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Outfront Media LLC v. Board of Assessors of Boston

Supreme Judicial Court of Massachusetts, Suffolk - April 22, 2024 - N.E.3d - 2024 WL 1707561

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, sought abatement of real estate tax assessed by city of Boston for fiscal year at issue.

After City denied claim, taxpayer appealed to Appellate Tax Board, which upheld assessment. Taxpayer appealed, and action was transferred from Appeals Court to Supreme Judicial Court on latter court's own initiative.

The Supreme Judicial Court held that:

- Taxpayer "used" MBTA signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes, and
- Essential government function doctrine did not bar city of Boston from assessing real estate taxes upon taxpayer.

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, "used" those signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes assessed by city of Boston for fiscal year at issue; taxpayer did not just provide services to MBTA but, also, used signs on public property to conduct a for-profit business, as agreement with MBTA gave taxpayer exclusive right to advertise on existing signs and to advertise on new signs designed and installed by taxpayer on MBTA property, to contract with private parties seeking to advertise on those signs, to install, license, operate and maintain telecommunications equipment on MBTA signs, to contract with those telecommunications companies, and taxpayer was compensated through revenue it generated from signs and equipment installed on signs, and could reap significant, uncapped profits from such operations.

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, "used" those signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes assessed by city of Boston for fiscal year at issue, despite contention that statute governing MBTA's tax exemption incorporated a specific, restrictive, common-law meaning for term "use and occupancy" requiring greater possessory interest in property than that granted to taxpayer in order to be subject to taxation; statute did not refer to "use and occupation" and, instead, use of property alone was sufficient so long as it was in connection with a business for profit.

"Essential government function doctrine," which prohibited regulation of entities or agencies created by legislature in manner that interfered with their legislatively mandated purpose, did not bar city of Boston from assessing real estate taxes upon taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, for

fiscal year at issue; although taxing MBTA property when contracted out to private parties to operate businesses for profit could affect MBTA's negotiating power and lower revenues MBTA would be able to receive from private parties to support its provision of mass transportation services, such a possible reduction was understood by Legislature when it passed the specific exception to the MBTA's tax exemption for use of MBTA property "in connection with a business conducted for profit."

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