These are consolidated appeals filed under the formal procedure pursuant to G.L. c. 58A, §§ 6 and 7, G.L. c. 59, §§ 64 and 65, from the refusal of the appellee, the Board of Assessors of the City of Boston (the “assessors” or “appellee”), to abate taxes on certain personal property located in the City of Boston owned by and assessed to Verizon New England, Inc. (“Verizon NE”) and RCN Becocom LLC (“RCN LLC”) (together, the “appellants”) under G.L. c. 59, §§ 18 and 38, for fiscal year 2012.

Commissioner Scharaffa heard these appeals, and he was joined in the Corrected Decision for the appellee by Chairman Hammond and Commissioners Rose and Good. Commissioner
Chmielinski did not participate in the deliberations of or decisions in these appeals.

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

William A. Hazel, Esq. and James F. Ring, Esq. for the appellants.

Anthony M. Ambriano, Esq. for the appellee.

Daniel A. Shapiro, Esq. and Donald E. Gorton, III, Esq. for the Amicus Curiae, Commissioner of Revenue.

FINDINGS OF FACT AND REPORT

Introduction and Jurisdiction

For fiscal year 2012, the City of Boston adopted a percentage shift in its tax levy on real and personal property in favor of the residential and open-space real property classes, in accordance with G.L. c. 40, § 56 (“Section 56”), and assessed tax on personal property situated in Boston at a rate equal to that applied to commercial and industrial real property classes consistent with the statutory scheme in G.L. c. 40 and c. 59.\(^1\) The appellants brought these appeals for fiscal year 2012 to contest the assessors’ imposition of a $31.92 tax rate on the appellants’ personal property situated in Boston, which the Commissioner of Revenue (the “Commissioner”) had centrally

\(^1\) The relevant sections of the statutes referenced in this part of the Findings of Fact and Report are set forth in the Opinion, infra.
valued under G.L. c. 59, § 39 ("Section 39"). In these appeals’
the appellants did not contest the values that the Commissioner
ascribed to that personal property or the assessors’ adoption of
those values. Rather, the appellants argued that the assessors’
imposition of the $31.92 tax rate on their centrally valued
personal property situated in Boston had resulted in that
personal property being disproportionately taxed in violation of
Mass. Const. Pt. II, ch. 1, § 1, art. 4 ("Article 4"); Pt. I,
and the appellants being obligated to pay more than their
"share" of property taxes under Mass. Const. Pt. I, art. 10
("Article 10 of the Declaration of Rights").

On the basis of a Statement of Agreed Facts and the
Exhibits incorporated therein, which the parties’ agreed
constitutes the complete evidentiary record for these appeals,
the Appellate Tax Board (the “Board”) made the following
findings of fact.

Pursuant to G.L. c. 58, § 1A, the Commissioner is directed
to determine, within each of the Commonwealth’s cities and towns
(the “municipalities”), whether locally assessed values
represent the full and fair cash valuation for each class of
real property, as defined in G.L. c. 59, § 2A, and personal
property not exempt from local taxation. For each municipality
which the Commissioner determines is taxing at full and fair
cash valuation, the Commissioner also ascertains a minimum
residential factor (the “MRF”). On or before April first of each year in which there is to be a determination of the percentages of the local tax levy to be borne by each class of real property and by personal property in accordance with Section 56, the Commissioner sends the approved values and the MRF to the municipalities. Pursuant to Section 56, the Commissioner must certify triennially whether a board of assessors is assessing property at full and fair cash valuation. Once so certified, a municipality may classify property in the manner set forth in section 56 for not only the year of certification but also the succeeding two years.

On December 18, 2009, the Commissioner certified that the assessors were assessing the real and personal property situated in Boston at full and fair cash valuation for fiscal year 2010 and that certification remained in effect for fiscal year 2012. For fiscal year 2012, Boston elected to adopt a split tax rate based upon classification under Section 56. The assessors determined the percentages of local tax levy to be borne by each class of real property, as defined in G.L. c. 59, § 2A, and personal property. The percentages, as shown on Boston’s LA-5 Form for fiscal year 2012,\(^2\) and the fiscal year 2012 tax rates resulting from Boston’s elections, were as follows:

\(^2\) In accordance with IGR No. 10-401 “Guidelines for Annual Assessment and Allocation of Tax Levy,” Boston submitted Form LA-5 “Classification Tax Allocation” to the Commissioner’s Bureau of Accounts.
<table>
<thead>
<tr>
<th>Classification</th>
<th>Percentage</th>
<th>Tax Rate per Thousand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>38.7353%</td>
<td>$13.04</td>
</tr>
<tr>
<td>Open Space</td>
<td>0.0000%</td>
<td>$0.00</td>
</tr>
<tr>
<td>Commercial</td>
<td>50.9987%</td>
<td>$31.92</td>
</tr>
<tr>
<td>Industrial</td>
<td>1.3352%</td>
<td>$31.92</td>
</tr>
<tr>
<td>Personal</td>
<td>8.9308%</td>
<td>$31.92</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

For fiscal year 2012, the assessors complied with all procedural requirements of Section 56 to adopt the percentages of the local tax levy to be borne by each class of real property and by personal property. On December 12, 2011, the Commissioner, taking into account the elections made by Boston under Section 56, the Boston expenditures for fiscal year 2012, the total values of each class of real property and personal property situated in Boston as of January 1, 2011, and other relevant data submitted to her by Boston or otherwise obtained, approved, and ultimately certified, Boston’s fiscal year 2012 tax rates.

