Recent Massachusetts Tax Litigation

CORPORATE EXCISE TAX

SALES AND USE TAX

OTHER TAXES

PERSONAL INCOME TAX

SELECTED PROPERTY TAX

Please note that the following case summaries do not represent official statements by, or positions of, the Massachusetts Department of Revenue.

Corporate Excise Tax

Supreme Judicial Court Decisions

***First Marblehead Corp. v. Commissioner of Rev.*, 470 Mass. 497 (Jan. 28, 2015), *petition for cert. granted, vacated and remanded to Mass. Sup. Jud. Ct.*, No. 14-1422 (U.S. Oct. 13, 2015)**

Tax Periods: FYE 6/2004 - FYE 6/2006

First Marblehead Corp. ("FMC") is the sole owner of Gate Holdings, Inc. ("Gate"), a holding company commercially domiciled in Massachusetts. For the years at issue, Gate's only activity was holding residual interests in Delaware statutory trusts (the "Trusts") that purchased student loan portfolios (the "Loans"). Gate had no employees, payroll, or office space and its only assets were cash and interests in the Trusts. The Loans were serviced by unrelated servicers located outside of Massachusetts. At issue was whether Gate's interest in the Loans should be assigned to Massachusetts for purposes of the apportionment property factor under the financial institution excise tax (the "FIET").

Agreeing with the ATB, the SJC held G.L. c. 63 § 2A(e)(vi)(B) created a rebuttable presumption that the preponderance of substantive contacts regarding the Loans owned by Gate occurred in its commercial domicile, Massachusetts. The SJC then found Gate failed to rebut the presumption and assigned 100 percent of Gate's interest in the Loans to Massachusetts, resulting in a 100 percent property apportionment factor under the FIET. The SJC held the activities of the Loan servicers were not attributable to Gate in determining where the contacts regarding the Loans occurred and only Gate's direct loan administration activities (of which there were none), not the activities of agents, could be considered. The SJC also held the apportionment formula was constitutional because FMC was not subject to duplicative taxation and because the FIET apportionment formula reasonably reflected how Gate generated the income subject to taxation — the income was a result of FMC's securitization of the Loans.

The U.S. Supreme Court granted certiorari and vacated and remanded the case for further consideration in light of its recent decision in *Comptroller of Treasury of Md. v. Wynne*. *See First Marblehead Corp. v. Commissioner of Rev.*, No. 14-1422 (U.S. Oct. 13, 2015).

Appellate Tax Board Decisions

***Genentech, Inc. v. Commissioner of Rev.*, 2014 ATB Adv. Sh. 877 (Nov. 17, 2014), *on appeal with Mass. App. Ct.*, Docket No. 2015-P-0287**

Tax Periods: FYE 12/1998 - 12/2004

Taxpayer, a biotechnology company, engaged in research, development, production and sale of various drugs. Taxpayer produced drugs using protein collected from genetically modified bacteria and animal cells. For the years at issue, the Commissioner made additional tax assessments on the grounds Taxpayer was a manufacturer required to use a single sales factor apportionment formula. Taxpayer appealed the assessment.

First, the ATB held Taxpayer owned sufficient property in Massachusetts for each tax year to establish nexus with the state. Second, the ATB held Taxpayer's drug production activities qualified as manufacturing because Taxpayer modified the DNA of the cells it collected protein from. The ATB compared Taxpayer's activities with "merely collecting" a specific protein from an identified cell during its natural reproduction — an activity that is not manufacturing. Third,

the ATB rejected Taxpayer's argument that, in calculating whether it was "substantially engaged" in manufacturing, gross receipts include revenue from any source, including Taxpayer's return of capital from sales of securities and money market funds. According to the ATB, including returns of capital in gross receipts would lead to the "absurd" result that Taxpayer was engaged in a cash management business, not a pharmaceutical business.

