COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BENJAMIN MANDELBRAUT	**v.**	**BOARD OF ASSESSORS OF THE CITY OF BOSTON**

Docket No. F346785

Promulgated:
May 29, 2025

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 ("appellee" or "assessors") to abate taxes on real estate assessed to Fountain Square, LLC ("Fountain Square") for fiscal year 2022 ("fiscal year at issue"). Benjamin Mandelbraut ("appellant") was the sole member of Fountain Square, LLC.

Chairman DeFrancisco heard the appeal. He was joined by Commissioners Good, Elliott, and Bernier in the decision for the appellant. Commissioner Metzer dissented.

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

Benjamin Mandelbraut, pro se, for the appellant.

Laura Caltenco, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2021, the relevant assessment date for the fiscal year at issue, Fountain Square was the record owner of a condominium unit in Boston with an address of 543 Massachusetts Avenue, #5 ("subject property"). As noted above, the appellant was the sole member of Fountain Square.

The appellee timely issued to Fountain Square a tax bill valuing the subject property at $668,200, with a tax due of $7,331.84, inclusive of a Community Preservation Act surcharge. The fourth-quarter tax payment was untimely and incurred interest; however, evidence submitted by the assessors demonstrated that the appellant made sufficient payments to satisfy the three-year average provision under G.L. c. 59, §§ 64 and 65.

On March 25, 2022, the appellant timely filed with the assessors an application for a residential exemption under G.L. c. 59, § 5C ("§ 5C"), which was denied on April 27, 2022. The appellant seasonably filed an appeal with the Board on July 20, 2022. Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

At all relevant times, Fountain Square was a single-member LLC. The appellant testified that his commercial lender required

him to establish a limited liability company ("LLC") to receive financing for renovations that were necessary to make the subject property habitable. The appellant further testified that Fountain Square conducted no business apart from its ownership of the subject property, and that Fountain Square held no assets other than the subject property. The appellant made all mortgage, insurance, real estate tax, and other payments in connection with the ownership of the subject property from his own funds. Finally, the appellant testified that he lived at the subject property as his principal residence at all relevant times and used the subject property's address for income tax purposes, facts not challenged by the assessors. The Board found the appellant's testimony to be credible.

The assessors contended that the appellant did not qualify for the residential exemption because Fountain Square, not the appellant, was the assessed owner of the subject property and thus the "taxpayer" for purposes of § 5C.

For the reasons explained further in the Opinion below, the Board found that: the subject property was the "principal residence of [the appellant] as used by [the appellant] for income tax purposes" within the meaning of § 5C; the appellant made all payments in connection with the ownership of the subject property, including real estate tax payments assessed on the subject property; and, the appellant was the sole member of Fountain

Square, a disregarded entity for income tax purposes. The Board therefore found and ruled that the appellant was the "taxpayer" for purposes of § 5C and was entitled to the residential exemption at issue in this appeal.

Accordingly, for reasons stated more fully in the following Opinion, the Board issued a decision in favor of the appellant and ordered the abatement at issue.

OPINION

General Laws c. 59, § 5C provides municipalities with the option of granting a partial exemption from property tax to property that is the "principal residence of a taxpayer as used by the taxpayer for income tax purposes." The City of Boston offered a residential exemption for qualifying properties for the fiscal year at issue.

The principal issue in the present appeal, as it has been in a number of prior appeals, is the meaning of the term "taxpayer" for purposes of § 5C. The present appeal presents the discrete question, not previously decided, of whether a single-member LLC or its sole shareholder is the taxpayer for purposes of § 5C.

