COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MOHAN A. HARIHAR **v.** **COMMISSIONER OF REVENUE**

Docket No. C350271

Promulgated:
May 22, 2026

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the refusal of the Commissioner of Revenue ("Commissioner" or "appellee") to abate penalties and interest assessed to Mohan A. Harihar ("appellant") for late payment of income taxes for the tax years 2009, 2011-2013, and 2015-2022 ("tax years at issue").[1]

Chairman DeFrancisco heard this appeal. Commissioners Good, Elliott, Metzer, and Bernier joined him in the decision for the appellee.

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

Mohan A. Harihar, pro se, for the appellant.

R. Emmett Murphy, Esq., for the appellee.

[1] The appellant filed a Petition Under Formal Procedure ("Original Petition") with the Appellate Tax Board on June 21, 2023, identifying the tax years ending December 31, 2006 through December 31, 2022 as the tax years in dispute in this appeal. By Order dated February 16, 2024, the Appellate Tax Board required the appellant to file a Petition in Proper Form. The appellant filed the "Re-Filed Petition Under Formal Procedure" ("Re-Filed Petition") in which he amended the disputed tax years in this appeal to the tax years at issue by reference to a Statement of Account issued by the Commissioner on October 10, 2023.

FINDINGS OF FACT AND REPORT

Based on testimony and evidence presented at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

The appellant is a resident of the Commonwealth who was assessed personal income taxes on income received for the tax years at issue, together with late payment penalties and interest.

The appellant filed an abatement application with the Commissioner on July 24, 2022, seeking abatement of personal income tax for tax years 2010 through 2021. The application was denied by Notice of Abatement Determination dated April 26, 2023. On June 19, 2023, the appellant filed the Original Petition with the Board and later the Re-Filed Petition, revising this appeal to reflect the tax years at issue, as explained in footnote 1.

Prior to the commencement of the hearing on the merits of this appeal, the Commissioner filed a Motion to Dismiss in Part for Lack of Jurisdiction and to Limit the Relief Available ("Motion to Dismiss"). In the Motion to Dismiss, the Commissioner sought to dismiss this appeal with respect to tax years 2009, 2011-2013, 2015, 2016, part of 2017, 2018, and 2022 based on jurisdictional defects. Chairman DeFrancisco heard the Motion to Dismiss and was joined in the decision to allow it by Commissioners Good, Elliott, Metzer, and Bernier. The jurisdictional defects for each tax year that was dismissed are outlined as follows:

The Board dismissed tax years 2009 and 2022 because the abatement application filed by the appellant included only tax years 2010 through 2021, not tax years 2009 and 2022. Pursuant to G.L. c. 62C, § 39 ("§ 39"), a taxpayer must be aggrieved by the refusal of the Commissioner to abate or to refund tax resulting from the denial or deemed denial of an abatement application. Here, neither the application for abatement nor the Commissioner’s denial included tax years 2009 and 2022. Thus, the appellant was not aggrieved by the Commissioner’s refusal to abate a tax, and the Board does not have jurisdiction over tax years 2009 and 2022.

With respect to tax years 2012 and 2013, G.L. c. 62C, § 38 requires a taxpayer who is seeking an abatement to have filed a tax return for each tax year at issue prior to or concurrent with the filing of an abatement application. Here, the appellant failed to file income tax returns for tax years 2012 and 2013. Consequently, the Board does not have jurisdiction over those tax years.

Under the provisions of G.L. c. 62C, § 37 (“§ 37”), any person aggrieved by the assessment of a tax may apply to the Commissioner for an abatement of the tax assessed at any time within three years from the date of filing of the return, taking into account paragraph (a) of section 79, within two years from the date the tax was assessed or deemed assessed, or within one year from the date that the tax was paid, whichever is latest. In this case, the abatement application as it pertained to tax years 2011, 2015, 2016, 2017 (in part) and 2018 was filed beyond the allowable time limits set forth in § 37. The chart below illustrates the latest that the abatement application could have been timely filed for each of these tax years.

Tax Year	Tax Return Filing Date	Assessment Date	Payment Date	Latest Date for Filing Abatement Application
2011	02/13/2015	02/13/2015 09/14/2015	None	02/13/2018
2015	12/12/2016	12/12/2016	None	12/12/2019
2016	04/18/2017	04/18/2017	None	04/18/2020
2017	03/12/2018	03/17/2018 08/30/2021[2]	None None	04/15/2021 08/30/2023
2018	04/22/2019	04/22/2019	None	04/22/2022

The abatement application with respect to each of these tax years was filed on July 24, 2022, thus barring the Board's jurisdiction with respect to tax years 2011, 2015, 2016, 2017 (except with respect to an assessment made on August 30, 2021) and 2018.

In consideration of the above, the Board found and ruled that its jurisdiction is limited to the assessment made on August 30, 2021, for tax year 2017, and tax years 2019, 2020, and 2021 ("relevant tax years").

The appellant presented his case through the submission of documentary evidence as well as his testimony. Though he did not contest the underlying assessment of tax, he argued that the penalties and interest assessed to him for each of the tax years at issue warrant abatement because he suffered and continues to suffer from a "severe financial hardship." Much of the appellant's argument focused on what he described as an "illegal foreclosure of his residential property" by a lender that occurred in 2010 and

[2] The Notice of Assessment dated August 30, 2021 was issued pursuant to adjustments disclosed on a report received from the Internal Revenue Service in accordance with c. 62C, § 30.

which he considered to be the source of his ongoing financial hardship. The appellant argued that his failure to pay the taxes for the relevant tax years was the result of his financial hardship, which he asserted constituted reasonable cause for late payment. On this basis, the appellant argued that an abatement of penalties and interest charged on the taxes owed was warranted.