Taxpayer also argued in the alternative that, if it was a manufacturer, the denial of the Massachusetts ITC for its purchases of qualified manufacturing property placed in service outside of Massachusetts violated the Dormant Commerce Clause. The ATB rejected this alternative argument; instead the ATB held the ITC is constitutional because it is granted for making a qualifying one-time investment in Massachusetts and therefore does not cause disparate treatment of taxpayers in the marketplace or distort interstate commerce in favor of in-state business.

Taxpayer has appealed the ATB's decision. *See* Mass. App. Ct., Docket No. 2015-P-0287.

***Massachusetts Mutual Life Insurance Company and MassMutual Holding LLC v. Commissioner of Rev., MML Investor Services, Inc. v. Commissioner of Rev.*, 2015 ATB Adv. Sh. 270 (June 12, 2015)**

Tax Periods: FYE 12/2004 - 12/2005

At issue was whether the Commissioner's denial of interest deductions for intercompany advances from Massachusetts Mutual Life Insurance Company ("MMLIC") to its wholly-owned subsidiary MassMutual Holding LLC ("MMH") was proper. The ATB held MMLIC was entitled to the interest deductions because the advances gave rise to bona fide debt. To support its conclusion, the ATB relied on the following facts and subsidiary conclusions: (1) MMH was required to pay a sum certain with interest at maturity of the advances; (2) MMLIC and MMH intended and treated the advances as debt in order to comply with risk-based capital regulatory requirements applicable to insurance companies; (3) MMH was a worthy borrower with assets and revenues sufficient to pay back the advances; (4) it was irrelevant that MMH refinanced some of the advances or borrowed to pay some of the interest on the advances because MMH was in a period of rapid growth and expansion; (6) the memorialization of the advances evidenced an intent to create debt despite several "isolated incidents" of improper memorialization; and (7) MMLIC limited MMH's borrowing from other parties to ensure that it would be paid back and be able to enforce its rights with respect to the advances.

Additionally, because the advances were entered into for valid business purposes, had economic substance, and were bona fide debt, the ATB held the interest deductions were not subject to the add-back rules.

***National Grid Holdings, Inc, National Grid USA, and National Grid USA Service Co., Inc. v. Commissioner of Rev.*, 2014 ATB Adv. Sh. 357 (June 4, 2014), *on appeal with Mass. App. Ct.*, Docket No. 2014-P-1662**

Tax Period: FYE 3/2002

Taxpayer has appealed the ATB's determinations that: (a) deferred subscription arrangements ("DSAs") between Taxpayer and its parent were not bona fide debt; (b) obligations under the DSAs were not deductible as liabilities for net worth tax purposes; and (c) a Closing Agreement with the IRS regarding Taxpayer's federal income tax interest deductions was properly excluded from evidence.

The parties have briefed the issues. *See* Mass. App. Ct., Docket No. 2014-P-1662.

***National Grid USA Service Co., Inc. v. Commissioner of Rev.*, 2014 ATB Adv. Sh. 630 (Sept. 19, 2014), *on appeal with Mass. App. Ct.*, Docket No. 2014-P-1861**

Tax Period: FYE 3/2002

Taxpayer has appealed the ATB's determination that an IRS Closing Agreement allowing interest deductions for federal income tax purposes was not binding for Massachusetts state income tax purposes.

The parties have briefed the issue. *See* Mass. App. Ct., Docket No. 2014-P-1861.

***Staples, Inc. v. Commissioner of Rev., Staples Contract & Commercial, Inc. v. Commissioner of Rev.*, 2015 ATB Adv. Sh. 424 (Sept. 4, 2015), *on appeal with Mass. App. Ct.*, Docket No. No. 2015-P-1418**

Tax Periods: FYE 1/2002 - FYE 1/2005

Taxpayer, through its wholly-owned subsidiaries, operates as an international vendor of office supplies. For the years at issue, the Commissioner denied Taxpayer interest deductions relating to the operation of its intercompany cash management system. Under the cash management system, Taxpayer's subsidiaries "swept" their excess cash to Taxpayer on a daily basis. The ATB held the transfers under the cash management system did not give rise to bona fide debt because neither Taxpayer, nor its subsidiaries, treated the net accounts-payable balances that accrued under the system as arm's length, unqualified, legal obligations to repay.

