COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

QUABBIN SOLAR, LLC et al.	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF BARRE**
Docket Nos.: F329741 F329742 F329743		Promulgated: November 2, 2017

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 Town of Barre ("appellee" or "assessors"), to abate taxes on certain personal property in the Town of Barre owned by and assessed to, respectively, Quabbin Solar, LLC, Quabbin Wind, LLC, and Barre Wool Solar, LLC (collectively, the "appellants") under G.L. c. 59, §§ 11 and 38 for fiscal year 2016 ("fiscal year at issue").

Commissioner Good heard these appeals. Chairman Hammond and Commissioners Scharaffa, Rose, and Chmielinski joined her in the decisions for the appellants.

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.

Nicholas D. Bernier, Esq. for the appellants.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

These appeals, which were consolidated for hearing, involve three separate but commonly owned entities and present the same primary issue: whether personal property in the form of solar arrays owned by the appellants was exempt from taxation under G. L. c. 59, § 5, cl. 45 ("Clause Forty-Fifth"). Clause Forty-Fifth provides an exemption for any:

> 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; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device.

Here the assessors conceded that the solar arrays[1] at issue constituted "solar… powered system[s]" for purposes of Clause Forty-Fifth, and the parties did not dispute that the twenty-year period had yet to expire. The issues remaining in dispute focused on the other requirements set forth within Clause Forty-Fifth, and the adequacy of the evidence offered by the appellants. Based on the testimony and documentary evidence entered into the record at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

[1] The solar arrays at issue had a generating capacity of between one and two megawatts.

On January 1, 2015, each of the appellants was the assessed owner of personal property in the form of solar arrays located in Barre (collectively, the "subject property"). The relevant valuation and tax information for each appellant is set forth in the following table.

Appellant	**Assessed Value**	**Tax Rate Per $1,000**	**Total Tax Assessed**
Quabbin Solar, LLC	$1,013,860	$17.80	$18,046.71
Quabbin Wind, LLC	$1,013,860	$17.80	$18,046.71
Barre Wool Solar, LLC	$1,634,100	$17.80	$29,086.98

Each of the appellants timely paid at least one-half of the total tax assessed in accordance with G.L. c. 59, § 64. The appellants each timely filed Applications for Abatement with the assessors on February 1, 2016. The abatement applications were deemed denied on May 1, 2016, and the assessors sent notice to the appellants of their deemed denial on May 3, 2016. The appellants timely filed petitions with the Board on May 16, 2016, and on the basis of the foregoing facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

The appellants offered into the record documentary evidence as well as the testimony of the owner and manager of all three of the appellants, Michael Staiti. Mr. Staiti testified about

the formation of the appellants as well as their day-to-day operations, and the Board found him to be credible.

Mr. Staiti explained that he established the appellants in 2010 but they did not become fully operational until 2012. He testified that the appellants entered into an interconnectivity agreement, also referred to as a net-metering agreement, with National Grid that permitted the appellants to connect their solar arrays to the electrical grid and to receive credits for the value of electricity produced and made available to the electrical grid. Net-metering agreements allow parties to allocate the credits among various recipients, and those allocations are reported on Schedule Z of the net-metering agreement.

Mr. Staiti testified that the appellants entered into a purchase agreement with Honey Farms, Inc. ("Honey Farms"), a for-profit, family-owned enterprise that operates a chain of convenience stores in Massachusetts. Under the purchase agreement, Honey Farms paid the appellants for the net-metering credits generated by the subject property to offset their own electricity expenses. Mr. Staiti testified that Honey Farms is the sole customer of the appellants.

Schedule Z of each of the appellants' net-metering agreements with National Grid was entered into evidence as part of appellants' Exhibit 1, and the schedules set forth the

percentages of net-metering credits to be allocated to each Honey Farms location. The Schedule Z for appellant Barre Wool Solar, LLC allocated the net-metering credits among eleven Honey Farms locations, while the Schedules Z for the other two appellants allocated the credits among a total of sixteen Honey Farms locations.

Also contained within Exhibit 1 were property record cards that the appellants asserted, and the Board found, corresponded to each of the Honey Farms locations referenced on the Schedules Z.[2] Honey Farms was the owner of certain of the properties, but it leased rather than owned the majority of the parcels. In either case, the property records demonstrated that each of the Honey Farms locations at issue was situated on an improved parcel that was taxable under Chapter 59 for purposes of Clause Forty-Fifth.

