



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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GRANTED IN PART: October 31, 2019

CBCA 5269, 5659

NOAA MARYLAND, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Diana Parks Curran and Hadeel N. Masseoud of Curran Legal Services Group, Inc.,  
Jones Creek, GA, counsel for Appellant.

James F. H. Scott, Office of General Counsel, General Services Administration,  
Washington, DC, counsel for Respondent.

Before Judges **HYATT**, **KULLBERG**, and **RUSSELL**.

**RUSSELL**, Board Judge.

Appellant, NOAA Maryland, LLC (NOAA Maryland), has appealed the General Services Administration's (GSA) decision denying NOAA Maryland's claim for reimbursement of four taxes pursuant to the Tax Adjustment clause of a lease entered into between NOAA Maryland and GSA. The clause defines "real estate taxes" for which GSA is financially responsible. The Board finds that two of the four disputed taxes (designated for stormwater management and transportation) fall under the clause's definition of a real estate tax and, therefore, fall under GSA's obligation to pay them. However, the other two

disputed taxes (designated for education and a clean water fund) fall under an exception in the clause, making GSA not obligated to reimburse them. Therefore, we grant the appeal in part.

### Background

#### I. The Lease

In September 2005, GSA executed a thirteen-year lease with NOAA Maryland's predecessor in interest to rent property in Prince George's County, Maryland. The lease was assigned to NOAA Maryland in December 2011. Under the lease, GSA agreed to pay real estate taxes as defined in the lease's Tax Adjustment clause:

Real estate taxes . . . are only those taxes, which are assessed against the building and/or the land upon which the building is located, without regard to benefit to the property, for the purpose of funding general Government services. Real estate taxes shall not include, without limitation, general and/or special assessments, business improvement district assessments, or any other present or future taxes of governmental charges that are imposed upon the Lessor or assessed against the building and/or the land upon which the building is located.

The Tax Adjustment clause also requires GSA to "pay its share of tax increases or . . . receive its share of any tax decrease based on the ratio of the rentable square feet occupied by the Government to the total rentable square feet in the building." The Government's percentage of occupancy within the subject building for the purpose of calculating future tax adjustments was 100% of the building's total rentable square footage.

#### II. The Appeals

On April 6, 2016, NOAA Maryland filed an appeal with the Board challenging GSA's decision denying NOAA Maryland's request to be reimbursed \$282,491.77 for taxes designated for Stormwater/Chesapeake Bay Water Quality (Stormwater Tax), the Washington Suburban Transit Commission (Transportation Tax), a Clean Water Act Fee (Clean Water Tax), and education (Education Tax). This appeal was docketed as CBCA 5269.

On October 27, 2016, NOAA Maryland submitted a revised request for a final decision to GSA for an additional \$70,568.82 for the tax year of July 2016 to June 2017 – increasing its total claim to \$353,060.59. With no reply to its request, on March 1, 2017,

NOAA Maryland filed with the Board an appeal from a deemed denial. This second appeal and NOAA Maryland's first appeal were consolidated. After denying NOAA Maryland's request for summary relief, the Board held a hearing on April 2, 2019.

### III. Disputed Taxes

The parties are in agreement that there are four taxes at issue in this dispute:

#### A. Stormwater Tax

In 1987, Prince George's County created a stormwater management district that includes all the land within the county except the city of Bowie, Maryland. *See* Prince George's County, Md., Code § 10-262(a) (2019). The county imposes "a direct ad valorem tax" on all property assessed for tax purposes within the district to pay for stormwater management operations and activities. *Id.* § 10-263(a). The tax also pays for costs associated with bonds issued by the county and the Washington Suburban Sanitary Commission. *Id.* According to the county's code, the stormwater tax is to be "levied and collected in the same manner . . . and be treated in all respects as other County property taxes." *Id.* § 10-263(b).