Rejecting Taxpayer's argument, the ATB also held Taxpayer's characterization of the excess cash transfers as debt for accounting purposes did not control for net worth tax purposes.

Taxpayer has appealed the ATB's decision. *See* Mass. App. Ct., Docket No. 2015-P-1418.

Sales & Use Tax

Appellate Tax Board Decisions

***Regency Transportation, Inc. v. Commissioner of Rev.*, 2014 ATB Adv. Sh. 1039 (Dec. 4, 2014), *appealed to Mass. App. Ct., transferred, sua sponte, to Mass. Sup. Jud. Ct.*, Docket No. SJC-11873**

Tax Periods: Month Ends 10/2002 - 1/2008

Taxpayer, an interstate trucking company, purchased vehicles outside of Massachusetts. Those vehicles were stored and used in Massachusetts. The vehicles were purchased in states that did not impose a sales tax or did not impose a sales tax on vehicles engaged in interstate commerce. Taxpayer appealed the Commissioner's imposition of use tax on the vehicles.

The ATB held the vehicles were subject to use tax assessments because the use tax did not violate the Commerce Clause under the four prong test established by the Supreme Court in *Complete Auto*. Specifically, the ATB held the use tax was fairly apportioned because Massachusetts offers a system of tax credits for sales and use taxes, thus the system prevented Taxpayer from incurring multiple taxation on the vehicles. The ATB also held Taxpayer's claim that it was denied equal protection under the U.S. and Massachusetts Constitutions was without merit — Taxpayer did not offer evidence or testimony regarding malice, bad faith, or impermissible discrimination by the Department of Revenue or the auditor.

Taxpayer's appeal was transferred, *sua sponte*, to the SJC. *See* Mass. Sup. Jud. Ct., Docket No. SJC-11873. The SJC will hear arguments on November 5.

Other Taxes

Supreme Judicial Court Decisions

***DirecTV, LLC v. Dep't of Rev.*, 470 Mass. 647 (Feb. 18, 2015), *petition for cert. filed*, No. 14-1499 (U.S. June 22, 2015)**

On direct appellate review, the SJC held Massachusetts' five percent excise tax on direct broadcast satellite providers did not violate the Commerce Clause of the U.S. Constitution. Taxpayers, satellite companies, argued the excise tax discriminated against interstate commerce, both in effect and purpose.

For purposes of its analysis, the SJC assumed satellite companies were out-of-state companies and cable companies were in-state companies. First, the SJC rejected Taxpayers' argument that the excise tax was discriminatory in effect because it was only imposed on satellite companies. The SJC instead held that any difference in treatment of satellite companies vis-à-vis cable companies was due to the "different nature" of the two types of business (e.g., the regulatory burdens imposed on cable companies, but not on satellite companies). Second, the SJC held the lobbying material created by the cable industry supporting the excise tax did not prove the legislature enacted the tax for a discriminatory purpose. The SJC held the arguments made by the cable industry could not be attributed to the legislature.

Taxpayers have filed a petition for certiorari with the U.S. Supreme Court. *See DirecTV, LLC v. Dep't of Rev.*, No. 14-1499 (U.S. June 22, 2015).

Appellate Tax Board Decisions

***Bank of America, N.A. v. Commissioner of Rev.*, 2014 ATB Adv. Sh. 244 (June 10, 2015), *on appeal with Mass. App. Ct.*, Docket No. 2015-P-1279**

Tax Period: FYE 12/2007

At issue was whether Taxpayer, as trustee of certain trusts, was an "inhabitant" of Massachusetts for purposes of the fiduciary income tax. If an inhabitant, income generated by the trusts could be subject to the fiduciary income tax. The ATB held that Taxpayer's significant presence and activities in Massachusetts caused it to have a permanent place of abode in Massachusetts. By having a permanent place of abode, the ATB held Taxpayer was an inhabitant of Massachusetts for purposes of the fiduciary income tax. The ATB did not give weight to Taxpayer's historical argument — that a corporation is only a domiciliary in the state in which it is incorporated. Instead, the ATB held that when the applicable statute was amended it created a definition of inhabitant "distinct" from the definition of domiciliary, and there was no indication that corporate trustees, such as Taxpayer, were to be excluded from the new definition.

