COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

AIRFLYTE, INC		**V.**	**BOARD OF ASSESSORS OF THE CITY OF WESTFIELD**
Docket Nos.:	F311916 F311917 F311918		Promulgated: October 1, 2014

These are appeals under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Westfield ("appellee" or "assessors"), to abate taxes assessed on certain property located in the City of Westfield and assessed to AirFlyte, Inc. ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2011. The question presented for consideration was whether the property at issue was subject to taxation under G.L. c. 59, § 2B.[1]

Chairman Hammond heard the appeals and was joined in the decision for the appellant by Commissioners Scharaffa, Rose, Mulhern, and Chmielinski.

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

Lauren J. Elliot, Esq. for the appellant.

Brian J. Pearly, Esq. for the appellee.

[1] The appellant disputed both the property's taxation under G.L. c. 59, § 2B and its valuation. The appeals were bifurcated and a hearing was held first to address the issue of taxability.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits introduced at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

The appellant's case was presented largely through Mr. Gary Potts, the appellant's president and owner, whose testimony the Board found credible. The appellant was a for-profit corporation organized in Massachusetts that Mr. Potts testified had continuously served as a Fixed Base Operator ("FBO")[2] at Westfield-Barnes Regional Airport ("Airport") for approximately twenty-three years.[3] For several years preceding the hearing of these appeals, the appellant was responsible for approximately eighty-five percent of the FBO services at the Airport. In its capacity as an FBO, the appellant provided a variety of services including fueling, maintenance, repair, parking and storage of aircraft. The appellant also offered services to facilitate flight arrival and departure as well as embarkation and disembarkation of passengers and crew.

Mr. Potts testified that the appellant's services were available to anyone who wished to use them. There was no

[2] The Federal Aviation Administration has defined an FBO as "a commercial business granted the right by [an] airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc." ***U.S. Department of Transportation Federal Aviation Administration Advisory Circular;*** AC No: 150/5190-7, p.13.

[3] The appellant had not been assessed real estate tax under G.L. c. 59, § 2B or otherwise prior to fiscal year 2011.

membership or other "pre-use" requirement for a prospective customer to purchase the appellant's services. Further, the appellant advertised its services via a website, brochures, and mailings, each of which encouraged interested persons to visit the appellant's operation, and to inquire about and purchase the appellant's services.

The Property at Issue

On January 1, 2010, the relevant assessment date for fiscal year 2011, the appellant was the lessee of three parcels of real estate located within the Airport, a non-commercial airport owned by the City of Westfield (collectively, the "subject property"). Two of the parcels were located at 32 Airport Drive and one at 110 Airport Drive. The first parcel at 32 Airport Drive ("Parcel 1") consisted of 6.09 acres. It was improved with two airplane hangars, a storage building and a "fuel farm," a facility dedicated to fueling aircraft. The hangars, which were approximately 18,000 and 18,600 square feet in size, roughly twelve percent of which consisted of workshop and office space, were used to store, service, maintain and repair aircraft. The storage building contained personal property used in support of the appellant's operations. The second parcel at 32 Airport Drive ("Parcel 2") consisted of approximately one acre improved with a 9,500-square-foot hangar, which the appellant used for parking aircraft when the hangars on Parcel 1 were full.

The parcel located at 110 Airport Drive ("Parcel 3"), was within the Airport's administration building. The leased premises consisted of office space used by the appellant to facilitate flight arrival and departure, and provide security and other services for passengers and aircraft crew.

The Subject Property's Leases

A lease for each of the parcels that comprised the subject property was entered into evidence during the hearing of the appeals. The appellant was identified as the lessee in each of the leases. The lessor was identified, variously, as the Westfield Airport Commission, the City of Westfield Airport Commission and the Westfield-Barnes Airport. The record does not reflect whether the named lessors were, in fact, different entities. There is no dispute, however, that in each instance, the lessor was an instrumentality of the City of Westfield.

