**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**SWISSPORT FUELING, INC. v.    BOARD OF ASSESSORS OF**

**THE CITY OF WORCESTER**

Docket No. F321360    Promulgated:

 August 10, 2018

This is an appeal 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 City of Worcester (“assessors”), to abate taxes assessed on certain property located in the City of Worcester and assessed to Swissport Fueling, Inc. (“appellant”), under G.L. c. 59, § 2B (“§ 2B”),[[1]](#footnote-1) for fiscal year 2013 (“fiscal year at issue”).

Chairman Hammond heard the appeal and was joined in the decision for the appellant by Commissioners Scharaffa, Rose, Chmielinski, and Good.

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

*Kathryn A. O’Leary,* Esq. for the appellant.

*John F. O’Day,* Esq. for the appellee.

**FINDINGS OF FACT AND REPORT**

 On the basis of the testimony of Mr. Frank Grolimund, the appellant’s vice president of operations, and exhibits introduced at the hearing of this appeal, the Board made the following findings of fact.

**Jurisdiction**

The assessors valued the property at issue in this appeal at $915,400.00 for the fiscal year at issue, and issued an assessment in the amount of $28,240.09. The appellant timely paid the taxes due and filed an application for abatement on January 30, 2013. The abatement application was deemed denied on April 30, 2013 and the appellant filed a Petition Under Formal Procedure with the Board on July 16, 2013. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

**Factual Background**

Mr. Grolimund, whose testimony the Board found credible, explained that the appellant had continuously served as the exclusive Fixed Base Operator (“FBO”)[[2]](#footnote-2) at Worcester Regional Airport (“Airport”) for approximately twenty-five years, including during the fiscal year at issue. The appellant became the exclusive FBO at the Airport pursuant to a lease entered into during 1987 by the appellant[[3]](#footnote-3) and the City of Worcester, then the owner of the Airport (“Lease”). During June of 2010, the City of Worcester conveyed the Airport to the Massachusetts Port Authority (“Massport”), which then became the lessor. As the exclusive FBO for the Airport, the appellant was responsible for a variety of general aviation services including fueling, storage, repair, and maintenance of aircrafts.

The property at issue in this appeal (“subject property”), all of which was located within the Airport, included: a hangar; a parcel of approximately 16,600 square feet located approximately twelve feet west of the hangar; a second parcel of approximately 3,600 square feet located approximately 100 feet south of the hangar; a fuel farm; and a second hangar and a general aviation terminal that were constructed by the appellant on the referenced parcels according to the terms of the Lease.

The Lease identified its central purpose as the appellant’s use of the leased property to provide FBO services at the Airport and required the appellant at all times to afford the general public accessibility and the “highest consideration” in its operations and use of the property. The appellant fully complied with these obligations.

Based on the record in its entirety, and for the reasons stated in the following Opinion, the Board found and ruled that the appellant, as lessee of the subject property and exclusive FBO at the Airport, was not subject to real estate tax under § 2B because the appellant’s operations were “reasonably necessary to the public purpose of a public airport . . . which [were] available to the use of the general public.”

Accordingly, the Board issued a decision for the appellant in this appeal and granted an abatement in the amount of $28,240.09.

**OPINION**

Section 2B, which addresses taxation of government-owned real estate, provides, in pertinent part:

Real estate owned in fee or otherwise or held in trust for the benefit of . . . the commonwealth, or a county, city or town, or any instrumentality thereof, if used in connection with a business conducted for profit or leased or occupied for other than public purposes, shall for the privilege of such use, lease or occupancy, be valued, assessed and taxed annually as of January first to the user, lessee or occupant in the same manner and to the same extent as if such user, lessee or occupant were the owner thereof in fee . . . **This section shall not apply to a use, lease or occupancy which is reasonably necessary to the public purpose of a public airport** . . . **which is available to the use of the general public.**

(emphasis added).

Pursuant to § 2B, publicly-owned property or property owned by a public instrumentality is generally taxable to the user, lessee, or occupant when it is used in connection with a for-profit business, or leased for non-public purposes. *See* ***Airflyte, Inc. v. Assessors of Westfield***, Mass. ATB Findings of Fact and Reports 2014-731(citing***Smith v. Assessors of Fitchburg****,* Mass. ATB Findings of Fact and Reports 2008-73, 77). Under the exception in § 2B, a leaseholder is not taxed on the property when the lease is “reasonably necessary to the public purpose of a public airport . . . which is available to the use of the general public.”

In ***Airflyte***, the Board considered whether an FBO responsible for approximately eighty-five percent of FBO services at the Westfield-Barnes Regional Airport qualified for exception from taxation under § 2B. In reaching its conclusion that the taxpayer so qualified, the Board focused on the taxpayer’s fulfillment of applicable criteria for the exception, namely that: the leased premises at issue were located within a government-owned public airport; the taxpayer provided a variety of FBO services that were concededly essential to the operation of the airport and necessary to its public purpose; and the services were available to the use of the general public. ***Airflyte***, Mass. ATB Findings of Fact and Reports at 2014-732, 743-44.

The dispositive facts of the present appeal are strikingly similar to those in ***Airflyte,*** and any distinctions are without legal consequence. In particular, the uncontested facts of this appeal include the following: the Airport is a public airport; the subject property, which was leased by the appellant from Massport during the fiscal year at issue, was located within the Airport; Massport is an “instrumentality” of the Commonwealth of Massachusetts, pursuant to St. 1956, c. 465, § 2; the appellant, as the Airport’s exclusive FBO, provided services including fueling, storage, repair, and maintenance of aircrafts; and the appellant’s FBO services were available to the use of the general public. Arguably, the only factual distinction of note between ***Airflyte*** and this appeal is that the appellant was the exclusive FBO at the Airport, while the taxpayer in ***Airflyte*** provided only eighty-five percent of FBO services at Westfield-Barnes Regional Airport.

Consistent with the relevant provisions of § 2B and the Board’s analysis in ***Airflyte***, the cited facts of the present appeal compel the conclusion that as lessee of the subject property and the exclusive FBO at the Airport, the appellant’s operations were “reasonably necessary to the public purpose of a public airport . . . which [were] available to the use of the general public.” § 2B. Thus, the Board found and ruled that the appellant was not subject to real estate tax pursuant to § 2B and issued a decision for the appellant, granting an abatement in the amount of $28,240.09.

 **THE APPELLATE TAX BOARD**

 **By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

**A true copy,**

**Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. In their post-trial memorandum, the assessors stated their view that only valuation of the property was at issue in this appeal. The appellant, however, disputed both the property’s valuation and taxation under § 2B in its petition, the evidence submitted, and its post-trial memorandum. Further, during the hearing of the appeal, counsel for the appellant confirmed that the appellant was contesting taxability under § 2B. Consequently, the Appellate Tax Board (“Board”) decided the appeal based on application of § 2B, thereby obviating the need for consideration of valuation. [↑](#footnote-ref-1)
2. The Federal Aviation Administration has defined an FBO as “a commercial business granted the right by [an] airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.” ***U.S. Department of Transportation Federal Aviation Administration Advisory Circular; AC No: 150/5190-7, p.13.*** [↑](#footnote-ref-2)
3. The appellant executed the lease under its former corporate name, Dynair Fueling, Inc. [↑](#footnote-ref-3)