Taxpayer has appealed the ATB's decision. *See* Mass. App. Ct., Docket No. 2015-P-1279.

***Seaport II, LLC v. Commissioner of Rev.*, 2015 ATB Adv. Sh. 498 (Sept. 17, 2015)**

Taxpayer argued its conveyance of nine parcels of real property was not subject to the deeds excise tax because, after deducting the value of two mortgages encumbering the parcels, the parcels were transferred for zero consideration. The ATB, however, held the parcels were not

encumbered by the two mortgages. With regard to the first mortgage, the ATB held it was not assumed, but rather the mortgage was materially modified thereby creating a new encumbrance on the parcels that could not be deducted from the consideration paid. With respect to the second mortgage, the ATB found that, despite its continued existence after the transfer, it had no value because the transfer satisfied the related underlying indebtedness and the mortgage was no longer enforceable.

The ATB also found that there was no "credible business purpose" for structuring the transfer in the manner in which it was structured and that the transfer was structured to avoid the deeds excise tax. The ATB then applied the sham transaction and step transaction doctrines to disregard the structure.

Personal Income Tax

Circuit Court of Appeals Decisions

***Brian S. Fahey v. Mass. Dep't of Rev.*, 779 F.3d 1 (1st Cir. Feb. 18, 2015)**

At issue was whether a late-filed Massachusetts state income tax return is a dischargeable return under the Bankruptcy Code. In consolidating four bankruptcy appeals, the First Circuit held a late-filed Massachusetts state income tax return is not a "return that satisfies the requirements of applicable non-bankruptcy law" because timely filing a return is an applicable non-bankruptcy law requirement under Massachusetts law. Thus, the First Circuit held late-filed Massachusetts state income tax returns are not dischargeable returns.

Supreme Judicial Court Decisions

***Schussel v. Commissioner of Rev.*, 472 Mass. 83 (July 1, 2015), *aff'g* 86 Mass. App. Ct. 419 (2014)**

Tax Years: 1993-1995

The SJC upheld a G.L. c. 62C, §28 double assessment imposed on husband and wife Taxpayers for knowingly filing false returns with an "intent to avoid taxes." Taxpayers argued that riders attached to their tax returns, stating certain items on the return were not reported "due to uncertainties" attributable to Taxpayer husband's federal tax case, undermined the conclusion that Taxpayers knowingly and intentionally filed false returns. The SJC disagreed and found the riders to be misleading — the federal case was an appeal of criminal tax convictions that, "given its procedural posture," could not have caused an adjustment to Taxpayers' tax liability. Second, the SJC afforded little weight to the fact that Taxpayers' returns were prepared by a tax attorney because the record did not show Taxpayers provided their tax attorney with the relevant facts.

Appellate Tax Board Decisions

***Anthony R. Bott v. Commissioner of Rev.*, 2014 ATB Adv. Sh. 1293 (Dec. 30, 2014)**

Tax Years: 2002-2005

Taxpayer, a former attorney, sought abatement of a G.L. c. 62C, §28 double assessment imposed for filing a false return with an intent to evade taxes. Taxpayer withdrew money from client accounts (without client knowledge) and lied to a client about the facts of a settlement in order to keep at least $75,000 of the $115,000 proceeds for his personal use. Taxpayer did not report

these amounts on his Massachusetts tax returns. After being disbarred, Taxpayer pled guilty to larceny and forgery.

