

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

DAR NO. _____
APPEALS COURT DOCKET NO. 2018-P-1266

VEOLIA ENERGY BOSTON, INC.,
Plaintiff-Appellee

v.

BOARD OF ASSESSORS OF THE CITY OF BOSTON,
Defendant-Appellant

On Appeal from a Decision and Findings of Fact
of The Appellate Tax Board

APPELLANT'S APPLICATION FOR DIRECT
APPELLATE REVIEW

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Dated: October 1, 2018

Table of Contents.

Table of Authorities 3

 I: Request for Direct Appellate Review 6

 II: Statement of Prior Proceedings 7

 III: Short Statement of Facts Relevant
 to the Appeal 8

 IV: Statement of Issues of Law Raised by
 the Appeal..... 11

 A. Whether by adopting the judicially created
 concept of the "great integral machine" in
 ruling that Veolia's pipes were not
 taxable, the ATB erroneously disregarded
 the plain words of Clause 16(3).

 B. Whether the holding of Lowell Gas Light
 should be extended to cases where the
 property at issue is used by non-
 manufacturing entities.

 V: Brief Argument Supporting Appellant's
 Position..... 11

 A. Poles and Underground Conduits, Wires
 And Pipes are Specific Subjects of Taxation
 and are Taxable To Foreign Manufacturing
 Corporations Under The Plain Terms of
 Clause 16(3). 11

 B. The Disparate Manufacturing Classifications
 of Veolia And Kendall Preclude The
 Application of "The Great Integral Machine"
 Theory. 20

 VI: Statement of the Reasons why Direct
 Appellate Review is Appropriate 21

Conclusion 23

Certificate of Service 24

Table of Authorities.

Cases

AMB Fund III v. Assessors of Boston, Mass. ATB
Findings of Fact and Reports 2011-969..... 14

Boston Edison Co. v. Assessors of Boston,
7 Mass. App. Tax Bd. Rep. 93(1986)..... 19 n.3

Boston Gas Co. v. Assessors of Boston,
334 Mass. 549 (1956) 17, 18 n.3, 19, 23

Boston v. Mac-Gray Co., 371 Mass. 825
(1977) 19

Cabot v. Assessors of Boston, 335 Mass.
53 (1956) 15

Commonwealth v. Colon, 59 Mass. App. Ct.
476 (2003) 22

Commonwealth v. Dube, 59 Mass. App. Ct.
476 (2003) 22

Commonwealth v. Lowell Gas Light Co.,
12 Allen 75 (1866) *passim*

Commonwealth v. Ventura, 465 Mass. 202 (2013) 13

Commonwealth v. Venturainski, 473 Mass.
164 (2015) 13

Phillips v. Equity Residential Mgmt., LLC,
478 Mass. 251 (2017) 12

Risk Mgmt. Foundation of Harvard Med. Insts.,
Inc. v. Commissioner of Ins., 407 Mass. 498
(1990) 14

TBI, Inc. v. Board of Health of North Andover,
431 Mass. 9 (2000) 14

Veolia Energy Boston, Inc. v. Assessors of
Boston, Mass. ATB Findings of Fact &
Reports 2018-198 6

Table of Authorities (cont'd).

iii.

Verizon New England, Inc. v. Assessors of Boston, 81 Mass. App. Ct. 444 (2012) 19

Warner Amex Cable Communications, Inc. v. Assessors of Everett, 396 Mass. 239 (1985) 15, 15 n.2, 18 n.3

Warner Amex Cable Communications, Inc. v. Assessors of Everett, 4 Mass. App. Tax Bd. Rep. 117 (1984) 15

Statutes

General Laws c. 59, § 5, cl. 16(3) *passim*

General Laws c. 59, § 18, cl. 5 11 n.1

General Laws c. 59, § 29 9

General Laws c. 59, § 64 8

General Laws c. 59, § 65 8

General Laws c. 63, § 39 9

General Laws c. 63, § 42B 9

General Laws c. 211A, §10 6

Acts & Bills

St. 1864, c. 208 16

St. 1936, c. 362, § 1 12

1936 House Bill No. 143 12

Regulations

Code of Massachusetts Regulations, c. 830 § 58.2.1 ... 9

Table of Authorities (cont'd).

iv.

Rules

Massachusetts Rules of Appellate Procedure, Rule 11 .. 6

Other Authorities

Nichols, Philip, Taxation in Massachusetts
286 (3d ed. 1938)13

I: REQUEST FOR DIRECT APPELLATE REVIEW

The defendant-appellant, Board of Assessors of the City of Boston (Assessors), hereby requests that, pursuant to G.L. c. 211A, §10 and Mass. R. App. P. 11, the Court grant direct appellate review of the Decision, and Findings of Fact and Report, entered in Veolia Energy Boston, Inc. v. Board of Assessors of the City of Boston, Appellate Tax Board Docket No. F325148. Copies of the Appellate Tax Board's (ATB) Decision, dated November 18, 2016, and Findings of Fact and Report (Findings) dated June 5, 2018, are attached at Addendum 5, and Addendum 6, respectively.

The issues submitted for decision in this appeal, concerning the local taxation of the real estate, poles and underground conduits, wires and pipes of manufacturing corporations pursuant to G. L. c. 59, §5, Clause 16(3) (Clause 16(3)), present novel questions of law, and are of great public interest to all 351 municipal boards of assessors in the Commonwealth, as well as to all taxpayers classified by the Commissioner of Revenue (Commissioner) as manufacturing corporations.

Clause 16(3) provides that in the case of a manufacturing corporation, all property owned by the corporation is exempt from local property tax, except

for "real estate, poles and underground conduits, wires and pipes[.]" (Clause 16(3) Property).

The Assessors argued at the ATB that the poles and underground conduits, wires and pipes of Veolia Energy Boston, Inc. (Veolia) were subject to property tax under Clause 16(3); Veolia contended that the property was exempt from taxation as a component of exempt machinery. This case presents the novel issue of whether the statutory language of Clause 16(3) takes precedence over this Court's holding in Commonwealth v. Lowell Gas Light Co., 94 Mass. 75 (1866) (Lowell Gas Light). Should this Court answer that question in the negative, the issues presented include whether Lowell Gas Light should be expanded to cases where, as here, the Clause 16(3) property owned by a manufacturing taxpayer is also used by a non-manufacturing entity.

II: STATEMENT OF PRIOR PROCEEDINGS

For fiscal year 2014, the Assessors valued certain of Veolia's personal property, consisting primarily of pipes, at \$62,910,630, and assessed a tax thereon at the rate of \$31.18 per \$1,000 of assessed value, in the amount of \$1,961,533.44. Veolia filed an application for abatement with the Assessors (Application), which

was denied. Veolia appealed the denial of the Application pursuant to G. L. c. 59, §§ 64, 65 to the ATB on the grounds that the property was exempt from taxation, and was overvalued. The ATB bifurcated the hearing relating to the appeal such that the exemption claim would be heard first, and the issue of the property's valuation would be reached only if the ATB ruled the property to be taxable.

