

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

No. 2019-P-1629

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Springfield Rescue Mission,

Plaintiff-Appellee

V.

Board of Assessors of the City of Springfield,

Defendant-Appellant

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On Appeal from a Decision and Findings of Fact  
of the Appellate Tax Board

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Brief of the Amici Curiae, Massachusetts Association  
of Assessing Officers and the Massachusetts Municipal  
Lawyers Association in Support of the Defendant-  
Appellant Seeking Reversal

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Date: 09/28/20

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## INTRODUCTION

As a subsequent owner, the Appellee, Springfield Rescue Mission, Inc. (the "Mission"), sought a reduction of the fiscal year 2016 ("FY2016") property taxes assessed to Blue Tarp reDevelopment, LLC ("Blue Tarp Casino")<sup>1</sup> on the subject property (the "Car Dealership"). The Appellant, the Springfield Board of Assessors (the "Assessors"), denied the abatement. The Mission appealed to the Appellate Tax Board (the "ATB"). Sua sponte, the ATB exempted the Car Dealership from FY2016 local property tax pursuant to G.L. c. 59, §5, cl. Eleventh, (the "Religious Exemption Clause"). It relied on the date the deed to the property was signed in December of 2014 rather than when it was recorded at the Registry of Deeds almost ten months later in October of 2015. Thus, it found that the Mission, a religious organization owned the Car Dealership on July 1, 2015, the FY2016 "date of determination" for exemption qualifications. The Amici, the Massachusetts Association of Assessing Officers (the "MAAO") and the Massachusetts Municipal Lawyers Association ("MMLA") that joins in this brief,

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<sup>1</sup> The majority owner of Blue Tarp reDevelopment, LLC was MGM Springfield, LLC. (R.A. I -181).

urge this court to reject this finding because the decision changes the meaning of "date of determination" for all<sup>2</sup> property tax exemption qualifications under G.L. c. 59, §5 from a July 1 date certain to an indeterminate date, rendering administration of exemptions to be an unduly complex and uncertain administrative task.

**STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

The Amici submit this brief to address Issue I as stated by the Appellant, the Board of Assessors of the City of Springfield, in its brief at page 7.

**STATEMENT OF INTERESTS OF AMICI CURIAE**

The MAAO is a Massachusetts non-profit organization established in 1890 and incorporated in 1980 to promote the efficient and uniform administration of local tax laws and to provide methods for encouraging the development of desirable tax laws and discouraging the adoption of harmful

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<sup>2</sup> G.L. c 59, §5 contains not only the Religious Exemption Clause, but also some seventy additional clauses providing qualification requirements for other property tax exemptions.

measures relating to taxation or to the duties of local taxing officials. The membership of the MAAO comprises Assessing Officers, members of the Boards of Assessors and their staffs from cities and towns across the Commonwealth. Its members play a critical role in assuring that local property tax policy, as expressed through legislation or regulation, is implemented to achieve the desired objectives.

The Massachusetts Municipal Lawyers Association ("MMLA"), formerly known as the City Solicitors and Town Counsel Association, is the oldest and largest bar association dedicated to the practice of municipal law in the Commonwealth of Massachusetts. The members of the MMLA include attorneys and their assistants who represent municipal governments as city solicitor, town counsel, town attorney, or corporation counsel. Members of the MMLA also include attorneys who represent or advise cities, towns, and other governmental agencies in other capacities. MMLA's mission is to promote better local government through the advancement of municipal law.

The case at bar affects the annual assessment process for every community in the Commonwealth. The lawful assessment of real property taxes requires the

gathering and maintenance of specific pieces of information. Such information includes, but is not limited to: the owner, the fair cash value, and the taxability of the parcel. These pieces of information are tied to specified dates certain, "snapshot dates," related to the fiscal year starting July 1 and ending June 30.

The FY2016 tax year illustrates. FY2016 started on July 1, 2015 and ended on June 30, 2016. The snapshot date to determine a parcel's assessed owner was January 1, 2015 (six months before the start of the fiscal year). G.L. c. 59, §11. In Springfield, the snapshot date to determine the fair cash valuation of a parcel was June 30, 2015. G.L. c. 59, §2A(a)<sup>3</sup>. Finally, the snapshot date or date of determination for FY2016 exemption requirements, including ownership requirements, was July 1, 2015. G.L. c. 59, §5. The dates of determination are specified by law and assessors may not be influenced by their sympathies or give favor when applying them.