Taxpayer argued the misappropriated amounts were loans, not illegally obtained taxable income required to be reported. The ATB, in rejecting this argument, found the following undermined Taxpayer's assertion that he intended to repay his clients: (a) Taxpayer pled guilty to larceny and forgery; (b) there was virtually "no evidence of restitution" by Taxpayer; and (c) Taxpayer admitted in his disbarment proceedings to deceiving a client. The ATB also found Taxpayer "failed utterly to demonstrate" that he reasonably relied on his CPA in documenting the appropriations as loans on his wholly-owned company's federal tax returns — the CPA did not testify or provide an affidavit stating he sanctioned or knew about the illegal actions and Taxpayer admitted that he knew there was a problem with the returns. Finally, the ATB held the double assessment did not violate the Double Jeopardy Clause because Taxpayer was treated like any other taxpayer who failed to pay tax on income, whether obtained legally or illegally.

***Daniel Paul Flynn v. Commissioner of Rev.*, 2015 ATB Adv. Sh. 395 (July 20, 2015)**

Tax Year: 2008

The ATB ruled it did not have jurisdiction over pro se Taxpayer's 2008 abatement claim because Taxpayer failed to file a 2008 Massachusetts tax return and, instead, upon receiving a request to file a return, Taxpayer advanced "frivolous legal arguments" to claim he was not required to file a return. Although lacking jurisdiction, the ATB described Taxpayer's arguments as the same "hollow statutory and constitutional claims" that had been "summarily rejected" when previously advanced by other tax protesters.

***Jonathan Haar v. Commissioner of Rev.*, 2014 ATB Adv. Sh. 515 (July 23, 2014), *on appeal with Mass. App. Ct.*, Docket No. 2014-P-1725**

Tax Year: 2010

Taxpayer filed an application for an automatic six-month extension of time to file his Massachusetts income tax return for 2010, but failed to submit the application and accompanying payment electronically, in violation of TIR 04-30. The Taxpayer claimed that he had reasonable cause for his failure to comply with TIR 04-30 because of his privacy concerns regarding electronically transmitting personal financial information. The ATB agreed. The Commissioner has appealed. *See* Mass. App. Ct., Docket No. 2014-P-1725.

***Matthew J. Nasuti v. Commissioner of Rev.*, 2015 ATB Adv. Sh. 544 (Oct. 5, 2015)**

Tax Years: 2006-2008

The primary issue was whether pro se Taxpayer was entitled to certain trade or business expense deductions disallowed by the Commissioner. For the 2007 tax year, the ATB found Taxpayer was engaged in a law business and allowed deductions for certain expenses related to his law business. The ATB, however, denied deductions for Spanish language-immersion programs because Taxpayer failed to demonstrate his travel to Spain and Peru for the programs was ordinary and necessary for the practice of law or that such programs were the ordinary or necessary means of learning Spanish. For the 2008 tax year, the ATB denied Taxpayer's deductions relating to his law business because there was no evidence indicating Taxpayer was engaged in that business. The ATB also denied Taxpayer's deduction for unreimbursed expenses related to his work at the State Department because he did not show he was entitled to seek

reimbursement for the expenses from his employer and thus failed to show the expenses were necessary.

Additionally, the ATB held Taxpayer was subject to tax on early distributions from his IRA and could not claim his mother as a qualified dependent because he did not offer any evidence with respect to either of these issues.

***William H. Phillips, Jr. v. Commissioner of Rev.*, 2015 ATB Adv. Sh. 113 (Mar. 20, 2015)**

Tax Year: 2007

The ATB found and ruled that it lacked jurisdiction over husband and wife Taxpayers' abatement claims because (1) Taxpayers' failed to timely file an appeal under G.L. c. 62C, § 39 after the Commissioner denied Taxpayers' first abatement application and (2) Taxpayers were barred from filing an appeal from the date of their second abatement application because it was an "impermissible second application" that failed to provide the information requested by the Commissioner.

