**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**STATE STREET CORPORATION** **v.** **COMMISSIONER OF REVENUE**

Docket No. C344139

Promulgated:
August 15, 2024

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the refusal of the Commissioner of Revenue ("Commissioner" or "appellee") to abate corporate combined excise, penalties, and interest assessed to State Street Corporation ("appellant") for the tax year ending December 31, 2018 ("tax year at issue").

This matter proceeded on the appellant's Motion for Summary Judgment ("appellant's motion for summary judgment") and the appellee's Opposition to Appellant's Motion for Summary Judgment and Motion for Summary Judgment ("appellee's opposition and cross-motion for summary judgment"). Chairman DeFrancisco heard the oral arguments on these motions, and Commissioners Good, Elliott, Metzer, and Bernier joined him in the decision granting summary judgment in favor of 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.[1]

*Richard L. Jones*, Esq., *Caroline A. Kupiec*, Esq., and *Joseph X. Donovan*, Esq., for the appellant.

*Frances M. Donovan*, Esq., for the appellee.

**FINDINGS OF FACT AND REPORT**

This appeal concerns whether a financial institution is entitled to claim the Massachusetts research credit under G.L. c. 63, § 38M. On the basis of the parties' motions, oppositions, oral arguments, and all exhibits and supporting documents introduced in support thereof, the Appellate Tax Board ("Board") made the following findings of fact.

**I. The appellant and its research credits**

The appellant is registered with the Federal Reserve as a bank holding company pursuant to the Bank Holding Company Act of 1956 and files a consolidated return of income to the federal government. Consequently, the appellant and its subsidiaries come within the definition of a financial institution under G.L.

[1] All citations to the Appellate Tax Board Rules of Practice and Procedure in these findings of fact and report are to the version in effect prior to January 5, 2024.

c. 63, § 1[2] and are subject to tax in accordance with G.L. c. 63, § 2.

For each of the tax years ending December 31, 2016, December 31, 2017, and December 31, 2018 ("research credit tax years"), the appellant filed - as the parent reporting company - a Form 355U: Excise for Taxpayers Subject to Combined Reporting ("Combined Report"). These Combined Reports each included State Street Bank and Trust Company ("SSBT"), the appellant's principal banking subsidiary. The Combined Report for the tax year at issue also included Charles River Systems, Inc. ("CRSI"), an investment software company acquired on October 1, 2018. The "Type of group" was reported as "Financial" on the Combined Report for each of the research credit tax years, and the appellant, SSBT, and CRSI were indicated to be financial institutions.

The appellant, SSBT, and CRSI are classified as corporations for federal income tax purposes, and the appellant filed - as the parent reporting company – a federal consolidated Form 1120: U.S. Corporation Income Tax Return ("Form 1120") for each of the research credit tax years. These returns included SSBT (a corporation indicated therein to be a subsidiary, wholly

[2] The defined term "financial institution" includes, in paragraph (c), "any corporation . . . registered under the Federal Bank Holding Company Act of 1956 . . ., including any subsidiary which participates in the filing of a consolidated return of income to the federal government."

owned by the appellant) for each of the research credit tax years, and CRSI (a corporation indicated therein to be a subsidiary, wholly owned by SSBT) for the tax year at issue.

For each of the research credit tax years, the appellant reported Massachusetts research credits pursuant to G.L. c. 63, § 38M on its Combined Report and federal research credits pursuant to I.R.C. § 41 on its Form 1120. These research credits all derived from the activities of SSBT (for each of the research credit tax years) and from the activities of CRSI (for the tax year at issue).

SSBT generated $3,308,976 in Massachusetts research credits for the tax year ending December 31, 2016, and $4,869,882 in Massachusetts research credits for the tax year ending December 31, 2017. Losses in both of these tax years resulted in the appellant carrying over the Massachusetts research credits to the tax year at issue. SSBT and CRSI generated $5,696,927 in Massachusetts research credits for the tax year at issue. Combined with the carried-over amounts, the appellant reported a total of $13,875,785 in Massachusetts research credits on its Combined Report for the tax year at issue.