The following table summarizes the salient information set forth in the Commissioner’s State Tax Form 31C entitled “Tax Rate Recapitulation of Boston” (“Form 31C”) for fiscal year 2012.
<table>
<thead>
<tr>
<th>Class</th>
<th>Levy Percentage</th>
<th>Valuation by Class</th>
<th>Tax Rates per Thousand</th>
<th>Levy by Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential</td>
<td>38.7353%</td>
<td>$57,517,785,281</td>
<td>$13.04</td>
<td>$625,063,441.89</td>
</tr>
<tr>
<td>Net of Exempt</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Open Space</td>
<td>0.0000%</td>
<td>0</td>
<td></td>
<td>0.00</td>
</tr>
<tr>
<td>Commercial</td>
<td>50.9987%</td>
<td>$25,790,869,236</td>
<td>$31.92</td>
<td>$823,244,546.01</td>
</tr>
<tr>
<td>Net of Exempt</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industrial</td>
<td>1.3352%</td>
<td>$675,290,093</td>
<td>$31.92</td>
<td>$21,555,259.77</td>
</tr>
<tr>
<td>SUBTOTAL</td>
<td>91.0692%</td>
<td>$83,983,944,547</td>
<td></td>
<td>$1,469,863,247.67</td>
</tr>
<tr>
<td>Personal</td>
<td>8.9308%</td>
<td>$4,516,465,740</td>
<td>$31.92</td>
<td>$144,165,586.42</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100.0000%</td>
<td>$88,500,410,287</td>
<td></td>
<td>$1,614,028,834.09</td>
</tr>
</tbody>
</table>

As determined by the assessors under G.L. c. 59, § 38, and as certified by the Commissioner in accordance with G.L. c. 58, § 1A, and as indicated on Form 31C for fiscal year 2012: the total fair cash value of all taxable real and personal property situated in Boston was $88,500,410,287; the fair cash value of all taxable personal property situated in Boston was $4,516,465,740; the fair cash value of all real property situated in Boston was $83,983,944,547; the fair cash value of all real property situated in Boston and classified as commercial and industrial (the “CI classes”) was $26,466,159,329; and the fair cash value of all real property situated in Boston and classified as commercial and industrial, plus all personal property (the “CIP classes”) was $30,982,625,069.

As further indicated on Form 31C for fiscal year 2012: the total Boston tax levy to be raised through the assessment of all taxable real and personal property was $1,614,028,834.09; the
portion of the Boston tax levy that was to be raised through the assessment of personal property was $144,165,586.42; the portion of the Boston tax levy that was to be raised through the assessment of real property was $1,469,063,247.67; the portion of the Boston tax levy that was to be raised through the assessment of the CI classes was $844,799,805.78; and the portion of the Boston tax levy that was to be raised through the assessment of the CIP classes was $988,965,392.20.

Based on these underlying amounts, personal property constituted 8.9308% of the Boston tax levy for fiscal year 2012, but accounted for only 5.1033% of the total valuation of all real and personal property situated in Boston. For fiscal year 2012, personal property made up approximately 14.577% of the portion of the Boston tax levy attributable to the CIP classes and accounted for that same percentage, approximately 14.577%, of the total valuation attributable to property in the CIP classes. Residential property made up 38.7353% of the Boston tax levy for fiscal year 2012, but accounted for 64.9915% of the total valuation of all real and personal property situated in Boston.

At all relevant times, Verizon NE was a New York corporation with a principal place of business in Massachusetts. RCN LLC was a Delaware limited liability company with a principal place of business in Boston.

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3 The Board has rounded most of the percentages appearing in these findings.
principal place of business in Massachusetts. Both Verizon NE and RCN LLC owned taxable personal property in Boston and were assessed personal property taxes by the assessors for fiscal year 2012 and paid those taxes based on the $31.92 rate imposed by Boston on personal property.

As of January 1, 2011, Verizon NE was a “foreign corporation subject to taxation under section . . . fifty two A . . . of . . . chapter 63,” G.L. c. 59, § 5 (16)(1)(d); was subject to property tax only upon its “real estate, poles, underground conduits, wires and pipes, and machinery used in manufacture or in supplying or distributing water” id.; and owned no personal property which was required to be reported to the assessors on a Form of List. Accordingly, Verizon NE timely reported all of its taxable personal property to the Commissioner on a Form 5941. As a limited liability company, RCN LLC timely reported some of its taxable personal property to the assessors on a Form of List and some of its taxable personal property to the Commissioner on a Form 5941.4 The appellants used or held the personal property for use for business purposes.

Pursuant to Section 39, the Commissioner must determine and certify the valuation at which the machinery, poles, wires, and underground conduits, wires and pipes of all telephone and

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4 RCN LLC is not challenging here the valuation or assessment on its personal property reported to the assessors on the Form of List.
telegraph companies shall be assessed by the respective municipalities where such property is subject to taxation. The Commissioner describes the property that she centrally values under Section 39 as personal property. On May 13, 2011, the Commissioner provided her certified valuations, as of January 1, 2011, of the property of the telephone and telegraph companies that she had centrally valued under Section 39 to affected Boards of Assessors, including the values of the appellants’ centrally valued personal property situated in Boston to the assessors. Consistent with the valuations provided to the assessors by the Commissioner for fiscal year 2012, the assessors assessed as personal property the property of the appellants situated in Boston that had been centrally valued by the Commissioner under Section 39.

For fiscal year 2012, the Commissioner centrally valued Verizon NE’s personal property situated in Boston at $215,846,800. The assessors assessed a tax thereon, at the rate of $31.92 per thousand, in the total amount of $6,889,829.86. For fiscal Year 2012, the Commissioner centrally valued RCN LLC’s personal property that was situated in Boston and reported to her on RCN LLC’s fiscal year 2012 Form 5941 at $48,444,900. The assessors assessed a tax thereon, at the rate of $31.92 per thousand, in the total amount of $1,546,361.21.
The appellants timely paid all personal property tax due on their centrally valued personal property situated in Boston without incurring interest. On January 30, 2012, the appellants timely filed with the assessors abatement applications which the assessors denied on March 27, 2012 for Verizon NE and on April 4, 2012 for RCN LLC. Verizon NE seasonably appealed the denial to this Board on June 25, 2012, and RCN LLC seasonably appealed its denial to this Board on July 2, 2012. On the basis of these facts and findings, the Board found that it had jurisdiction over these appeals.