***Sarah P. Thayer v. Commissioner of Rev.*, 2014 ATB Adv. Sh. 1184 (Dec. 17, 2014)**

Tax Years: 2006-2008

The ATB rejected Taxpayer's argument that she was entitled to deductions for certain expenses related to her horse-training activities. Taxpayer, a surgeon and assistant professor, owned and trained horses for sale or lease during the tax years at issue. Taxpayer testified that during the tax years at issue she spent 25 to 29 hours a week riding and training her horses and had expenses associated with her horses of over $100,000 each year.

In upholding the Commissioner's denial of deductions for the horse-related expenses, the ATB ruled that an IRS auditor's determination that Taxpayer conducted the horse-related activities as a trade or business was not binding for Massachusetts tax purposes, despite the fact that Massachusetts courts look to federal law to determine whether a taxpayer is engaged in a trade or business. Citing *National Grid USA Service Company, Inc.*, the ATB held that it must weigh the "facts and circumstances" to determine whether Taxpayer was engaged in a trade or business. The ATB found Taxpayer's horse-related activities to be in the "nature of a hobby" pursued for recreational benefits. The ATB relied on the following facts and subsidiary conclusions to support its finding: (1) Taxpayer failed to use her records to evaluate and improve the financial performance of her horse-related activities; (2) Taxpayer did not make adjustments to improve profitability after one of her horses was injured and another became ill; (3) Taxpayer failed to develop expertise in the economics of training, leasing and selling horses; (4) Taxpayer would have undertaken the horse-related activities, whether or not she had a profit motive; (5) potential profits from the horse-related activities were based on a speculative sale of a single horse; (6) the horse-related activities generated minimal and occasional receipts; (7) Taxpayer subsidized the horse-related activities through her work as a doctor; and (8) the small possibility of profit was minimal in relation to the possibility of gratification from the activities.

Selected Property Tax

Appellate Court Decisions

***Cape Cod Shellfish & Seafood Company, Inc. v. Boston*, 86 Mass. App. Ct. 651 (Nov. 12, 2014)**

Plaintiffs, several wholesale fish and seafood businesses, leased properties from Massport. After the leases expired, Plaintiffs continued to pay rent and occupy the properties. Plaintiffs argued following the expiration of the leases they were no longer lessees of the properties and, as such, were not subject to property tax. Pursuant to Massachusetts law, a lessee of Massport property is subject to property tax on the leased property only if it leases the property for business purposes.

The Appeals Court disagreed and held the Plaintiffs continued to be lessees under the leases because each lease expressly stated the conditions for continued tenancy after expiration of the lease. Thus, after expiration of the term, Plaintiffs continued to be lessees by occupying the property pursuant to the express terms of the lease. As such, Plaintiffs were liable for property tax during that period.

***Russell Block Associates v. Bd. of Assessors of Worcester*, 88 Mass. App. Ct. 351 (Sept. 16, 2015)**

Tax Year: 2012

The Appeals Court held the ATB did not err in ruling a garage owned by Taxpayer was properly classified as mixed-use property, and not classified solely as commercial property. The garage was built in connection with Taxpayer's development of a residential tower. Parking spaces in the garage were reserved for tenants of the tower and the garage was constructed as a required part of the tower development (for both zoning and lending purposes). For these reasons, the Appeals Court held the portion of the garage reserved for tenants of the tower qualified as residential property because that portion of the garage was an accessory building "incidental to habitation." The Appeals Court next held that the garage satisfied the "exclusive use requirement" because that requirement is appropriately read to refer to the portion of the garage "used exclusively for residential accessory purposes" — not the garage as a whole. The Appeals Court noted that adopting the interpretation presented by the assessor would disregard the "provision for mixed-used classifications."