Although the provisions of the leases were similar in most respects, the lease for Parcel 1, executed on December 22, 2006, and entitled "Fixed Base Operator Airport Lease and Agreement" ("Lease"), articulated in greatest detail the obligations of the appellant as they related to the operation of its business at the Airport. In particular, Article VI, Section 6.1 of the Lease required the appellant to "establish, maintain and operate a multi-service fixed base operation" on the leased premises and in that capacity to provide various services to its regular

customers and the general aviation community including: aircraft maintenance and repairs; aircraft storage; aircraft charters and/or air taxi services; and a host of hospitality services.[4] Section 6.2 of Article VI required the appellant to make the referenced services and facilities "available to the public during daylight hours of each day of the week" and "to have an available on-call service for reasonable after hours requests for service from airport customers." Failure to provide the required services would have constituted a default by the appellant, in which case the lessor was entitled to terminate the Lease immediately. Both Mr. Potts' testimony and the record taken as a whole indicated that the appellant fully complied with its obligation to supply FBO and other required services at the subject property.

Jurisdiction

For fiscal year 2011, the assessors valued the subject property and issued assessments as follows:

Parcel	Assessed Value	Tax Rate/1000	Tax Assessed
Parcel 1	$2,614,900	$29.13	$76,172.04
Parcel 2	$372,600	$29.13	$10,853.84
Parcel 3	$159,700	$29.13	$4,698.58[5]

[4] The leases for Parcels 2 and 3, executed on April 1 and May 1, 2007, respectively, also required provision of FBO services on the leased premises.
[5] This sum included a Community Preservation Act "CPA" surcharge of $46.52.

Having timely paid the taxes due, the appellant filed an application for abatement with respect to each parcel on January 11, 2011. The abatement applications were deemed denied on April 11, 2011, and the appellant timely filed Petitions Under Formal Procedure with the Board on May 27, 2011. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

For the reasons explained in the following Opinion, the Board found and ruled that the appellant was not subject to real estate tax under G.L. c. 59, § 2B because the appellant's lease of the subject property and associated operation as the primary FBO at the Airport were "reasonably necessary to the public purpose of a public airport . . . which [was] available to the use of the general public." ***Id.***

Accordingly, the Board issued a decision for the appellant in these appeals and granted an abatement in the total amount of $91,724.46.

OPINION

General Laws chapter 59, section 2B ("§ 2B"), which addresses taxation of municipally owned land, provides:

> real estate owned in fee or otherwise or held in trust for the benefit of . . . a . . . city or town, or any instrumentality thereof, if used in connection with a business conducted for profit or leased or occupied for other than public purposes, shall for the

> privilege of such use, lease or occupancy, be valued, classified, assessed and taxed annually as of January first to the user, lessee or occupant in the same manner and to the same extent as if such user, lessee or occupant were the owner thereof in fee . . . . **This section shall not apply to a use, lease or occupancy which is reasonably necessary to the public purpose of a public airport, . . . which is available to the use of the general public . . . .** (emphasis added)

Thus, municipally-owned property used in connection with a for-profit business, or leased or occupied for other than public purposes, is generally taxable to the user, lessee or occupant. *See, e.g.,* ***Smith v. Assessors of Fitchburg,*** Mass. ATB Findings of Fact and Reports 2008-73, 77. However, under § 2B, real estate taxes do not apply to municipally-owned property if its use, lease or occupancy is "reasonably necessary to the public purpose of a public airport . . . which is available to the use of the general public."

The appellant argued that it satisfied all of § 2B's requirements for exemption from tax. Although the assessors did not dispute the issue of ownership of the subject property or whether the Airport constituted a public airport within the meaning of § 2B, they asserted that the appellant was not "reasonably necessary to the public purpose" of the Airport nor were its services "available to the use of the general public."