**II. The parties' assertions**

The appellant maintained that the provisions of G.L. c. 63, § 38M are unambiguous – a financial institution may claim the Massachusetts research credit against the excise imposed under

G.L. c. 63, § 2 because financial institutions are business corporations under G.L. c. 63, §30(1). The Commissioner, while acknowledging that the appellant and its subsidiaries are business corporations under G.L. c. 63, §30(1), interpreted G.L. c. 63, § 38M to mean that only business corporations subject to the excise imposed under G.L. c. 63, § 39 may claim the Massachusetts research credit. The Commissioner also claimed that, having determined that a financial institution was not eligible to claim research credits, he had conducted neither an in-depth evaluation of the research expenses claimed by SSBT and CRSI, nor a calculation of Massachusetts research credits. Hence, material facts remained at issue.

**III. Procedural history and jurisdiction**

By Notice of Selection for Audit dated March 7, 2019, the Commissioner notified the appellant that its Combined Reports for the tax years ending December 31, 2016, and December 31, 2017, had "been selected for verification and audit." Included in the notice were twenty-two detailed requests for information and documents from the appellant.

The Commissioner sent the appellant a Proposed Adjustment to Massachusetts Tax Returns on February 20, 2020, stating that Massachusetts research credits "can't be claimed in accordance with [] 830 CMR 63.38M.1(3)(b)" because a "financial institution is taxed under [G.L. c. 63, § 2] and not under [G.L. c. 63, §

39]" and that the Commissioner planned "to disallow the Research Credit generated and carried over from the 2016-2017 tax years," which would "produce a $0 balance NIA as all entities in the reporting group paid the $456 minimum excise." Further, the Commissioner planned "to create a limited-scope desk audit for the [tax year at issue] to disallow all Research Credit generated from 2016-2018 and then subsequently claimed on the 2018 Form 355U." Correspondence from the Commissioner to the appellant dated November 18, 2020, and December 2, 2020, regarding the tax years ending December 31, 2016, and December 31, 2017, also reiterated the Commissioner's rationale that Massachusetts research credits are not available to financial institutions.

The Commissioner issued a Notice of Intent to Assess to the appellant on December 3, 2020, reflecting a proposed assessment of $0 for each of the tax years ending December 31, 2016, and December 31, 2017. Because no deficiency assessment resulted from the audit, the appellant had nothing to appeal for those tax years.

By Notice of Selection for Audit dated November 5, 2020, the Commissioner notified the appellant that its Combined Report for the tax year at issue had "been selected for verification and audit." Included in the notice were ten detailed requests for information and documents from the appellant. Correspondence

from the Commissioner to the appellant dated February 16, 2021, concerning the tax year at issue, as did correspondence from the Commissioner to the appellant dated December 2, 2020, concerning the tax years ending December 31, 2016, and December 31, 2017, stated that Massachusetts research credits are not available to financial institutions.

The Commissioner issued a Notice of Intent to Assess to the appellant on March 9, 2021, proposing the assessment for the tax year at issue of tax in the amount of $13,594,574, interest in the amount of $1,516,994.56, and G.L. c. 62C, § 35A underpayment penalties ("35A penalties") in the amount of $2,718,915, for a total proposed assessment of $17,830,483.56. The proposed assessment was based on the disallowance of Massachusetts research credits carried over from the tax years ending December 31, 2016, and December 31, 2017, as well as the disallowance of Massachusetts research credits generated in the tax year at issue. The Commissioner issued a Notice of Assessment to the appellant on April 23, 2021, assessing tax and 35A penalties in the amounts and for the reasons indicated in the Notice of Intent to Assess, plus interest in the amount of $1,596,140.64, for a total assessment of $17,909,629.64.