***Community Involved in Sustaining Agriculture, Inc. v. Bd. of Assessors of Deerfield*, 86 Mass. App. Ct. 1119 (Nov. 10, 2014) (Rule 1:28), *rev'g* 2013 ATB Adv. Sh. 395 (May 28, 2013), *further appellate review denied*, 470 Mass. 1108 (Jan. 30, 2015)**

Tax Year: 2010

Taxpayer, a Massachusetts non-profit corporation and 501(c)(3) organization, is organized to support the advancement of understanding of farms and farming and to educate farmers, consumers, and the public on issues related to farming. The Appeals Court held the ATB "erred in its legal conclusion" that Taxpayer was not a charitable organization and thus not entitled to a charitable property tax exemption. The Appeals Court instead found Taxpayer "more closely resembles" a traditional charitable organization than a commercial business. The Appeals Court found Taxpayer's programs benefited an indefinite number of people, not just its members, because its activities help decrease food insecurity and develop sustainable agriculture. By providing literature regarding sustainable agriculture and food to citizens who might otherwise

lack access to fresh local food, the Appeals Court held Taxpayer's programs helped lessen the burdens of many governmental agencies.

Appellate Tax Board Decisions

***Forrestall Enterprises, Inc. v. Bd. of Assessors of Westborough*, 2014 ATB Adv. Sh. 1025 (Dec. 4, 2014)**

Tax Years: 2012-2013

The ATB held Taxpayer's solar systems were exempt from property tax under G.L. c. 59, § 5, cl. forty-fifth. The ATB held the Department of Revenue's interpretation of Clause forty-fifth — that it only applies to solar property located on the same parcel or a contiguous parcel to the property it is intended to power and that is not connected to the power grid — was incorrect. According to the ATB, the Department of Revenue's interpretation was inconsistent with the plain language of Clause forty-fifth and inconsistent with the overall purpose of the statute.

***Shrine of Our Lady of LaSalette v. Bd. of Assessors of Attleboro*, 2015 ATB Adv. Sh. 454 (Sept. 9, 2015)**

Tax Year: 2013

Taxpayer, a Massachusetts non-profit religious organization, sought abatement for real estate taxes imposed on portions of its property under G.L. c. 59, § 5, cl. eleventh, which exempts houses of religious worship from property tax. The ATB, in agreeing with the assessor, held that the subject property was not exempt "in its entirety" under Clause eleventh because the evidence showed that certain portions of the property were regularly and frequently used for purposes other than religious worship or instruction, such as fundraising activities and private functions. The ATB therefore upheld the mixed usage classification of the assessor.

Taxpayer, by conceding it failed to file the appropriate jurisdictional forms, waived its claim for property tax exemption under G.L. c. 59, § 5, cl. third, which generally exempts property owned by a charitable organization from property tax.

***Verizon New England, Inc. v. Bd. of Assessors of Boston*, RCN Becocom LLC v. Bd. of Assessors of Boston, 2015 ATB Adv. Sh. 335 (June 26, 2015), *on appeal with Mass. App. Ct.*, Docket No. 2015-P-0009**

Tax Year: 2012

The ATB held that Taxpayers failed to prove personal property tax assessments imposed on their property by the City of Boston violated the Massachusetts Constitution. Taxpayers first argued that, with respect to personal property, the differential tax rate scheme implemented by St. 1979, c. 797, unconstitutionally exceeds the authority granted to the legislature under constitutional amendment Article 112 because Article 112 is silent with respect to personal property. In rejecting this argument, the ATB relied on an opinion of the Justices of the SJC that held the differential tax rate scheme comported with applicable constitutional requirements.

Taxpayers also argued they paid a disproportionate portion of the property tax assessments made by the City of Boston in violation of Article 10 of the Declaration of Rights. Article 10 requires each person to pay "his share" of the state's expenses and has been interpreted to forbid "imposition upon one taxpayer of a burden relatively greater or relatively less than that imposed upon other taxpayers." The ATB held the assessments did not violate Article 10 because

Taxpayers' "share" of property tax assessments, in this context, meant Taxpayers' share of the total tax levy determined by "a constitutionally sound, classification based, system of local property taxation."

Taxpayer has appealed the ATB's decision. *See* Mass. App. Ct., Docket No. 2015-P-0009.