Based on the foregoing, the Board found and ruled that the appellants established that the subject property constituted "solar … powered systems[s]… being utilized as a primary or auxiliary power system[s] for the purpose of heating or

[2] The assessors challenged the sufficiency of the evidence proffered by the appellants on numerous fronts. One of the assessors' contentions was that the appellants failed to establish that the property record cards contained within Exhibit 1 corresponded to the Honey Farms locations listed on the Schedules Z. As will be discussed further below, the Board found that the evidence offered by the appellants, in its totality, was both credible and sufficient and it therefore rejected the assessors' arguments.

otherwise supplying the energy needs of property taxable" under Chapter 59, and it therefore qualified for the exemption.

The assessors advanced a number of arguments in support of their position that the subject property was not entitled to the exemption under Clause Forty-Fifth. Among their arguments was the contention that in order to qualify for the exemption, the appellants were required to show that Honey Farms was responsible for the payment of electricity under the terms of the leases for those properties that it did not own, and that they failed to make such a showing. The Board rejected this argument for a number of reasons. First, it disagreed with the assessors' contention as a factual matter. The evidence in its totality in fact showed that Honey Farms was responsible for the payment of electricity in each of the relevant locations, and the Board so found. Second, and as will be discussed further in the Opinion below, the Board found that there is no such requirement in the plain language of Clause Forty-Fifth. Therefore, this argument was without merit.

The assessors additionally argued, for the first time in their post-hearing brief, that the appellants are "generation companies" under G.L. c. 164, which regulates net-metering arrangements, and are therefore not eligible to participate in the net-metering process. The Board rejected this eleventh-hour argument for several reasons. First, it was inappropriately

raised for the first time by the assessors in their post-hearing brief, rather than prior to or during the hearing, which would have afforded the appellants an opportunity to respond. The Board specifically found and ruled that equity and good conscience did not require consideration of this argument. *See* G.L. c. 58A, § 7. *See* ***Massachusetts Bay Lines, Inc. v. Commissioner of Revenue,*** Mass. ATB Findings of Fact and Reports 2007-723, 743-47, *aff'd,* 72 Mass. App. Ct. 321 (2008) (finding and ruling that the Board was not bound by equity and good conscience to consider an argument that was raised late),. Moreover, the question of whether the appellants are eligible to participate in the net-metering process is misdirected to the Board. The appellants did in fact receive net-metering credits at all times material to these appeals. Whether they should have received or should continue to receive net-metering credits is an issue appropriately directed to another forum. Accordingly, the Board declined to consider this argument.

The assessors' remaining arguments were essentially a laundry list of alleged deficiencies in the evidence offered by the appellants. The Board was not persuaded by these arguments, which were primarily directed at the sufficiency of the documentary evidence.

To begin with, the Board did not consider the record to be deficient in the manner alleged by the assessors. Many of their

complaints were directed at the purported lack of clarity on the property record cards offered into evidence. These property record cards were drawn from on-line databases maintained by assessors in the ordinary course of business, and are of the type frequently offered into evidence before the Board. While it is true that property record cards culled from on-line databases do not provide as much information as other versions, that does not render the information unreliable.[3] The Board found the appellee's complaints about these documents to be disingenuous.

Moreover, many of the evidentiary deficiencies pointed to by the assessors related to the appellants' supposed failure to establish that Honey Farms was the party responsible for the payment of electricity at each of the locations referenced in the Schedules Z. As stated above, the Board found that the appellants had no obligation to establish this fact in order to claim the exemption under Clause Forty-Fifth, and the Board therefore rejected this argument.

Most troubling, however, was the repeated refrain in the assessors' post-hearing brief that there was simply "no

[3] The property record cards were offered solely for the purpose of demonstrating that the parcels to which they relate were subject to tax under Chapter 59. Assuming, *arguendo,* that these record cards were somehow deficient, as suggested by the assessors, there was no evidence in the record suggesting that any of the parcels was exempt from tax under chapter 59, nor was it logical to so infer, as the parcels were either owned or leased by Honey Farms, a for-profit business.

evidence" to support a number of claims made by the appellants. In each case, the assessors failed to acknowledge the extensive and detailed testimony of Michael Staiti, the founder and Manager of the appellants, whom the Board found to be credible.