In ***Moscatiello v. Assessors of Boston,*** 36 Mass. App. Ct. 622, 625 (1994), the Appeals Court upheld the assessors' denial of the residential exemption where the property was held in a nominee trust, and the applicant was the trust beneficiary but not the holder of record title to the property. Similarly, in ***Born v.***

Assessors of Cambridge, 427 Mass. 790, 794 (1998), the Supreme Judicial Court, relying on the Appeals Court's analysis in ***Moscatiello,*** declined to extend the residential exemption to the applicants, who were tenant-shareholders of a Chapter 157B housing cooperative corporation, because record title of the property was held by the corporation, not the individual shareholder occupants.[1]

In holding that a resident's payment of the tax was not sufficient to qualify the resident as the "taxpayer" for purposes of § 5C, the ***Moscatiello*** court determined that "because eligibility for the exemption is based on the facts extant on January first preceding the fiscal year in which the tax will be billed and paid, the status of the applicant [for the exemption] must be ascertainable" as of the relevant qualification date. 36 Mass. App. Ct. at 625. The court then observed that the assessors may not know who paid the tax as of the relevant qualification or application date. ***Id.*** at 624-25, fn. 2. In the example used by the court, the resident's application for residential exemption was filed before the payment of the first-half of the semi-annual real estate bill under G.L. c. 59, § 57, so the assessors did not know, at the time the applicant filed the residential exemption application, who would be paying the real estate tax.

[1] Seemingly in recognition of the inequity of denying an exemption to the member responsible for payment of the taxes, § 5C was subsequently amended in 2003 to allow the exemption for the portion of a Chapter 157B cooperative corporation property used as a principal residence that is represented by the member's stock in the cooperative corporation.

However, in the present appeal, the appellant paid the first three quarters of his quarterly real estate tax bill under G.L. c. 59, § 57C before he filed his residential exemption application, giving notice to the assessors that he was paying the real estate tax. Moreover, in the context of a single-member LLC, there is no mystery as to who paid the real estate tax; it was the appellant, as the sole shareholder of the single-member LLC, who had paid the tax for the fiscal year at issue and for prior fiscal years.[2]

In addition, the requirement in § 5C that the property be the taxpayer's principal residence "as used by the taxpayer for income tax purposes" indicates that a taxpayer applying for the residential exemption may establish qualification for the exemption after the January first qualification date. First, the assessors cannot definitively know the residential address of the taxpayer as used for income tax purposes as of January 1 because, among other reasons, the taxpayer's income tax return is due on April 15. Assuming that the assessors would look to the April 15th prior to the January 1 qualification date for the residential exemption, a taxpayer could have moved after filing the income tax return and prior to the January 1 qualification date.

[2] The appellant's qualification as the taxpayer for purposes of § 5C was the subject of a prior appeal to the Board that was decided in favor of the appellant. *See* ***Mandelbraut v. Assessors of Boston,*** ATB Docket No. X309331 (August 18, 2021). No Findings of Fact and Report were issued for this appeal.

More importantly, the Board has held that the phrase "as used by the taxpayer for income tax purposes" does not mean "as used by the taxpayer ***on his [the taxpayer's] income tax* return**. *See* ***Wiggins v. Assessors of Boston,*** Mass ATB Findings of Fact and Reports 2009-34, 48 (emphasis added); *see also* ***Browning v. Assessors of Boston,*** Mass ATB Findings of Fact and Reports, 2009-247, 251. Rather, the Board interpreted the phrase "as used by the taxpayer for income tax purposes" to mean that the taxpayer "must use the property in such a manner as to qualify it as his principal residence for income tax purposes." ***Wiggins*** at 2009-48; *see also* ***Browning*** at 2009-251. The Board therefore adopted a facts and circumstances test, as do the cases and regulations interpreting federal and state income tax law, to determine whether a taxpayer is using property as the taxpayer's principal residence as of the relevant qualification date. ***Id.*** Accordingly, the assessors cannot readily ascertain as of the January 1 qualification date whether facts and circumstances exist to establish that a taxpayer is using property as the taxpayer's principal residence but can determine such facts and circumstances when reviewing a taxpayer's application for exemption.

There are also several other statutory provisions that allow persons to file abatement applications who are not the record owners of property on the assessment or qualification date and are therefore not known to the assessors prior to the date on which an

abatement application is filed. For example, G.L. c. 59, § 59 allows the following persons to apply for an abatement of tax: a tenant who is under an obligation to pay more than one-half the tax; a person who pays the tax and is in possession of the property; a person who pays the tax and has an interest in the property; the holder of a mortgage who has paid at least one-half of the tax "during the last 10 days of the abatement period of the year to which the tax relates;" and a person who acquires title to real estate after January first. None of these persons would have paid the tax as of the valuation date and yet each has a right to apply for an abatement, notwithstanding the inability of assessors to know who would pay the tax as of the relevant assessment date.