The ATB held two days of hearings with respect to the exemption issue, and on November 18, 2016, issued a Decision in favor of Veolia, ruling that "the subject property is exempt under G. L. c. 59, § 5, Clause 16(3). Abatement is granted in full in the amount of \$1,961,553.44, plus statutory additions." Addendum, at 5. Pursuant to the Assessors' request that the ATB make findings of fact and report, on June 5, 2018 the ATB issued its Findings. Addendum, at 6. The Assessors filed a Notice of Appeal on June 19, 2018, and entered this case in the Appeals Court on September 10, 2018.

III: SHORT STATEMENT OF FACTS RELEVANT TO THE APPEAL

Veolia is a privately-held corporation organized under the laws of Delaware, and at all times material hereto the Commissioner of Revenue (Commissioner)

classified Veolia as a manufacturing corporation within the meaning of G.L. c. 63, §§ 39, 42B, and 830 Code Mass. Regs § 58.2.1. Kendall Green Energy Holdings LLC (Kendall), referred to in the ATB's Findings as an affiliate of Veolia, owns a co-generation facility and other property in Cambridge (Kendall Station); Kendall, as a limited liability company, is not classified by the Commissioner as a manufacturing corporation.

Pursuant to G.L. c. 59, § 29, Veolia filed a "Form of List," State Tax Form 2, as approved by the Commissioner, for fiscal year 2014 with the Assessors. On that Form of List for fiscal year 2014, Veolia did not "check the box" indicating that it was a corporation classified as a manufacturer by the Commissioner.

The Form of List provides instructions to taxpayers. In particular, it contains a chart summarizing, by the organizational status of the taxpayer, "the personal property that is taxable and must be listed in the return." While there are certain differences in the types of personal property taxable to "business corporations," "manufacturing corporations," and "all other Massachusetts corporations," one category of personal property taxable to all such corporate

entities is: "Poles, underground conduits, wires and pipes."

Consistent with the Form of List instructions, Veolia reported on its fiscal year 2014 Form of List that it owned property in the category of "Poles, Underground Conduits, Wires and Pipes." For that same year Veolia also reported property in the categories of "Machinery" and "Business Furniture and Fixtures."

As found by the ATB, Veolia owns and operates a "district energy network" in Boston and assists in the operation of a similar network in Cambridge, which includes Kendall Station. The ATB referred to the Boston and Cambridge networks, jointly, as the "Networks." The part of the Networks owned by Veolia consists of a system that produces and distributes steam to customers, primarily for heating and cooling purposes. Kendall Station produces both steam and electrical energy, and its steam is distributed in part through Veolia's Clause 16(3) Property.

Most of the steam provided to Massachusetts General Hospital, one of Veolia's largest customers, comes from Kendall Station—Veolia acts as a middleman, buying steam from Kendall and selling it to its own customers.

Facilities owned by Biogen and the Massachusetts Institute of Technology are also part of the Networks.

IV: STATEMENT OF ISSUES OF LAW RAISED BY THE APPEAL

- A. Whether by adopting the judicially created concept of the "great integral machine" in ruling that Veolia's pipes were not taxable, the ATB erroneously disregarded the plain words of Clause 16(3).
- B. Whether the holding of Lowell Gas Light should be extended to cases where the property at issue is used by non-manufacturing entities.

Pursuant to Mass. R. App. 11(b), these issues were raised and properly preserved in the proceedings below through the Assessors' Answer, post-trial brief, and post-trial reply brief.

V: BRIEF ARGUMENT SUPPORTING APPELLANT'S POSITION

- A. Poles And Underground Conduits, Wires And Pipes are Specific Subjects of Taxation and are Taxable To Foreign Manufacturing Corporations Under The Plain Terms Of Clause 16(3).

The property tax exemption available to a foreign manufacturing corporation such as Veolia extends to all property owned by the corporation other than "real estate, poles and underground conduits, wires and pipes." Clause 16(3).¹ The text is clear and

¹ Moreover, those distinct categories of property are explicitly made taxable by G.L. c. 59, § 18, cl.5, which provides (with exceptions not applicable here) that underground conduits, wires and pipes laid in public ways, and poles, underground conduits

unambiguous, and is to be given its ordinary meaning.

Phillips v. Equity Residential Mgmt., LLC, 478 Mass.

251, 257(2017).

[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.

Id.

In 1936, the Legislature implemented a radical change in the system for taxing manufacturing corporations, exempting all their property except "real estate, poles, underground conduits, wires and pipes" from the local property tax. St. 1936, c. 362, § 1, amending G.L. c. 59, § 5, Sixteenth. The incentive for this change was tax relief for industry to stall the exodus of mills and factories from the Commonwealth to other states by eliminating the tax on machinery used in manufacturing. 1936 House Bill No. 143 at 5-6. This relief for manufacturing corporations was not absolute, however; the resultant St. 1936, c. 362, § 1 amendment of the exemption for machinery does not extend to "poles,

and pipes, together with the wires thereon or therein, laid or erected upon private property, shall be assessed to the owners thereof in the towns where laid or erected.

underground conduits, wires and pipes," maintaining the character of such property as distinct items for purposes of taxation. The Legislature could have exempted mill and factory owners from taxation of such property, but did not. Nor did the Legislature endorse the Lowell Gas Light premise that pipes, as components of a system for the distribution of a manufactured product, can be styled as anything other than pipes, much less as machinery. According to one commentator, the intent was to favor manufacturing, while subjecting to taxation utility-type pipes and similar apparatus "used for the distribution of some commodity to the public[.]" P. Nichols, *Taxation in Massachusetts* 286 (3d ed. 1938).

The ATB's decision can be sustained only if property which is explicitly made taxable by Clause 16(3) is somehow implicitly rendered exempt. Such a result would upend well-established rules of statutory construction. Where, as here, the text of Clause 16(3) is clear and unambiguous, "the sole function of the courts is to enforce it according to its terms." Commonwealth v. Venturainski, 473 Mass. 164, 169 (2015), quoting Commonwealth v. Ventura, 465 Mass. 202, 208(2013).

Clause 16(3), by its terms, segregates Clause 16(3) property from non-taxable property and makes real estate, poles and underground conduits, wires and pipes specific subjects of taxation under Clause 16(3). However, the ATB's Findings focus almost exclusively on whether Veolia's pipes are a component of what the ATB refers to as "exempt manufacturing machinery," a term not found in Clause 16(3). The Assessors submit that the issue is not whether such property is machinery, but whether Veolia owns poles and underground conduits, wires and pipes—a fact not open to dispute. The ATB did not recognize that "pipes" comprise a discrete class of property, separate from "machinery" (taxable under Clause 16(3)), and are liable to be taxed if owned by a manufacturing corporation.

"It is a basic canon of statutory interpretation that 'general statutory language must yield to that which is more specific.'" TBI, Inc. v. Board of Health of North Andover, 431 Mass. 9, 18 (2000), quoting Risk Mgmt. Foundation of Harvard Med. Insts., Inc. v. Commissioner of Ins., 407 Mass. 498, 505 (1990). With respect to local taxation, it is well settled that "[s]tatutes specifying the tax treatment of particular property supersede more general tax statutes." AMB Fund

III v. Assessors of Boston, Mass. ATB Findings of Fact and Reports 2011-969, 982, aff'd, 82 Mass. App. Ct. 1123 (2012), citing Cabot v. Assessors of Boston, 335 Mass. 53, 63-65 (1956)).

