Appellate Tax Board Decision Clarifies Application of So-Called Clause 45 Solar Tax Exemption

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Section 5, clause Forty-Fifth of Chapter 59 of the General Laws, commonly referred to as Clause 45, exempts from local property taxation "a solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of [taxable] property. . . ." The Massachusetts Department of Revenue ("DOR") has interpreted Clause 45 as applicable only if the system is located on, or contiguous to, the property being supplied with heat or energy. In a decision dated December 4, 2014, the Massachusetts Appellate Tax Board ("ATB") rejected that interpretation. Forrestall Enterprises Inc. v. Board of Assessors of the Town of Westborough, Appellate Tax Board, Docket No. F317708/318861 (2012/2013).

The Forrestall case involved the installation of a small solar energy facility on vacant land by Forrestall Enterprises, a corporation owned by Bruce Forrestall. The system's electricity was delivered to the utility's distribution grid, and all net metering credits were allocated, without charge, to other properties also owned, directly or indirectly, by Bruce Forrestall. Forrestall Enterprises applied for an abatement under Clause 45. Applying DOR's interpretation of that clause, the Westborough Board of Assessors denied the application on the grounds that the system was not located on or contiguous to the properties being served. The ATB disagreed and rejected DOR's interpretation of Clause 45, reasoning that if the legislature sought to apply that clause only where the solar or wind powered system was located on or contiguous to the property being supplied with heat or energy, it would have expressly so stated. It was apparently significant to the ATB that Mr. Forrestall owned, directly or indirectly, all of the affected properties, and that Forrestall Enterprises received no compensation in return for the net metering credits.

The decision does not address, however, the fact that Forrestall Enterprises' allocation of net metering credits, and the ownership of the properties benefiting from those credits, could be easily changed. It also leaves unanswered the question of how a board of assessors is to be made aware of any such changes, and whether such changes may, or should, result in the revocation or non-renewal of the Clause 45 tax exemption. Nevertheless, if not overturned on an appeal or by legislative action, it is likely that the reach of the decision in Forrestall will be limited to those seemingly rare situations where an individual or entity owns, directly or indirectly, the solar or wind powered system as well as the properties to which the system's net metering credits are allocated.

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