#### B. Transportation Tax

The Washington Suburban Transit District includes the counties of Prince George's and Montgomery in Maryland. Prince George's County, Md., Washington Suburban Transit District Code, § 3. The district is authorized to enter into contracts or agreements with the Washington Metropolitan Area Transit Authority in exchange for the district contributing sums for the construction or acquisition of transit facilities, for debt service requirements, and for meeting expenses and obligations incurred in the operation of transit facilities. *Id.* § 12(a). These contributions are funded by a tax levied against all assessable property within the district by the councils of Prince George's and Montgomery Counties. *Id.* § 14(a). The Washington Suburban Transit Commission (WSTC), created in 1965, is the agency that provides planning and oversight for mass transit services for the two counties. *Id.* §§ 4, 14(a)(1). The WSTC also determines the amounts necessary to be raised by the counties for a given year based on the valuation of assessable property within the counties. *Id.* § 14(a)(1). The county councils levy and collect the transit tax in the same way as county taxes. *Id.* The transit tax has the same priority rights, bears the same interest and penalties, and in every respect is treated the same as county taxes, but is earmarked for transit. *Id.*

C. Clean Water Tax

In 2013, the Prince George's County Council adopted a resolution establishing a schedule of fees to be collected for the county's Local Watershed Protection and Restoration Fund. Prince George's County, Md., Code § 10-302(b)(1). The fund supports various stormwater management activities and projects, and the fund's money cannot be transferred or reverted into the county's general fund. *Id.* § 10-303(a)-(c). The tax is collected in the same manner as county real property taxes and has all the same priority and rights, bears the same interest and penalties, and is enforced in the same manner as county real property taxes. *Id.* § 10-302(a)(6).

D. Education Tax

Prince George's County imposed an education tax, designated exclusively for its school system, for all taxable years after June 30, 2015. The tax was initially imposed against NOAA Maryland for the tax period from July 2016 to June 2017.

Discussion

These appeals present issues of contract interpretation. "The primary objective of contract interpretation is to determine the intent of the parties at the time an agreement is created." *Belle Isle Investment Co. v. General Services Administration*, CBCA 4734, 16-1 BCA ¶ 36,416, at 177,554 (quoting *Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 4068, 16-1 BCA ¶ 36,333, at 177,129). Contract interpretation begins with an examination of the plain language of the contract. *LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009). When interpreting the language of a contract, "reasonable meaning must be given [to] all parts of the [contract] so as to not render any portion meaningless, or to interpret any provision so as to create a conflict with other provisions of the contract." *Jane Mobley Associates, Inc. v. General Services Administration*, CBCA 2878, 16-1 BCA ¶ 36,285, at 176,954 (quoting *Champion Business Services v. General Services Administration*, CBCA 1735, et al., 10-2 BCA ¶ 34,539, at 170,345). If the contract's plain language is unambiguous then the contract's language controls. *Hunt Construction Group, Inc. v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002). Further, "only language which is reasonably susceptible to more than one meaning may be considered ambiguous." *Thermal Electronic, Inc. v. United States*, 25 Cl. Ct. 671, 673 (1992) (citing *Neal & Co. v. United States*, 19 Cl. Ct. 463, 471 & n.4 (1990), *aff'd*, 945 F.2d 385 (Fed. Cir. 1991)).

## I. The Tax Adjustment Clause

The Tax Adjustment clause requires GSA to “pay its share of tax increases” on the leased property. The question is whether the four disputed taxes are “real estate taxes” under the clause for which GSA has financial responsibility.

To answer the question of whether a disputed tax is a “real estate tax,” courts have looked behind the names or descriptions used for or given the tax and, instead, have focused on the “specific characteristics” of the tax. *City Crescent Ltd. Partnership v. United States*, 71 Fed. Cl. 797 (2006). In *City Crescent Ltd. Partnership*, the Court of Federal Claims examined the following factors in finding that a Baltimore city tax, described as a “real property surcharge” or a “special benefit district surcharge,” was a “real estate tax” under a GSA lease – whether the tax was (1) an “ad valorem real estate tax assessed, collected, and enforced in the same manner as other . . . [city] real estate taxes,” (2) “not for a single fixed amount,” (3) to be “assessed every year” for an “indefinite duration,” (4) used “predominantly [to] benefit the general public, not any specific property owners,” and (5) “used to augment the level of traditional governmental services.” *Id.* at 804. In *ASP Denver, LLC v. General Services Administration*, CBCA 2618, 15-1 BCA ¶ 35,850, this Board found that a tax assessed for a quasi-municipal government subdivision was a “real estate tax” because the tax was included as a component of assessed real estate taxes in property tax assessment notices, designated for general public improvements of the subdivision, and imposed as a general ad valorem tax and not a special assessment. *Id.* at 175,302-03. Courts have also found that lessees are responsible for charges or assessments imposed after effectuation of a lease when they supplant or are direct substitutes for general real estate taxes. *See Wright Runstad Properties Ltd. Partnership v. United States*, 40 Fed. Cl. 820, 825 (1998) (discussing cases).

