

KTT, LLC v. Board of Assessors of the Town of Swansea Appellate Tax Board Docket No. F322736

Appellate Tax Board Further Expands Application of Exemption for Solar or Wind Powered Energy Facilities

The Appellate Tax Board (“ATB”) decision in KTT, LLC v. Board of Assessors of the Town of Swansea, ATB 2016-246, (“KTT, LLC”) further expands application of Clause Forty-fifth of G.L. c.59, §5 for energy suppliers. In KTT, LLC, the ATB found that a solar facility was entitled to an exemption from real estate taxes as a solar powered system even though the net metering credits generated by the solar facility were sold for profit to an unaffiliated, off-site business. Clause Forty-fifth provides a tax exemption for:

Solar or wind powered system or device which is being utilized as primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of installation of such system or device.

In 2014, the ATB in Forrestall Enterprises, Inc. v. Assessors of Westborough, ATB 2014-1025, considered the application of Clause Forty-fifth to Forrestall Enterprises Inc. (“Forrestall”), the owner of a solar facility. Forrestall had allocated net metering credits to the electric accounts for properties owned by the company’s sole owner, Bruce Forrestall. The Westborough Board of Assessors decided to tax Forrestall, finding that the exemption was inapplicable as Forrestall was not providing “energy”, i.e., net metering credits, to the property on or contiguous to which the solar facility was sited. This position was consistent with a prior opinion from the Department of Revenue (“DOR”). Notwithstanding DOR’s opinion, however, the ATB determined that the solar facility was tax exempt pursuant to Clause Forty-Fifth on the grounds that allocating net metering credits to the electric accounts of properties owned by Mr. Forrestall qualified as the “supplying of energy needs of property” and that a plain reading of Clause Forty-fifth did not limit the exemption as suggested by DOR and the Board of Assessors.

In KTT, LLC, the ATB took this rationale one step further. The Swansea Board of Assessors taxed a solar facility located on 65 acres of land owned by KTT, LLC (“KTT”). KTT had entered into a net metering credit purchase agreement with the Fall River Five Cents Bank (the “Bank”), an unaffiliated, off-site business. Under the agreement, 98% of the net metering credits generated by the solar facility were allocated to the electric bills of four of the Bank’s Massachusetts branch locations, while 2% of the credits were allocated to the electric bills for the residence of the owners of KTT. In exchange for the credits, the Bank agreed to pay KTT an amount equal to 95% of the dollar value of the net metering credits.

KTT sought an exemption from local property taxes pursuant to Clause Forty-fifth, which the Board of Assessors denied. The ATB, however, rejected the Board's argument that the Legislature did not intend for Clause Forty-fifth to apply to for-profit solar powered systems. Instead, the ATB held that for purposes of the exemption, for-profit allocation of net metering credits by the solar array owner to a utility customer's electric accounts constituted "supplying the energy needs of property", even if that customer was not the owner of the solar array.

Based on the ATB decisions in Forrestall and KTT, LLC, it appears that the ATB will apply the Clause Forty-Fifth exemption based on the plain language of the Clause and will not impose limitations on the exemption where none are specifically set forth in the statute. As a result, unless the statute is amended or the decision in KTT, LLC is overturned on appeal, the ATB will likely continue to construe Clause Forty-Fifth as providing an exemption from taxation for solar facilities that supply the energy needs of taxable properties regardless of whether the facility is located on or adjacent to the properties or whether the credits generated by the facility are sold for profit to entities unaffiliated with the owner of the facility.

If you have any questions regarding this decision or other ATB issues, please feel free to contact Thomas W. McEnaney (tmcenaney@k-plaw.com) or for energy related issues, Richard T. Holland (rholland@k-plaw.com).

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