Regarding the residential exemption at issue, a taxpayer who has not received the exemption "may apply for such residential exemption to the assessors, in writing, on a form approved by the commissioner, on or before the deadline for an application for exemption under section 59." The exemption filing deadline under § 59 is April 1 "of the year to which the tax relates, or within 3 months after the bill or notice of assessment was sent, whichever is later." In the present case, April 1, 2022 was the deadline for applying for the residential exemption, long after the January 1, 2021 qualification date for the residential exemption.

Given the timing of the residential exemption application and the reference to the address used for income tax purposes, the

Board reads ***Moscatiello*** to require that the applicant establish that the facts necessary to qualify for the exemption be extant as of the qualification date but that the proof of those facts may be offered during the application and appeal process.

Further, there is a critical distinction between a single-member LLC and the trust and cooperative forms of ownership at issue in ***Moscatiello*** and ***Born.*** As a single-member LLC, Fountain Square was, for income tax purposes, a disregarded entity with no independent significance apart from its owner. *See* G.L. c. 62, § 1 *and* Treas. Regs. 301.7701-3(b)(1)(ii). For purposes of the Massachusetts individual income tax, "without limitation, all income, assets, and activities of the [the single-member LLC] shall be considered to be those of the owner." G.L. c. 62, § 1. Thus, for income tax purposes, where property is held in the name of a single-member LLC, the entity is disregarded, and its sole member is considered the actual owner of any property that it holds.

For all of the foregoing reasons, the Board ruled that the ***Moscatiello*** and ***Born*** decisions are distinguishable from the present appeal and that, as the sole owner of a disregarded entity, the appellant was the "taxpayer" for purposes of § 5C. Because the appellant lived in the subject property as his primary residence as of the relevant qualification date, the Board ruled that the subject property was entitled to the residential exemption for the

fiscal year at issue. Accordingly, the Board issued a decision in favor of the appellant and ordered the abatement at issue.

THE APPELLATE TAX BOARD

By: _____
Mark J. DeFrancisco, Chairman

A true copy,

Attest: _____
Clerk of the Board

Commissioner Metzer Dissenting:

Benjamin Mandelbraut ("Mr. Mandelbraut") decided to buy an apartment in Boston in 2017 and finance the purchase and renovations with a commercial lender. Finding that the lender required him to take title in the name of a limited liability company, Mr. Mandelbraut formed Fountain Square, LLC ("Fountain Square" or "Limited Liability Company") on November 16, 2017, pursuant to G.L. c. 156C, the purpose of which is "[t]o buy, sell, and develop real estate and engage in any and all lawful activities for which limited liability companies may be formed in Massachusetts." The Certificate of Organization for Fountain Square designates the street address of the entity's office as

that of its corporate registered agent located in Pittsfield, Massachusetts, where its records would be maintained. The business address of Fountain Square's sole manager (Mr. Mandelbraut) is stated to be at 11 Deerfield Street, Boston. Although not required to be indicated in the Certificate of Organization, it is undisputed that Mr. Mandelbraut is the sole member and in effect the owner of the Limited Liability Company.[3]

On December 15, 2017, a Condominium Unit Deed transferring to the Limited Liability Company title to Unit 5, 543 Massachusetts Avenue ("subject property") was recorded with the Suffolk County Registry of Deeds. On January 1, 2021, the valuation and assessment date for the fiscal year 2022 ("fiscal year at issue"), title to the subject property remained in the name of the Limited Liability Company, the then owner, to whom the appellee assessed taxes in the amount of $7,331.84, including the Community Preservation Act surcharge.[4]

Before the Appellate Tax Board ("Board"), Mr. Mandelbraut maintains that the subject property was his personal residence on

[3] Due to his ownership of the Limited Liability Company, certain taxes personally due from Mr. Mandelbraut but remaining unpaid after demand, if any, could become a lien in favor of the Commonwealth on all property or rights to property of Fountain Square. *See* G.L. c. 62C, § 50(a), which pursuant to G.L. c. 62C, § 2 does not apply to real property taxes such as those at issue in the matter before the Board.