The Board found that Mr. Staiti had detailed knowledge of the day-to-day operations of the appellants as well as their sole customer, Honey Farms. He testified that he is in "almost daily, certainly weekly" contact with Honey Farms and visits the locations referenced within Exhibit 1. Mr. Staiti was able to confirm that Honey Farms is operating a business at each of the locations; that the electric meter at each location is in Honey Farms' name; and that Honey Farms is still receiving the net-metering credits in those locations.

Mr. Staiti's uncontroverted testimony, which was given under oath and reported by an official stenographer, is as much a part of the record in these appeals as any document. The assessors' assertions that there was "no evidence" to support the appellants' claims was therefore without merit, and the Board rejected these arguments.

In conclusion, on the basis of the evidence in its totality, the Board found that the appellants met their burden of proving that the subject property was entitled to the exemption provided by Clause Forty-Fifth, and it therefore issued decisions for the appellants in these appeals. The Board

granted abatements of tax in the following amounts: $18,046.71 to Quabbin Solar, LLC; $18,046.71 to Quabbin Wind, LLC; and $29,086.98 to Barre Wool Solar, LLC, along with applicable interest.

OPINION

All property, real and personal, situated within the Commonwealth is subject to local tax, unless expressly exempt. G.L. c. 59, § 2. As previously noted, such an exemption is provided in Clause Forty-Fifth 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; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device.

G. L. c. 59, § 5, cl. 45. 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).

Courts interpret a statute in accordance with the plain meaning of its 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).

There is nothing ambiguous in the language of Clause Forty-Fifth, and the plain meaning of its words requires only that the subject property be: (1) a solar or wind powered system or device; (2) utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying energy; and (3) utilized to supply the energy needs of property that is subject to Massachusetts property tax. Based on the evidence presented, the Board found and ruled that the solar arrays at issue here were solar powered systems within the meaning of Clause Forty-Fifth and used as a primary or auxiliary power system supplying the energy needs of taxable property in Massachusetts. Therefore, the Board found and ruled that the subject property fulfills all of the express requirements of Clause Forty-Fifth.

The facts of the present appeals are similar to those in ***Forrestall Enterprises, Inc. v. Assessors of Westborough***, Mass. ATB Findings of Fact and Reports 2014-1025 ("***Forrestall***") and ***KTT, LLC v. Assessors of Swansea***, Mass. ATB Findings of Fact

and Reports 2016-426 ("***KTT***"), in which the Board also ruled in favor of the taxpayers. In ***Forrestall***, the solar array at issue was used to generate power for several residential and business properties located on taxable parcels that were different than the parcel on which the solar array was located.[4] As here, the taxpayer in ***Forrestall*** had entered into a net-metering agreement under which the credits for the power generated by the solar array were allocated among the various properties. ***Id.*** at 2014-1028.

The assessors in ***Forrestall*** urged the Board to construe Clause Forty-Fifth in a way that limited its application to solar arrays that supply power to property located on the same, or a contiguous, parcel as the solar array. ***Id.*** at 2014-1030. The basis for the assessors' argument in that case was that Clause Forty-Fifth should be construed as a personal exemption, like many of the other exemptions found within G.L. c. 59, § 5, such as clauses 37, 42, and 43, each of which are limited to a single residential property that is occupied as the domicile of the person eligible for the exemption. G.L. c. 59, § 5, cls. 37, 42, and 43. However, each of those clauses contains express language limiting the scope of the exemption to specific property, while Clause Forty-Fifth does not. The Board

[4] The properties receiving the energy credits in ***Forrestall*** were all owned directly by or through entities controlled by the same person, Bruce Forrestall.

therefore rejected the assessors' argument in that case as it was without support in the statute. ***Forrestall*** at 2014-1030.

The facts in ***KTT*** were similar to those in ***Forrestall***, with the key distinction being that the energy generated by the solar arrays at issue was credited to an unrelated third party - a local bank - and allocated among the bank's branch locations, in exchange for cash payments, as here. The assessors in that case argued that this type of commercial use was not what the Legislature intended to favor with an exemption in enacting Clause Forty-Fifth. The Board likewise rejected this argument as being without support in the language of Clause Forty-Fifth. ***KTT, LLC*** at 2016-433.

