

Property Valuation

Verizon Challenge to Massachusetts Property Tax Denied

A challenge to a property tax rate structure in Massachusetts filed by Verizon New England Inc. and another telephone company has been denied by the state's highest court.

In a ruling issued Nov. 2, the Massachusetts Supreme Judicial Court (SJC) said the split-rate property tax structure in question doesn't violate the state constitution and upheld a ruling by Massachusetts Appellate Tax Board (ATB) (*Verizon New England Inc. v. Board of Assessors of Boston*, Mass., No. SJC-12034, 11/2/16).

The court's decision validates a state statute on which more than 100 Massachusetts cities and towns rely in allocating their annual property tax burden.

A Verizon spokesman told Bloomberg BNA in a Nov. 2 e-mail the company would have no comment due to the pending litigation.

A Boston tax attorney said the decision may cause doubt as to the proper meaning of a constitutional provision—even one with clear and unambiguous language.

Companies Say System Unconstitutional. Verizon and RCN BecoCom LLC had challenged the constitutionality of the property tax system that allows for different classes of real property to be taxed at different rates, so long as all real property within a class is taxed at the same rate.

The two companies appealed the ATB decision upholding the property tax assessments by the Boston Board of Assessors for fiscal year 2012 on personal property owned by each of the companies.

The property at issue owned by Verizon had been valued at \$215.8 million and the company was assessed a property tax bill of \$6.9 million. RCN's property had been valued at \$48.4 million and that company was assessed property taxes of \$1.5 million on the property in question.

The companies weren't contesting the value that had been assigned to the property. They were instead challenging the assessors' imposition of a tax rate of \$31.92 per \$1,000, which they said resulted in their property being disproportionately taxed in violation of the Massachusetts Constitution.

Under a constitutional amendment adopted by Massachusetts legislators, and ratified by voters (Article 112),

the Legislature was authorized to create a property tax system that would impose different rates of taxation on different classes of real property. In practical effect, the SJC said, this system "would resemble and legitimize the long-time local practice of establishing relatively lower property tax assessments for residential property and vacation land or open space, as compared to other classes."

However, the companies said in their brief filed with the SJC, Article 4 of the Massachusetts Constitution requires "proportional assessments, rates and taxes," and that the enactment of Article 112 in 1978 does nothing to alter that requirement. The appellants said in order to meet that mandate, the assessors should have imposed a tax rate on personal property that would result in owners of personal property being responsible only for their proportionate share of the tax levy.

Verizon further argued that the 1978 amendment's exception explicitly applies only to real property, not tangible personal property.

The SJC said in its decision that it disagreed. The court wrote that the legislative history reflects that "the animating purpose of Art. 112 was to change the meaning of proportionality in Art. 4 in order to enable residential property to be treated differently from other property classes."

Purpose Trumps Wording.

Richard L. Jones, an attorney with Sullivan and Worcester LLP in Boston, told Bloomberg BNA Nov. 2 that in its decision, the SJC acknowledged that the language of proportionality exception allowed for split rates for "real property" and not tangible personal property. But despite the language, the SJC interpreted the split rate exception for real property to apply to tangible personal property as well.

"The court rejected Verizon's 'narrow' view that the proportionality exception, by its own terms, is limited to real property," Jones said. "While this interpretation might be appropriate for a statute, the court said that a constitutional amendment's words should be read more broadly and 'given a construction adapted to carry into effect its purpose.'"

"The purpose of the split rate exception for real property, the court found, was to enable towns to treat residential real property different from and lower than other kinds of property," Jones said. "And although a plain language reading of the amendment would allow for a lower rate for residential real property compared to all other kinds of real property, the court believed that treating tangible personal property the same as

commercial real property achieves the overarching objective of the amendment and retains proportionality 'to a large extent.' ”

Thus, Jones said, “in ruling against Verizon, the SJC gave more effect to its view of the constitutional amendment’s purpose than its words.”

Municipal Concerns. If the court had found in favor of the appellants, there would have been “an immediate and irreversible shift of the total tax levy to Residential class property owners in contravention of Art. 112,” the Massachusetts Municipal Association said in an amicus brief filed with the SJC. In addition, the MMA said, “such a shift would lead to substantial abatements becoming due to the Taxpayers and other personal prop-

erty owners, leading to significant negative effects upon local property tax administration and financial harm to municipalities across the Commonwealth.”

Verizon is represented by William A. Hazel, a partner with the law firm of Chu, Ring & Hazel in Boston.

The Board of Assessors of Boston is represented by Anthony M. Ambriano of Sassoon & Cymrot in Boston.

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Text of the ruling is at <http://src.bna.com/jN1>

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