The appellant has served as an FBO at the Airport for more than twenty-three years, and as of the relevant assessment date,

was responsible for approximately eighty-five percent of the FBO services provided at the Airport. Services provided by the appellant included parking, storage, refueling, maintenance and repair of aircraft, as well as facilitation of flight arrival and departure and embarkation and disembarkation of passengers and crew. The assessors acknowledged that these services were essential to the operation of the Airport and "reasonably necessary to [its] public purpose."[6] They argued, however, that the appellant, as the provider of the services, was not. The assessors' conclusion rested on two subsidiary arguments. The first was that as a for-profit corporation, the appellant's sole purpose was to make a profit, *ipso facto*, it could not be reasonably necessary to the public purpose of a municipal airport. The assessors next argued that no single FBO "is integral or essential" to the operation of the Airport, as any FBO could be replaced by a new FBO at the behest of the Airport Commission. Thus, the successful operation of the Airport was in no way dependent on the services provided by the appellant or any single FBO. Finally, the assessors separately argued that the "appellant's hangars and office space" did not serve a public purpose because they were not reasonably necessary to the

[6] The assessors' view is consistent with the minimum requirements for airports under Massachusetts law. For example, 702 C.M.R. 5.03(d) mandates the presence of servicing facilities at airports, which includes the presence of "a hangar for the housing of aircraft; aviation gasoline and oils must be available for sale; there must be facilities for minor aircraft and engine repairs and facilities for tying down aircraft."

public purpose of the Airport. The Board found the assessors' arguments unpersuasive.

As support for their assertion that the operation of a for-profit corporation could not, by definition, be reasonably necessary to the public purpose of a municipal airport, the assessors cited ***Willowdale LLC v. Assessors of Topsfield,*** 78 Mass. App. Ct. 767 (2011). In ***Willowdale***, the Appeals Court affirmed the Board's decision that a mansion located in a public park and leased to a private company for restoration and operation "as a bed and breakfast and for other specified for-profit purposes" was not exempt from property tax under § 2B. ***Id.*** at 768. Neither the Appeals Court nor the Board, however, concluded that a for-profit entity could not qualify for exemption under § 2B. To the contrary, in its decision, the Board observed that "'[p]roperty owned by a municipality may serve a public purpose even though it is managed or operated by a private, for-profit entity, and even though the private entity charges admission to the facility.'" ***Willowdale LLC v. Assessors of Topsfield,*** Mass. ATB Findings of Fact and Reports 2010-239, 248, *aff'd*, 78 Mass. App. Ct. 767 (2011)(quoting ***MCC Management Group, Inc. v. Assessors of New Bedford***, Mass. ATB Findings of Fact and Reports 2000-886, 903)(additional citation omitted).

The facts of ***Willowdale*** are also distinct from those of the present appeals. Operation of the mansion in ***Willowdale*** was

entirely independent of the use of the surrounding park. ***Id.*** As the Appeals Court noted, "[t]he public is free to walk the park's trails and meadows and admire its ponds and natural beauty without regard to the presence of the mansion." ***Willowdale,*** 78 Mass. App. Ct. at 770, 771. In sharp contrast, the FBO services provided by the appellant were concededly essential to the operation of the Airport and reasonably necessary to its public purpose. That the appellant operated as a for-profit corporation did nothing to undermine its role in fulfilling the public purpose of the Airport.

The Board found the assessors' argument regarding the fungibility of FBOs similarly unavailing. To accept the argument would necessarily mean that exemption from tax under § 2B would only be available if there was a single unique user, lessee or occupant to fulfill a role that otherwise fell within the purview of the exemption. "A statute or ordinance should not be construed in a way that produces absurd or unreasonable results when a sensible construction is readily available." ***Manning v. Boston Redevelopment Authority***, 400 Mass. 444, 453 (1987). To adopt the assessors' view would produce just such a result. Moreover, existing precedent substantially undermines the assessors' argument. In ***MCC Management Group,*** the Board found that a skating rink located on property owned by the City of New Bedford and operated by a private for-profit management company

was not taxable under § 2B. ***MCC Management Group, Inc. v. Assessors of New Bedford***, Mass. ATB Findings of Fact and Reports at 2000-895. The facts as presented in ***MCC Management Group*** and common sense indicate that the management company operating the skating rink was not the sole entity able to fulfill its role. In sum, the Board found that the assessors' argument was at odds with the Board's prior construction of § 2B as well as a fundamental principle of statutory construction.