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<sup>3</sup> The City of Springfield accepted the last sentence of the first paragraph of G.L. c. 59, §2A(a) making their value determination date June 30, 2015 rather than January 1, 2015, the valuation date for communities not accepting the local option provision.



When examined with reference to one parcel, the above-referenced determinations may seem easily made. When examined in light of the number of parcels for which these determinations must be made, the need for a straightforward application of each statute becomes clear. To illustrate, for FY2016, Springfield assessors alone worked with over 44,000 parcels of real estate of which over 2,300 were exempt. These numbers become even more compelling when examined statewide. For FY2016, assessors in Massachusetts were charged with maintaining accurate information on over 2.3 million real estate parcels and ownership changes evidenced by over 128,000 recorded deeds in the calendar year 2014 leading up to January 1, 2015 (the "assessed owner" snapshot date).<sup>4</sup> Determinations of potentially exempt property dependent on a July 1, 2015 snapshot date of ownership, required maintenance of an additional six months of changes in ownership between January 1, 2015 and July 1, 2015. The

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<sup>4</sup> The Massachusetts Department of Revenue tracks this data as public information. See, <https://dlsgateway.dor.state.ma.us/gateway/DLSPublic/LA3Parcels>; and [https://dlsgateway.dor.state.ma.us/reports/rdPage.aspx?rdReport=PropertyTaxInformation.LA4.Parcel counts vals](https://dlsgateway.dor.state.ma.us/reports/rdPage.aspx?rdReport=PropertyTaxInformation.LA4.Parcel%20counts%20vals)

statutes are designed to provide straight forward methods to make needed determinations.

#### STATEMENT OF THE CASE

The Amici adopt the statement of the case as stated by the Appellant, the Board of Assessors of the City of Springfield, in its brief at page 7.

#### STATEMENT OF THE FACTS

##### **Background**

In 2011, a tornado hit a portion of downtown Springfield. Subsequently, looking down over that portion of the City, numerous blue tarps could be seen protecting damaged buildings from the weather. The MGM Casino was eventually created in this "blue tarp" area. During 2012, Blue Tarp reDevelopment, LLC (the "Blue Tarp Casino") sought to acquire a contiguous group of properties in the blue tarp area to form the footprint of what is known today as the MGM Casino in Springfield. The Springfield Rescue Mission, Inc. (the "Mission") owned and operated a shelter (the "Shelter") in the blue tarp area. The Shelter survived the tornado. Blue Tarp Casino targeted the operating

Shelter for acquisition. See, (R.A. I - 168, P&S; R.A. I - 190)

To obtain the Shelter property, Blue Tarp Casino offered to locate and renovate a property into a new shelter for the Mission. For this purpose, Blue Tarp Casino would eventually obtain the former Orr Cadillac Dealership (the "Car Dealership") in Springfield.

(R.A.I - 190) (The taxability of the Car Dealership is the subject of this appeal.) The parties chose the form of the potential deal through their Purchase and Sale Agreement (the "P&S"). (R.A. I - 168, 181)

#### **The Deal Structure**

In May of 2013, Blue Tarp Casino and the Mission entered into the P&S. (R.A. I - 168, 181) The "Closing Date,"<sup>5</sup> the endpoint of the P&S, was to be the date Blue Tarp Casino recorded a deed to a renovated "New Location" in favor of the Mission. (R.A. I - 170-171, P&S, Section 5) The P&S included several escape clauses allowing Blue Tarp Casino to exit the deal at any time prior to the Closing Date. If Blue Tarp Casino did not acquire a casino license, it could pay

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<sup>5</sup> The capitalized "Closing Date" is used in the P&S, section 5.

\$650,000 and walk away. (R.A. I - 171, *P&S, sec. 5*) If Blue Tarp failed to properly renovate the Car Dealership or gain the necessary approvals for the Mission's use of the Car Dealership as a shelter, it would have to pay \$650,000 and then could walk away. (R.A. I - 173-4, *P&S, sec. 14*) Essentially, if Blue Tarp Casino simply chose to exit prior to the Closing Date, it could pay the Mission \$650,000 and then walk away. Id. The Closing Date turned out to be October 30, 2015. (R.A. I - 225, *Deed*) The transfer of ownership was never certain until October 30, 2015.