The Appellants’ Centrally Valued Personal Property

The value ascribed to Verizon NE’s centrally valued personal property situated in Boston for fiscal year 2012 was approximately 0.2439% of the total valuation of all real and personal property situated in Boston. The personal property tax assessed against and paid by Verizon NE for its centrally valued personal property situated in Boston for fiscal year 2012 was approximately 0.4269% of the Boston tax levy for fiscal year 2012. The value ascribed to RCN LLC’s centrally valued personal property situated in Boston for fiscal year 2012 was approximately 0.0547% of the total valuation of all real and personal property situated in Boston. The personal property tax assessed against and paid by RCN LLC for its centrally valued personal property situated in Boston for fiscal year 2012 was
approximately 0.0958% of the Boston tax levy for fiscal year 2012.

The appellants asserted that the respective percentages of their centrally valued personal property for fiscal year 2012 compared to the total valuation of all real and personal property situated in Boston for fiscal year 2012 should also be their respective percentages of the Boston tax levy for fiscal year 2012. Consequently, they contended that the assessors should have applied a tax rate of $18.24 per thousand to the respective values of their centrally valued personal property situated in Boston for fiscal year 2012, resulting in a personal property tax of $3,937,045.63 for Verizon NE and a personal property tax of $883,634.98 for RCN LLC for their centrally valued personal property situated in Boston for fiscal year 2012. Accordingly, Verizon NE sought a tax abatement for fiscal year 2012 in the amount of $2,952,784.23, while RCN LLC sought a tax abatement for fiscal year 2012 in the amount of $662,726.23.

However, the value ascribed to Verizon NE’s centrally valued personal property situated in Boston for fiscal year 2012 was approximately 0.6966% of the total valuation of property in the CIP classes situated in Boston for fiscal year 2012. The personal property tax assessed against and paid by Verizon NE for its centrally valued personal property situated in Boston for fiscal year 2012 was also approximately 0.6966% of the total
taxes levied on the property in the CIP classes for fiscal year 2012. Therefore, Verizon NE’s share of the Boston tax levy was proportional to that of all other CIP property situated in Boston.

In addition, the value ascribed to Verizon NE’s centrally valued personal property situated in Boston for fiscal year 2012 was approximately 4.78% of the total valuation of personal property situated in Boston for fiscal year 2012. The personal property tax assessed against and paid by Verizon NE for its centrally valued personal property situated in Boston for fiscal year 2012 was also approximately 4.78% of the total taxes levied on all the personal property situated in Boston for fiscal year 2012. Therefore, Verizon NE’s share of the Boston tax levy was proportional to that of all other personal property situated in Boston.

Moreover, the value ascribed to RCN LLC’s centrally valued personal property situated in Boston for fiscal year 2012 was approximately 0.156% of the total valuation of property in the CIP classes situated in Boston for fiscal year 2012. The personal property tax assessed against and paid by RCN LLC for its centrally valued personal property situated in Boston for fiscal year 2012 was also approximately 0.156% of the total taxes levied on the property in the CIP classes for fiscal year 2012. Therefore, RCN LLC’s share of the Boston tax levy was
proportional to that of all other CIP property situated in Boston.

In addition, the value ascribed to RCN LLP’s centrally valued personal property situated in Boston for fiscal year 2012 was approximately 1.07% of the total valuation of personal property situated in Boston for fiscal year 2012. The personal property tax assessed against and paid by RCN LLC for its centrally valued personal property situated in Boston for fiscal year 2012 was also approximately 1.07% of the total taxes levied on all the personal property situated in Boston for fiscal year 2012. Therefore, RCN LLC’s share of the Boston tax levy was proportional to that of all other personal property situated in Boston.

In sum, even though the appellants’ percentage share of the Boston tax levy for its centrally valued personal property situated in Boston exceeded that property’s percentage share of the total value of all real and personal property situated in Boston, when compared to other real and personal property situated in Boston used for business purposes, namely commercial, industrial, and other personal property, the percentages are identical.

The Board’s Ultimate Findings

On the basis of these facts and findings, and as explained more fully in its Opinion below, the Board found and ruled that
the appellants failed to carry their burden of proving that for fiscal year 2012 the tax assessments placed by the assessors on the appellants’ centrally valued personal property situated in Boston were improper or erroneous. In conjunction with this determination, the Board also found and ruled that the appellants failed to prove that for fiscal year 2012 the statutory scheme employed by the Commissioner and the assessors for valuing and assessing property tax on centrally valued personal property situated in Boston did not pass Constitutional muster. Rather, the Board found that the statutory scheme devised by the Legislature and implemented by the Commissioner and municipalities furthered the legislative goal of favoring residential real estate and resulted in a rational and systematic way to achieve a real and personal property taxing regime at the local level using a split tax rate entirely consistent with applicable constitutional limitations. The Board also found that this statutory scheme was narrowly tailored to further the legitimate and compelling governmental interest of assuring that local property taxes are based on a full and fair cash valuation standard, are proportional within classes, treat all commercial property the same, and favor residential property.

