COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

LTC JONATHAN L. RIGGS	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF BEDFORD**
Docket No. F337365		Promulgated: March 9, 2023

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 Town of Bedford ("appellee" or "assessors") to abate a motor vehicle excise paid by Lieutenant Colonel Jonathan L. Riggs ("appellant") under G.L. c. 60A, § 1 during calendar year 2017.

Chairman DeFrancisco heard the appellant's Motion for Summary Judgment ("Motion"). He was joined by then-Chairman Hammond and Commissioners Good and Elliott in the decision for the appellant.

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.

Matthew A. Morris, Esq., for the appellant.[1]

Nina L. Pickering-Cook, Esq., and *Ezra D. Dunkle-Polier*, Esq., for the appellee.

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[1] Attorney Morris represented the appellant on a *pro-bono* basis.

FINDINGS OF FACT AND REPORTS

Based on documentary evidence submitted by both parties in connection with the Motion, the Appellate Tax Board ("Board") made the following findings of fact.

The excise at issue, in the amount of $350, was imposed on a vehicle leased by the appellant on August 29, 2017. At all relevant times, the appellant was an active-duty Marine domiciled in West Virginia who temporarily resided in Bedford due to his two-year duty assignment at Fort Devens.

On or about November 13, 2017, the appellant was billed for the excise at issue and paid the excise shortly thereafter. On November 30, 2018, pursuant to G.L. c. 60A, § 2, the appellant timely filed an abatement application with the assessors, which the assessors denied on December 19, 2018. On March 18, 2019, pursuant to G.L. c. 59, §§ 64 and 65, the appellant timely filed a Petition Under Formal Procedure with the Board. Based on these facts, the Board found and ruled that it had jurisdiction over the instant appeal.

On August 29, 2017, the appellant leased a 2017 Chevrolet Silverado ("Silverado") from G.M. Financial Leasing ("finance company"), a New York corporation, through Best Chevrolet, Inc., a Massachusetts car dealership located in Hingham ("dealer"). The appellant listed his address on the vehicle lease as 8 Mayflower

Road, Bedford, his residential address while stationed at Fort Devens.

The assessors issued a motor vehicle excise bill in the amount of $350 to either the dealer or the finance company, as the owner of the Silverado. In accordance with the lease agreement between the lessor and the appellant, the finance company billed the appellant for the excise at issue on November 13, 2017, and as previously noted, the appellant paid it shortly thereafter.

The appellant maintains that a federal statute precludes the imposition of a motor vehicle excise on the appellant because he was an active-duty servicemember who was temporarily present but not domiciled in Massachusetts at the time that the excise was imposed. The appellee countered that the appellant lacked standing to bring this appeal because the appellant was the lessee, not the assessed owner, of the vehicle. The appellee conceded that the federal statute would have precluded imposition of the excise at issue on the appellant if he were the owner of the Silverado.

For reasons explained in the following Opinion, the Board ruled that standing was not an impediment to the appellant contesting the excise at issue. The Board further ruled that imposition of the excise violated federal law providing specific rules for the treatment of the property of servicemembers who are stationed outside of their state of residence.

Accordingly, the Board issued a decision for the appellant granting the Motion and ordered abatement of the excise at issue.

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 rely on 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 parties agreed, and the Board found and ruled, that no material facts were in dispute and therefore, resolution of the appeal pursuant to 831 CMR 1.22 was appropriate.

The critical material facts upon which resolution of this appeal depend are: (1) the appellant leased, rather than purchased, the Silverado; (2) the appellant was an active-duty servicemember who was domiciled in West Virginia; (3) the appellant was temporarily residing in Bedford while stationed at Fort Devens; and (4) the Silverado was "customarily kept" in Bedford.

Under G.L. c. 60A, § 2, imposition of the motor vehicle excise depends on the municipality in which the vehicle is "customarily

kept." There is no dispute that the vehicle was customarily kept in Bedford during the relevant time period.