The appellant filed a Form ABT – Application for Abatement ("abatement application") for the tax year at issue on June 21, 2021. The Commissioner denied the abatement application by

Notice of Abatement Determination dated July 7, 2021, stating as the reason that the appellant "is a financial institution and is not eligible for the Massachusetts research credit pursuant to G.L. c. 63, § 2." The appellant filed a petition with the Board on August 2, 2021. Based upon this information, the Board found and ruled that it had jurisdiction over this appeal.

**IV. The Board's findings and rulings**

***A. The provisions of G.L. c. 63, § 38M permit a financial institution to claim a Massachusetts research credit.***

As discussed further in the Opinion, G.L. c. 63, § 38M does not limit eligibility for the Massachusetts research credit to business corporations taxed under G.L. c. 63, § 39. The provisions of G.L. c. 63, § 38M(a)(1) permit business corporations to claim the Massachusetts research credit, with no specified distinctions for eligibility based on the type of business corporation.

The parties dispute neither that the appellant, SSBT, and CRSI are financial institutions taxed under G.L. c. 63, § 2, nor that each is definitionally a business corporation within the provisions of G.L. c. 63, § 30, a definition that applies to sections 30-52 of G.L. c. 63, including G.L. c. 63, § 38M.

Accordingly, Massachusetts research credits were properly claimed on the Combined Reports for the research credit tax years, including the tax year at issue.

***B. There is no genuine dispute of material fact at issue.***

The Commissioner cannot rely on speculative assertions of potentially discoverable issues of material fact to defeat summary judgment. Here, the Commissioner identifies no material fact genuinely in dispute. The Board is not the venue to conduct an audit of the appellant for the tax year at issue. The Commissioner had an opportunity to engage in a verification of the Massachusetts research credits and to make an assessment within the timeframe enumerated in G.L. c. 62C, § 26. Instead the Commissioner chose to deny the Massachusetts research credits on the purely legal reasoning - as stated in the Notice of Abatement Determination - that the appellant "is a financial institution and is not eligible for the Massachusetts research credit pursuant to G.L. c. 63, § 2."[3]

Accordingly, on the basis of the above findings and as discussed further in the Opinion, the Board found that there were no material facts genuinely in dispute in this appeal and

[3] At the hearing on the motions, Counsel for the Commissioner stated that the appellant's "motion must be denied so that the Commissioner can review the qualified research expenses in total for the research credit claimed following its review by the final determination by the IRS." Counsel for the appellant explained during the hearing that any reported federal research credits were subjected to review by the IRS for the research credit tax years and that there was no decrease to any reported federal research credits. Counsel for the Commissioner also admitted that there was a review at the audit level, though there was no in-depth evaluation of the qualified research expenses. A pending - and now completed - review by the IRS is not a dispute of a material fact. If the IRS issued a final determination, the appellant was required to follow appropriate statutory provisions to report any changes to the Commissioner. *See* G.L. c. 62C, § 30.

that the appellant was entitled to judgment as a matter of law, with an abatement in the full amount of the assessment for the tax year at issue, plus statutory additions.

## OPINION

### I. Summary judgment

#### *A. The summary judgment standard*

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. Having considered the appellant's motion for summary judgment and the appellee's opposition and cross-motion for summary judgment, the Board found and ruled that this appeal presented no genuine dispute of material fact and that disposition of this appeal by summary judgment was appropriate pursuant to 831 CMR 1.22. *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."); ***Norwood v. Adams-Russell Co.***, 401 Mass. 677, 683 (1988) (party moving for summary judgment "need not prove that *no* factual disputes exist, only that there is no *genuine* dispute of *material* fact") (emphasis in original).