Underlying these findings were the Board’s determinations that the appellants’ centrally valued personal property situated
in Boston was not disproportionately taxed because the assessors had certifiably valued all real and personal property in Boston at its full and fair cash value, and the tax rate applied to the appellants’ centrally valued personal property situated in Boston was identical to that of all commercial, industrial, and other personal property situated in Boston. Accordingly, the Board also determined that the appellants’ share of the Boston tax levy attributable to its centrally valued personal property situated in Boston for fiscal year 2012 was proportional to that of all other personal and CIP property situated in Boston. The Board additionally found and ruled that it is permissible and proper under the Massachusetts Constitution to use a split tax rate to favor residential and open space property over commercial, industrial, and personal property and to apply the same higher tax rate to commercial, industrial, and personal property.

The Board therefore issued a Corrected Decision for the appellee in these appeals.

OPINION

The Appellants’ Claims

The appellants’ petitions make two associated claims in challenging the fiscal year 2012 property tax assessments placed on their centrally valued personal property situated in Boston.
First, they contend that the tax rate imposed on their taxable personal property resulted in their “being assessed in a disproportionate manner . . . in violation of [Article 4].” And second, this purported violation “has resulted in the [appellants] being assessed and required to pay . . . personal property tax[es] that exceed [their] share[s] of the total tax levy raised by Boston for fiscal year 2012 contrary to [Article 10 of the Declaration of Rights].” Consequently, they sought an abatement of “any such disproportionate portion” of the personal property taxes assessed against them.

More particularly, the appellants argued that because the 1979 property tax classification amendment, article 112 (“Article 112”), is silent as to personal property, such property is not subject to the differential tax rate scheme implemented by St. 1979, c. 797 (“Chapter 797”) amending, primarily, Section 56 and G.L. c. 59. Moreover, the appellants asserted that for any given fiscal year, the percentage of the tax levy that may be constitutionally assessed against taxable personal property by any municipality must be derived by dividing the fair cash value of all taxable personal property situated in a municipality by the total fair cash value of all the taxable real and personal property. Therefore, the appellants contended that their centrally valued personal property situated in Boston should have been taxed at a “factor
of one,” or, what amounts to, an unclassified rate of $18.24 per thousand.

The Appellants’ Burden of Proof

The appellants challenged the classification scheme and taxation mechanism adopted by the Legislature through Chapter 797, to the extent that it applies the same tax rate to personal property that it applies to real estate classified as commercial or industrial. The appellants did not contest the amount of the Levy or the assessed values applied to their centrally values personal property situated in Boston, or maintain that they were victims of an intentional scheme. Rather, they claimed that the implementing legislation is unconstitutional because it exceeds the authority granted by the constitutional amendment, article 112, ratified by the people in 1978 (“Article 112”).

“It is a general principle of constitutional law that the provisions of a written constitution are not grants of power from the people to the government, but are limitations upon a power that would otherwise be absolute.” P.Nichols, Taxation In Massachusetts, at 111, (3rd Ed. 1938). “In addressing a constitutional challenge to a tax measure, we begin with the premise that the tax is endowed with a presumption of validity and is not to be found void unless its invalidity is established beyond a rational doubt.” Andover Savings Bank v. Comm’r of Revenue, 387 Mass. 229, 235 (1982). See also Opinion of the

In judicial review of legislative acts alleged to be unconstitutional, “statutes that do not collide with a fundamental [constitutional] right are subject to a ‘rational basis’ standard of judicial review.” See Goodridge v. Department of Pub. Health, 440 Mass. 309, 330 (2003). The rational basis standard requires merely that a statute be reasonably related to the furtherance of a valid State interest to be constitutionally sound. See Id. “[W]here a statute unjustifiably burdens the exercise of a fundamental right... , the standard of review appl[ied] is strict judicial scrutiny.” Gillespie v. Northampton, 460 Mass. 148, 153 (2011). Under this standard, a statute must be “narrowly tailored to further a legitimate and compelling government interest.” Id. The appellants have not advanced the argument that there is a
“fundamental right” to have their centrally valued personal property situated in Boston used for business purposes taxed differently from real estate classified as commercial and industrial.

In addition, the appellants have not fashioned or labelled their constitutional challenge as either a “facial” or an “as-applied” challenge. See, generally, WB&T Mortgage Co., Inc. v. Assessors of Boston, Mass. ATB Findings of Fact and Reports 2006-379, 408-13, aff’d 451 Mass. 716 (2008). A statute is facially unconstitutional where “‘no set of circumstances exist under which the Act would be valid.’” Id. at 2006-409 (quoting United States v. Salerno, 481 U.S. 739 (1987). An as-applied challenge presents a claim that the statute at issue “‘may be constitutional as applied to some states of facts and violative to rights secured by fundamental law as applied to other states of facts.’” Id. (quoting Magee v. Comm’r of Corporations & Taxation, 256 Mass. 512, 518 (1926). “Where a statute is unconstitutional ‘as applied’ to certain facts, the statute itself is not invalid; rather, it is ‘left for full force as to all subjects which it may constitutionally govern.’” Id. at 2006-409-410 (quoting Thurman v. Chicago, M. & St. P. Ry. Co., 254 Mass. 569, 575 (1926). “‘A statute survives scrutiny if it may reasonably be applied in ways that do not violate constitutional safeguards.’” WB&T Mortgage Company, Inc. v.

The Board found and ruled that the appellants’ challenge in these appeals is a facial attack on the split tax rate percentage calculations authorized by Section 56. “A facial challenge to the constitutional validity of a statute is the ‘weakest form of challenge, and the one least likely to succeed.’” WB&T Mortgage Co., Inc., Mass. ATB Findings of Fact and Reports at 2006-408-13 (quoting Blixt v. Blixt, 437 Mass. 649, 652 (2002)). “If the statute in question ‘may reasonably be applied in ways that do not violate constitutional safeguards, then . . . the . . . provisions escape a facial constitutional challenge.’” Id. at 2006-408-09 (quoting Route One Liquors, Inc. 439 Mass. at 118). “[T]he challenging party must demonstrate beyond a reasonable doubt that there are no ‘conceivable grounds’ which could support its validity.” Leibovich v. Antonellis, 410 Mass. 568, 576 (1991) (quoting Zeller v. Cantu, 395 Mass. 76, 84 (1985)).

