



THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board

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Docket No. C339402

JASON BLOOMBERG
Appellant.

v.

COMMISSIONER OF REVENUE
Appellee.

DECISION WITH FINDINGS

After consideration of the Commissioner's Motion to Dismiss ("Motion"), the appellant's Opposition to the Motion, and the arguments advanced at the December 7, 2020 hearing of the Motion, the Appellate Tax Board ("Board") makes the following findings of fact and rulings of law.

The material facts are not in dispute. The appellant timely filed personal income tax returns for tax years 2009, 2010, and 2011 ("tax years at issue") and timely paid the tax shown as due on those returns. The Commissioner audited and then assessed additional tax, penalties, and interest for each of the tax years at issue. Other than an intercepted refund for tax year 2011 that the Commissioner applied toward the deficiency assessment for tax year 2009, the appellant has made no payments of the deficiency assessments for the tax years at issue.

G.L. c. 62C, § 37 provides, in pertinent part, that an application for abatement must be filed with the Commissioner within 3 years of the filing of the return, 2 years of an assessment, or 1 year of tax payment, whichever is later. Application of § 37 to the facts of this appeal results in the following deadlines for the timely filing of abatement applications for the tax years at issue:

<u>Tax Year</u>	<u>Deadline for Filing Abatement Application</u>
2009	June 27, 2016
2010	March 21, 2016
2011	March 21, 2016

The appellant filed his abatement application with the Commissioner on July 16, 2019, over three years after the expiration of the period provided under § 37 in the absence of payment of the deficiency assessments.

The appellant does not dispute the above filing dates or the Commissioner's calculation of tax, penalties, and interest. Rather, he argues that the Commissioner's supposed violation of the "Taxpayer Bill of Rights," a document that the Commissioner is required to prepare pursuant to G.L. c. 14, § 6, provides him with a basis to appeal to the Board, notwithstanding his failure to comply with § 37. He also cites various statutes and non-Massachusetts case law for the proposition that the Board may order an abatement in the absence of a timely filed abatement application. There is no merit to the appellant's argument.

The abatement remedy is created by statute and, therefore, the Board has only that jurisdiction conferred on it by statute. ***Commissioner of Revenue v. Pat's Super Market Inc.***, 387 Mass. 309, 311 (1982). Timely filing of an abatement application has long been held a condition of invoking the Board's jurisdiction. See, e.g., ***Dana Lease Finance Corp. v. Commissioner***, 53 Mass. App. Ct. 840, 843 (2002); ***Nissan Motor Corp. in U.S.A. v. Commissioner of Revenue***, 407 Mass. 153, 157, (1990); ***Tilcon Massachusetts, Inc. v. Commissioner of Revenue***, 30 Mass. App. Ct. 264, 264-267, (1991). Neither the courts nor this Board have the authority to create an exception to the time limit specified by statute. ***Sears Roebuck & Co. v. State Tax Commission***, 370 Mass. 127, 130 (1976); ***Peterson v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 1994-305.

Because the appellant did not timely file his abatement application with the Commissioner in accordance with G.L. c. 62C, § 37, the Board finds and rules that it has no jurisdiction over this appeal. The Board notes that the appellant could file a new abatement application with the Commissioner within one year of payment of all or part of the deficiency assessments and, if successful, recover an abatement up to the amount of his payment. See ***Electronics Corp. of America v. Commissioner of Revenue***, 402 Mass. 672, 675 (1988).

On the basis of the foregoing, the Board allows the Commissioner's Motion to Dismiss for lack of jurisdiction and enters a decision for the appellee in this appeal.

APPELLATE TAX BOARD

/s/ Thomas W. Hammond, Jr. Chairman

/s/ Patricia M. Good Commissioner

/s/ Steven G. Elliot Commissioner

/s/ Patricia Ann Metzger Commissioner

/s/ Mark J. DeFrancisco Commissioner

Attest: /s/ William J. Doherty
Clerk of the Board

Date: December 17, 2020

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.