This Court has recognized that Clause 16 creates distinct subjects of taxation. In Warner Amex Cable Communications, Inc. v. Assessors of Everett, 396 Mass. 239, 240 (1985), the assessors had argued before the ATB that the entire apparatus by which television programs were broadcast should be taxed as "machinery used in the conduct of the business."² The ATB rejected that proposition, stating "under our tax laws, poles and wires, among others, are distinct subject matters of taxation and are taxed, if at all, as 'poles and wires' and not as 'machinery used in the conduct of the business.'" Warner Amex Cable Communications, Inc. v. Assessors of Everett, 4 Mass. App. Tax Bd. Rep. 117, 133 (1984) (emphasis added). This Court affirmed the ATB's rejection of this argument. Warner Amex, 396 Mass. at 240-241.

² In Warner Amex, the Assessors had attempted to avail themselves of the "great integral machine" theory relied on by Veolia here.

The following paraphrase of Warner Amex, supra, should be dispositive of Veolia's claims here: "Under our tax laws, pipes are distinct subject matters of taxation and are taxed, if at all, as "pipes" and not exempted as "machinery employed in any branch of manufacture." However, in the present case, rather than accepting the express statutory scheme for the taxation of poles, underground conduits, wires, and pipes, the ATB relied on Lowell Gas Light.

One issue in Lowell Gas Light was whether, in ascertaining the state excise tax to be assessed upon the corporate taxpayer under St. 1864, c. 208, the valuation of the aggregate of the corporation's shares or capital stock had omitted to deduct therefrom the value of the corporation's locally taxed real estate and machinery without including in that figure, as machinery, the value of mains and pipes employed in the distribution of gas and of customers' meters. 12 Allen at 78. This Court determined, so far as the facts were concerned, that "[T]he entire apparatus by which gas is manufactured and distributed for consumption throughout a city or town constitutes one great integral machine[.]" Id. at 78-79. Being "unable to see any

plausible reason for refusing to make [the] deduction[,]”
this Court ruled for the corporation. Id. at 79.

It is the ATB's view that Lowell Gas Light controls
on the facts of this case:

In sum, precedent spanning more than a century
and dispositive in a variety of analogous
contexts unequivocally supports the
proposition that property that would otherwise
be regarded as taxable personalty or realty,
when incorporated as an integral part of
exempt machinery, will be exempt as part of
that machinery.

Addendum at 20. The Assessors dispute that conclusion,
and submit that the soundness of this Court's implicit
holding, in a case dealing with the excise tax and not
a local property tax, that pipes, if utilized for the
distribution of a commodity, could be subsumed within
the term "machinery" has since been tested but rarely,
and followed only reluctantly.

Boston Gas Co. v. Assessors of Boston, 334 Mass.
549 (1956), an appeal from a decision of the ATB,
concerned certain machinery utilized by the company in
the distribution of gas and electricity in Boston and
taxable as personal property. Id. at 552-553. The
parties had stipulated that certain property, including
yard piping and mains, was taxable Id., at 555. That
left in dispute compressors and governors and consumers'

meters. *Id.* at 555-556, 652. Regarding the latter, the Court, noting the ATB's lengthy quotation of Lowell Gas Light, set out the Board's findings: "'In so far as it is a question of fact,' the gas meters, station governors, compressors, and engines . . . [that is, only the contested property] constituted machinery used in manufacture and were subject to local taxation.' *Id.* at 558. The Court sanctioned the ATB's invocation of the "one great integral machine" concept (*id.* at 562), and—as to the "disputed items" only—held that they were subject to taxation as machinery. *Id.* at 565. The taxable status of the yard piping, mains, and services—types of property similar to those now at issue—was neither before the Court nor ruled upon.

Even with respect to the disputed items, this Court did not adopt the ATB's reasoning without reservation, stating "[t]o us in 1956, this might seem like a curious type of machine, and as an original proposition, we might have some difficulty in conceiving of customers' meters, for example, as part of such a machine or as machinery used in manufacture." (Footnote omitted). *Id.*³

³ This Court's ambivalence toward Lowell Gas Light is not confined to its decision in Boston Gas. See Warner Amex Cable

Nonetheless, this Court found itself constrained to follow Lowell Gas Light. Id.

As discussed above (Argument V-A, p. 8, supra), there has in fact been legislative action that prohibits the application of Lowell Gas Light to real estate, poles and underground conduits, wires and pipes making up part of a distribution system. While this Court, in Boston Gas, quoted Lowell Gas Light to the effect that the case is a "square holding that the mains, pipes, and meters" at issue in that case "were 'machinery' employed in any branch of manufacture[,]" (id. at 564-565), that holding must be confined to its place in history. This is not a case where "[i]n matters of taxation" courts "should follow the pattern of [their] decisions, leaving to the Legislature the opportunity to make responsive adjustments in the scope of the tax statutes." Verizon New England, Inc. v. Assessors of Boston, 81 Mass. App. Ct. 444, 450 (2012), quoting Boston v. Mac-Gray Co., 371 Mass. 825, 828 (1977). Whatever precedential weight the

Communications, Inc. v. Assessors of Everett, 396 Mass. 239, 241 (1985) (the Court observes that its extension of Lowell Gas Light to Boston Gas's electric distribution system was done only "reluctantly."). The ATB has noted that while the "one great integral machine" concept was extended to Boston Gas's electrical distribution system, it was done so only with "grave reservations." Boston Edison Co. v. Assessors of Boston, 7 Mass. App. Tax Bd. Rep. 93, 147 (1986), aff'd, 402 Mass. 1 (1988).

"great integral machine" concept of Lowell Gas Light may retain regarding the treatment for excise tax purposes of the machinery of manufacturing corporations, 150 years of intervening legislative adjustments to the governing statutory scheme have eliminated any option for considering Veolia's pipes as machinery for purposes of local taxation.

B. The Disparate Manufacturing Classifications of Veolia And Kendall Preclude The Application Of "The Great Integral Machine" Theory.

Kendall Green, a limited liability company, is not classified by the Department of Revenue as a manufacturing corporation. No part of Kendall is owned by Veolia. Veolia Energy North America Holdings, Inc. owns 51 percent of Kendall Green, with the remainder owned by an unrelated entity. Kendall is treated as a partnership for federal tax purposes and is not eligible for treatment as a manufacturing corporation. Even if this Court were to find that the "one great integral machine" theory overrides the plain words of Clause 16(3) and G.L. c. 59, §18(5), the Assessors submit that the disparate local property tax treatment of Veolia and Kendall precludes its application to the facts of this case.

Veolia's distribution system, consisting, inter alia, of 22 miles of pipe in Boston is used not only by Veolia, but also by Kendall. The acceptance by this Court of the ATB's application of the great integral machine theory will result in that pipe being exempted from local taxation, and Kendall will receive a windfall. That result was surely not contemplated by the Legislature, and this Court should rule that the judicially created "great integral machine theory" does not apply where substantial amounts of property are used by entities not entitled to tax treatment under Clause 16(3).