## II. Taxes

### A. Transportation and Stormwater Taxes

We find that the stormwater and transportation taxes are “real estate taxes” under the lease. Under the relevant district code governing the transportation tax and the county code governing the stormwater tax, the taxes are to be levied and collected in the same manner and are to be treated like other county property taxes. Although the district and county codes use the term “property” and the GSA lease uses the term “real estate,” “there is no distinction in the law” between the two terms. *City Crescent Ltd. Partnership*, 71 Fed. Cl. at 804 (“The terms ‘real estate’ and ‘real property’ are synonyms of ‘property,’ and all are defined as ‘[l]and and anything growing on, attached to, or erected on it.’” (citing Black’s Law Dictionary 1254 (8th ed. 2004))). Thus, the relevant codes reflect that these two taxes are to

be treated as property or “real estate taxes.” Further, similar to the quasi-municipal tax at issue in *ASP Denver, LLC*, both the stormwater and transportation taxes are included on the county’s consolidated real property tax bill, and imposed ad valorem. Both taxes are also assessed every year, and imposed for an indefinite duration. Additionally, given their codification dates, which predate the lease, neither tax falls under the category of a “future tax” which is excluded from those taxes for which GSA is obligated to pay. We also do not find, as GSA urges, that the Tax Adjustment clause limits real estate taxes to those going into the county’s general fund. The clause does not contain this limitation but instead states that real estate taxes are those used for “general Government services.” GSA does not dispute that public transportation and stormwater management are within the scope of general government services provided by the county.

Additionally, we do not find that the taxes would fit within the category of “special assessments” which, under the lease, GSA is not obligated to pay. The lease does not include a definition of “special assessment.” However, as noted in *City Crescent Ltd. Partnership*, “ample federal and state case law has developed on the distinctions between ‘general real estate taxes’ and ‘special assessments,’ beginning with the Supreme Court’s landmark decision long ago in *Illinois Central R.R. Co. v. City of Decatur*[, 147 U.S. 190 (1893)].” 71 Fed. Cl. at 805. In *Illinois Central*, the Supreme Court stated:

Between taxes—or ‘general taxes,’ as they are sometimes called . . . —and special taxes or special assessments, which are imposed upon property within a limited area for the payment for a local improvement, supposed to enhance the value of all property within that area, there is a broad and clear line of distinction, although both of them are properly called taxes. . . . Taxes proper, or general taxes, proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution it renders no return of special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all. . . .

On the other hand, special assessments or special taxes proceed upon the theory that, when a local improvement enhances the value of neighboring property, that property should pay for the improvement.

The stormwater management and public transportation services at issue in this appeal are provided as public benefits county-wide, not for specific property owners or properties. Thus, the property taxes collected in support of these services do not fall within the category of a “special assessment” as that term has been defined in case law including decisions from a predecessor board. *Woodbridge Construction Corp. v. General Services Administration*, GSBGA 14200, 98-1 BCA ¶ 29,345, at 145,907 (“Taxes are used for the benefits of government that all citizens receive, while assessments are used, in part, for the benefit of the person whose land abuts the improvement that is financed with the assessment.”); *McDaniel Brothers Construction Co.*, GSBGA 6973, et al., 84-2 BCA ¶ 17,497, at 87,151 (“[S]pecial assessments are charged to particular parcels of real property within designated districts to recover the benefits conferred upon that property by specific local improvements of a public nature.”); *see also Wright Runstad Properties Ltd. Partnership*, 40 Fed. Cl. at 826 (City of Seattle’s assessment against downtown properties for a metro bus tunnel deemed as a “special assessment” because it was a one-time fee charged against properties specifically benefitting from the bus tunnel).