The Commissioner submitted documentary evidence, including jurisdictional documents and rested without further presentation of an affirmative case.

Based on the above, the Board found and ruled that the appellant failed to establish reasonable cause for his failure to timely pay taxes due for the tax years at issue and that abatement of penalties is therefore not warranted. As discussed in the Opinion below, the appellant's claim of financial hardship, even if established, is not sufficient to establish reasonable cause for late payment. The Board further found no evidence that the underlying tax was invalid and therefore ruled that the Board has no discretion to abate associated interest.

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

OPINION

Pursuant to G.L. c. 62C, § 33(f) the Commissioner has discretion to waive or abate late file and late pay penalties "if it is shown that any failure to file a return or to pay a tax in a timely manner is due to reasonable cause and not due to willful neglect." The appellant bears the burden of establishing reasonable cause. ***Blakeley v. Commissioner of Revenue***, 28 Mass. App. Ct. 499, 501, (1990), *rev. denied*, 407 Mass. 1103 (1990). The courts and this Board have found that "reasonable cause" is an objective standard, whereby “[a]t a minimum, the taxpayer must show that he exercised the degree of care that an ordinary taxpayer in his position would have exercised.” ***Commissioner of Revenue v. Wells Yachts South***, ***Inc.***, 406 Mass. 661, 665 (1990). Various forms of hardships, including financial hardships, do not constitute reasonable cause to relieve a taxpayer of late-file or late-pay penalties. *See*, *e.g.*, ***Sign of the Surf, Inc. v. Commissioner of Revenue***, 47 Mass. App. Ct. 830, 831 (1999) (neither “personal financial problems” nor “[c]ommercial necessity” can alone constitute reasonable cause for purposes of § 33(f)), *rev. denied*, 430 Mass. 1111 (1999).

The Department of Revenue’s Administrative Procedure 633 (“AP 633”) also provides that a taxpayer’s lack of funds to make timely payment does not support a claim of reasonable cause. In the instant appeal, the Board found that the appellant’s claim of financial hardship did not constitute reasonable cause for the late or non-payment of the taxes at issue. Accordingly, the appellant did not meet his burden of proving that he was entitled to an abatement of penalties.

With respect to the appellant’s claim for abatement of interest, the Board has no discretion to abate interest where the underlying tax is found to be valid. General Laws c. 62C, § 32(a) provides, in relevant part:

> If any amount of tax is not paid to the commissioner on or before its statutory due date, there shall be added to the tax interest… .

It is well-settled that the imposition of interest is mandatory and there is no provision for an appeal. ***Moss v. Commissioner of Revenue,*** Mass. ATB Findings of Fact and Reports 1989-270, 278-79; *see also* ***Blue Jay Corporation v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 1994-140, 142 (stating that “there is no provision for abating interest accrued on a tax validly due”).

Finally, as to the Board's jurisdiction with respect to several of the tax years initially at issue in this appeal, it has long been the law of this Commonwealth that, when a remedy is created by statute, and the time within which it may be availed of is one of the prescribed conditions for relief, failure to meet that time limit deprives a judicial body, court, or administrative appeals board of jurisdiction to hear the case. ***Nissan Motor Corp. in USA v. Commissioner of Revenue***, 407 Mass. 153, 157 (1990) (citing ***Greeley v. Zoning Bd. of Appeals of Framingham,*** 350 Mass. 549, 552 (1966)). The Supreme Judicial Court has stated that "[s]ince the remedy by abatement is created by statute the board . . . has no jurisdiction to entertain proceedings for relief by abatement begun at a later time or prosecuted in a different manner than prescribed by statute." ***Assessors of Boston v. Suffolk Law School,*** 295 Mass. 489, 492 (1936); *see also* ***Stilson v. Assessors of Gloucester,*** 385 Mass. 724, 732 (1982).

Adherence to statutory prerequisites is "essential to 'effective application for abatement of taxes and to prosecution of appeal from refusals to abate taxes.'" ***Commissioner of Revenue v. Pat's Super Market, Inc.,*** 387 Mass. 309, 311 (1982)(quoting ***New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth,*** 368 Mass. 745, 747 (1975)). Consequently, "there can be no appeal to the board on the merits after the right to apply . . . for abatement has been lost through failure to follow statutory procedures." ***New Bedford Gas & Edison Light Company,*** 368 Mass. at 748. As explained earlier, the appellant failed to adhere to the statutory requirements of § 39 for appealing tax years 2011 and 2022; §38 for tax years 2012 and 2013; and § 37 for tax years 2011, 2015, 2016, part of 2017, and 2018. Therefore, the Board found and ruled that it had no jurisdiction over those tax years.

On the basis of the foregoing, the Board decided this appeal for the appellee, upholding the assessments of penalties and interest for the tax years at issue.

THE APPELLATE TAX BOARD

By: ________________________________
Mark J. DeFrancisco, Chairman

A true copy,

Attest: ________________________________
Clerk of the Board