VI: STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

The concept of the great integral machine was created by this Court in Lowell Gas Light in 1866. Although rarely invoked, as illustrated by this case, the concept has significant economic impact not only on Boston and Veolia but on all 351 cities and towns in Massachusetts.

The question of the continued viability of "the great integral machine" concept is not appropriate for resolution by the Appeals Court. "As an intermediate appellate court," the Appeals Court is "bound to follow the decisions of the Supreme Judicial Court."

Commonwealth v. Colon, 52 Mass. App. Ct. 725, 730 n.1 (2001). "[F]rom the very earliest decisions [the Appeals Court] issued and continuing to this day, [it has] uniformly and unequivocally held [it has] no power to alter, overrule or decline to follow the holding of cases the Supreme Judicial Court has decided." Commonwealth v. Dube, 59 Mass. App. Ct. 476, 485 (2003). It is thus fitting that this Court, as the originator of the concept and as the ultimate arbiter of statutory interpretation, determine whether its own common law interpretation survives the current iteration of Clause 16(3).

Even if this Court were to decide that Lowell Gas Light remains, as a general proposition, "good law," it would be up to this Court to determine whether its holding in that case should be expanded to a situation where the property at issue is used by an entity whose property does not qualify for Clause 16(3) treatment. The ATB states in its Findings that the Assessors "provided no persuasive authority" in support of their position that ownership and use of Clause 16(3) Property by entities other than the assessed owner is a requisite to the application of the great integral machine concept. The Assessors submit that there is no authority because the issue has not been decided. This Court's

statement in Boston Gas Company v. Assessors of Boston, 334 Mass. 549, 565 (1956) ("[t]here is no requirement that 'one great integral machine' be exclusively owned by a single company any more than that it be contained within the boundaries of a single municipality") is only dicta. If the ATB's decision is allowed to stand, property intended by the Legislature to be taxable will escape taxation. To ensure the security of municipal finances, and to clarify the "great integral machine" theory that this Court itself created, direct appellate review is appropriate.

CONCLUSION

For the foregoing reasons, the Assessors hereby request that this Application for Direct Appellate Review be GRANTED.

Respectfully submitted,

BOARD OF ASSESSORS
OF THE CITY OF BOSTON,
BY ITS ATTORNEY,

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Dated: October 1, 2018

CERTIFICATE OF SERVICE

I, Anthony M. Ambriano, hereby certify under penalties of perjury that on October 1, 2018 I caused the foregoing Appellant's Application for Direct Appellate Review filed by the Board of Assessors of the City of Boston, to be mailed by first-class mail postage prepaid, and sent by e-mail, to the following:

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/S/ Anthony M. Ambriano
Anthony M. Ambriano

ADDENDUM TO APPLICATION FOR DIRECT APPELLATE REVIEW



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Appellate Tax Board

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Veolia Energy Boston, Inc. vs. Boston

Docket#: F325148-14-PRO

Status: Findings Promulgated

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Subject Property

Property Assessment

Personal Property
Boston, MA 02201
Suffolk County

\$62,910,630.00

Schedule

05/16/2016 9:30AM Hearing Scheduled

Board Members / Stenographers / Clerks

Board Member :

Stenographer :

Clerk :

Thomas W. Hammond

None Assigned

Janice D. Brown

View Chronology

Date	Action
07/24/2014	Docket Number assigned; clerk notifies.
07/24/2014	Entry fee paid.
07/24/2014	Formal Petition filed.
08/05/2014	Certificate of Service filed

Docket Report - Veolia Energy Boston, Inc. vs. Boston - F325148-14-PRO
Tuesday, September 25, 2018 12:36:36 PM

APPELLATE TAX BOARD
A TRUE COPY

Addendum 1

ATTEST  CLERK

03/16/2015 Hearing Scheduled - Hearing Scheduled - 05/19/15

05/12/2015 Hearing Scheduled - Hearing Scheduled (from 05/19/15) - 10/20/15

11/12/2015 Hearing Scheduled - 5/16/16

11/12/2015 Hearing Scheduled - Hearing Scheduled (NFC) - 5/16/16

12/23/2015 Converted Note - Appellee's First Request for Production & Inspection of Documents and Things from Veolia Energy Boston, Inc. (appellant)

12/28/2015 Converted Note - Appellee's First Set of Interrogatories to be Answered Under Oath by Veolia Energy Boston, Inc. (appellant)

12/30/2015 Converted Note - Appellant's First Request for Production & Inspection of Documents and Things from the Board of Assessors of the City of Boston (appellee)

12/30/2015 Converted Note - Notice of Rule 30(b)(6) Deposition of the Board of Assessors of the City of Boston filed by the Appellant

01/07/2016 Converted Note - Appellant's Motion for Leave to Take a Deposition of the Board of Assessors of Boston filed.

01/11/2016 Hearing Scheduled - Hearing Scheduled (Status Conference) - 1/21/16

01/12/2016 Converted Note - Appellee's Motion to Allow Additional Discovery Requests to Appellant filed.

01/21/2016 Hearing Scheduled Status Conference

01/25/2016 Converted Note - Appellant Veolia Energy Boston, Inc.'s Responses to the Board of Assessors of the City of Boston's First Request for Production & Inspection of Documents and Things dated December 23, 2015.

01/26/2016 Converted Note - Order issued: After 1/21/16 hearing on appellant's Motion for Leave to Take Deposition and assessors' Motion to Allow Additional Discovery, Board rules as follows: 1. Appellant's Motion is continued generally, to allow all parties to pursue written discovery; 2. Assessors' Motion is allowed; 3. Hearing and all further proceedings in this appeal are hereby bifurcated. Board will first determine whether subject property is exempt from taxation under G.L. c. 59, s. 5, cl. 16(3). If Board determines that subject is not exempt, further proceedings regarding valuation will commence.

01/27/2016 Converted Note - Appellant's First Set of Interrogatories - filed by Appellant

01/27/2016 Converted Note - Appellant's Responses to Board of Assessors of the City of Boston's First Set of Interrogatories - filed by the Appellant

01/29/2016 Converted Note - Appellant's Second Request for Production and Inspection of Documents and Things from the Appellee Board of Assessors of the City of Boston - filed by Appellant

02/17/2016 Converted Note - Board of Assessors of the City of Boston's Responses to Veolia Energy Boston, Inc.'s First Request for Production and Inspection of Documents and Things

03/23/2016 City of Boston's Responses to Veolia Energy Boston's, Inc. First Set of Interrogatories

03/25/2016 Order Issued: - April 8, 2016 - Parties exchange expert reports
April 27, 2016 - Parties exchange witness and exhibits lists
April 29, 2016 - Parties exchange expert rebuttal reports
May 3, 2016 - Parties file statement of undisputed facts w/ the ATB

04/25/2016 Appellee's Supplemental Response to Veolia Energy Boston, Inc.'s Interrogatory Number 16

04/25/2016 Motion to Compel - Appellant's Motion to Compel Responsive Interrogatory Answers OR, in the Alternative Motion for Stipulation that Subject Property is part of a Great Integral Machine

04/27/2016 Status Conference Scheduled - 5/5/2016

04/28/2016 Appellant's Exhibit List

04/28/2016 Appellant's Witness List filed

04/28/2016 Appellee's Exhibit List

Docket Report - Veolia Energy Boston, Inc. vs. Boston - F325187-172
Tuesday, September 25, 2018 12:36:36 PM

APPELLATE TAX BOARD
A TRUE COPY

Addendum 2

ATTEST  CLERK

04/28/2016 Appellee's Witness List filed

05/02/2016 Stipulation of Agreed Facts are extended to Friday, May 6, 2016

05/03/2016 Answer of the Board of Assessors of the City of Boston - filed by Anthony Ambriano, Esq.

