



**THE COMMONWEALTH OF MASSACHUSETTS**

***Appellate Tax Board***

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**Docket No. C337100**

**MARK PETER JENCO**  
**Appellant.**

**v.**

**COMMISSIONER OF REVENUE**  
**Appellee.**

**DECISION WITH FINDINGS**

The Commissioner's Motion to Dismiss is allowed. The appeal is dismissed for lack of jurisdiction.

On February 6, 2015, the appellant filed a timely abatement application for tax years 2007 and 2008, which the Commissioner denied on February 1, 2016. The appellant did not file an appeal within sixty days of the February 1, 2016 denial.

On December 1, 2016, the appellant filed a second abatement application concerning the same periods and raising the same issues as its February 6, 2015 application. The Commissioner denied the second abatement application on December 19, 2016, indicating that the issues raised in the second abatement application had been raised in the appellant's previous application. The appellant did not file an appeal within sixty days of the December 19, 2016 denial.

On November 19, 2017, the appellant filed a third abatement application concerning the same periods and raising the same issues as his previous two abatement applications. The Commissioner denied the third abatement application on August 2, 2018, again on the ground that the issues raised in the third application had already been raised and denied. The appellant filed his appeal on September 13, 2018, within sixty days of the third denial but well beyond sixty days from the February 1, 2016 denial of his first abatement application.

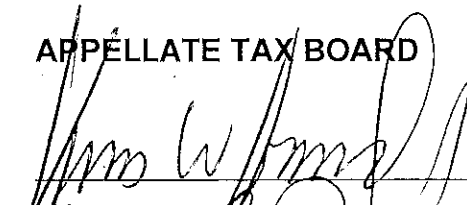

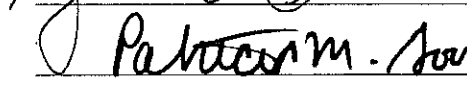
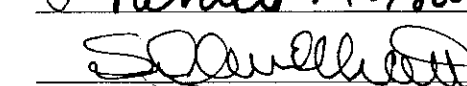
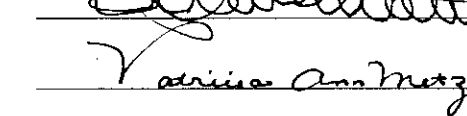
The appellant maintained that he timely filed his appeal with the Board within sixty days of the Commissioner's denial of his first abatement application. However, after a thorough search of its records, the Board found no indication that the appellant filed such an appeal or paid the required filing fee. The Commissioner also has no record of receiving a copy of a timely filed docketed appeal. Further, despite several requests from the Board, the appellant failed to provide a canceled check or other evidence that he paid the required filing fee or filed his appeal in a timely manner.

On the basis of these facts, the Board ruled that it has no jurisdiction over this appeal because: (1) G.L. c. 62C, § 39 provides that any appeal from the Commissioner's denial of an abatement application must be filed with the Board within sixty days of the date of notice of the denial; (2) the appellant failed to provide sufficient evidence that it timely filed an appeal with this Board within sixty days of the February 1, 2016 denial of his first abatement application; and (3) the appellant cannot extend the period to appeal to the Board by filing additional abatement applications which raise the same issue and contest the same item of tax. See **Liberty Mutual Life Assurance Co. v. State Tax Commission**, 374 Mass. 25 (1977); **Fredkin v. State Tax Commissioner**, 369 Mass. 973 (1976).

Appellants' failure to comply with § 39 is fatal to the Board's jurisdiction. See, e.g. **Commissioner of Revenue v. Pat's Supermarket, Inc.**, 387 Mass. 309, 311 (1982) (quoting **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975)) ("Adherence to the statutory prerequisites is essential to [an] 'effective application for abatement of taxes and to [the] prosecution of appeals from refusals to abate taxes.'"); **Nissan Motor Corp. in U.S.A. v. Commissioner of Revenue**, 407 Mass. 153, 157 (1990) ("The board lacks subject matter jurisdiction over abatement proceedings where the process was commenced at a later time or prosecuted in any manner different from that dictated by statute."). The abatement remedy is created by statute and, therefore, the Board has only that jurisdiction conferred on it by statute. **Pat's Super Market Inc.**, 387 Mass. at 311. 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.

Accordingly, the Commissioner's Motion to Dismiss is allowed and the Decision is for the Commissioner.

APPELLATE TAX BOARD

 Chairman  
 Commissioner  
 Commissioner  
 Commissioner  
 Commissioner

Attest:

  
Clerk of the Board

Date:  
(Seal)

JUL 23 2019

**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.