



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued February 9, 2021

Appellate Tax Board

For the period July 1, 2017 through December 31, 2019





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Making government work better

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Mr. Thomas W. Hammond Jr., Chair
Appellate Tax Board
100 Cambridge Street, Suite 200
Boston, MA 02114

Dear Mr. Hammond:

I am pleased to provide this performance audit of the Appellate Tax Board. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2017 through December 31, 2019. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Appellate Tax Board for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular watermark.

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

ATB	Appellate Tax Board
COR	Commissioner of Revenue
EOAF	Executive Office for Administration and Finance
SJC	Supreme Judicial Court

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Appellate Tax Board (ATB) for the period July 1, 2017 through December 31, 2019. In this performance audit, we examined the cycle time of closed appeals, as well as ATB's compliance with Section 4 of Chapter 58A of the General Laws, which requires ATB to file annual reports with the Legislature.

Below is a summary of our finding and recommendation, with links to each page listed.

Finding 1 Page 10	ATB did not submit required information to the Legislature.
Recommendation Page 11	ATB should file reports containing all of the required elements annually with the Legislature.

OVERVIEW OF AUDITED ENTITY

Background

The Appellate Tax Board (ATB) was established in 1929 by Section 1 of Chapter 58A of the Massachusetts General Laws as a quasi-judicial agency required to hear and decide cases on appeal from decisions made by local and state taxing authorities. It was established to relieve the Superior Court of the large volume of tax appeals and provide taxpayers with a less expensive and more expedient means of appeal.

ATB's purpose is to hear taxpayer (appellant) appeals for abatements of property taxes, personal taxes, water bills, and motor vehicle excise taxes that have been denied by local boards of assessors (appellees). ATB also hears appeals by taxpayers regarding state taxes, including income tax, corporate and bank excise, use tax, and other related taxes. All ATB's decisions are binding on both the appellant and the appellee; however, under specific rules of Section 13 of Chapter 58A of the General Laws, certain decisions may be appealed to the State Appeals Court or the Supreme Judicial Court (SJC).

ATB has five commissioners, appointed by the Governor for six-year staggered terms. It is organizationally placed within the Executive Office for Administration and Finance (EOAF) for administrative purposes, but is not subject to EOAF control in conducting its adjudicatory function. During the audit period, ATB had 25 employees (representing 18.5 full-time-equivalent positions, including the five commissioners as well as part-time employees). It is located on the second floor of 100 Cambridge Street in Boston, where the majority of hearings are conducted. However, for taxpayers and boards of assessors in areas farther from Boston, ATB members travel to cities and towns such as Pittsfield, Springfield, New Bedford, Falmouth, and Northampton to hold hearings. ATB received state appropriations (including retained revenue) of \$2,279,461 and \$2,341,510 for fiscal years 2018 and 2019, respectively.

Tax Appeal Procedures

According to ATB's *Real Estate Tax Appeals: A Helpful Guide for Taxpayers and Assessors*,

If [the city or town assessor fails] to send the notice within 10 days following the . . . denial of an application and a taxpayer fails to file an appeal within three months of the . . . denial, the taxpayer may file a petition for late entry of appeal ("PLE") with the ATB. PLEs should be filed within 2 months after the date the appeal was due.

Taxpayers may choose to file tax appeals using formal procedure, small-claim procedure, or informal procedure.

According to Section 1.03 of Title 831 of the Code of Massachusetts Regulations, formal procedure requires “a clear and concise statement of the nature of the tax or other matter in controversy and of the facts on which the appellant relies.” Formal procedure requires that the parties file formal discovery requests such as document requests and appellees’ requests for admission of evidence to the court. The parties do not waive any rights of appeal to the State Appeals Court, and either party may request a written decision to explain the factual and legal basis of ATB’s decision.

Under small-claim procedure, as described in Section 7B of Chapter 58A of the General Laws, the amount of tax or excise placed in dispute by the petition under the small claim should not exceed \$25,000 per taxable year or calendar year and should not exceed \$25,000 for any taxable event or transaction in the case of any tax, such as income tax or motor vehicle excise taxes. Proceedings under small-claim procedure are conducted as informally as possible, and the board makes a decision and writes a summary in each case heard under the procedure. ATB’s decisions can be appealed to the State Appeals Court and then SJC.