***B. The Commissioner identified no genuine dispute of material fact.***

The Commissioner failed to identify a genuine dispute of material fact. A "[b]are assertion[] made in the nonmoving party's opposition will not defeat a motion for summary judgment." ***Barron Chiropractic & Rehabilitation, P.C. v. Norfolk & Dedham Group***, 469 Mass. 800, 804 (2014). "[T]he opposing party cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment." ***LaLonde v. Eissner***, 405 Mass. 207, 209-10 (1989) (citations omitted) (holding that the "motion judge did not err in concluding that the plaintiffs failed to 'allege specific facts which establish that there is a genuine, triable issue' which would defeat summary judgment"); *see also* ***Chiodini v. Target Marketing Group, Inc.***, 58 Mass. App. Ct. 376, 379-80 (2003) ("The plaintiff's opposition to the defendant's motion for a protective order to stay discovery failed to identify what specific facts the plaintiff hoped to glean from discovery that would counter the defendants' summary judgment submissions."). "Parties may not 'fish' for evidence on which to base their complaint 'in hopes of somehow finding something helpful to [their] case in the course of the discovery procedure.'" ***E.A. Miller, Inc. v. South Shore Bank***, 405 Mass. 95, 102 (1989).

In the matter at hand, the Board found neither a dispute of material fact nor a contention made by the Commissioner that even rose to the level of a dispute. The Commissioner conducted an audit review of the research credit tax years, including the tax year at issue, and requested a mass of information and documents. The omission by the Commissioner to conduct an in-depth review of the Massachusetts research credits is not a genuine dispute of a material fact. The record does not reflect that the Commissioner sought, with respect to the tax year at issue, the opportunity to extend the deadline to assess under G.L. c. 62C, § 27 ("If, before the expiration of the time prescribed under section twenty-six for the assessment of any tax, the commissioner and the taxpayer consent in writing to extend the time for the assessment of the tax, the commissioner or his duly authorized representative may examine the books, papers, records, and other data of the taxpayer, may give any notice required by section twenty-six and may assess the tax at any time prior to the expiration of the extended time.").

**II. The research credit under G.L. c. 63, § 38M is not limited to business corporations taxed under G.L. c. 63, § 39.**

"Ordinarily, where the language of a statute is plain and unambiguous, it is conclusive as to legislative intent" and courts "give effect to the plain and ordinary meaning of the language." ***Malloch v. Hanover***, 472 Mass. 783, 788 (2015).

General Laws c. 63, § 38M(a)(1), as relevant to the research credit tax years, states that "a business corporation shall be allowed a credit against its excise due under this chapter equal to the sum of 10 per cent of the excess, if any, of the qualified research expenses for the taxable year over the base amount and 15 per cent of the basic research payments determined under subsection (e)(1)(A) of section 41 of the federal Internal Revenue Code."[4]

The preamble to G.L. c. 63, § 30 states that "[w]hen used in this section and in sections 31 to 52, inclusive, the following terms [including 'business corporation'] shall have the following meanings, and the term[] 'business corporation[,]' . . . defined in paragraph[] 1 of this section, shall, unless otherwise provided, also have the following meaning[] and effect for purposes of all sections of this chapter," including for purposes of G.L. c. 63, § 38M.

The term "business corporation" is defined in G.L. c. 63, § 30(1) as "any corporation, or any 'other entity' as defined in section 1.40 of chapter 156D, whether the corporation or other

[4] The Board was not persuaded by the Commissioner's reliance on other sections of G.L. c. 63, § 38M as support for his assertion that the Massachusetts research credit may be claimed only by business corporations subject to G.L. c. 63, § 39. The provisions of G.L. c. 63, § 38M(a)(1) explicitly outline the eligibility for the research credit. The provisions relied upon by the Commissioner address how the credit provisions impact business corporations taxed under G.L. c. 63, § 39, but they do not indicate that only business corporations taxed under G.L. c. 63, § 39 can claim a research credit. *See* G.L. c. 63, § 38M(c), (d), and (f).