When reviewing the constitutionality of a statute, the inquiry “is only to . . . whether the Legislature had the power to enact the statute and not whether the statute is wise or efficient.” Pielech v. Massasoit Greyhound, Inc., 441 Mass. 188, 193 (2004).
Historical Perspective

Prior to its 1978 amendment, Article 4 of the Massachusetts Constitution empowered the Legislature “to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within said commonwealth . . . .” With respect to taxes, Article 4 “forbids their imposition upon one class of persons or property at a different rate from that which is applied to other classes, whether that discrimination is effected directly in the assessment or indirectly through arbitrary and unequal methods of valuation.” Cheshire v. County Comm’rs of Berkshire, 118 Mass. 386, 389 (1875). Article 10 of the Declaration of Rights states, “Each individual . . . has a right to be protected . . . in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection . . . .” (Emphasis added). The phrase “his share” in Article 10 of the Declaration of Rights “forbids the imposition upon one taxpayer of a burden relatively greater or relatively less than that imposed upon other taxpayers.” Bettigole v. Assessors of Springfield, 343 Mass. 223, 230 (1961) (citing Opinion of Justices, 332 Mass. 769, 777 (1955)). Therefore, “[a]n intentionally made, widely disproportionate assessment would constitute a gross violation of ‘a fundamental
constitutional limitation upon the power . . . to impose property taxes.'” Stone v. Springfield, 341 Mass. 246, 248 (1960)(quoting Opinion of the Justices, 324 Mass. 724, 728 (1940)).

Notwithstanding these limitations on favoritism, in practice, boards of assessors routinely engaged in intentionally disproportionate assessment schemes employing varying percentages of fair cash values favoring residential properties at the expense of commercial and industrial properties. See Bettigole, 343 Mass. at 227-28. The Supreme Judicial Court declared the assessments illegal and voided them and enjoined their collection. Id. at 237. Subsequent Supreme Judicial Court decisions held that disproportion claims could be raised in abatement proceedings before the Board which could then reduce assessments to the percentage at which others were taxed, Shoppers World, Inc. v. Assessors of Framingham, 348 Mass. 223 (1965), and discussed the nature and quantum of evidence necessary to demonstrate disproportionate assessment. First National Stores, Inc. v. Assessors of Somerville, 358 Mass. 554 (1971). The Supreme Judicial Court also declared in Town of Sudbury v. Comm’r of Corporations and Taxation, 366 Mass. 558 (1974), that the Commissioner had the statutory power to direct assessors to revalue and attain assessment uniformity on a statewide basis.
“[A]midst the accelerated judicial enforcement of the fair cash valuation requirement, there was public challenge to the concept of 100% valuation,” Keniston v. Assessors of Boston, 380 Mass. 888, 890 (1980) (citation omitted), culminating in the constitutional amendment, Article 112, ratified by the people in 1978. Article 112 added, after the words, “proportional and reasonable assessments, rates and taxes,” in Article 4:

except that, . . . . the general court may classify real property according to its use in no more than four classes and . . . . assess, rate and tax such property differently in the classes so established, but proportionately in the same class, and except that reasonable exemptions may be granted.

The Legislature went through several statutory iterations attempting to put flesh on the bones of the new constitutional standard. Initially, the Legislature enacted enabling legislation to implement this classification amendment, effective for fiscal year 1980, in the event that the amendment was approved. St. 1978, c. 580 (“Chapter 580”). This “shelf” legislation used different ratios of fair cash value to establish assessed values and taxes in each of four classes of real property for every municipality.\(^5\) The primary rub with this approach was that it deprived municipalities of the power to decide how to allocate the tax burden among classes of property situated within their boundaries.

\(^5\) The different, statutorily fixed, ratios of fair cash value were: 40% for residential; 25% for open space; 50% for commercial; and 55% for industrial.
Chapter 580 was never implemented, as the Legislature postponed the effective date, St. 1979, c. 578, and ultimately repealed the law, St. 1979, c. 797, § 23. Before the repeal of Chapter 580, however, the Supreme Judicial Court sustained its constitutionality in *Associated Industries of Massachusetts v. Comm’r of Revenue*, 378 Mass. 657 (1979).

In 1979, in *Opinion of The Justices*, 378 Mass. 802, 811, 815 (1979) ("Opinion"), the Justices upheld the constitutionality of 1979 House Bill No. 6371 ("House Bill No. 6371"), which was adopted with only minor changes as Chapter 797. Under Chapter 797, distribution of the tax levy among various classes of real property is not accomplished by applying varying percentages to the valuations, as had been done under the repealed “shelf legislation,” but rather by adjustments to the tax rates to be applied. Section 56, as appearing in Chapter 797, § 1. Therefore, a “central feature” of the new approach is that it allows municipalities “a limited flexibility to allocate the tax burden among several classes.” *Opinion*, at 806.

The shift to a structure that validly taxed property by usage classification fashioned a system that emulated the

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6 The only change made to House Bill No. 6371, as considered by the Justices, affecting the calculations of various tax rates, was to Section 56. Instead of the fixed 70% residential factor under Chapter 580, that factor is determined by the Commissioner pursuant to G.L. c. 58, § 1A, presumably to better reflect the relative proportions of the real estate classes and personal property among municipalities. The minimum residential factor is now 65%, subject to important qualifications which may lower it to 50%.
pervasive *de facto* classification systems declared unconstitutional in *Bettigole*. The primary objective in both Article 112 and Chapter 797 was to continue in legitimate ways the favoritism in tax burdens historically afforded to residential properties over commercial real property and personal property.

