**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

|  |  |  |
| --- | --- | --- |
| **CLAUDIA MURROW** |  **v.** | **BOARD OF ASSESSORS OF THE CITY OF BOSTON** |
| Docket No. F338259 |  | Promulgated:January 22, 2021 |

 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 a tax on an interest in certain real estate located in the City of Boston, owned by and assessed to Claudia Murrow (“appellant”) under G.L. c. 59, §§ 11 and 38 for fiscal year 2019 (“fiscal year at issue”).

 Commissioner DeFrancisco heard the assessors’ Motion for Summary Judgment and the appellant’s Cross Motion for Summary Judgment. Chairman Hammond and Commissioners Good, Elliott, and Metzer joined him in allowing the assessors’ Motion for Summary Judgment and issuing a Decision for the appellee.

These findings of fact and report are made pursuant to the Board’s own motion under G.L. c. 58A, § 13 and 831 CMR 1.32, and are promulgated simultaneously with the Decision.

*Mark F. Murphy*, Esq. for the appellant.

*Laura Caltenco*, Esq., for the appellee.

**Findings of Fact and Report**

This appeal was presented to the Board on cross motions for summary judgment together with evidentiary and jurisdictional documentation. The parties agree that the material facts are not in dispute. On the basis of the record in its entirety, the Appellate Tax Board (“Board”) made the following findings of fact.

Information relevant to the Board’s jurisdiction is summarized in the following chart:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Assessed value** | **Tax assessed** | **Abatement application filed** | **Date denied** | **Petition filed with Board** |
| $56,000 | $590.24 | 01/25/2019 | 03/21/2019 | 06/11/2019 |

On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The sole issue presented for the Board’s consideration is whether the appellant is subject to a real estate tax on her interest in a parking space in the Charles Bulfinch Condominium (“Condominium”) located at 350 North Street in Boston. The Condominium was established by the recording of the Bulfinch Condominium’s Master Deed (“Master Deed”) on November 3, 1986. Section 4(a) of the Master Deed states as to certain parking spaces in the Condominium, including the appellant’s:

there is reserved to the Sponsor exclusive easements in gross for the parking of a motor vehicle in each such space and the right to pass and repass from each such parking space for the purpose of egress and exit. Such exclusive easements in gross are not appurtenant to any estate and may freely be assigned and alienated by Sponsor and those claiming by, through and under the Sponsor by reason of such assignment and alienation.

By deed dated November 24, 1987, the Condominium sponsor granted to the appellant a “perpetual and exclusive Easement in gross” to use parking space number 40 located in the Condominium (“Easement 40”). Through Easement 40, the appellant has the exclusive use of parking space 40, and no unit owner or any other person may use parking space 40 without the appellant’s permission. Further, Easement 40 is freely alienable, and the appellant may lease or sell the parking easement at any time without permission of the Condominium sponsor, unit owners, or any other individual or entity. Ownership of Easement 40 is not connected to the ownership of any unit in the Condominium and the appellant does not own a unit in the Condominium.

For the reasons explained in the following Opinion, the Board ruled that Easement 40 is a present interest in real estate within the meaning of G.L. c. 59, § 11 owned by the appellant and that she is subject to real estate tax on the value of that interest under § 11. Accordingly, the Board allowed the assessors’ Motion for Summary Judgment and issued a decision for the appellee in this appeal.

**OPINION**

In accordance with 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.” The Board may use 831 CMR 1.22 to hear and decide cases where there is no genuine issue of material fact and a party is entitled to judgment as a matter of law. *See generally* ***Brownell v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 2003-324, 326-27. In the instant appeal, the Board found and ruled that no material facts were in dispute and resolution of the appeal pursuant to 831 CMR 1.22 was appropriate.

The assessors maintain that the plain language of G.L. c. 59, § 11 and case law support the conclusion that Easement 40 is a present interest in real estate owned by the appellant and that she is properly subject to real estate tax on the value of that interest. In contrast, the appellant argues that real estate tax is properly assessed to the owner of the fee simple interest in property and, because the unit owners of the Condominium own the fee simple interest in the Condominium’s property, the unit owners are responsible for real estate taxes assessed on all Condominium property, including that portion encumbered by Easement 40.

In pertinent part, G.L. c. 59, § 11, as most recently amended by St. 2016, c. 218, § 251, provides that “whenever the assessors deem it proper, they may assess taxes upon any present interest in real estate to the owner of such interest on January 1.” The issue of whether the owner of a parking easement owns a present interest in real estate that is distinct from a unit owner’s ownership interest in the common area of a condominium is not novel.

In a case involving the present appellant’s responsibility for a separate common area charge based on her ownership of Easement 40, the Appeals Court described the appellant’s interest as follows:

[A]s specified in the master deed, the developer retained freely alienable easements in gross as to a certain number of parking spaces in the garage. One such space was sold to Murrow, whose interest is as an owner of an easement in gross for the parking of motor vehicles on land owned by the condominium, and not as a unit owner. In accordance with common law and based on the language of the master deed, Murrow’s interest is separate from that of unit owners, is not part of the common area, and is not subject to c. 183A.