entity may be formed, organized, or operated in or under the laws of the Commonwealth or any other jurisdiction, and whether organized for business or for non-profit purposes, that is classified for the taxable year as a corporation for federal income tax purposes." The parties do not dispute that the appellant and each of its subsidiaries, SSBT and CSRI, fit within the G.L. c. 63, § 30(1) definition of "business corporation" during the research credit tax years at issue.[5]

Thus, by the unambiguous language of G.L. c. 63, § 30(1) and G.L. c. 63, § 38M(a)(1), the appellant, SSBT, and CRSI were business corporations during the research credit tax years and entitled to seek Massachusetts research credits. *See* ***Malloch v. Hanover***, 472 Mass. at 788. *See also* ***O'Brien v. Massachusetts Bay Transportation Authority***, 405 Mass. 439, 445 (1989) ("In the absence of specific statutory language indicating a legislative intent to avoid these results, . . . we think the MBTA's argument would more appropriately be addressed to the Legislature than to the court."); ***Commissioner of Revenue v. Cargill, Inc.***, 429 Mass. 79, 81-82 (1999) (holding that "[t]o reach the conclusion urged by the commissioner, we are asked to

[5] The term "other entity" is defined broadly in G.L. c. 156D, § 1.40 as "any association or entity other than a domestic or foreign business corporation, a domestic or foreign nonprofit corporation or a governmental or quasi-governmental organization. The term includes, without limitation, limited partnerships, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts and profit and not-for-profit unincorporated associations."

look beyond the clear language of the statute and infer an intention on the part of the Legislature to limit the credit" and "[h]ad the Legislature intended to limit the credit in the manner advocated by the commissioner, it easily could have done so"); ***Boss v. Leverett***, 484 Mass. 553, 560 (2020) ("Similarly, here we cannot read a payment limitation into the statute when it is not explicitly mentioned in § 9A or in other sections of c. 32B.").

The Commissioner argues that the appellant's "claim directly controverts the clear and unambiguous language of the statutes and the Commissioner's contemporaneously duly promulgated regulation" and – in a contradicting statement by the Commissioner – that "to adhere blindly to a literal reading of [the] statute . . . would yield an 'absurd' or 'illogical' result [that] would not effectuate the intent of the Legislature enacting it." While courts do not adhere blindly to a literal reading of a statute if doing so would yield an absurd or illogical result, the Board finds nothing patently absurd or illogical about a financial institution claiming a research credit.[6] ***Commonwealth v. Peterson***, 476 Mass. 163, 167, 169 (2017)

[6] The basis for the Commissioner's contention is that the appellant "only elects to be treated as a business corporation in order to be eligible for" Massachusetts research credits. The Commissioner points out that the appellant "does not elect as a business corporation to comply with [] G.L. c. 63, § 30(2)-(17) for the purpose of calculating its net income" and "does not elect as a business corporation to be subject to the apportionment rules set

(stating that the absurd results doctrine must be used sparingly).

Both parties reference 2008 amendments ("2008 amendments") to the relevant statutory sections - the appellant claiming that the 2008 amendments rendered obsolete the Commissioner's regulation at 830 CMR 63.38M.1 and the Commissioner claiming that the 2008 amendments were only technical changes that do not impact the continued relevance of 830 CMR 63.38M.1.[7] Prior to the 2008 amendments, G.L. c. 63 set forth distinct tax regimes for "domestic corporations" under G.L. c. 63, § 32 and "foreign corporations" under G.L. c. 63, § 39. These distinctions were eliminated with the 2008 amendments. *See* St. 2008, c. 173. The 2008 amendments eliminated any distinction between "domestic corporation" and "foreign corporation" by replacing these terms with the term "business corporation," defined in G.L. c. 63, § 30(1). *See* St. 2008, c. 173, § 41. The 2008 amendments also

---

forth in G.L. c. 63, § 38" and "does not elect as a business corporation to be subject to the net worth tax pursuant to G.L. c. 63, § 39." The appellant, SSBT, and CRSI do not elect to do so because statutorily they cannot *elect* to comply with these provisions. The appellant, SSBT, and CRSI are business corporations that are financial institutions and as such must calculate net income and apportionment in accordance with G.L. c. 63, § 2. *See also* G.L. c. 63, § 1, G.L. c. 63, § 30, G.L. c. 63, § 68C.

