COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

UNITED SALVAGE CORP. OF AMERICA	**v.**	**BOARD OF ASSESSORS OF THE CITY OF FRAMINGHAM**
Docket Nos. F329077, F332069		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 City of Framingham ("appellee" or "assessors"), to abate tax on certain personal property in the City of Framingham owned by and assessed to United Salvage Corp. of America ("appellant") under G.L. c. 59, §§ 11 and 38 for fiscal years 2016 and 2017 ("fiscal years at issue").

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa and Good joined him 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.

David G. Saliba, Esq. for the appellant.

James F. Sullivan, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

Based on an agreed statement of facts and exhibits, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2015 and January 1, 2016, the assessment dates for the fiscal years at issue, the appellant was the assessed owner of a parcel of real estate located at 721 Waverly Street ("Waverly parcel") improved with a solar photovoltaic system ("Solar PV System") that the appellant installed on the Waverly parcel in 2012. These appeals pertain exclusively to the taxation of the Solar PV System and do not involve the assessment of the Waverly parcel. Relevant jurisdictional facts are summarized below:

Fiscal year	Assessed value of Solar PV System	Tax amount/ tax rate (per $1,000 of value)	Timely payment of one-half of tax[1] (Y/N)	Abatement application filed	Date of denial	Date petition filed with Board
2016	$1,228,200	$46,647.04 $37.98	Y	01/22/2016	01/28/2016	04/07/2016
2017	$1,173,000	$42,837.96 $36.52	Y	01/10/2017	01/12/2017	01/26/2017

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

The 2,500-panel, 800-kilowatt Solar PV System is connected and supplies energy to the local electric distribution system ("electric grid") owned and operated by NSTAR, now Eversource Company ("Eversource"). Through the program known as net metering,

[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.

an owner of a solar photovoltaic system may receive and accrue "net metering" credits[2] from Eversource for electricity that the owner supplies to the grid. Such an owner may apply the net metering credits to reduce its electricity bills and may also sell any unused net-metering credits to other utility customers connected to the electric grid pursuant to a net-metering sales agreement.

On March 5, 2013, the appellant entered into a Net Metering Credit Sales Agreement ("Net-Metering Agreement") with the City[3] of Framingham ("City"). In accordance with the Net-Metering Agreement the City agreed to purchase one hundred percent of the net-metering credits generated by the Solar PV System for a period of five years. Pursuant to the Net-Metering Agreement, the City then distributed the net-metering credits that it purchased from the appellant to three municipal properties that it owned and operated, as outlined below:

Municipal property	**Percentage of net-metering credits distributed by the City**
City of Framingham Police Department 1 William Welch Way	52%
City of Framingham Public Library 49 Lexington St.	24%
City of Framingham Loring Arena Fountain St.	24%

[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."

[3] At the time of the Net-Metering Agreement, the City of Framingham was the Town of Framingham.

As municipally owned and operated properties, these three properties were exempt from property taxes.

The issue raised in these appeals is whether the Solar PV System qualified for the personal property tax exemption under G.L. c. 59, § 5 cl. Forty-Fifth ("Clause Forty-Fifth") for the fiscal years at issue. In order to qualify for the Clause Forty-Fifth exemption, the Solar PV System must have been used to supply the energy needs of property that was subject to property tax.

The appellant contends that the Net-Metering Agreement does not determine the recipient of the energy generated by the Solar PV System. It argues that net-metering credits are merely financial figures and do not represent the actual energy produced by the Solar PV System. The appellant instead theorizes that, because the Solar PV System was connected to the electric grid, its energy was dispersed and distributed to numerous Eversource electric customers connected to the grid. Eversource has approximately 1.4 million electric customers in 140 different communities within the commonwealth, including many non-municipal customers. The appellant maintains that some of Eversource's customers are subject to Massachusetts property tax. Therefore, the appellant concludes, because the Solar PV System supplied power to meet the energy needs of all properties connected to the electric grid,

including taxable properties, the appellant satisfied the requirements of Clause Forty-Fifth.

The appellee maintains that the Net-Metering Agreement is controlling. Pursuant to the Net-Metering Agreement, tax-exempt properties received the benefit of the Solar PV System's electrical output, as evidenced by the parties' allocation of all of the net-metering credits to three municipal properties.[4] Therefore, the assessors maintained that the appellant cannot satisfy the requirements of Clause Forty-Fifth.

On the basis of all of the evidence, the Board agreed with the appellee and found that the Solar PV System supplied the energy needs of three City-owned properties that are not subject to property tax. The Net-Metering Agreement provided that all of the net-metering credits resulting from the Solar PV System were purchased by the City and supplied the energy needs of the three municipal properties.