***Cashin v. Murrow,*** 79 Mass. App. Ct. 1117 (2011) (Rule 1:28 Decision).

 Further, in a case involving the precise question of whether parking easements reserved by a condominium developer that are freely alienable and not appurtenant to any condominium unit are subject to real estate tax, the Appeals Court rejected the notion that parking easements are only subject to tax as part of the common areas of the condominium. *See* ***Rauseo v. Assessors of Boston,*** 94 Mass. App. Ct. 517 (2018). In upholding the Board’s decision that parking easements were not part of the common areas and were separately subject to real estate tax, the court succinctly ruled that:

while the area within which the parking easements are physically located is a part of the limited common areas of the condominium, the easements themselves were reserved by the declarant from the property interests submitted to the provisions of G.L. c. 183A, are not appurtenant to any condominium unit, are separately alienable as interests in real property, and are not (and never were) part of the condominium common areas.

***Id.*** at 521. Based on this ruling, the court held that “[i]t follows that such an easement is subject to taxation as an interest separate from the units in the condominium.” ***Id.*** At 520. *See also* ***Gacicia v. Assessors of Boston,*** Mass. ATB Findings of Fact and Reports 2019-376 (ruling that parking easements were not part of the condominium common areas and that assessors may tax parking easements as an interest in real estate distinct from a unit owner’s interest in the common areas).

 In an effort to distinguish this case law that specifically focuses on the ownership and taxation of parking easements, the appellant cites to general property tax and easement cases to argue that it has long been settled that real estate tax is assessed on the fee simple interest in land and that an easement does not shift the real estate tax from the servient to the dominant estate, *i.e.,* from the land burdened by the easement to the land benefited by the easement. Applying that rationale to the present appeal, the appellant argues that the Condominium’s unit owners, who own the fee simple interest in the Condominium’s property, should be assessed the real estate tax and not the appellant as the owner of an easement.

This argument not only effectively ignores relevant precedent but is premised on cases that are unrelated to the specific grant of authority under G.L. c. 59, § 11, which allows the assessors to assess taxes “upon any present interest” in real estate to the owner of such interest ”whenever the assessors deem it proper.” This broad grant of authority, coupled with the clear language of ***Rauseo*** and ***Gacicia,*** support the subject assessment.

The appellant also reads too much into the following footnote in ***Rauseo***:

Neither party has raised any question whether an easement may be taxed as a separate interest, directly to the easement holder, rather than as an element of the value of the land comprising the servient estate burdened by the easement. We accordingly do not consider the question, other than to observe that it would make little practical difference in the present case inasmuch as the master deed provides that any taxes on the value of the parking easements imposed on the organization of unit owners would be passed through to the parking easement holders.

***Id.*** at 520, n. 5. However, the court was not asked to construe the present version of G.L. c. 59, § 11 (“§ 11”). In that same footnote, the court ruled that the parking easement was a present interest in property, and the court nowhere in its opinion construed any version of § 11. Instead, the court focused on its determination that the easement was not part of the condominium common areas.

 As discussed above, the version of § 11 applicable to these appeals provides the assessors with broad discretion to tax present interests in real property. The appellant argues that the assessors should not be granted “unfettered discretion” under § 11 to tax all interests in property, particularly where such discretion results, in appellant’s view, in the overturning of longstanding principles of taxation.

However, allowing the assessors to exercise their discretion in the present appeals to tax the appellant on Easement 40 is consistent with the holdings in ***Cashin, Rauseo*** and ***Gacicia,*** and is a reasonable reading of the plain language of § 11. The appellant held full possessory rights in her parking space through Easement 40, including the rights to exclude others from her parking space, to collect rents from the lease of the space, and to receive the proceeds of any sale of the easement. The owners of the servient estate – the Condominium unit owners – enjoy no rights in the parking space. Taking the appellant’s argument to its logical conclusion leads to the absurd result that the Condominium unit owners, who have no legal interest or rights in the parking space, are subject to a tax on the parking space, while the appellant, who possesses all the critical ownership rights in the parking space, escapes taxation. Accordingly, taxation of Easement 40 to the appellant rather than the unit owners is consistent with § 11, relevant case law, and fundamental notions of tax policy.

Tax statutes are to be construed according to their plain meaning**.** ***Commissioner of Revenue v. Franchi***, 423 Mass. 817, 822 (1996); *see also* ***Massachusetts Broken Stone Co. v. Weston***, 430 Mass. 637, 640 (2000)(“Where the language of a statute is clear, courts must give effect to its plain and ordinary meaning and the courts need not look beyond the words of the statute itself.”). Under the clear and explicit language of § 11, the assessors had the discretion to tax “any present interest in real estate to the owner of such interest.” The appellant’s interest in Easement 40 is a present interest in real estate under ***Cashin, Rauseo*** and ***Gacicia*** and is therefore properly subject to tax under the plain meaning of § 11.

Accordingly, the Board allowed the appellee’s Motion for Summary Judgment and issued a Decision for the appellee.

**THE APPELLATE TAX BOARD**

 **By: /S/ Thomas W. Hammond**

 **Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: /S/ William J. Doherty**

 **Clerk of the Board**