05/04/2016 Appellant's Motion to Strike Appellee's Answer as Untimely & Take Judicial Notice of Admitted Facts

05/04/2016 Appellee's Assented to Motion to Take Deposition

05/04/2016 Official Stenographer Request - Appellant

05/05/2016 Attorney Appearance - Appellant Elizabeth J. Smith, Esq.

05/05/2016 Attorney Appearance - Appellant Erin Macgowan, Esq.

05/05/2016 Official Stenographer Request - Appellant: for Monday, May 16, 2016 & Tuesday, May 17, 2016

05/05/2016 Order Issued: 1) Appellee's Assented to Motion to Take Deposition, filed 5/4/16, is allowed.
2) Appellant's Motion to Strike Answer & Take Judicial Notice of Admitted Facts, filed on 5/4/16, is denied.
3) Appellant's Motion to Compel, filed 4/25/16, is denied. Appellee remains under duty to supplement responses to interrogatories and requests for documents. Any responsive documents not produced by the appellee will be inadmissible at the hearing of this matter.

05/05/2016 Status conference @ 9:30 am

05/05/2016 Stipulation of Agreed Facts extended to Wednesday, May 11, 2016

05/10/2016 Appellant's Statement of Agreed Facts & Stipulated Exhibits, Volumes 1 thru 3

05/16/2016 Hearing Held - on 5/16/16 and 5/17/16

07/29/2016 Appellee's request for filing Reply Briefs to be extended to August 26, 2016

08/26/2016 Appellant's Post-Hearing Reply Brief - filed by Appellant

08/26/2016 Appellant's Supplemental Requests for Ruling of Law - filed by Appellant

08/26/2016 Appellee's Post-Trial Reply Brief - filed by Appellee

08/26/2016 Certificate of Service

11/18/2016 Decision for Appellant- Abatement - granted in the amount of \$1,961,553.44

11/22/2016 Request for Findings of Fact and Report filed - Appellee

06/05/2018 Findings promulgated on 6/5/18

06/19/2018 Notice of Appeal

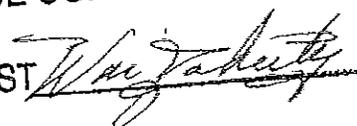
08/30/2018 General Case Note - Record assembled and delivered to appeals court.

09/13/2018 Notice of Entry of Appeal - filed by Appeals Court

Docket Report - Veolia Energy Boston, Inc. vs. Boston - F3251-18-0000
Tuesday, September 25, 2018 12:36:36 PM

APPELLATE TAX BOARD
A TRUE COPY

Addendum 3

ATTEST  CLERK



THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board
100 Cambridge Street, Suite 200
Boston, Massachusetts 02114

(617) 727-3100
(617) 727-6234 (fax)

NOV 18 2016

Kathleen Saunders Gregor, Esq.
Elizabeth J. Smith, Esq.
Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199

Re: Veolia Energy Boston, Inc.
v. Board of Assessors of the City of Boston
Docket No. F325148

Dear Madam,

Enclosed please find copy of Decision promulgated by the Appellate Tax Board
in the above-entitled appeal.

Sincerely,

Clerk of the Board

Asst.

Cc: Anthony M. Ambriano, Esq.
Sassoon & Cymrot, LLP
84 State Street, Suite 820
Boston, MA 02109

Assessing Department
City Hall - Rm. 301
One City Hall Square
Boston, MA 02201

/jlb
Enclosure



COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board
100 Cambridge Street, Suite 200
Boston, Massachusetts 02114

(617) 727-3100
(617) 727-6234 FAX

Docket No. F325148

VEOLIA ENERGY BOSTON INC.,
Appellant.

BOARD OF ASSESSORS OF THE CITY OF BOSTON,
Appellee.

DECISION

The decision is for the Appellant. The Board rules that the subject property is exempt under G. L. c. 59, s. 5, Clause 16(3). Abatement is granted in full in the amount of \$1,961,553.44, plus statutory additions.

APPELLATE TAX BOARD

By Thomas W. Hammond, Jr. Chairman

Frank J. Scharaffa Commissioner

James D. Rose Commissioner

Richard G. Chmielinski Commissioner

Patricia M. Good Commissioner

Attest: Janice Bona Clerk of the Board
Asst.

Date: NOV 18 2016

(Seal)

NOTICE: Pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32, either party may request findings of fact and report within ten days of this Decision and may also appeal this Decision in accordance with the Massachusetts Rules of Appellate Procedure and 831 CMR 1.35

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

VEOLIA ENERGY BOSTON, INC. v. BOARD OF ASSESSORS OF
THE CITY OF BOSTON

Docket No. F325148

Promulgated:
June 5, 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 Board of Assessors of the City of Boston ("appellee" or "assessors") to abate taxes on certain personal property in the City of Boston owned by and assessed to Veolia Energy Boston, Inc. ("appellant") under G.L. c. 59, §§ 18 and 38 for fiscal year 2014 ("fiscal year at issue").

Chairman Hammond heard this appeal. Commissioners Scharaffa, Rose, Chmielinski, and Good joined him 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.

Kathleen S. Gregor, Esq., Elizabeth J. Smith, Esq., and Erin R. Macgowan, Esq. for the appellant.

Anthony M. Ambriano, Esq. for the appellee.

ATB 2018-198

Addendum 6

FINDINGS OF FACT AND REPORT

The appellant presented its case primarily through the testimony of four witnesses: Mr. Donald Silvia, director of system operations for Veolia North America, an affiliate of the appellant, testified about the appellant's operations; Mr. David Walls, managing director of the energy practice at Navigant Consulting, gave expert testimony regarding the appellant's operating systems; Mr. Steven Weafer, vice president and head of finance for Veolia North America, discussed the appellant's financial reporting; and Mr. Charles Clabaugh, director of personal property for the City of Boston Assessing Department, testified about the contested assessment. The assessors did not offer any witnesses. Based on the testimony and exhibits entered into evidence at the hearing of this appeal, as well as a Statement of Agreed Facts with attached exhibits, the Appellate Tax Board ("Board") made the following findings of fact.

Introduction and Jurisdiction

The appellant is a privately-held corporation organized under the laws of Delaware. Its parent, Veolia Environment S.A., is a publicly-traded company. At all times relevant to the fiscal year at issue, the

Commissioner of Revenue ("commissioner") classified the appellant as a manufacturing corporation within the meaning of G.L. c. 63, §§ 39 and 42B and 830 CMR 58.2.1.