Section 7A of Chapter 58A of the General Laws describes informal procedure as follows:

The informal procedure [is] for the determination of petitions for abatement of any tax upon real estate or tangible personal property. . . . Such procedure shall eliminate formal rules of pleading, practice and evidence.

The appellee may change to formal procedure within 30 days after the date the appeal is filed, if the fair cash value of the property concerned exceeds \$20,000.

ATB Case Management System

During the audit period, ATB used Time Matters as its case management system for managing all three appeal types and their related workflows. The system also allows ATB to run monthly and yearly queries against its data to obtain all of its case management metrics and generate operational reports that reflect the daily history of all appeals.

According to the ATB Cases Inventory that ATB provided to us, there are three types of appeals:

1. Property appeals: These cases, which represent 88% of the cases ATB handles other than telecommunication appeals, involve appeals of local property taxes and include both formal and informal procedures.
2. Commissioner of Revenue (COR) appeals: These are appeals of personal income taxes due individuals. According to ATB, COR appeals include both formal and small-claim procedures. ATB allows taxpayers three months to file an appeal of the denial of an application for abatement by the COR. The taxpayers must file a statement of the facts,¹ the amount of tax they paid, and the reasons they disagree with the denial.
3. Telecommunication appeals: These cases include only formal procedure; they are appeals of the Department of Revenue’s central valuation of telecommunication property taxes in various municipalities. There are at least three parties involved in these appeals: a telecommunication corporation, the COR, and the municipality or municipalities in which a property is located. Cases involving the property of a single telecommunication corporation in multiple municipalities may be consolidated for hearing. According to ATB management, because these appeals are complex, many of them are ultimately litigated before SJC.

The table below breaks down the case inventory during our audit period.

ATB Caseload

Case Type	Closed Cases*	Filed Cases†	Active Cases‡
Property Tax Appeals			
Formal Procedure	4,453	4,823	2,008
Informal Procedure	1,028	929	252
Petition for Late Entry	18	18	0
Telecommunication Tax Appeals	1,118	499	93
COR Tax Appeals			
Formal Procedure	513	355	191
Small-Claim Procedure	223	244	29
Total	<u>7,353</u>	<u>6,868</u>	<u>2,573</u>

* Closed cases are appeals that were closed during the audit period, which may include appeals submitted before that period.

† Filed cases include appeals filed during the audit period.

‡ Active cases include all appeals that were in the system, regardless of when they were filed.

1. Section 1.06 of Title 831 of the Code of Massachusetts Regulations states that the statement of the facts must include “the type of tax at issue and the tax periods or transaction dates involved,” “the date the return at issue (if any) was filed,” “the date of any assessment by the Commissioner of Revenue,” “the date(s) on which the tax was paid,” the date the taxpayer filed the application for abatement,” “the date of the Commissioner of Revenue’s denial of the application for abatement,” “an address and telephone number where the appellant may be contacted and where service of notices and other papers concerning the appeal may be made,” “such other information as the Board may require,” and “the signature of the taxpayer or its authorized representative.”

ATB Mediation Process

Under Section 8A of Chapter 58A of the General Laws, ATB is authorized to “employ alternative dispute resolution techniques including, without limitation, mediation and arbitration.” Although mediation is only listed as an option on the application for COR appeals, the same mediation process is available to litigants involved in property appeals.

Mediation is an informal, expeditious, voluntary, and confidential process agreed to by the parties involved. Taxpayers submit petitions to ATB to resolve contract negotiation disputes through a neutral third party, a mediator, who is an attorney in ATB’s Legal Department. The mediator coordinates meetings between both parties until the case is withdrawn or resolved. If the case cannot be resolved, the mediator may narrow the contested issues for trial, with the agreement of both parties. There were 158 appeals within the Mediation Program during the audit period, 139 of which were settled and closed. Approximately 2.7% of the total closed appeals processed by ATB were closed and settled within the Mediation Program.

ATB processes all submissions related to mediation through its Boston office. The submissions are received via in-person application or postal mail. Administrative staff members enter details in Time Matters. If the submission acknowledges mediation, the ATB mediator accepts the case. Taxpayers can also change their appeals to mediation during the pre-trial meeting or a status conference. The mediator records and updates the submission in ATB’s Mediation Schedule List of all mediation cases for further processing.