On the Closing Date, nearly two and a half years after entering the P&S, the deed to the Car Dealership was finally recorded in favor of the Mission. (R.A. I - 171, *P&S, sec. 5*; R.A. I - 225, *Deed*) Any time prior to that Closing Date, Blue Tarp Casino could have walked away and the Mission would never have become the owner of the Car Dealership. The recording of the deed triggered the Mission's obligation to vacate the Shelter within 90 days or start paying rent to Blue Tarp Casino as the new owner of the Shelter. (R.A. I - 171, *P&S, sec. 5*) The October 30, 2015 deed recording also enabled the Mission to move its operations to the renovated Car Dealership.

While the P&S contemplated that the parties each sign and place in escrow a deed to their respective properties in favor of the other, it was only the recording of the deeds that actually transferred ownership as the parties intended. Id.

**FY16 Car Dealership ownership determination facts**

On January 1, 2015<sup>6</sup>, Blue Tarp Casino was the Car Dealership's owner of record at the Registry of Deeds. (R.A. I - 216, 225)

On July 1, 2015<sup>7</sup>, Blue Tarp Casino was the Car Dealership's owner of record at the Registry of Deeds. (R.A. I - 222, 225)

On October 30, 2015<sup>8</sup>, the Mission became the Car Dealership's owner of record at the Registry of Deeds. (R.A. I - 225)

**The Assessors' determinations**

FY2016 started on July 1, 2015 and ended on June 30, 2016. The Assessors determined Blue Tarp Casino to

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<sup>6</sup> The FY16 date of determination for the "assessed owner" of a parcel.

<sup>7</sup> The FY16 date of determination for the owner of a parcel for exemption purposes.

<sup>8</sup> October 30, 2015 is a date without significance to the assessment process.

be the owner of the Car Dealership on January 1, 2015. (R.A. I - 214, 167) The Assessors determined the assessed value of the Car Dealership to be \$6,181,700 based on its fair cash value as renovated as of June 30, 2015. (R.A. I - 214, 165) The Assessors determined that the Car Dealership was owned by Blue Tarp Casino on July 1, 2015.

**The billing of the tax**

On July 1, 2015, the City issued the first quarter tax bill for the Car Dealership. The preliminary tax bill was for one fourth of the amount due on the previous year's tax bill. G.L. c. 59, §23D; G.L. c. 60, §3. The bill was sent to Blue Tarp Casino as the then owner. (R.A. I - 212) On October 1, 2015, the City issued the second quarter bill, also preliminary, to Blue Tarp Casino as the then owner. (R.A. I - 213)

On January 1, 2016, the City issued the third quarter bill, referred to as the "actual bill" for the Car Dealership. (R.A. I - 214) The FY16 tax was calculated by multiplying the City's FY16 tax rate

that was set in the fall<sup>9</sup> by the value of the property on June 30, 2015. Unlike the two preliminary bills, the third and fourth quarter bills<sup>10</sup> reflected the value of the property with renovations on June 30, 2015. The third and fourth quarter bills were sent to the Mission as the then owner. <sup>11</sup> (R.A. I - 214, 15)

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<sup>9</sup> Communities generally set their tax rates after July 1 and before December 31, for FY16, after July 1, 2015 and before December 31, 2015.

<sup>10</sup> The third quarter bill equaled one-half of the difference between the total FY2016 tax less the payments made with the first and second quarter bills. The fourth quarter bill equaled the difference between the total FY2016 tax less the payments made with the first, second and third quarter bills.