However, under the Servicemembers Civil Relief Act, 50 U.S.C. 4001, § (d)(1) ("Relief Act"), the personal property of a servicemember "shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders." There is no dispute that had the appellant purchased the Silverado, the Relief Act would have precluded the imposition of the motor vehicle excise. However, the assessors maintain that the appellant is not protected by the Relief Act because he was a lessee and not an owner.

The assessors rely on ***RNK, Inc. v. Assessors of Bedford,*** Mass. ATB Findings of Fact and Reports 2008-1893, for the proposition that only the party on whom a tax is assessed can be a "person aggrieved" who has standing to prosecute an appeal of the assessment. Although that is a correct statement of the law for most purposes, neither ***RNK*** nor the cases on which it relied construed a situation involving a federal statute that protects an identifiable class that bears the economic burden of a tax.

In ***First Agricultural National Bank v. State Tax Commission,*** 392 U.S. 339 (1968), the U.S. Supreme Court ("Court") considered whether a national bank that purchased tangible personal property was subject to the Massachusetts sales tax. The Supreme Judicial

Court ("SJC") had ruled that the national bank, as a purchaser, was not entitled to relief from the tax because the incidence of the sales tax is upon vendors who sell tangible personal property.

The Court held that because federal immunity from state taxation was implicated, "it is clear that for this limited purpose we are not bound by the state court's characterization of the tax." ***Id.*** at 347. The Court went on to rule that:

> essentially the question for us is: On whom does the incidence of the tax fall? [citations omitted]. It would appear to be indisputable that a sales tax which by its terms must be passed on to the purchaser imposes the legal incidence of the tax upon the purchaser.

Id. Accordingly, the Court reversed the SJC and held that the national bank purchaser was immune from the Massachusetts sales tax.

Shortly after the Court's decision in ***First Agricultural***, the SJC decided a case involving a claim by a Massachusetts fraternal organization that argued it should be exempt from Massachusetts sales tax on its Massachusetts purchases. *See* ***Supreme Council of Royal Arcanum v. State Tax Commission,*** 358 Mass. 111 (1970). In rejecting the fraternal organization's challenge, the SJC distinguished ***First Agricultural***:

> In reversing our decision that sales to a national bank could be taxed, a majority of the Supreme Court of the United States held that in determining questions of Federal immunity they were not bound by our determination of the legal incidence of the tax. The Supreme Court held that the incidence of the tax was upon the purchaser. 392 U.S. 347-348. We see no reason,

> however, for changing our conclusion on the incidence of the sales tax in a situation where Federal immunity from State taxation is not involved.

Royal Arcanum, 358 Mass. at 113.

The Relief Act, like the immunity statute construed by the Court in ***First Agricultural,*** is specifically designed to limit the power of states to exact a tax on individuals or entities that would otherwise be subject to state tax. *See, e.g.,* ***California v. Buzard,*** 382 U.S. 386, 393 (1966) (holding that "in broadly freeing the nonresident serviceman from the obligation to pay property and income taxes" the purpose of the Soldiers' and Sailors' Civil Relief Act of 1940 (the predecessor of the Relief Act) was to "relieve him of the burden of supporting the governments of the States where he was present solely in compliance with military orders"). *See also* ***Michigan Canners & Freezers Ass'n v. Agricultural Mktg. & Bargaining Bd.***, 467 U.S. 461, 478 (1984) (ruling that a state law stood "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting the federal law in question).

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Based on the forgoing and because the appellant is protected by the provisions of the Relief Act and paid the excise at issue, the Board ruled that the incidence of the tax fell on the appellant, and he had standing to prosecute this appeal. The Board further ruled that the Relief Act precluded imposition of the contested excise. Accordingly, the Board allowed the Motion and issued a decision for the appellant granting an abatement in the amount of $350.

THE APPELLATE TAX BOARD

By: /S/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /S/ William J. Doherty
Clerk of the Board