[7] The Commissioner cited to 830 CMR 63.38M.1(3)(b) in the appellee's opposition and cross-motion for summary judgment, stating that the "clear and unambiguous language of the regulation provides that the 'credit is available to corporations subject to tax under G.L. c. 63, § 39.'" The precise words of the regulation during the research credit tax years - and still currently as of promulgation of these findings of fact and report - state that the "Massachusetts credit for research expenses is available to all domestic corporations subject to tax under M.G.L. c. 63, § 32, and all foreign corporations subject to tax under M.G.L. c. 63, § 39."

amended G.L. c. 63, § 38M to substitute the term "business corporation" in place of the language that previously read "domestic or foreign corporation," adding as well G.L. c. 63, § 68C. *See* St. 2008, c. 173, § 76 (amending G.L. c. 63, § 38M) and St. 2008, c. 173, § 89 (inserting G.L. c. 63, § 68C). General Laws c. 63, § 68C makes clear that a financial institution can be a business corporation, and that all business corporations are not taxed pursuant to G.L. c. 63, § 39.[8]

While the Board declines to make any findings on whether the appellant and its subsidiaries would or would not have qualified for the Massachusetts research credit under facts and statutory provisions in effect during tax years not relevant here, the Board notes that the Commissioner's regulation critically lacks any update addressing the 2008 amendments and whether these amendments were mere technical changes as now alleged by the Commissioner. Consequently, the Board declines to give the regulation any deference for the research credit tax years. Just as the regulation at issue in ***U.S. Auto Parts Network, Inc. V. Commissioner of Revenue***, 491 Mass. 122, 139 (2022), "cabined its enforcement to the parameters of *Quill*,"

[8] The provisions of G.L. c. 63, § 68C state in relevant part that "[i]n general, a business corporation as defined in section 30 is subject to an excise under section 39," but "[n]otwithstanding this general rule or any other provision of this chapter, the excise under section 39 shall not apply in the case of a business corporation that is . . . . a financial institution, as defined in section 1, that is subject to excise under section 2 or 2B."

the regulation at 830 CMR 63.38M.1 has cabined its applicability to the statutory regime in place prior to the 2008 amendments.

Further, even if the Commissioner had updated the regulation to address the 2008 amendments, any limiting language imposed by the regulation but not by the statute would not be entitled to deference by the Board. General Laws c. 62C, § 3 authorizes the "commissioner [to] prescribe regulations and rulings, not inconsistent with law, to carry into effect the provisions of [the statutes referred to in section two, including G.L. c. 63], which regulations and rulings, when reasonably designed to carry out the intent and purposes of said provisions, shall be prima facie evidence of their proper interpretation." However, "an administrative agency has no authority to promulgate rules or regulations that conflict with the statutes." ***Massachusetts Municipal Wholesale Electric Co. v. Massachusetts Energy Facilities Siting Council***, 411 Mass. 183, 194 (1991). *See also* ***Lowney v. Commissioner of Revenue***, 67 Mass. App. Ct. 718, 722-23 (2006) (noting that "where the statute has been found to be unambiguous, courts have declined to accord any deference whatsoever to the department's regulation, reasoning that 'a regulation that purports to tax an item that the statute itself does not tax is itself invalid'").

Accordingly, the Board found and ruled that there were no material facts at issue in this matter and that the appellant

was entitled to judgment as a matter of law on the basis that a financial institution may claim the Massachusetts research credit. The Board granted an abatement in the full amount of the assessment for the tax year at issue, plus statutory additions.

**THE APPELLATE TAX BOARD**

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

**A true copy,**

**Attest: /S/** _____
**Clerk of the Board**