<sup>11</sup> While the assessed owner is primarily liable for the tax, the burden of paying the tax may fall on another. Town of Milton v. Ladd, 348 Mass. 762 (1965) *citing* Boston v. Quincy Mkt. Cold Storage & Warehouse Co., 312 Mass. 638, 644-645 (1942). When property taxes are not paid, a municipality can ultimately take the property and sell it to collect unpaid taxes. Thus, when a property's ownership changes during the fiscal year, the consequences of non-payment of property tax falls on the current owner (in this case, the Mission) even though primary liability rests with the assessed prior owner (Blue Tarp Casino). This is why private parties usually specify apportionment of property taxes when transferring property ownership. In the case at bar, the P&S shifted FY2016 tax burden from Blue Tarp Casino to the Mission on a pro-rata basis as of the Closing Date when the deed was recorded. (R.A. I - 172, P&S, section 12)

### **Standing to challenge the tax**

The P&S called for Blue Tarp to pay a pro-rata share of the taxes based on the October 30, 2015 closing date, i.e. one third of the total tax.<sup>12</sup> (R.A. I - 173, *P&S*, sec. 12) As the assessed owner, Blue Tarp Casino had a right to file an abatement application. G.L. c 59, §59. The Mission's right to file an abatement application derived from its status as a "subsequent owner," i.e., an owner subsequent to the January 1, 2015 assessed owner, Blue Tarp Casino. Id. The Mission filed an abatement application seeking a reduction of the June 30, 2015 fair cash valuation. (R.A. I - 165)

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<sup>12</sup> The pro-rata share would be one-third of the tax because the closing occurred one third of the way into the fiscal year.



## ARGUMENT

THE CAR DEALERSHIP PROPERTY DID NOT QUALIFY FOR A FISCAL YEAR 2016 RELIGIOUS EXEMPTION BECAUSE ON JULY 1, 2015, THE STATUTORY "DATE OF DETERMINATION," ONLY BLUE TARP REDEVELOPMENT, LLC COULD BE IDENTIFIED AS THE OWNER AND IT WAS NOT A RELIGIOUS ORGANIZATION AS REQUIRED BY G.L. c. 59, §5.

General Laws chapter 59, §5 recites some seventy-one different property exemptions in separate numbered clauses. The first sentence of G.L. c. 59, §5 addresses how to determine any ownership requirement under those clauses. It states in pertinent part:

The following property shall be exempt from taxation and **the date of determination as to age, ownership or other qualifying factors required by any clause shall be July 1 of each year unless another meaning is clearly apparent from the context; ...** (*Emphasis added.*)

Clause Eleventh of G.L. c. 59, §5, exempts houses of religious worship owned by a religious organization.

It is a well-established rule that a "party claiming exemption bears a grave burden of proving the claim." Harvard Community Health Plan v. Assessors of Cambridge, 384 Mass. 536, 543 (1981). "Any doubt must operate against the one claiming a tax exemption." Boston Symphony Orchestra, Inc. v. Board of Assessors of the City of Boston, 294 Mass. 248, 257 (1936),

(citing Springfield Young Men's Christian Ass'n v. Board of Assessors, 284 Mass. 1, 8 (1933)). "A taxpayer is not entitled to an exemption unless he shows that he comes within the express words" of the statute granting the exemption. Animal Rescue League v. Board of Assessors of Bourne, 310 Mass. 330, 332 (1941) (citing Milford v. County Commissioners, 213 Mass.162 (1912)). Any interpretation of the July 1 "date of determination as to" ownership under G.L. c. 59, §5 must be informed by these principles.

For the purposes of fair, transparent and sound tax administration, Massachusetts courts have reiterated certain fundamental principles to be used when testing exemption qualifications. A qualification requirement must be met and ascertainable with certainty on the date of determination. See, Moscatiello v. Assessors of Boston, 36 Mass. App. Ct. 622, 625 fn. 2 (1994) tying "taxpayer" to payment of tax rather than statutory date of determination of assessed owner for exemption purposes found unworkable where payment might not be required until after determination date). In determining "the owner of

real estate from records in the county's registry of deeds" the assessors are only required to exercise "reasonable diligence." See, Goduti v. City of Worcester, 87 Mass. App. Ct. 355, 359 (2015) (two filings in existence at the registry of deeds on the determination date could have led to two different determinations, court found assessors met the standard by choosing the more recent filing, even though further investigation into the older filing may have led to a different determination of ownership). Where property is held in a form that does not satisfy an exemption qualification requirement, the parties are bound by their choice. See, Kirby v. Assessors of Medford, 350 Mass. 386 (1966) (beneficiary who placed his home in trust disqualified from claiming exemption where trustee found to have required "ownership of a record legal interest"). Facts supporting the ownership requirement under G.L. c. 59, §5, must exist and be ascertainable from the Registry of Deeds through an exercise of reasonable diligence on the date of determination.