The assessors valued certain of the appellant's personal property, consisting principally of pipes located within the city of Boston as of January 1, 2013, ("subject property") at \$62,910,630 and assessed a tax thereon, at the rate of \$31.18 per \$1,000 of assessed value, in the amount of \$1,961,553.44. The appellant timely paid the tax due in three installments and filed an Application for Abatement of Personal Property Tax with respect to the subject property on Monday, February 3, 2014. The assessors denied the appellant's Application for Abatement on April 25, 2014, and gave the appellant written notice of the denial dated May 2, 2014. The appellant seasonably filed a Petition Under Formal Procedure with the Board on July 24, 2014. On the basis of the foregoing, the Board found and ruled that it had jurisdiction to hear and decide this appeal.¹

¹ Pursuant to an order dated January 26, 2016, the Board bifurcated the hearing relating to the appeal. Specifically, if the Board had found that the subject property was not exempt from property tax, the Board would then have conducted proceedings regarding the property's valuation.

Appellant's Business in Massachusetts

The appellant owns and operates a "district energy network" in Boston and assists in the operation of a similar network in Cambridge, which includes a co-generation facility² (the "Boston Network" and the "Cambridge Network," respectively, and collectively, the "Networks").³ The Boston Network is a steam system that converts chemical energy from natural gas and fuel oil into high-pressure steam and then distributes the high-pressure steam. The Cambridge Network also converts chemical energy into steam and electrical energy.

The Boston Network serves approximately 250 commercial, health care, government, institutional, and hospitality customers, who use the steam (and in at least one instance, hot water) for various purposes, including power generation, sterilization, heating, and cooling. The appellant also provides maintenance and operation services to some of its customers. Customers are typically billed based on their steam consumption.

² As described by Mr. Silvia, a co-generation facility, also known as "combined heat and power," generates multiple energy sources using one fuel supply.

³ Certain of the Networks' components, including the co-generation facility, are owned by affiliates of the appellant and other entities.

The Boston Network and the Cambridge Network are interdependent, and the high-pressure steam generated by each Network is distributed between the Networks as well as within a given Network. The Networks are physically connected by two sets of pipes and a variety of equipment. One set of pipes follows the Charles River Dam Road near the Museum of Science and the other set crosses the Charles River, attached to the Longfellow Bridge.

The high-pressure steam is initially generated at three generation facilities ("Generation Facilities"): the Kneeland Facility, located on Kneeland Street in Boston; the Scotia Facility, located on Scotia Street in Boston; and Kendall Station, located in Cambridge. The Scotia Facility also generates hot water and Kendall Station generates electricity that is fed through a substation and sold on the Independent System Operator New England wholesale market.

The Generation Facilities perform a number of functions, including water treatment, fuel treatment and storage, and high-pressure steam generation. With respect to water treatment, boiler feed water, which is used to generate steam, is treated to remove contaminants. The decontamination process prevents scaling, corrosion, foaming, and other adverse impacts on boiler operation.

Each Generation Facility stores fuel oil and is supplied with natural gas, which are burned by the steam generation equipment. The Generation Facilities use boilers to generate the high-pressure steam.

Equipment varies somewhat among the Generation Facilities. For example, in the Scotia and Kneeland Facilities, the boilers employ a burner for combustion. Air used in combustion is pumped into the system by a forced-draft fan and the exhaust gas is pulled out by induced-draft fans. The exhaust gases exit via an exhaust stack, while the treated water is heated and becomes steam in the boiler. At Kendall Station, steam is generated both in boilers and by using a heat recovery steam generator that creates steam using heat from exhaust gases in a combustion turbine.

The pressure of the steam is highest at the point of generation, ranging from 150 to 220 pounds per square inch. After the steam is generated, it enters a pressure-regulated network of distribution mains and appurtenant equipment. Because steam can move throughout the Networks, one or more of the Generation Facilities can be used, as needed, to maintain a steady and stable supply of steam for the entire system. The Networks operate together to balance customer load and steam generation across the Generation

Facilities to ensure equivalent rates of production and consumption. The customer load is dynamic and varies based upon the time of day, the day of the week, and ambient temperature. These variables are used to create load predictions, which impact the amount of steam generated and delivered on a given day.

Generally, once the steam reaches a customer's site, its pressure is reduced by a pressure reduction valve. Pressure reduction is necessary to assure safety, to comply with regulatory requirements, and to conform to customer equipment compatibility and use requirements. Customers' pressure requirements vary. For example, a hospital may need relatively high pressure for sterilization purposes, whereas a mixed-use building on Newbury Street uses a much lower pressure for heating purposes.

The Networks consist of various components, some of which are located above ground and some underground. Pipes are used to deliver the high-pressure steam within and from the Generation Facilities to customer sites. As Mr. Silvia noted, the pipes, which store energy, are crucial to maintain the quality of the steam until its delivery to customers.

Steam valves, which may be manual or automatic, help to restrict the flow of steam and condensate (steam that

has returned to an aqueous state) throughout the Networks. Flow restriction allows portions of the Networks to be shut off for maintenance or to disconnect a customer. Flow restriction also changes steam flow patterns and permits rerouting of steam to optimize its flow from the Generation Facilities to customers.

Pipe temperatures fluctuate throughout the Networks, so expansion joints are employed to allow the pipes to expand and contract in a controlled manner without incurring cyclic fatigue failures such as cracks, buckles or leaks. Expansion joints are held in place by fixed anchors, and pipe movement is controlled by guides, which permit movement only in predetermined directions.

Manholes and vaults provide access to various components of the Networks for inspection and manual operation. Steam traps remove condensate that accumulates in the Networks. Failure to remove accumulated condensate would reduce the quality of the steam and could result in portions of the Networks filling with water, thereby inhibiting the flow of steam and at times causing "water hammer," which occurs when water forced through the Networks at high pressure causes damage to the Networks and may create safety hazards. Sump pumps remove water that accumulates in manholes and vaults due to condensate or

groundwater seepage. Accumulated water, if not removed, may also inhibit maintenance activities and compromise electrical devices.

Once steam has been used at a customer's site, it is generally condensed into condensate. Part of the condensate is returned to the Generation Facilities through condensate-return lines to be recycled and is used to generate more steam. Condensate not returned is generally drained or pumped into the municipal sewer system.

The Networks employ a centralized supervisory control and data acquisition ("SCADA") system to constantly monitor their activity. The SCADA system is accessible via the internet and at several places in the Networks. Each of the Generation Facilities also has an internal control system that feeds data to the master SCADA system. A system shift supervisor directs operations of the entire SCADA system, monitoring the Networks, the status of the Generation Facilities, the status of multiple monitoring points in the Networks, and the status at key customer sites.

Mr. Walls' Testimony

Mr. Walls, who has extensive experience in the operation of a variety of energy systems, offered his expert opinion as to whether the Networks, including the subject property, function as a single integrated machine.

To form his opinion, Mr. Walls visited various parts of the Networks including the Generation Facilities and the street system. He also reviewed comprehensive documentation on all the components of the Networks and conducted interviews with staff.