Finally, the Board found the assessors' focus on the "appellant's hangars and office space" as not reasonably necessary to the public purpose of the Airport misplaced. It is not property in and of itself that provides the basis for exemption under § 2B, but the lease, use or occupancy of property. In the present appeals, the subject property, which consisted primarily of land improved with hangars, as well as a fuel farm, a storage building, and a limited amount of office space, were leased and used by the appellant to provide essential FBO services that, as previously noted, were reasonably necessary to the public purpose of the Airport. Thus, the appellant's lease, use and occupancy of the subject property satisfied the necessity and public purpose requirements of § 2B.

The final requirement for exemption under § 2B is that the appellant's services were available to the use of the general public. Consistent with the terms of the Lease, the appellant's

services were available to anyone who wished to purchase them. Indeed, the Lease explicitly required that the appellant's FBO services be "available to the public" for all daylight hours. Further, there was no prerequisite to use of the appellant's services such as a membership fee or other "pre-use" requirement, and the appellant advertised its services to the public at large via a website, brochures, and mailings. Given these facts, the Board found and ruled that the appellant's services were available to the general public within the meaning of § 2B.

As stated above, the assessors argued the contrary. In particular, the assessors noted that the general public was not able to purchase a commercial airline ticket to fly to or from the Airport and, quoting the appellant's own promotional materials, that the appellant had served "private aviation since 1988." Citing ***Home for Aged People in Fall River v. Assessors of Fall River***, Mass. ATB Findings of Fact and Reports 2011-370, the assessors also emphasized that the appellant, a for-profit corporation, provided no charitable services and that the purpose of its business was not charitable.

As a threshold issue, whether the appellant provided charitable services is not relevant to the question of whether its services were available to the general public or, for that matter, to these appeals. In ***Home for Aged People,*** the Board

considered independent living and long term care facilities' qualification for exemption from property tax under G.L. c. 59, § 5, Clause Third ("Clause Third"). ***Id.*** Clause Third requires that a taxpayer claiming exemption must prove first that property is owned by a charitable organization and second, that a charitable organization occupies the property for charitable purposes. ***Home for Aged People in Fall River***, Mass. ATB Findings of Fact and Reports at 2011-391, (citing ***Jewish Geriatric Services, Inc. v. Longmeadow,*** Mass. ATB Findings of Fact and Reports 2002-337, 351, *aff'd*, 61 Mass. App. Ct. 73 (2004)). The exemption under Clause Third is wholly separate from and has no bearing upon § 2B, which specifies its own distinct criteria for exemption.

The Board also found that the absence of a commercial airline at the Airport and the appellant's provision of services to those who use or own private aircraft were not dispositive. Of substantially greater import were the appellant's provision and marketing of various and essential services to any individual or entity in the public that may have sought the services.

On the basis of the foregoing, the Board found and ruled that the subject property was not subject to real estate tax under § 2B. There is no dispute that the appellant was the lessee of property owned by the City of Westfield and that the

FBO services provided by the appellant at that property were reasonably necessary to the public purpose of the Airport. That the appellant operated as a for-profit entity and could have been replaced by another FBO did not affect the logical inference that the appellant's lease of and operations at the subject property were reasonably necessary to the requisite public purpose. Finally, the unrestricted availability and marketing of the appellant's services provided ample support for the conclusion that the appellant's services were available to the general public.

Accordingly, the Board issued a decision for the appellant in these appeals and granted an abatement in the total amount of $91,724.46.

THE APPELLATE TAX BOARD

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

A true copy,

Attest: _____
Clerk of the Board