**Constitutionality of House Bill No. 6371**

As previously stated, House Bill No. 6371 allowed municipalities “limited flexibility” to allocate the tax burden among several classes.” *Opinion*, at 806. As part of the new system of taxation, the House Bill created four classes of real property – residential, open space, commercial and industrial – which are defined by their uses. House Bill No. 6371, § 19. Subsequent to Article 112, Article 4 specifically permits the classification of real property according to “use,” but does not mandate any particular use classification or mechanism for shifting the tax burden, such as different assessment rates, different tax rates, or both. “The Constitution of Massachusetts [and amendments thereto] . . . declare[] only fundamental principles as to the form of government. . . . [They are] [] statement[s] of general principles and not a specification of details. [Their] words must be given a construction adapted to carry into effect [their] purpose.” *Trefry v. Putnam*, 227 Mass. 522, 523-24 (1917). “A
constitutional amendment should be ‘interpreted in the light of the conditions under which it . . . [was] framed [and] the ends which it was designed to accomplish.’” *Mazzone v. Attorney General*, 432 Mass. 515, 526 (2000)(quoting *Tax Comm’r v. Putnam*, 227 Mass. 522, 524 (1917)).

In the *Opinion*, the Justices upheld the constitutionality of House Bill No. 6371 in providing a detailed methodology for the determination of the tax rates for all property – real and personal – and as reflecting the Legislature’s judgment on how best to implement Article 112 so “‘the benefits which it was expected to confer and the evils which it hoped to remedy’” could be accomplished. *Mazzone*, 432 Mass. at 526 (quoting *Tax Comm’r v. Putnam*, 227 Mass. at 524).

The first question submitted by the Legislature to the Justices was whether it is constitutionally competent for House Bill No. 6371 to permit the municipalities, within the guidelines established by the bill, to set rates for each class of property within each municipality, and to vary those rates in accordance with the local determination as to how the tax burden should be allocated among the classes. The Justices specifically recognized that House Bill No. 6371 would develop and operate a system “similar in practical effect to those declared unlawful in the *Bettigole* and *Sudbury* cases.” *Opinion*, at 804. The classes of property for which the different tax
“rates” were considered were not just the four classes of real estate established by § 19 of House Bill No. 6371, but rather the rates computed for all classes of real property and for personal property. Section 1 of House Bill No. 6371 specifically provides for the determination by municipalities of “the percentages of the local levy to be borne by each class of [real] property, as defined in section three of chapter fifty-nine, and personal property.” (Emphasis added.)

The process of setting the tax rates for the four classes of real property and for personal property, as provided in § 1 of House Bill No. 6371 (and as now codified in Section 56) and as considered by the Justices, starts with the requirement that the Commissioner certify that the board of assessors is assessing “each class of real property . . . and personal property not exempt from local taxation” at full and fair cash valuation. G.L. c. 58, § 1A. It has been stipulated and the Board ruled that such a certification, which is a “foundation requirement” according to the Justices, Opinion, at 805, 806, was in effect for Boston for fiscal year 2012.

After valuing all the property, the assessors then divide the real property into the four classes established by § 19 of House Bill No. 6371. “This task would be carried out under rules, guidelines, and regulations promulgated by the Commissioner or Revenue.” Opinion, at 806. The Commissioner
then transmits assessed values and classifications to municipalities for use in setting tax rates. *Opinion*, at 807.

Secondly, the municipality determines the portions of the local tax levy “to be borne by each class of property, as defined in section three of chapter fifty-nine [that is, the four classes of real estate established pursuant to § 19 of House Bill No. 6371], and personal property.” House Bill No. 6371, § 1.

Under House Bill No. 6371, each municipality chooses a “residential factor,” which under the House Bill could be as high as 100% but not less than 70%. The “class one,” or residential, percentage of the total tax levy is computed by multiplying the residential factor by a fraction representing the full and fair cash value of all residential real property in the municipality divided by the full and fair cash value of all real and personal property located in the municipality. The “class two,” or open space, percentage is calculated by multiplying 62-1/2% of the residential factor by a fraction representing the full and fair cash value of the open space property divided by the full and fair cash value of all real and personal property. The “class three,” or commercial, percentage is determined by multiplying the difference between 100% and the sum of the class one and class two percentages by a fraction representing the full and fair cash value of the commercial
property divided by the sum of the full and fair cash value of commercial, industrial, and personal property. The “class four,” or industrial, percentage is determined in the same manner as the class three percentage, except the numerator of the fraction is computed using the fair cash value of industrial rather than commercial property. Finally, the personal property percentage is determined by multiplying the difference between 100% and the sum of the class one and class two percentages by a fraction representing the full and fair cash value of the personal property divided by the sum of the full and fair cash value of the commercial, industrial, and personal property. Opinion, at 807. The Board ruled that this formula preserves the requirements that all property be valued at full and fair cash value, insures that all property is treated proportionately within its class, and includes personal property in the fully integrated calculations of percentages.

After determining the various percentages, the third step in the tax rate process requires the assessors to notify municipal officials of the amount to be raised by the tax on real and personal property. That amount is divided among the various classes of property by the use of the percentages. Opinion, at 807-08.
Finally, to determine the tax rate for the several classes, the total amount to be obtained from each class is divided by the total value of the property in that class. *Opinion*, at 808.

