COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

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| **ILSE W. GRATTON** | **v.** | **BOARD OF ASSESSORS OF** |
|  |  | **THE TOWN OF WARE** |

Docket No. F334902    Promulgated:

    December 17, 2018

 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 Ware (“assessors” or “appellee”) to grant a surviving spouse veteran’s exemption under G.L. c. 59, § 5, Clause 22D (“Clause 22D”) for certain real estate in the Town of Ware, owned by and assessed to Ilse W. Gratton (“appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2018 (“fiscal year at issue”).

Commissioner Good heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Elliott joined her in the decision for the appellant.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

 *Debra Gratton,* pursuant to a power of attorney*,* for the appellant.

 *Theodore Balicki,* assessor, for the appellee.

**FINDINGS OF FACT AND REPORT**

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2017, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a single-family residence located at 11 Laurel Drive in Ware (“subject property”). The appellant has lived in the subject property since 1973; she lived in the subject property with her late husband, Roland Gratton, from 1973 until his death in 1996, and has since lived alone in the subject property.[[1]](#footnote-1) Mr. Gratton was a veteran who was exposed to Agent Orange during a tour of active duty in Vietnam; the United States Department of Veterans Affairs (“Department of Veterans Affairs”) determined that his death was the result of a service-connected disability.

For the fiscal year at issue, the assessors valued the subject property at $154,900 and assessed a tax at a rate of $20.71 per thousand in the amount of $3,207.98. The appellant timely paid the tax due without incurring interest.

As they had done for several prior years, the assessors took it upon themselves to prepare an application for statutory exemption for the appellant’s use for the fiscal year at issue. The application did not indicate under which clause of G.L. c. 59, § 5 the exemption was claimed; it merely had a heading of “Veteran.” The application was filed with the assessors on November 1, 2017 and they allowed a $400 exemption in tax on November 7, 2017, reducing the total tax for the fiscal year at issue to $2,807.98. The assessors, however, failed to notify the appellant of their action on the application within ten days as required under G.L. c. 59, § 63; rather, they sent notice of the $400 abatement to the appellant on December 28, 2017.

The appellant’s daughter became aware of the situation and, after investigation, concluded that the appellant should have been receiving a full exemption from real estate tax under G.L. c. 59, § 5, Clause 22D (“Clause 22D”) for real estate owned by the surviving spouse of a veteran who “during active duty service, suffered an injury or illness documented by the United States Department of Veterans Affairs . . . which was a proximate cause of their death.”

The appellant’s daughter brought this to the attention of the assessors and attempted to file an abatement application with the assessors on behalf of the appellant seeking a full abatement of tax. By letter dated March 23, 2018, the assessors refused to accept the application and informed the appellant that the “time frame has passed” for her to file an appeal of their decision.

The assessors were mistaken, both as to the appellant’s appeal rights and the merits of her claim. First, with regard to the ability of the appellant to challenge their decision, the assessors’ failure to comply with G.L. c. 59, § 63 affords additional time for the appellant to file her appeal. As will be discussed in the Opinion below, the assessors’ late notice resulted in the appellant’s application being deemed denied three months after its November 1, 2017 filing date; accordingly, the application was deemed denied on February 1, 2018. The appellant timely filed her appeal with this Board on April 25, 2018, prior to the May 1, 2018 deadline. Accordingly, the Board has jurisdiction to hear and decide this appeal.

The assessors were also mistaken regarding the merits of the appellant’s claim. The assessors granted a $400 exemption to her for the fiscal year at issue, as they did for several prior fiscal years, apparently under the general veterans exemption provisions of G.L. c. 59, § 5, Clause 22 (“Clause 22”) and not under Clause 22D. However, as the evidence of record indicates, the appellant clearly qualifies for the Clause 22D exemption for surviving spouses of veterans whose deaths are proximately caused by their military service. The appellant offered uncontroverted evidence that she meets the minimum domicile requirement, her husband was exposed to Agent Orange during his tour in Vietnam, and she produced a document dated June 7, 2018 from the Department of Veterans Affairs indicating that her husband “died as a result of a service-connected disability.” In short, there exists no basis in law or fact for the assessors to deny her a full exemption under Clause 22D.

On the basis of the foregoing, the Board issued a decision for the appellant and granted an abatement in the full amount of the tax assessed, $3,207.98.[[2]](#footnote-2)

**OPINION**

1. **JURISDICTION**

Under G.L. c. 59, § 63 (“§ 63”), assessors must “within ten days after their decision on an application for an abatement, send written notice thereof to the applicant.” The assessors failed to comply with this requirement in the present appeal. The § 63 notice requirement is “not merely directory” and it “impacts the filing deadlines” for perfecting an appeal to this Board. ***Stagg Chevrolet, Inc. v. Board of Water Commissioners of Harwich,*** 68 Mass. App. Ct. 120, 125 (2007).