Accordingly, we find that both the stormwater and transportation taxes are real estate taxes, and that NOAA Maryland is entitled to their reimbursement.

#### B. Clean Water and Education Taxes

The Board finds that the clean water tax, imposed in 2013, and the education tax, imposed in 2015, fall within the category of a “future tax” under the lease. While “future tax” is not defined within the lease, this Board finds that the plain language of the lease supports the understanding that it means a tax not contemplated at the time the parties entered into the lease. NOAA Maryland’s arguments urging that the taxes are reimbursable are unpersuasive.

NOAA Maryland argues that, because the education tax is funded by an increase in county real estate property taxes, the tax is a reimbursable “real estate tax.” However, NOAA Maryland presents no evidence that the tax, effectuated in 2015, was one contemplated by the parties when they entered into the lease; nor did NOAA Maryland put forth evidence demonstrating that the tax was intended as a direct substitute for real estate taxes in existence at the time that lease was effectuated, in which case reimbursement would be appropriate. *See S.S. Silberblatt Inc. v. United States*, 888 F.2d 829, 832 (Fed. Cir. 1988) (“must . . . be strong indicia that the new taxes [are] intended as direct *substitutes* for the prior general real estate taxes”).

In further support of its position that the clean water and education taxes are reimbursable, NOAA Maryland presented testimony at the hearing from its corporate

representative, and a corporate representative from its predecessor, stating their understanding that GSA had committed to reimbursing certain costs under the lease, including the disputed taxes. However, their testimony fell short of showing that GSA had a contractual obligation to do so. Further, there was no written record – no affidavit or declaration, no deposition testimony, no email or other correspondence, and no contract modification – supporting the representatives’ testimony notwithstanding the many years that have passed since the lease was initially effectuated. Accordingly, we find the testimony unpersuasive to show that GSA was obligated to pay the clean water and education taxes.

Finally, NOAA Maryland argues that other provisions of the lease requiring GSA to pay increases in real estate taxes during the lease term over the base year should be construed to mean that GSA is also obligated to pay the clean water and education taxes at issue here. To accept this argument, we would have to ignore certain language in the Tax Adjustment clause. The clause defines “real estate taxes” as those that are assessed against the building without benefit to the property for the purpose of funding general government services. The definition excludes, however, “*without limitation*, general and/or special assessments, business improvement district assessments, or any other present or future taxes or governmental charges” that are assessed against the property or the land it sits on. This exclusionary provision means that, at the time that the lease was effectuated, no *other* taxes currently existing or assessed, other than real estate taxes, would be paid by GSA under the lease; nor would any future taxes created and imposed after effectuation of the lease. Accordingly, in light of this provision and because “[t]he primary objective of contract interpretation is to determine the intent of the parties at the time an agreement is created,” we cannot find that, in 2005, when the lease was initially executed, the parties intended to be bound by taxes created in 2013 and 2015. *See Belle Isle Investment Co.*, 16-1 BCA ¶ 36,416, at 177,554 (quoting *Systems Management & Research Technologies Corp.*, 16-1 BCA at 177,129).

Accordingly, we find that NOAA Maryland is not entitled to reimbursement of the clean water and education taxes.

### Decision

The Board **GRANTS IN PART** the appeals. Based on the Board’s interpretation of the Tax Adjustment clause, NOAA Maryland is due reimbursement on the stormwater and the transportation taxes. The claim for reimbursement of the clean water and education taxes is denied.



*Beverly M. Russell*  
BEVERLY M. RUSSELL  
Board Judge

We concur:

*Catherine B. Hyatt*  
CATHERINE B. HYATT  
Board Judge

*H. Chuck Kullberg*  
H. CHUCK KULLBERG  
Board Judge