The Justices provided a detailed example of the computation of the tax rates for residential, open space, commercial, industrial, and personal property, and observe that as the residential factor is reduced below 100%, a higher share of the total tax burden is borne by commercial, industrial, and personal property. Under § 19 of House Bill No. 6371, the residential could not be less than 70%, and there are severe limits on the permissible extent of variations among classes.\(^7\) “In all cases the rate on open space property will be . . . less than that on commercial, industrial, and personal property, all three of which will be identical.” *Opinion*, at 808 (emphasis added). The Board ruled that the Justices clearly recognized the necessity of including personal property in the rate determination exercise for all classes of real property and personal property situated within the municipality and the equivalence of the personal property rate to that of commercial and industrial property.

The Justices also advised the Legislature that it could constitutionally delegate to the municipalities, under guidelines established in House Bill No. 6371, the authority to

\(^7\) See the second and third sentences in footnote 6, *supra*. 

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set tax rates on the different classes of property and in some degree to vary those rates in accordance with the local determination as to how the tax burden should be allocated among the classes. The Justices described in detail the method for computing the rate for each class, and considered the effect on each class of varying the residential factor, and found no constitutional infirmity. The Board ruled that the Justices were clear in their determination that the “classes” which they were considering were the classes for which tax rates were to be computed under the House Bill, namely the four classes of real property and personal property.

On these bases, the Board ruled that the appellants’ centrally valued personal property here was taxed in the same manner as was sanctioned by the Justices in the Opinion, and that taxation comports with the constitutional requirements. The assessors applied the CIP rate to the appellants’ centrally valued personal property situated in Boston, which equals the rate for real property classified as commercial and industrial. The appellants’ centrally valued personal property situated in Boston was not subject to a higher rate than the highest rate adopted by the community.
The Appellants’ Failed to Demonstrate that the Legislature’s Implementation of Article 112 through Chapter 797 Was Unconstitutional

“A facial challenge to the constitutional validity of a statute is the weakest form of challenge, and the one that is least likely to succeed.” *WB&T Mortgage*, Mass. ATB Findings of Fact and Reports at 2006-408. The Legislature has considerable discretion under the Massachusetts Constitution in matters of taxation. *Opinion of the Justices*, 425 Mass. at 1203. The Legislature’s exercise of this discretion “w[ill] not be declared illegal and void, as being unreasonable, unless . . . plainly and grossly oppressive and unequal, or contrary to common right; nor w[ill] it be held to be disproportional unless it violate[s] clearly and palpably the [applicable] rules of proportion.” *Oliver v. Washington Mills*, 11 Allen 268, 279 (Mass. 1865).

The appellants contended that the tax assessments on their centrally valued personal property situated in Boston resulted in a greater “share” of the Boston tax levy being shifted to them in violation of Article 10 of the Declaration of Rights. However, the Board ruled that Article 10 of the Declaration of Rights, “must be regarded as qualified by Article 112, as amended.” *Associated Indus. of Mass., Inc.*, 378 Mass. at 668 n.23 (1979). In other words, in this context, “his share” in
Article 10 of the Declaration of Rights means the share of the total tax levy borne by a taxpayer through a constitutionally sound, classification-based, system of local property taxation. Further the system installed by the Legislature through Chapter 797 has passed constitutional muster. See Opinion.

Moreover, the Board ruled that, under the rational basis standard requiring that a statute be merely “reasonably related to the furtherance of a valid state interest” to be constitutional, the appellants’ facial challenge failed. The Board found and ruled that the split tax rate property taxing system employed by the assessors here was a reasonable mechanism for furthering the valid state interest of favoring residential real property over commercial property. Furthermore, and assuming arguendo that a “fundamental right” has been implicated, which the appellants did not assert, the Board found and ruled that, even under the strict judicial scrutiny standard of review, the appellants’ challenge would fail. The Board determined that Chapter 797 was narrowly tailored to further a legitimate and compelling governmental interest to assure that local property taxes are proportional within each class of property, are based upon full fair market value assessments, and favor residential property while treating all commercial property the same. Accordingly, the Board ruled that the appellants were not unjustifiably burdened by the property taxes
which the assessors levied upon their centrally valued personal property situated in Boston.

The Appellants’ Remedy Lacks Merit

Article 112 empowered the Legislature “to impose different rates of taxation on different classes of real property, and thus to develop and operate a system which may be similar in practical effect to those declared unlawful in the Bettigole and Sudbury cases.” Opinion, at 804. Consequently, the Board ruled that the longstanding pre-amendment definition of constitutional proportionality under Article 4, and Article 10 of the Declaration of Rights – which precluded the imposition of taxes on one class of property at a different rate from which was applied to other classes – must now be examined in conjunction with the constitutional amendment, Article 112, allowing classification, according to use, of four classes of real property and authorizing the Legislature to “assess, rate and tax the property differently in the classes so established, but proportionately in the same class, . . . .”

The abatements sought by the appellants would require personal property to be taxed at a rate not equivalent to any class of real property; a rate calculated without any regard to the other property classes being taxed to meet the Boston tax levy. Thus, despite the adoption of a community-specific split tax rate, the appellants’ suggested personal property tax rates
are established by what amounts to a statewide formula; one which requires the portion of the tax levy borne by personal property to be equivalent to that property’s share of the municipality’s property tax base. This approach, however, ignores the construction of the constitutional amendment on personal property, which the Supreme Judicial Court adopted in the *Opinion*. For municipalities, like Boston, which elect a split tax rate, constitutional proportionality is modified – a class of real property or personal property’s percentage share of the tax levy is no longer equal to that class of real property or personal property’s percentage share of the total value of all classes of real property and personal property making up the tax levy. Moreover, there is no separate requirement that personal property be treated without regard to the tax levy burden borne by the CI classes. The Board ruled that it is therefore constitutionally acceptable to achieve equivalence between personal property and the split tax rate for the CI classes. See *Opinion*, at 806-08. The Board further ruled that the statutes enacted to implement taxation applying to real property classifications can “reasonably be applied in ways that do not violate” the constitution as amended. *WB&T Mortgage Co., Inc.*, 451 Mass. at 721.
Appellants seek to overcome the necessary implications of the constitutional amendment and implementation legislation with a simple mathematical, “mechanistic” solution that segregates personal property. The Board ruled, however, that proportionality has never been viewed as “mechanistic.”