[4] *See* G.L. c. 59, § 11, stating: "Taxes on real estate shall be assessed . . . to the person who is the owner on January 1, and the person appearing of record, in the records of the county . . . where the estate lies, as owner on January 1, . . . shall be held to be the true owner thereof . . . ."

January 1, 2021, and that, therefore, the City of Boston's residential exemption for the fiscal year at issue should have been applied to reduce the taxable value of the subject property. Mr. Mandelbraut confirmed in his testimony that the Limited Liability Company did not file a federal or state income tax return.

The provisions of G.L. c. 59, § 5C ("Section 5C"), describing the residential exemption, are clear. A residential exemption is to be "applied only to the principal residence of a taxpayer as used by the taxpayer for income tax purposes." The parties agree that Mr. Mandelbraut occupied the subject property as his principal residence on January 1, 2021. However, Mr. Mandelbraut was not then the record title holder of, and hence not the taxpayer with respect to, the subject property. Title to the property resided in the name of the Limited Liability Company, recognized by Massachusetts as a legal entity with the rights to sue and be sued, separate and apart from its owner. *See* ***Dickey v. Inspectional Services Department of Boston***, 482 Mass. 1003, 1004 (2019).

In ***Born v. Assessors of Cambridge***, 427 Mass. 790 (1998), tenant/shareholders- of a housing cooperative corporation organized under G.L. c. 157B ("Chapter 157B") sought to claim the residential exemption. The parties agreed that most of the shareholders of the corporation occupied an apartment in the subject property as their principal residence for income tax

purposes and that the shareholders indirectly paid the real estate taxes on the corporation's property. 427 Mass. at 792. It was undisputed that the Chapter 157B cooperative was "the holder of record legal title to, and the assessed owner of, the property." 427 Mass. at 794. Accordingly, construing the definition of taxpayer in Section 5C narrowly to mean the holder of legal title to whom taxes are assessed,[5] the Supreme Judicial Court held that since (i) the Chapter 157B cooperative was a corporation, and (ii) the tenant-shareholders did not qualify as taxpayers within the meaning of Section 5C because they did not hold legal title to, and were not the assessed owners of, the property, neither qualified for the residential exemption under Section 5C. ***Id.*** at 794.

Following the decision in ***Born***, the statute was amended by the Legislature in 2003 to provide a special rule for that portion of real property owned by a Chapter 157B cooperative corporation (i) occupied by a member of the corporation pursuant to a proprietary lease as the member's domicile, and (ii) used as the member's principal residence for income tax purposes. 2003 Mass. Acts c. 46, § 49. The portion so occupied, represented by the

[5] The Court cited the decision of the Court of Appeals in ***Moscatiello v. Assessors of Boston***, 36 Mass. App. Ct. 622 (1994), and stated: "Construing the definition of taxpayer narrowly in the context of a tax exemption is consistent with legal precedent and sound public policy, because tax exemptions release taxpayers from their obligation to pay their share of the cost of government, thereby disturbing the objective of 'equalizing the distribution of the tax burden.'" ***Born***, 472 Mass. at 794.

member's stock in the cooperative corporation, is now eligible for the residential exemption under Section 5C.

No such special rule exists with respect to a principal residence to which an individual takes record title in the name of a limited liability company of which the individual is the sole member. The statutes of the Commonwealth do not disregard such an entity for property tax purposes – they do not treat the member as the direct owner of property to which the entity holds title. Definitions of "disregarded entity" are found only in G.L. c. 62, § 1(q) and G.L. c. 63, § 30(2). The former relates to matters dealing with the taxation of income and the latter relates to matters addressed in G.L. c. 63, dealing with the excise imposed on corporations. Both provisions define a disregarded entity as an entity that is disregarded as separate from its owner for *federal* income tax purposes, and each goes on to provide that a disregarded entity "shall similarly be disregarded for purposes of [Chapter 62 or Chapter 63], and without limitation, all income, assets, and activities of the entity shall be considered to be those of the owner."