The Board rejected the notion that the electricity generated by the Solar PV System and transferred to the grid could have been used for the energy needs of taxable property, thereby qualifying for the Clause Forty-Fifth exemption. There is simply no practical way to trace the electricity generated by a solar photovoltaic system to its place of consumption; the electricity is transferred

[4] Clause 5.2 of the Net-Metering Agreement provides that the appellant assumed responsibility for all government charges attributable to the Solar PV System, including local property tax.

to the grid and disbursed, even where the net metering credits are retained by the owner of the solar photovoltaic system. The owner of such a system does not receive and use the electricity generated by the system but instead transfers the electricity to the grid and receives a net-metering credit based on the amount of electricity the owner generates.

Accordingly, consistent with its prior decisions under Clause Forty-Fifth, the Board ruled that it is the property that benefits from the net-metering credits whose energy needs are supplied by a solar photovoltaic system. Because the net-metering credits in the present appeals benefitted three City-owned properties that are exempt from property tax, the Board ruled that the Solar PV System did not qualify for the Clause Forty-Fifth exemption.

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

OPINION

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 from property tax for a:

> 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).

Statutes are to be interpreted in accordance with the plain meaning of the statutory text. ***Reading Coop. Bank v. Suffolk Constr. Co.***, 464 Mass. 543, 547-48 (2013)(citing ***Massachusetts Community College Council MTA/NEA v. Labor Relations Comm'n,*** 402 Mass. 352, 354 (1988)). As the primary source of insight into the intent of the Legislature is the language of the statute, if the language of the statute is unambiguous, a court's function is to enforce the statute according to its terms. ***Id.*** at 548; ***International Fid. Ins. Co. v. Wilson***, 387 Mass. 841, 853 (1983).

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 or device; the electricity that it generated was transferred to Eversource's electric grid in exchange for net-metering credits; and the appellant sold the net-metering credits to the City, which allocated them to three City-

owned, tax-exempt properties. The issue here is whether the Solar PV System supplied the energy needs of property that was subject to property tax.

The appellant contends that energy produced by the Solar PV System was dispersed through Eversource's massive electric grid to any number of customers, including many whose properties were subject to property tax. The appellant's argument, however, disregards the Board's rulings in previous solar-power appeals and, if accepted, would render meaningless Clause Forty-Fifth's language restricting the exemption to solar power systems that supply energy to taxable property.

The Board has consistently ruled that Clause Forty-Fifth applies to property that supplies energy to taxable properties by means of an electric grid. ***Forrestall Enterprises, Inc. v. Assessors of Westborough***, Mass. ATB Findings of Fact and Reports 2014-1025, 1033; *see also* ***KTT, Inc. v. Assessors of Swansea***, Mass. ATB Findings of Fact and Reports 2016-426, 432-33, *and* ***Quabbin Solar, LLC v. Assessors of Barre***, Mass. ATB Findings of Fact and Reports 2017-480, 491-92. In those appeals, the Board did not require a taxpayer seeking the exemption to trace solar-generated energy through a massive electric grid to the end user because such an effort would be fruitless and would ignore the reality of the solar energy industry where electricity generated by a solar photovoltaic system is routinely transferred to the grid in

exchange for net-metering credits. In fact, the Board in ***Forrestall*** rejected that approach and instead looked to the parties' allocation of net-metering credits:

> Thus, the Board found that Forrestall Westborough Properties effectively used the equivalent of 100 percent of the energy produced by the Solar PV System, even if the actual electricity used to power the Forrestall Westborough Properties drawn from the electrical grid could have been generated from different originating sources and the electricity produced by the Solar PV System could be directed to other customers.

Forrestall, Mass. ATB Findings of Fact and Reports at 1014-1029-30.

The Board in ***Forrestall*** thus equated net-metering credits with the energy produced by a solar photovoltaic system and determined that the property receiving the benefit of the net-metering credits was the property whose energy needs were supplied by the system. The Board followed this approach in its subsequent solar-power tax appeals, ***KTT,*** Mass. ATB Findings of Fact and Reports at 2016-429 (allowing Clause Forty-Fifth exemption where net-metering credits were sold to an unrelated third-party), and ***Quabbin,*** Mass. ATB Findings of Fact and Reports at 2016-484-85 (allowing Clause Forty-Fifth exemption where net-metering credits were sold to an unrelated third-party lessee of property whose energy needs were supplied by solar photovoltaic system). The common thread in all of these prior cases is that the property

benefited by the net-metering credits was the property whose energy needs were supplied by the solar photovoltaic system.

In the instant appeals, the Net-Metering Agreement provided that all of the appellant's net-metering credits were transferred for the benefit of three municipal properties. Because these properties were exempt from property tax, the Board found and ruled that the Solar PV System did not qualify for the Clause Forty-Fifth exemption because it supplied the energy needs of property that was not subject to property tax.

Accordingly, the Board issued decisions in favor of the appellee in these 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