

# Solar Power Facility: Massachusetts Appellate Court Addresses Applicability of Personal Property Tax Exemption



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The Appeals Court of Massachusetts (“Court”) addressed in a September 21st Opinion whether a Massachusetts property tax exemption was applicable to a solar photovoltaic facility (i.e., “Solar Power Facility”). See *PelleVerde Capital, LLC v. Board of Assessors of West Bridgewater*, 101 Mass. App.Ct. 739.

The question involved whether the Solar Power Facility whose output was transferred to municipal properties for public purposes was encompassed by the exemption.

PelleVerde Capital, LLC (“PV”) owned a Solar Power Facility in fiscal years 2015, 2016, and 2017. The Solar Power Facility’s output was utilized by the town of West Bridgewater, Massachusetts, for public purposes.

The Massachusetts Legislature had exempted from taxation:

... any 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 property taxable under this chapter.

See G. L. c. 59, § 5, Forty-fifth, as amended by St. 1978, c. 388 (solar exemption).

PV requested personal property abatements for each of the previously referenced years. Each were denied by the Board of Assessors of West Bridgewater. The decision was affirmed by the Appellate Tax Board.

Each of these bodies rejected the argument that PV was entitled to the solar exemption.

The denial was based on the interpretation that the municipal properties supplied by PV’s Solar Power Facility were not subject to taxation under G. L. c. 59.

On appeal to the Massachusetts Appellate Court, PV argued that the Appellate Tax Board:

- Did not hew to the statutory language, and instead impermissibly substituted the phrase “subject to Massachusetts property tax” for the actual statutory language “property taxable under [c. 59].”
- Municipal properties to which PV supplied its Solar Power Facility’s output were “property taxable under c. 59.

As to the second argument, the Court holds that judicial precedent provides that despite the absence of an express exemption, municipal property is not subject to taxation so long as it is actually devoted to a public use.

As to the first argument, the Court determines that the relevant language from the statute indicates that municipal property held for a public use is not within the class of property taxable under c. 59.

The Court does note its recognition that:

. . . the result we reach here undercuts what we perceive to be an underlying purpose of the solar exemption, namely, to create an incentive to produce wind and solar energy. Not extending that incentive to wind and solar energy producers that supply municipal properties is likely to make it either harder, more expensive, or both, for municipalities to get solar and wind power suppliers to deal with them. But, second, we note that the Legislature recently enacted a comprehensive amendment of the solar exemption, . . . and eliminated the language upon which our decision here turns.

The Court upholds the Appellate Tax Board's decision that PV's Solar Power Facility is not encompassed by the exemption.

A copy of the decision can be downloaded [here](#).