

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**PAUL & EILEEN GILLIGAN**

**v.**

**BOARD OF ASSESSORS OF  
THE TOWN OF PLYMOUTH**

Docket No. F350284

Promulgated:  
October 28, 2024

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Plymouth ("appellee" or "assessors") to abate a tax on real estate owned by Paul and Eileen Gilligan ("appellants") for fiscal year 2023 ("fiscal year at issue").

Chairman DeFrancisco heard the appellee's Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss"). Commissioners Good, Elliott, Metzger, and Bernier joined him in allowing the Motion to Dismiss and dismissing the appeal for lack of jurisdiction.

These findings of fact and report are made pursuant to a request by the appellants under G.L. c. 58A, § 13 and 831 CMR 1.34.

*Paul and Eileen Gilligan, pro se, for the appellants.*

*Anne Dunn, Director of Assessing, for the appellee.*

## **FINDINGS OF FACT AND REPORT**

Based on evidence presented at the hearing of the Motion to Dismiss, the Appellate Tax Board ("Board") made the following findings of fact.

On February 28, 2022, the appellants purchased a 0.147-acre improved parcel of real property located at 11 Woodhaven Drive in Plymouth ("subject property"). The appellants purchased the subject property from the developer, Stabile Homes at Redbrook LLC ("Stabile Homes"). The subject property was assessed for the first time for the fiscal year at issue and was valued at \$621,200, for which a total tax was due of \$8,664.40, including the Community Preservation Act surcharge. On January 17, 2023, the appellants filed an abatement application with the assessors, which they denied on April 11, 2023. On June 20, 2023, the appellants filed a petition with the Board.

According to an affidavit of the Plymouth Collector of Taxes, as well as supporting documentation, the appellants timely paid the first-quarter tax installment but paid the second-quarter tax installment after its November 1, 2022 due date and thus incurred interest.

At the hearing of the Motion to Dismiss, the appellants conceded that they paid the installment late but further testified that they never received the second-quarter tax bill. A copy of the second-quarter tax bill shows that the bill was sent to Stabile

Homes in Nashua, New Hampshire, the owner of the subject property as of January 1, 2022, the valuation and assessment date for the fiscal year at issue. The appellants testified that after some time, they realized that they had never received the second-quarter tax bill, so they went to Town Hall to inquire and make the tax payment. When questioned by the Board how they understood when to pay the first-quarter tax bill timely, the appellants testified that they had been advised at the closing of the subject property that the first-quarter tax bill would be payable on August 1, 2022.

Based on the arguments presented during the hearing of the Motion to Dismiss and supporting documents submitted by the parties, and for reasons that are further explained in the following Opinion, the Board allowed the Motion to Dismiss.

Accordingly, the Board issued a decision for the appellee in this appeal.

#### OPINION

In accordance with G.L. 59, § 64, a taxpayer aggrieved by the assessors' refusal to abate a tax on real property may file an appeal with the Board, provided that:

if the tax due for the full fiscal year on a parcel of real estate is more than \$5,000, said tax shall not be abated unless the full amount of said tax due, including all preliminary and actual installments, ***has been paid without the incurring of any interest charges on any part of said tax . . .***

(emphasis added). Although timely payment is not a condition precedent to filing an application for abatement with the assessors, "[p]ayment of the full amount of the tax due without incurring interest charges 'is a condition precedent to the board's jurisdiction over an abatement appeal.'" **Columbia Pontiac Co. v. Assessors of Boston**, 395 Mass. 1010, 1011 (1985) (quoting **Stilson v. Assessors of Gloucester**, 385 Mass. 724, 732 (1982)).

"Since the remedy of abatement is created by statute, the board lacks jurisdiction over the subject matter of proceedings in which this remedy is sought where those proceedings are commenced at a later time or prosecuted in a different manner from that prescribed by statute." **Nature Church v. Assessors of Belchertown**, 384 Mass. 811, 812 (1981) (citing **Assessors of Boston v. Suffolk Law School**, 295 Mass. 489, 495 (1936)). Adherence to the statutory prerequisites is essential "to effective application for abatement of taxes and to prosecution of appeal from refusals to abate taxes." **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747, (1975) (citing **Old Colony R. R. Co. v. Assessors of Quincy**, 305 Mass. 509, 511-12 (1940)). Because the tax on the subject property for the fiscal year at issue exceeded the \$5,000 tax liability threshold, and the second-quarter tax

bill incurred interest for untimely payment, the Board was deprived of jurisdiction over this appeal.<sup>1</sup>

The appellants requested leniency, testifying that they never received the second-quarter tax bill. As indicated on its face, the tax bill was sent to Stabile Homes, not the appellants. However, the Town of Plymouth complied with statutory mandates by sending the tax bill to Stabile Homes. Pursuant to G.L. c. 59, § 21, "all taxes shall be assessed as of January first preceding the fiscal year with respect to which the taxes are assessed," and G.L. c. 59, § 11 further requires that taxes on real property shall be assessed "to the person who is the owner on January 1." See also **Hardy v. Jaeckle**, 371 Mass. 573, 578 (1976). As Stabile Homes was the record owner of the subject property on January 1, 2022, the relevant date of assessment for the fiscal year at issue, the assessors followed proper statutory procedure. See G.L. c. 59, § 21; G.L. c. 59, § 11; G.L. c. 59, § 2A.

The appellants' failure to receive a tax bill cannot absolve the late payment of the tax and the ensuing accrual of interest. "An omission to send a notice under this section shall not affect the validity either of a tax or of the proceedings for its collection." G.L. c. 60, § 3. See also **Boston v. Du Wors**, 340 Mass.

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<sup>1</sup> Under G.L. c. 59, § 64, if a taxpayer has timely paid at least the average of the tax assessed for the three fiscal years preceding the fiscal year at issue, incurring interest does not deprive the Board of jurisdiction. However, where, as here, no tax was assessed for the three preceding fiscal years, the "three-year average" rule does not apply. *Id.*

402, 404 (1960) (“[T]he liability to pay the tax was not conditioned on the sending of a bill. The tax was due when, after July 1, its amount was fixed. There being a present obligation to pay, no demand was necessary.”). The liability for the second-quarter tax for the fiscal year at issue was valid and due on November 1, 2022, even if the appellants never received a tax bill. See **Orrall et al., Trustees v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 1983-78, 88 (holding that “[e]ven if the appellant did not receive the tax bill, it is obligated to pay the tax bill by [its due date] whether or not the tax bills are sent out and received”); **M. & J. Realty v. Assessors of Walpole**, Mass. ATB Findings of Fact and Reports 1992-11, 17 (holding that “taxpayers are obligated to pay taxes on time whether or not the bills are sent out and received”) (citing **Boston v. Du Wors**, 340 Mass. 402 (1960)).


The Board recognizes the challenges posed to the appellants by the second-quarter bill having been sent to Stabile Homes, which did not then forward the bill to the appellants. However, the Board must follow statutory requirements for jurisdiction and cannot consider equitable arguments. See **Commissioner of Revenue v. Marr Scaffolding Co., Inc.**, 414 Mass. 489, 494 (1993).

The Board lacks jurisdiction over the appeal for the fiscal year at issue. Accordingly, the Board allowed the Motion to Dismiss and issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

By:   
**Mark J. DeFrancisco, Chairman**

A true copy,

Attest:   
**Clerk of the Board**