Thus, while all of the assets and activities of Fountain Square are considered to be those of Mr. Mandelbraut for state income tax purposes, the definitions of disregarded entity in Chapters 62 and 63 are not relevant to the assessment of property

taxes governed by G.L. c. 59[6] and, more particularly, to whether the residential exemption is available under the circumstances of this case.

Although the residential exemption sought here is described in Section 5C, most exemptions from property taxation appear in G.L. c. 59, § 5 ("Section 5"). Over the years, the number of exemptions granted by the Legislature under Section 5 has grown, but what has not changed is the specificity with which exemptions are described. Under Section 5 as in effect for the tax year at issue, only one clause makes reference to a "disregarded entity" – namely G.L. c. 59, § 5, Sixteenth (3) ("clause 16(3)"), which exempts from property taxation all property, other than real estate and certain other property, owned by manufacturing corporations and, if locally accepted, research and development corporations within the meaning of G.L. c. 63, § 42B (each a "Section 42B corporation") that engage in manufacturing or research and development within the Commonwealth.

As a result of legislation enacted in 2010 (2010 Mass. Acts c. 240, §§ 108 and 200), a limited liability company with its usual place of business in Massachusetts that is disregarded under

[6] Nor are the definitions of disregarded entity in Chapters 62 and 63 relevant to the determination of who, under G.L. c. 62B, is liable for the collection of withholding taxes on wages. *See also* U.S. Treasury Department Regulation § 301.7701-2(c)(2)(iv), indicating that a limited liability company disregarded for federal income tax purposes remains the taxpayer liable for the collection and payment of employment taxes.

G.L. c. 63, § 30(2) may now also claim the property tax exemption available to Section 42B corporations if it too engages in manufacturing or research and development within the Commonwealth and its sole member is a Section 42B corporation – provided that the city or town in which its property is located accepts the statutory change. For a discussion of this provision, see ***Brayton Point Energy, LLC v. Assessors of Somerset***, 101 Mass. App. Ct. 466, 471 (2022), aff'g. Mass. ATB Findings of Fact and Reports 2021-180.[7]

Just as it took a legislative amendment to permit tenant-shareholders of a Section 157B cooperative corporation to claim the Section 5C exemption, it took a legislative amendment to make it possible for a limited liability company whose sole member is a Section 42B corporation and which itself engages in manufacturing or research and development in the Commonwealth to qualify for the exemption under clause 16(3), which was previously available only to Section 42B corporations. In effect, the amendment ascribes the corporate attributes of a Section 42B corporation to its wholly

[7] In ***Brayton Point Energy***, the taxpayer, a limited liability company whose sole member was a member of a corporate combined group, claimed an exemption from property taxation available to business corporations under a different provision of G.L. c.59, § 5 — Sixteenth (2). The Board, in its opinion, rejected the appellant's contention that the entity's coal and fuel inventory was exempt thereunder, noting that the "statutory flow through of income, assets, and activities [in G.L. c.59, § 30(2) did] not transform disregarded entities into business corporations" for property tax purposes. Mass. ATB Findings of Fact and Reports 2021-187-189.

owned limited liability company, while respecting the separate legal existence of the entity.

No similar provision has been enacted addressing the matter before the Board. A residential property, title to which is held in the name of a single-member limited liability company disregarded for federal and state income tax purposes, cannot qualify for the residential exemption allowed under Section 5C simply because the sole member of the entity occupies the property as his principal residence. Without enabling legislation, the characteristics of the entity's sole member cannot be attributed to the entity, and the entity itself cannot be disregarded for property tax purposes. As stated by the Appeals Court in ***Brayton Point Energy***, 101 Mass. App. Ct. at 471, the 2010 legislation narrowly expanding the exemption under clause 16(3) "shows the Legislature did not intend all disregarded entities to benefit from the local property tax exemptions."

