COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PELLEVERDE CAPITAL, LLC	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF WEST BRIDGEWATER**

Docket Nos. F328570, F329852, F332235

Promulgated: May 29, 2020

These are appeals 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 appellee, the Board of Assessors of the Town of West Bridgewater ("appellee" or "assessors"), to abate tax on certain personal property in the Town of West Bridgewater owned by and assessed to PelleVerde Capital, LLC ("PelleVerde" or "appellant") under G.L. c. 59, §§ 11 and 38 for fiscal years 2015, 2016, and 2017 ("fiscal years at issue").

Commissioner Good heard these appeals. Chairman Hammond, and Commissioners Rose, Elliott, and Metzer joined her in the decisions for the appellee.

These findings of fact and report are made at the request of the appellant pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.

Daniel Patrick Morrissey, Esq. for the appellant.

David T. Gay, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2014, January 1, 2015, and January 1, 2016, the assessment dates for the fiscal years at issue, PelleVerde was the owner of a 1,868.24-kilowatt solar photovoltaic facility ("Solar PV System") located on a parcel it leases at 221 N. Main Street in West Bridgewater. Relevant jurisdictional facts are summarized below:

Fiscal year	Assessed value of Solar PV System	Tax amount/ tax rate (per $1,000 of value)	At least one half of total taxes timely paid[1] (Y/N)	Abatement application filed	Date of denial	Date petition filed with Board
2015	$2,677,690	$77,063.92 $28.78	Y	02/02/2015	05/20/2015	07/30/2015
2016	$2,395,100	$69,769.26 $29.13	Y	02/01/2016	02/17/2016	05/16/2016
2017	$2,112,510	$60,586.80 $28.68	Y	01/31/2017	02/01/2017	04/03/2017

Based on these facts, the Board found and ruled that it had jurisdiction over the instant appeals.

The appellant raised two issues in these appeals: (1) whether the Solar PV System qualified for the personal property tax exemption under G.L. c. 59, § 5 cl. 45 ("Clause Forty-Fifth"); and (2) if the Solar PV System were taxable,

[1] For appeals from assessors' refusal to abate a tax on personal property, at least one half of the assessed tax must have been paid prior to the taxpayer filing the appeal with the Board. G.L. c. 59, §§ 64 and 65.

whether the assessments were greater than its fair market value for the fiscal years at issue.

The Board conducted a hearing on both the Clause Forty-Fifth issue and the valuation issue. The appellant presented the testimony of Raipher Pellegrino, the manager of PelleVerde, and entered various documents into evidence. The appellee entered documents into evidence, including the relevant jurisdictional documents as well as a chart depicting the depreciation schedule used by the assessors for assessments of personal property.

This appeal involves property benefited by a net-metering agreement and credits, concepts that have been the subject of several prior Board decisions, most recently in ***United Salvage Corp. of America v. Assessors of Framingham,*** Mass. ATB Findings of Fact and Reports 2020-320. Net metering allows an owner of a solar photovoltaic system to receive and accrue "net metering" credits[2] from a utility for electricity that the owner supplies to the utility's electric distribution grid. Such an owner may apply the net metering credits to reduce its own electricity bills and may also sell

[2] G.L. c. 164, § 138 defines "net metering" as "the process of measuring the difference between electricity delivered by a distribution company [the utility] and electricity generated by a Class I, Class II, Class III or neighborhood net metering facility and fed back to the distribution company."

any unused net-metering credits to other utility customers connected to the grid pursuant to a net-metering agreement.

On July 12, 2011, Tecta Solar West Bridgewater, LLC, PelleVerde's predecessor in interest, entered into a Solar Power Purchase Agreement ("Net-Metering Sales Agreement") with the Town of West Bridgewater ("Town") by which the Town agreed to purchase 100 percent of the electricity or the net-metering credits generated by the Solar PV System. By August 2013, the Solar PV System was substantially installed and received permission to interconnect to the electric grid maintained by a subsidiary of National Grid, USA, Inc. ("National Grid").