To demonstrate the G.L. c. 59, §5 ownership requirement was satisfied, two burdens must be met. First, it must be shown that the Mission owned the Car Dealership on July 1, 2015. Second, it must be shown that ownership could have been determined on July 1, 2015 from the Registry of Deeds. If either burden is failed, an exemption cannot be found.

In the case at bar, neither burden can be met. First, the Mission did not own the Car Dealership on July 1, 2015. Per the structure of the deal, the conditions precedent to closing and recording the Car Dealership deed in favor of the Mission were not met until well after July 1, 2015. Blue Tarp Casino could have backed out any time between July 1 and the Closing in October. There was no certainty that the deal would go through until the Closing occurred. The Closing did not occur until some four months after July 1, 2015 in October. On the Closing Date the deed was recorded and only then was the Mission permitted to occupy the Car Dealership. Second, the facts from the Registry of Deeds as to ownership on July 1, 2015 were that Blue Tarp Casino owned the Car Dealership. *Assuming arguendo*, the Mission's ownership "related

back" to Blue Tarp Casino's signature date on the deed, that determination could not have been made on the "date of determination." It could only have been made a full four months later in October. The facts needed to "relate back" the deed, were not ascertainable on July 1 because the deed was not recorded at the Registry of Deeds. Again, *assuming arguendo*, the P&S somehow created ownership before the deed was recorded, ownership was still not ascertainable through the exercise of reasonable diligence because the P&S was not recorded at the Registry of Deeds. The facts existing on July 1, 2015 as to ownership of the Car Dealership do not support its exemption.

Straining the interpretation of the G.L. c 59, §5 date of determination to shift it from July 1 to an indeterminate closing date, will disrupt the tax administration of all 351 communities. Blue Tarp Casino and the Mission, chose the form of the transaction by executing the P&S. The P&S anticipated the property taxes and as is custom, privately shifted the tax burden from Blue Tarp Casino to the Mission as of October 30, 2015. (*P&S, Section 14*) As the January

1, 2015 record owner of the Car Dealership, Blue Tarp Casino was the assessed owner for FY2016 and bore primary liability for the FY2016 property tax under the law. Blue Tarp Casino's failure to meet the conditions precedent to Closing on or before July 1, 2015 resulted in the Car Dealership not qualifying for FY2016 exemption. Ironically, Blue Tarp Casino acquired the Shelter in October and enjoyed the Mission's FY2016 property tax exemption, because the Mission owned the Shelter on July 1, 2015.

Assessors must be able to make determinations of ownership in an objective and easily verifiable manner. The Moscatiello court found that it would be administratively unsound to require assessors to analyze the provisions of a *recorded* trust instrument to determine eligibility for exemption based on subtle differences in the degree of control exercised by a beneficiary who uses trust property as his principal residence. Moscatiello vs. Assessors of Boston, 36 Mass. App. Ct. 622, 625 (1994). It would be even more unsound to make them analyze the provisions of *unrecorded* purchase and sale agreements. Shifting the July 1 date certain to a date "to be determined" from

a document "to be revealed" will inject uncertainty and subvert the transparency of municipal tax administration.

CONCLUSION

For the foregoing reasons, the Amici, the Massachusetts Association of Assessing Officers, and Massachusetts Municipal Lawyers Association, submit that this Court should reverse the decision of the Appellate Tax Board and find that the subject property was not exempt and was taxable for fiscal year 2016 because it was not owned by a religious organization on July 1, 2015.

Respectfully submitted,

Massachusetts Association of  
Assessing Officers

Massachusetts Municipal  
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By their Attorney

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 17(c)(9) of the  
Massachusetts Rules of Appellate Procedure

I, Rosemary Crowley, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of amicus briefs, including, but not limited to:

Mass. R. A. P. 17; and  
Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font *Courier New* at size 12, 10.5 characters per inch, and contains 19, total non-excluded pages.

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CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on September 28, 2020, I have made service of this Brief of Amici Curiae upon the attorney of record for each party, or if the party has no attorney then I made service directly to the self-represented party, by the Electronic Filing System on:

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