The Board also ruled that the appellants’ reliance on *Keniston*, 380 Mass. at 895 n.10 (1980) to impose a determination of proportionality based on a strict application of so-called “precise fractions” was misplaced. The *Keniston* case evaluated proportionality without regard for proportionality under the new split rate tax system imposed following the constitutional amendment, Article 112, and dealt only with an interim remedy provision (Section 10 of Chapter 797) to abate disproportionate assessments to the municipal average. Moreover, *Keniston* used
the term, “precise fractions,” only in dicta, and otherwise clearly recognizes that “[n]o tax system has been devised whereby a perfect equalization of its burdens’ can be accomplished.” Keniston, 380 Mass. at 896 (quoting County of Essex v. Newburyport, 254 Mass. 232, 236 (1926)). Lastly, the Court in Keniston clearly confined its analysis of the nature of proportionality to a set of circumstances that did not include the classification system. See, Keniston, 380 Mass. at 895, n.10 (“Section 10 must be judged apart from art. 112, the constitutional amendment authorizing the Legislature to classify property according to its use for the purpose of taxation, . . . .”).

In addition, the Board ruled that the taxation of all property at fair cash value under a split tax rate system has repercussions for personal property. Put simply - personal property can no longer be taxed at a rate equivalent to all other classes of property. The constitutional amendment creates a distinction between residually classified real property and personal property, which does not mean that Section 56 unconstitutionally creates classifications for personal property. All personal property is treated the same; all personal property is taxed at a rate that is not greater than the highest rate for any non-residually classified real
property. There is no constitutional requirement for proportionality which demands that taxable property other than classified real property be taxed at the lowest rate, at an average rate, or at what would have been the single rate.

Furthermore, the Board ruled that it is inconsistent and anomalous to argue that, in accepting proportionality within each class of property, proportionality for real property necessitates proportionality for personal property being determined in isolation. Certainly all personal property must be taxed proportionately to all other personal property, and the appellants never suggested that did not occur under this statutory scheme. A taxpayer who objects merely to the level of taxation of personal property in a particular community, cannot successfully invoke a claim of disproportionate assessment when the tax rate is no greater than the rate applicable to other classes of non-residential property, particularly where, as here, the appellants are being taxed on assets utilized in their commercial businesses.

Moreover, the Board ruled that the appellants’ remedy would actually create disproportionality. To construe proportionality as requiring a calculation for personal property that is not rationally consistent with the real property categories would entitle commercial and industrial real property owners to argue that the classification system results in disproportionality for
them since personal property owners would be assessed at a lower rate. The Board ruled that benefitting residential real property owners through the residential factor does not justify reducing the share of the tax levy attributable to personal property taxes.

Lastly, the Board found and ruled that by adopting the appellants’ argument, the percentage of the tax levy attributable to real property would increase (in the case of Boston from 91.1% to 94.9%), thereby decreasing the amount of the tax levy to be paid by personal property owners. Applying the system advocated by the appellants would cause real property to bear a higher percentage of the tax levy and increase the tax rates for all real property classes – including residential real property – to the benefit of personal property, without any equivalence between the personal property rate and any real property class rate. Rather than interpreting the statutory scheme to harmonize proportional taxation of all real and personal property, the Board ruled that the appellants’ approach would disconnect personal property from a rational relationship to the overall tax levy. See Opinion of the Justices, 208 Mass. 616 (1911) (“It is not permissible to make an assessment at one
rate upon real estate and at another rate upon personal property.”)

For these as well as its other articulated reasons, the Board found and ruled that the comprehensive system of property valuation and classification embodied in the statutes at issue accomplishes the legislative goal of constitutionally favoring residential real estate and that system has been rationally and reasonably implemented in ways that do not offend the Massachusetts Constitution. The statutory scheme for taxation of personal property in municipalities electing split rate taxation also constitutionally furthers that legislative goal and results in a rational, proportional, and constitutional implementation of the split rate tax system.

Conclusion

Based on the stipulated facts, its findings, and its analysis, the Board found and ruled that the appellants failed to carry their burden of proving that the assessors’ imposition of the $31.92 tax rate on their centrally valued personal property situated in Boston resulted in that personal property being disproportionately taxed in violation of Article 4, and

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8 This Opinion rejected a statewide tax on personal property based on the average rate of taxation of real property throughout the Commonwealth. Since the rate of taxation on personal property would be “different” from the rate upon real estate, “[I]t is obvious that the assessments proposed . . . would be disproportional taxation.” Id. at 618. Article 112, allowing classes of real estate, does not provide any support for the appellants’ suggestion that the tax rate for personal property could be different from that of every class of real property.
the appellants being obligated to pay more than their “share” of property taxes thereby offending Article 10 of the Declaration of Rights. To the contrary, the Board found and ruled that the comprehensive system of property valuation and classification embodied in the aforementioned statutes and employed by the assessors here constitutionally furthered the legislative goal of favoring residential real estate and have been narrowly, rationally and reasonably implemented in ways that do not offend the Massachusetts Constitution. Moreover, the Board found and ruled that the statutory scheme for taxation of personal property in municipalities electing split rate taxation, as Boston did here, also furthered that legislative goal and results in a narrow, rational, proportional, and constitutional implementation of the split tax rate system.

Accordingly, the Board decided these appeals for the appellee.

THE APPELLATE TAX BOARD

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

Attest: __________________________
Clerk of the Board

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