On August 12, 2013, the Town executed Schedule Z – Additional Information Required for Net Metering Services, ("Schedule Z"), pursuant to which the Town allocated the net-metering credits generated by the Solar PV System to eight municipal properties. At all relevant times, the Solar PV System was operating at capacity and all of the appellant's net-metering credits were allocated to the eight municipal properties identified in Schedule Z as follows:

Municipal property	Percentage of net-metering credits received from Town
Town of West Bridgewater Police Department 99 West Center Street	9%
Town of West Bridgewater Middle-Senior High School 155 West Center Street	38%
Town of West Bridgewater Highway Department 65 North Main Street	23%
Town of West Bridgewater Water Department 8 Manley Street	19%
Town of West Bridgewater Town Hall 65 North Main Street	4%
Town of West Bridgewater Sanitary/Highway Department South Elm Street	2%
Town of West Bridgewater Council on Aging 97 West Center Street	2%
Town of West Bridgewater Library 80 Howard Street	3%

The Town did not assess these municipally owned properties for real estate taxes during the fiscal years at issue. As will be explained more fully in the Opinion, the Clause Forty-Fifth exemption requires solar property to supply energy to property that is subject to property tax.

The appellant acknowledged that, as outlined in the Net-Metering Sales Agreement and Schedule Z, eight municipal properties were receiving all of the appellant's net-metering credits, and therefore 100 percent of the energy generated by the Solar Facility.[3] However, the appellant claimed that the

[3] In ***Forrestall v. Assessors of Westborough***, Mass. ATB Findings of Fact and Reports 2014-1025, 1029-30, the Board found net-metering credits to be synonymous with the energy generated by a solar facility.

eight municipal properties were taxable, even if the Town was not actually assessing them during the tax years at issue.

The eight properties listed in Schedule Z were owned by the Town. These properties – which included a water department, a police department, and a school - performed functions typical of public municipal property. The appellant offered no evidence to challenge that the eight properties were operated for a public purpose, for example by attempting to establish that they were operated as a private, for-profit business. In the absence of evidence to the contrary, the Board found and ruled that these eight properties were exempt from property tax. Therefore, because the Solar PV System was supplying the energy needs of tax-exempt property, the Board found and ruled that the Solar PV System did not meet the requirements for exemption under Clause Forty-Fifth.

The appellant alternatively contended that, if the Solar PV System were taxable, it was overvalued. The appellant challenged the assessments on two theoretical grounds: (1) one-time payments made by the United States Treasury Department under a federal clean-energy incentive program, Section 1603 of the American Recovery and Reinvestment Act of 2009, reduced the fair market value of clean-energy property by thirty percent; and (2) the depreciation rates utilized by the appellee, as displayed on the appellee's depreciation

table, were not appropriate, because they offered lower deductions than those on a ten-year depreciation schedule. After applying deductions that it based on these theories, the appellant derived the following opinions of value for the Solar PV System: $1,329,299 for fiscal year 2015; $797,579 for fiscal year 2016; and $743,300 for fiscal year 2017.

The appellant did not produce any valuation evidence consisting of the three recognized approaches to value – cost, income, or sales comparison. As will be discussed in the following Opinion, the appellant's evidence did not constitute persuasive, credible evidence of fair market value. Therefore, the Board found and ruled that the appellant failed to meet its burden of proving a value for the Solar PV System that was lower than its assessed value for each of the fiscal years at issue.

Accordingly, the Board issued decisions for the appellee in the instant appeals.

OPINION

1. The Solar PV System does not meet the criteria for exemption under Clause Forty-Fifth

All property, real and personal, situated within the Commonwealth is subject to local tax, unless expressly exempt. G.L. c. 59, § 2. In pertinent part, Clause Forty-

Fifth provides an exemption for personal property that meets the following specific criteria:

> solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter.

A taxpayer seeking an exemption bears the burden of proving that the subject property qualifies "according to the express terms or the necessary implication of a statute providing the exemption." ***New England Forestry Foundation, Inc. v. Assessors of Hawley***, 468 Mass. 138, 148 (2014).

By its express terms, Clause Forty-Fifth requires that the appellant demonstrate that the Solar PV System was: (1) a solar or wind powered system or device; (2) utilized as a primary or auxiliary power system for the purpose of supplying energy; and (3) utilized to supply the energy needs of property that is subject to Massachusetts property tax. The parties agree that the Solar PV System was a solar-powered system that was used solely to supply the energy needs of eight municipal properties via National Grid's electric grid, as outlined in Schedule Z. The appellant maintains that those eight municipal properties were subject to Massachusetts property tax, even though the Town did not assess them during the fiscal years at issue.