After the mediation case intake process, the mediator verbally contacts the two parties for a mediation conference. When both parties agree to mediation, the mediator schedules and conducts one or more mediation sessions on an agreed-upon date. For those that do not settle, the mediations transfer to a regular hearing trial, and all submitted documentation is returned to the parties after mediation ends. The contents of the mediation process are only available to the parties involved in the Mediation Program and are confidential; therefore, documentation is not maintained after mediation.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Appellate Tax Board (ATB) for the period July 1, 2017 through December 31, 2019.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Are mediation conferences conducted in a timely manner in accordance with Section G(ii) of Standing Order 1-88?	Yes
2. Did the Mediation Program cause a significant decrease in the caseloads ATB heard, in comparison with the caseloads before the program was established?	Partially; see <u>Other Matters</u>
3. Does ATB file its annual report as required by Section 4 of Chapter 58A of the General Laws?	No; see <u>Finding 1</u>

To accomplish our objectives, we gained an understanding of ATB's internal control environment related to the objectives by reviewing applicable laws, regulations, and agency policies and procedures, as well as conducting interviews with management, and we reviewed the appeal process and the case management system.

We performed the following procedures to obtain sufficient, appropriate audit evidence to address the audit objectives.

Mediation Program

We obtained case data (e.g., docket number, appellant name, appellee name, petition type, filing date, case status, and closing date) for all appeals and their related case activity by date, for 100% of the 7,353 cases that were closed during our audit period, directly from Time Matters.

We then analyzed an ATB-provided document called Mediation Schedule List for valid data that listed all appeals that went through the Mediation Program, which is separate from Time Matters. The data included the docket number, appellant name, filing date, mediation date, and result. We also verified that each appeal in this schedule also existed in Time Matters by looking for equivalent docket numbers, which are unique to each appeal. Some fields² are available in Time Matters but not the Mediation Schedule List; we created a joined table using the Mediation Schedule List and the Time Matters data to have access to all fields.

We interviewed ATB management to better understand the data fields. We then filtered the joined table by filing date, mediation date, and closing date to come up with a list of appeals that had gone through a complete mediation cycle (from date filed through date closed), which comprised 139 mediations.

We performed the following procedures to obtain sufficient, appropriate audit evidence to address the first audit objective.

- We analyzed the 139 mediations to determine the cycle time³ during our audit period. We also computed a median cycle time and compared the cycle time for each mediation to the average track in Standing Order 1-88.⁴

We performed the following procedures to obtain sufficient, appropriate audit evidence to address the second objective.

- Using the same process to determine cycle time, we computed the median cycle time for all of the 5,137 appeals we had selected for this calculation.⁵ We then compared the median cycle time of all closed appeals with the median cycle time of appeals that used the mediation process to assess whether the difference was significant.

2. Each field is a unique column in a data table.

3. Cycle time is the amount of time from when a full appeal is filed to the date it is closed. We calculated it by subtracting the filing date from the final closed date.

4. This standing order recognizes the litigation process and adopts cycle time standards for the court system.

5. We excluded telecommunication appeals because they are not good candidates for the Mediation Program, and we excluded cases filed more than two years from the earliest date closed because often they had been delayed for reasons outside ATB's control.

- We inspected the five types of applications (informal, formal, small claim, late entry, and Commissioner of Revenue) from ATB’s website to assess whether petitioners could select mediation on the application form.
- We selected a nonstatistical random sample of 35 appeals out of a population of 139 to assess whether the mediation conference was held in the Boston office; whether both parties entered into mediation voluntarily; and whether the person who facilitated the mediation conference was an attorney, in accordance with ATB’s “Mediation Guideline” document. Since our sample was nonstatistical, we were not able to project the results to the population. ATB told us that all communication during a mediation conference is confidential and ATB does not keep any documentation on conferences.
- To test whether the ATB caseload decreased significantly as a result of the Mediation Program, we queried the data from a Time Matters table of all appeals closed during our audit period and compared it to appeals closed for an approximately two-year period (July 1, 2013 through December 31, 2015) before the audit period, when the Mediation Program had not yet been implemented. We compared the median cycle times to assess whether the implementation of the Mediation Program resulted in a significant decrease in cycle time.

Annual Report

We performed the following procedures to obtain sufficient, appropriate audit evidence to address the third objective.

