personal or a residential exemption.

While the Board is not bound to follow a Local Finance Opinion, Question No. 9 nonetheless fails to support the assessors' position. Legal title and beneficial interest of the domicile were not separated by conveyance to the trusts in this matter. Each trust held the correlative legal title and beneficial interest. Further, LFO 2022-2 acknowledged the lack of definition in case law as to what constitutes a sufficient beneficial interest, and the local finance opinion notably concluded "that the right to occupy the property under the terms of a declaration of trust

constitutes a sufficient beneficial interest in the premises." Under The John F. Helbert Living Trust, the appellant "reserve[d] the right to have complete and unlimited, possession, use and control of any real property which may ever constitute an asset of the trust estate and which is occupied by me for residential purposes."

Accordingly, the Board found and ruled that the appellant was entitled to the Clause 22 exemption for the fiscal year at issue and issued a decision for the appellant.

**THE APPELLATE TAX BOARD**

By:   
**Mark J. DeFrancisco, Chairman**

**A true copy,**

Attest:   
**Clerk of the Board**