Mr. Walls described the Networks, as well as the interaction among their various components, in great detail. In his testimony and his expert report, Mr. Walls stated his opinion of what constitutes a machine and the integrated nature of the Networks:

The [Networks] function[] as a single, integrated machine. Machinery is any combination of mechanical means designed to work together so as to effect an end. The components of the [Networks], such as the boilers, pipes, valves and steam traps, are machinery that operate together to generate, maintain, distribute, store, and convert steam for use by customers. Therefore, each component supports operation of the [Networks] as a single, integrated machine. Without each component, [the appellant] could not generate the product that is ultimately sold to the customer.

Mr. Walls emphasized that the high pressure steam generated by the appellant "is not a finished product until it's delivered to the customer through their control valves and provided to them for use in their energy services." He discussed the function of the pipes within the Networks, which he described as not mere conduits, but an active

network controlled with control valves, metered and monitored with monitoring measuring equipment. Mr. Walls also noted the importance of the storage and system flow pressure functions served by the pipes, stating that "steam is not like an instantaneous product, like electricity. When you flip a switch, you just don't have instant steam. You have to build up pressure in the system, and so you have to have that stored amount of energy in the system to really operate it." The Board found Mr. Walls' testimony credible and agreed with his conclusion that the Networks, including the subject property, constituted and operated as a single integrated machine.

Summary

Based on the evidence presented and the reasonable inferences drawn therefrom, the Board found and ruled that the subject property and the other components of the Networks together formed a single integrated machine. Because the appellant was classified as a manufacturing corporation, the subject property was exempt from taxation as manufacturing machinery pursuant to G.L. c. 59, § 5, cl. Sixteenth(3). Accordingly, the Board issued a decision for the appellant in this appeal.

OPINION

General Laws c. 59, § 5, cl. Sixteenth(3) ("Clause 16(3)") provides certain exemptions⁴ from property tax, including for property owned by manufacturing corporations, as follows:

In the case of (i) a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63 . . . all property owned by the corporation . . . other than real estate, poles and underground conduits, wires and pipes

Having acknowledged that the appellant was classified by the Commissioner of Revenue as a manufacturing corporation within the meaning of G.L. c. 63, § 42B, the assessors argued that the subject property was taxable as poles and underground conduits, wires and pipes, which are excluded from Clause 16(3) and remain taxable under G.L. c. 59, § 18, cl. Fifth. The appellant disagreed, asserting that the subject property should be exempt from taxation as a component of exempt manufacturing machinery. The Board agreed with the appellant.

In *Commonwealth v. Lowell Gas Light Co.*, 94 Mass. 75 (1866), the Supreme Judicial Court considered whether

⁴ Property "exempt" from taxation under Clause 16(3) is not exempt from tax in an absolute sense, but is subject indirectly to taxation by inclusion in the measure of excise imposed under G.L. c. 63. See *Assessors of Holyoke v. State Tax Commn.*, 355 Mass. 223, 234 (1969).

various components of a system operated by a manufacturer and distributor of gas, including mains and pipes used for gas distribution, were properly omitted from calculation of a deduction for the company's machinery. Holding that they were not, the Court stated:

The mains or pipes laid down in the streets and elsewhere to distribute the gas among those who are to consume it were clearly a part of the apparatus necessary to be used by the corporation in order to accomplish the object for which it was established. They constituted a part of the machinery by means of which the corporate business was carried on, in the same manner as pipes attached to a pump or fire-engine for the distribution of water, or wheels in a mill which communicate motion to looms and spindles, or the pipes attached to a steam-engine to convey and distribute heat and steam for manufacturing purposes, make a portion of the machinery of the mill in which they are used. Indeed, in a broad, comprehensive and legitimate sense, the entire apparatus by which gas is manufactured and distributed for consumption throughout a city or town constitutes **one great integral machine**, consisting of retorts, station-meters, gas-holders, street-mains, service-pipes and consumers' meters, all connected and operating together, by means of which the initial, intermediate and final processes are carried on, from its generation in the retort to its delivery for the use of the consumers.

Lowell Gas Light, 94 Mass. at 78-79 (emphasis added).

This analysis enjoys continuing vitality in Massachusetts law. For example, in *Lowell Gas Company v. Commissioner of Corporations and Taxation*, 377 Mass. 255 (1979), the Court, citing *Lowell Gas Light*, held that gas

mains, meters, and meter installations that formed part of a distribution apparatus qualified as machinery exempt from sales tax. In its analysis, the Court placed particular focus on "the following basic question: 'Does the disputed item operate harmoniously with the admittedly exempt machinery to make an integrated and synchronized system?' Pipes and meters function, along with production, storage, and pressure regulating equipment, as integral component parts required in the gas furnishing system." *Id.* at 260-61.

The Board has also addressed a similar issue. In *Perma, Inc. v. Assessors of Billerica*, Mass. ATB Findings of Fact and Reports 2001-805, the Board considered whether underground storage tanks owned by a corporation classified as a manufacturing corporation qualified as personal property exempt as machinery pursuant to Clause 16(3) or real estate subject to tax. The Board cited *Lowell Gas Light* for the proposition "that a receptacle that does not itself contain moving parts can nonetheless be considered machinery if it is part of a complete system 'all connected and operating together, by means of which the initial, intermediate and final processes are carried on,' which 'constitutes one great integral machine.'" *Perma, Inc.*, Mass. ATB Findings of Fact and Reports at

2001-824-25) (quoting *Lowell Gas Light*, 94 Mass. at 78-79).

Applying this rationale, the Board found that:

the tanks at issue should have been classified as exempt machinery of a domestic manufacturing corporation⁵. . . . [T]he tanks at issue are receptacles for the storage of raw materials but, due to their connections to other mechanical devices, they play a necessary and essential role in Perma's manufacturing functions. Accordingly, the Board found that the tanks are part of 'one great integral machine' and thus property exempt from real estate taxes.

Id.

In sum, precedent spanning more than a century and dispositive in a variety of analogous contexts unequivocally supports the proposition that property that would otherwise be regarded as taxable personalty or realty, when incorporated as an integral part of exempt machinery, will be exempt as part of that machinery. Such is the case in the present appeal, where the subject property, as observed by Mr. Walls, "supports operation of the [Networks] as a single, integrated machine. Without each component, [the appellant] could not generate the product that is ultimately sold to the customer." Moreover, if property owned by a manufacturing corporation may be classified as both falling within one of the listed

⁵ General Laws c. 63, § 38C, pertaining to domestic manufacturing corporations, was repealed in 2008. See St. 2008, c. 173, § 66. General Laws c. 63, § 42B, which previously addressed foreign manufacturing corporations, was amended in 2008 to encompass manufacturing corporations generally. See St. 2008, c. 173, § 85.

exceptions to Clause 16(3) (e.g., real estate) and machinery, it will be exempt as machinery if, as in the present appeal, its dominant aspect is that of machinery. See *Assessors of Swampscott v. Lynn Sand & Stone Co.*, 360 Mass. 595, 599 (1971); see also *Boston Edison Co. v. Assessors of Boston*, 402 Mass. 1, 12 (1988).

The assessors argued that poles and underground conduits, wires and pipes are explicitly made taxable by Clause 16(3), which makes no mention of machinery. The assessors then posited that to prevail in this appeal, the appellant must demonstrate that property explicitly made taxable by Clause 16(3) (e.g., pipes) is implicitly rendered exempt by the same clause, a result that would "upend well-established rules of statutory construction."