The appellant's argument begins with the premise that, pursuant to G.L. c. 59, § 2, all real property situated within the Commonwealth is subject to local tax, "unless expressly exempt." The appellant claims that an exemption must be statutory, not merely judicially recognized, and points out that there are no express exemptions under Chapter 59 for municipally owned property. Thus, the appellant concludes, the eight municipal properties were taxable, regardless of whether the Town actually assessed them. The appellant cites a few turn-of-the-twentieth-century Massachusetts cases upholding taxation of municipally owned property. *See e.g.*, ***Boston Fish Market Corp. v. Boston***, 224 Mass. 31 (1916). [4]

In each of the cases cited by the appellant, the municipal properties were not being devoted to public purposes but were leased to private entities for the conduct of business. *See e.g.*, ***Boston Fish Market***, 224 Mass. at 33-34 (ruling that property owned by the Commonwealth but leased to a private taxpayer for the operation of a business was taxable because not appropriated for public use). In addition, these cases predated the enactment of G.L. c. 59, § 2B, which codified their holdings by providing that

[4] The other cases cited by the appellant are: ***Proprietors of South Congregational Meetinghouse v. Lowell***, 42 Mass. 538 (1840); ***Essex County v. Salem***, 153 Mass. 141 (1904); ***Connecticut Valley Street Railway Company v. City of Northampton***, 213 Mass. 54 (1912); and ***Collector of Taxes of Milton v. City of Boston***, 278 Mass. 274 (1932).

governmentally owned property, including property owned by a city or town, that is "used in connection with a business conducted for profit or leased or occupied for other than public purpose" is taxable to the private user or lessee.

Accordingly, § 2B and the cases relied on by the appellant support the proposition that governmentally owned property is taxable only where it is used for a non-public purpose. *See* ***Middlesex Retirement Board System v. Board of Assessors of Billerica***, 453 Mass. 495, 499 (2009) (ruling that, nothwithstanding the absence of any specific statutory exemption from taxation for county-owned land, such land is exempt from taxation if it is owned by an instrumentality of the Commonwealth and devoted to public purposes).

The Board found and ruled that all eight municipal properties listed in Schedule Z were owned by the Town and devoted to public purposes and were therefore exempt from property tax. Because all of the appellant's net-metering credits were transferred for the benefit of eight municipal tax-exempt properties, the Board found and ruled that the Solar PV System did not supply the energy needs of property subject to property tax. Accordingly, the Solar PV System did not qualify for the Clause Forty-Fifth exemption. *See* ***United Salvage Corp. of America v. Assessors of Framingham***, Mass. ATB Findings of Fact and Reports 2020-320.

2. The Appellant Failed to Meet its Burden of Proving that the Solar PV System Was Overvalued

Assessors are required to assess real estate at its "fair cash value." G.L. c. 59, § 38. Fair cash value, also referred to as fair market value, is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston,*** 334 Mass. 549, 566 (1956).

Generally, the burden of proof is upon the taxpayer to prove that the subject property has a lower value than that assessed. ***Schlaiker v. Assessors of Great Barrington,*** 365 Mass. 243, 245 (1974) (citing ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before the Board, a taxpayer "may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation." ***General Electric Co.,*** 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

Generally, real estate valuation experts, Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. ***Correia v. New Bedford Redevelopment Auth.,*** 375 Mass. 360, 362 (1978). "The board is not required to adopt any particular method of valuation." ***Pepsi-Cola Bottling Co. v. Assessors of Boston,*** 397 Mass. 447, 449 (1986).

In the instant appeals, the appellant did not use a recognized valuation approach but instead argued that the appellee failed to reduce the assessed value of the Solar PV System to account for two factors. The appellant first contended that one-time payments made by the United States Treasury Department pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009 somehow reduced all clean-energy property values, because "once a tax credit is applied to the personal property, no purchaser would be willing to pay the full purchase price." According to the appellant, this factor established that the assessed value of the property exceeded its fair cash value.

The appellant further contended that the appellee's depreciation rates were not appropriate because they were lower than rates on a ten-year depreciation schedule. The appellant did not establish that the depreciation rates that

it suggested provided a more accurate determination of fair cash value than those used by the assessors. The appellant's general theories did not constitute persuasive, credible valuation evidence specific to the Solar PV System.

The Board thus found and ruled that the appellant failed to meet its burden of proving a value for the Solar PV System that was lower than its assessed value for any of the fiscal years at issue.

3. Conclusion

The Board having found and ruled that the Solar Facility did not qualify for the Clause Forty-Fifth exemption, and the appellant having failed to meet its burden of proving that the value of the Solar Facility was lower than its assessed value for any of the fiscal years at issue, the Board issued decisions for the appellee in the instant appeals.

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