Ordinarily, a taxpayer must file an appeal to the Board within three months after the assessors’ decision on an abatement application. *See* G.L. c. 59, §§ 64 and 65. However, when the assessors fail to comply with the requirements of § 63, a taxpayer’s three-month period to appeal to the Board does not commence with the date of the assessors’ decision; rather, taxpayers are afforded a “reasonable time for appeal based on the most relevant statutory standards.” ***Stagg Chevrolet*** 68 Mass. App. Ct. at 126. Both the Appeals Court and the Board recognize that “the ‘deemed to be denied’ time frame provides a reasonable time period with dates certain easily ascertained by both parties.” ***Id.;*** *see also* ***Cardaropoli v. Assessors of Springfield,*** Mass. ATB Findings of Fact and Reports 2001-913. In other words, where, as here, the assessors issue a notice that is defective under § 63, the three-month appeal period commences on the date that the application is deemed denied, not on the earlier date of the assessors’ action.

Under G.L. c. 58A, § 6 and G.L. c. 59, §§ 64 and 65 (“§§ 64 and 65”), the appellant’s November 1, 2017 application was deemed denied on February 1, 2018. Under §§ 64 and 65, her appeal to the Board was due, at the earliest, three months after the application’s deemed denial on May 1, 2018.[[3]](#footnote-3) Accordingly, her April 25, 2018 appeal to the Board was timely and the Board has jurisdiction over this appeal.

1. **CLAUSE 22D EXEMPTION**

Massachusetts veterans and their surviving spouses are entitled to a number of different real estate tax benefits, ranging from a $400 reduction in tax to a total exemption from tax, depending on a variety of qualifying factors. *See* G.L. c. 59, § 5, Clauses 22 through 22G. These factors include the extent of a veteran’s service-connected disability, the type of disability, and whether the veteran died as a result of an injury or illness suffered while on active duty. Each clause provides a different tax benefit depending on the qualifying factors identified in the particular clause, with greater tax benefits available for veterans with more severe disabilities and spouses of veterans whose death was caused by their active duty service. *Compare, e.g.,* Clause 22A ($750 for veterans who have lost the use of one hand, one foot, or one eye); Clause 22B ($1,250 for veterans who have lost the use of both hands, both feet, or both eyes); and Clause 22C ($1,500 for veterans who suffered permanent and total disability in the line of duty).

The assessors in the present appeal granted an exemption of $400 to the appellant under Clause 22, the smallest of all of the available exemptions for veterans and their spouses. A Clause 22 exemption is available for veterans who have a disability rating of 10 percent or more, have been awarded a Purple Heart, served at a particular time, or met other qualifying factors that are not applicable to the appellant’s deceased husband.

At the other end of the exemption spectrum is Clause 22D, which provides an exemption

to the full amount of the taxable valuation of real property of the surviving spouses of soldiers and sailors, members of the National Guard and veterans who: (i) during active duty service, suffered an injury or illness documented by the United States Department of Veterans Affairs or a branch of the armed forces which was a proximate cause of their death.

 The appellant offered uncontroverted evidence that her deceased husband had been exposed to Agent Orange during a tour of active duty in Vietnam and she produced a document from the Department of Veterans Affairs indicating that her husband “died as a result of a service-connected disability.” Accordingly, the appellant met her burden of proving that her husband suffered an “injury or illness documented by the United States Department of Veterans Affairs . . . which was a proximate cause” of his death. *See, e.g.,* ***Animal Rescue League of Boston v. Assessors of Bourne***, 310 Mass. 330, 332 (1941) (ruling that the taxpayer bears the burden of proving entitlement to a tax exemption).

 In addition to the above requirements, Clause 22D also requires that the surviving spouse occupy the real estate as the spouse’s domicile and that either the spouse has been domiciled in the commonwealth for at least the past five years or the deceased service person had been domiciled in the commonwealth for at least six months prior to entering the service. The appellant provided uncontroverted evidence that she has lived in the subject property since 1973; she and her late husband lived together in the subject property until his death in 1996, and she has since lived alone in the subject property. Accordingly, the appellant has met her burden of proving that she is domiciled in the subject property and has been domiciled in the commonwealth for the necessary five-year period.

 Accordingly, the Board found and ruled that the appellant was entitled to a full exemption from real estate tax under Clause 22D and issued a decision for the appellant in this appeal.

 **THE APPELLATE TAX BOARD**

 **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. The appellant was 88 years old and in poor health at the time of the hearing; she was assisted at the hearing by her daughter, an active-duty member of the armed forces who took a three-month leave to assist her mother. [↑](#footnote-ref-1)
2. Because $400 has previously been abated, the net amount to be abated is $2,807.98. [↑](#footnote-ref-2)
3. The appellant could also have had an additional two months beyond the expiration of three months from the deemed denial of her application to file her appeal under G.L. c. 59, § 65C. *See* ***Cardaropoli,*** Mass. ATB Findings of Fact and Reports at 2001-917. Because the appellant filed her appeal within the initial three-month period, the § 65C remedy was not necessary in the present appeal. [↑](#footnote-ref-3)