- We assessed whether ATB delivered annual reports for 2017, 2018, and 2019 to the Legislature by December.⁶ We also inspected ATB’s annual reports to determine whether the following were included in accordance with Section 4 of Chapter 58A of the General Laws:
 - the number and types of activities performed by ATB during the preceding state fiscal year
 - the number of appeals pending at the end of the year
 - the numbers and types of cases assigned (to each member and in the aggregate)
 - the way each case was disposed of
 - the average length of time from the date of the close of the record to the issuance of a decision.
- We reconciled the data in the ATB annual report for fiscal year 2019 to the data in Time Matters.

Data Reliability Assessment

To determine the reliability of the information obtained from Time Matters, we evaluated information security by conducting interviews, examining supporting documentation, and performing observations.

6. There is no set due date for the report; however, according to ATB, the board had a goal of December delivery each year.

Additionally, we performed validity and integrity tests of the data, which included (1) testing for missing data elements (e.g., case opening date), (2) scanning for duplicate records, (3) testing for values outside a designated range, (4) looking for dates outside specific periods, (5) testing for data validity errors, and (6) tracing a sample of claims to the source documents. We determined that the information was sufficiently reliable for audit testing.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Appellate Tax Board did not submit required information to the Legislature.

The Appellate Tax Board (ATB) did not submit an annual report for fiscal year 2018 to the Legislature. For fiscal year 2019, the annual report that ATB submitted to the Legislature was deficient: it lacked required information, including the types of matters ATB had handled during the preceding state fiscal year, the aggregate number and types of cases assigned to each member, the way each case was disposed of, and the average length of time from the date of the close of the record to the issuance of a decision. As a result, the Legislature did not have the information necessary to adequately review and assess ATB's activities when determining the agency's funding needs.

Authoritative Guidance

Section 4 of Chapter 58A of the Massachusetts General Laws states,

[ATB] shall report annually to the general court . . . and shall include in such report a statement of the number and type of matters handled by it during the preceding state fiscal year. . . . Such report shall further provide the aggregate number and type of cases assigned to each member, the manner by which the case was disposed of and the average length of time for issuing a decision from the date of the close of the record.

Reasons for Issue

ATB management told us that it had not completed its annual reports of all activities because there were reliability issues with the data it used for reporting. Specifically, in an email dated June 11, 2020, ATB stated,

A substantial portion of our case inventory during the fiscal year 2016 through 2019 consisted of telecommunication appeals. These appeals, which involve telecommunication providers' equipment in hundreds of cities and towns, as well as cross-appeals filed by many municipalities, were not uniformly accounted for in the old system, resulting in a significant number of closed cases appearing as active in Time Matters. The ATB corrected this issue going forward by creating a new category of cases, labeled "T" for telecommunications, so that these cases can be accurately tracked currently. However, for the periods covered by our annual reports for fiscal years 2016 through 2019, the difficulty in determining the total number of active telecommunication cases significantly skewed our data.

Recommendation

ATB should file reports containing all of the required elements annually with the Legislature.

Auditee's Response

We are committed to following the draft report's recommendation that we file our annual report on an annual basis now that the data integrity and accuracy issues described in the draft report have been resolved.

OTHER MATTERS

The Appellate Tax Board should consider encouraging the use of mediation to resolve more cases.

During our audit, we determined that the Appellate Tax Board's (ATB's) use of mediation to resolve appeals has had a positive impact on how quickly certain appeals are closed. For the 139 of 158 appeals in mediation that were closed during our audit period, the average median cycle time (the time from the date the appeal was filed to the date it was closed) was 149 days, in contrast to the average median cycle time of 328 days for the 8,205 appeals that ATB processed during fiscal years 2014 and 2015 before the implementation of the Mediation Program. This 179-day difference in cycle time (328 – 149) resulted in a total reduction of approximately 24,900 days for these 139 appeals. Since the ATB application only offers mediation on Commissioner of Revenue appeals, the 139 closed appeals represented only approximately 2.7% of the 5,137 total cases⁷ closed by ATB during the audit period. We understand that some appeals may be too complex to be good candidates for mediation, but we believe that ATB should consider taking whatever measures are possible to expand the use of mediation for other appeal types.

ATB's comment on this issue was "We will continue to explore ways to encourage parties to request participation in our mediation program."

7. For this calculation, we considered the total number of cases to be 5,137, as discussed previously in "Audit Objectives, Scope, and Methodology."