In the present appeals, the assessors advanced a different twist on the arguments made by the assessors in ***Forrestall*** and ***KTT***. Most of the properties referenced in the net-metering agreements were leased rather than owned by Honey Farms. The assessors argued that in order to qualify for the exemption, the appellant was required to show that Honey Farms was responsible for payment of the electricity under the terms of the lease at the properties being supplied with energy via the net-metering agreements. Once again the Board rejected this argument as lacking support in the statutory language.

As the Board observed in ***KTT*** and ***Forrestall***, unlike other statutes granting exemption, there is no limiting language in

Clause Forty-Fifth relating to individuals. *See* G.L. c. 64H, § 6(dd) (sales tax exemption enacted in 1977 for "a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of an individual's principal residence in the commonwealth"); *see also* G.L. c. 59, § 5, cls. 37, 42, and 43. Rather, the limiting language in Clause Forty-Fifth is directed toward property, specifically, "property that is taxable," under chapter 59. The statutory language requires no unity of ownership between the "property that is taxable" under chapter 59 and the personal property for which the exemption is being sought, nor does it address the identity of the individual responsible for payment of the "energy needs" being supplied by such property. Where the Legislature has not included language in the statute expressing the limitation advocated by the assessors, the Board will not interpret the statute to impose such a limitation. *See* ***Anderson Street Associates v. City of Boston & another,*** 442 Mass. 812, 817 (2004) ("Had the Legislature intended G.L. c. 121A to guarantee tax concessions to be permanent, it could have included statutory language to that effect. It has done so elsewhere."); ***Commissioner of Revenue v. Cargill, Inc.***, 429 Mass. 79, 82 (1999) ("Had the Legislature intended to limit the credit in the manner advocated by the commissioner, it easily could have done so.").

The assessors additionally challenged the sufficiency of the evidence offered by the appellants. The Board was not persuaded by their arguments. The Board's evidentiary standard, with few exceptions not applicable here, is proof by a preponderance of the evidence. *See* ***Assessors of New Braintree v. Pioneer Valley Academy,*** 355 Mass. 610, 612 (1969); ***Space Building Corporation v. Commissioner of Revenue***, 413 Mass. 445, 450 (1992). As the Board has observed before, the preponderance standard does not require certitude, but instead means that the party with the burden of proof must show that the facts necessary to prevail in its claim were more likely true than not. *See* ***Dental Service of Massachusetts, Inc. v. Commissioner of Revenue,*** Mass. ATB Findings of Fact and Reports 2017-45, 63; ***Gates v. Boston and Maine Railroad,*** 255 Mass. 297, 301 (1926); ***Black v. Boston Consol. Gas Co.,*** 325 Mass. 505, 508 (1950); ***Sullivan v. Hammacher,*** 339 Mass. 190, 194 (1959). In deciding whether a party has met this burden, the Board must be mindful that the "'[e]vidence of a party having the burden of proof may not be disbelieved without an explicit and objectively adequate reason.'" ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 470-71 (1981) (quoting L.L. JAFFEE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 607-608 (1965)).

In the present appeals, the appellants offered extensive documentary and testimonial evidence to demonstrate that the subject property met the requirements for exemption under Clause Forty-Fifth. The assessors for their part called no witnesses, and their documentary evidence consisted of only the requisite jurisdictional documents and copies of the appellants' annual reports, which were filed with the Massachusetts Secretary of State. The evidence offered by the assessors did nothing to undercut the evidence offered by the appellants. Accordingly, the Board rejected the assessors' arguments, and instead concluded that the appellants met their burden of proving that the subject property was exempt under Clause Forty-Fifth.

In conclusion, on the basis of all of the evidence, the Board found and ruled that the subject property was exempt under Clause Forty-Fifth, and therefore issued decisions for the appellants in these appeals. The Board granted abatements of tax in the following amounts: $18,046.71 to Quabbin Solar, LLC; $18,046.71 to Quabbin Wind, LLC; and $29,086.98 to Barre Wool Solar, LLC, along with applicable interest.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board