The Supreme Judicial Court has consistently recognized that property tax exemptions must be strictly construed. "Taxation is the general rule, and exemption is the exception. . . . Exemption from taxation is a matter of special favor or grace, and will be recognized only where the property falls clearly and unmistakably within the express words of a legislative command." ***Sylvester v. Assessors of Braintree***, 344 Mass. 263, 264-65 (1962) (citations omitted).

In ***RCN-BecoCom, LLC v. Commissioner of Revenue***, 443 Mass. 198 (2005), the taxpayer, a Massachusetts limited liability company, claimed that its machinery, other than its manufacturing machinery, was exempt from taxation under G.L. c. 59, § 5, Sixteenth as in effect for the fiscal year 2000. 443 Mass. at 200. The Supreme Judicial Court stated that the statute was not ambiguous. By its plain language, the exemption applied only to corporations — not limited liability companies. Hence the exemption was not available to the taxpayer. ***Id.*** at 207. Although the taxpayer argued that the historical practice had been to grant the exemption to all telephone companies, such as the taxpayer, the Court ruled that "the commissioner did not have the authority to extend the exemption . . . to any entity that was not a corporation." ***Id.***

Four years later, in ***In re MCI WorldCom Network Services, Inc.***, 454 Mass. 635 (2009), MCI Metro Access Transmission Services, LLC ("MCImetro"), a Delaware limited liability company treated until 2004 as a division of MCI WorldCom Network Services, Inc., a Delaware corporation, sought the corporate utility exemption under G.L. 59, § 5, Sixteenth (1)(*d*) as in effect for fiscal years 2004 and 2005. The Supreme Judicial Court ruled that the exemption applied only to telephone utility corporations subject to taxation under G.L. c. 63, § 52A ("§ 52A"), which, before its election to be taxed as a corporation, MCImetro was not. Citing the ***Born*** case,

supra, the Court stated that "[e]ven through MCImetro was disregarded for corporate *income* tax purposes, it was always treated separately for personal property ad valorem taxation. For personal property taxation, exemption status turns on ownership." The Court cited as well its decision in ***Minkin v. Commissioner of Revenue***, 425 Mass 174, 181 (1997), indicating that a "property owner's chosen form of organization creates tax consequences that must be accepted." ***In re MCI WorldCom***, 454 Mass. at 649.

The Supreme Judicial Court went on to conclude that even after MCImetro elected to be taxed as a separate corporation for federal income tax purposes, the corporate utility exemption was not available to it. Although MCImetro argued it then became a foreign corporation within the meaning of G.L. c. 63, § 30(2), which included limited liability companies, the Court stated that the definition "specifically [did] not apply to § 52 A." ***In re MCI WorldCom***, 454 Mass. at 649-50.

Mr. Mandelbraut, having chosen to form a limited liability company to take title to the subject property, must accept the tax consequences of his decision. The definitional provisions in both Chapter 62 and Chapter 63 serve a specific limited purpose (*see* ***In re MCI WorldCom***, *supra)*, and bear no relevance to the matter before the Board. Fountain Square was the holder of record title to, and the assessed owner of, the subject property on January 1, 2021, and hence neither Fountain Square nor Mr. Mandelbraut was eligible

for the Section 5C exemption for the fiscal year at issue. *See* ***Born***, *supra*. Just as the Commissioner of Revenue in ***RCN-BecoCom,*** *supra,* did not have the authority to extend to a limited liability company an exemption available only to corporations, the Board does not have the ability to extend the residential exemption beyond the limitations of the statute.

While an equitable argument might be made for allowing the residential exemption under the circumstances of this case, the Board has no equitable powers. ***Commissioner of Revenue v. Marr Scaffolding Co., Inc.***, 414 Mass. 489, 494 (1993). The solution to the matter lies not with the Board, but with the Legislature. *See* ***O'Brien v. Massachusetts Bay Transportation Authority***, 405 Mass. 439, 445 (1989).

THE APPELLATE TAX BOARD

By: _____
Patricia Ann Metzer, Commissioner

A true copy,

Attest: _____
Clerk of the Board