As a threshold matter, the assessors ignored that the section of the Acts and Resolves that implemented the manufacturing exemptions of Clause 16(3) is titled "An Act Exempting the Machinery of Manufacturing Corporations from Local Taxation and Changing the Methods of Determining Certain Corporation Taxes and of Distributing Certain Taxes." St. 1936, c. 362, § 1. When the title of an enactment clearly states a legislative purpose, "a contrary interpretation of the legislative intent runs afoul of the

plain meaning of the statute's title." *Town of Yarmouth v. Snowden-Lebel*, 17 LCR 654, 655-56 (Mass. Land Ct. 2009).

The language of G.L. c. 59, § 5, cl. Sixteenth, when viewed as a whole, also undermines the assessors' argument. In particular, G.L. c. 59, § 5, cl. Sixteenth(1) ("Clause 16(1)"), which applies to financial institutions and certain other corporations, begins, like Clause 16(3), by exempting all property owned by these entities. Also like Clause 16(3), Clause 16(1) provides several explicit exceptions to this exemption, including for "poles, underground conduits, wires, pipes and machinery used in manufacture." (emphasis added). Had the Legislature intended to exclude such machinery from exemption in Clause 16(3) as well as in Clause 16(1), it presumably would have done so. See, e.g. *Salem and Beverly Water Supply Board v. Commissioner of Revenue*, Mass. ATB Findings of Fact and Reports 1987-1. Further, an explicit reference to machinery as exempt in Clause 16(3) is unnecessary given that its starting point is the broad exemption of "all property."

Lastly, established case law explicitly sanctions exemption of machinery by Clause 16(3). In *Fernandes Super Markets, Inc. v. State Tax Commn.*, 371 Mass. 318 (1976), which concerned an appellant's request for manufacturing corporation classification, the Court stated that "[i]f

[the appellant] is a manufacturing corporation, all its machinery is exempted by G.L. c. 59, § 5, Sixteenth, from local personal property taxes which would otherwise be assessed on the machinery of a business corporation by cities and towns." *Id.* at 319. Similarly, in *Assessors of Holyoke v. State Tax Commn.*, 355 Mass. at 225, the Court observed that "[b]y G.L. c. 59, § 5, Sixteenth(3), as amended through St. 1957, c. 541, a 'domestic manufacturing corporation' is exempt from local taxation upon its property other than 'real estate, poles and underground conduits, wires and pipes.' Its machinery is thus not subject to local taxation." See also, *Assessors of Swampscott*, 360 Mass. at 597-98 ("[A]ll machinery of a domestic manufacturing corporation . . . must be treated as exempt from local taxation by virtue of G.L. c. 59, § 5, Sixteenth (3), as amended by St. 1936, c. 362, § 1, and later by St. 1957, c. 541." (additional citations omitted)).

The assessors also argued that even if the Board were to find that the subject property was part of integrated machinery, the language of G.L. c. 59, § 18 itself provides an impediment to exemption under Clause 16(3). The Board disagreed. General Laws c. 59, § 18 states, in pertinent part:

All taxable personal estate within or without the commonwealth shall be assessed to the owner in the town where he is an inhabitant on January first, except as provided in chapter sixty-three and in the following clauses of this section:

Second. Machinery employed in any branch of manufacture or in supplying or distributing water . . . shall be assessed where such machinery or tangible personal property is situated to the owner or any person having possession of the same on January first.

As the Board observed in *Whitten v. Assessors of the Town of Norwood*, Mass. ATB Findings of Fact and Reports 1984-99, 102, "G.L. c. 59, § 18 states **where** personal property shall be assessed." (emphasis added). No part of G.L. c. 59, § 18 affects the exemptions provided by G.L. c. 59, § 5, cl. Sixteenth. Indeed, in *New England Mutual Life Insurance Company v. City of Boston*, 321 Mass. 683, 689 (1947) the Court held that "[i]n so far as [G.L. c. 59, § 18, cl. Second] deals with the assessment of personal property of a corporation, it must be interpreted in conjunction with [G.L. c. 59, § 5, cl. Sixteenth] as a part of a single system for the taxation of such property. . . . The field for the operation of [G.L. c. 59, § 18, cl. Second] relative to the assessment of corporate personal property is restricted to such property as is not exempted by [G.L. c. 59, § 5, cl. Sixteenth]."

The assessors placed particular emphasis on the fact that the appellant does not own every part of the Networks, opining that the appellant should not receive manufacturing exemption with respect to a Network that is, at least in part, owned and used by entities other than the appellant. The assessors, however, have provided no persuasive authority in support of their position. Further, as the Court stated in *Boston Gas Company v. Assessors of Boston*, 334 Mass. 549, 565 (1956), "[t]here is no requirement that 'one great integral machine' be exclusively owned by a single company any more than that it be contained within the boundaries of a single municipality."

Finally, in their briefs, the assessors mounted a substantive, if not direct challenge to the appellant's manufacturing classification, arguing that the appellant's activities did not qualify as manufacturing. This argument, however, is foreclosed and was not before the Board. Pursuant to G.L. c. 58, § 2, the commissioner annually provides boards of assessors with a list of corporations that the commissioner has classified as manufacturing corporations. To receive this classification, a corporation must be engaged in manufacturing. See G.L. c. 63, § 42B. A corporation seeking manufacturing classification must file an application with the commissioner. 830 C.M.R.

58.2.1(7)(a). After a corporation files an application, the commissioner reviews the application and makes a determination as to whether the corporation is engaged in manufacturing. See 830 CMR 58.2.1(7)(c). The commissioner classifies all corporations determined to be engaged in manufacturing as manufacturing corporations. *Id.*

General Laws c. 58, § 2 provides a mechanism to challenge a manufacturing classification made by the commissioner:

Any person⁶ aggrieved by any classification made by the commissioner under any provision of chapters fifty-nine and sixty-three or by any action taken by the commissioner under this section may, on or before April thirtieth of said year or the thirtieth day after such list is sent out by the commissioner, whichever is later, file an application with the appellate tax board on a form approved by it, stating therein the classification claimed.

The assessors did not avail themselves of this mechanism for the times relevant to the fiscal year at issue, though they have done so with respect to the appellant's manufacturing classification effective January 1, 2016.⁷ Consequently, the assessors only have standing to challenge the commissioner's classification and the

⁶ G.L. c. 58, § 2 provides that "[f]or the purpose of this section, 'person' shall include a board of assessors."

⁷ That appeal, *Assessors of the City of Boston v. Commissioner of Revenue*, Docket No. C331142, is currently pending before the Board.

manufacturing activities underlying that classification for later fiscal years not related to this appeal.

Conclusion

Based on the evidence presented, the Board found and ruled that the subject property, which was owned by the appellant, a corporation that was classified as a manufacturing corporation within the meaning of G.L. c. 63, §§ 39 and 42B, formed an essential part of a single integrated machine and was therefore exempt from property taxation pursuant to Clause 16(3). Accordingly, the Board issued a decision for the appellant in this appeal.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr. Chairman

A true copy,

Attest: _____
Clerk of the Board