



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. F331752

**JOSEPH D. FEASTER, JR. AS RECEIVER OF
ROXBURY COMPREHENSIVE COMMUNITY HEALTH CENTER, INC.
Appellant.**

**BOARD OF ASSESSORS OF THE
CITY OF BOSTON
Appellee.**

DECISION WITH FINDINGS

The assessors' motion to dismiss is allowed and the appeal is dismissed for lack of jurisdiction.

This appeal concerns the fiscal year 2016 assessment on property located at 435 Warren Street in Boston ("subject property"). Prior to fiscal year 2016, the assessors treated the subject property as exempt under G.L. c. 59, § 5, Clause 3, as real estate owned and occupied by a charitable corporation.

By Order of the Suffolk Superior Court dated April 5, 2013 ("Receiver Order"), a receiver was appointed to carry out the charitable purposes of Roxbury Comprehensive Community Health Center, Inc. ("RoxComp") and to wind down its operations as a health care center. For the first time since fiscal year 2006, the assessors assessed real estate tax on the subject property for fiscal year 2016; they assessed the subject property at a value of \$2,666,500 with a tax due of \$71,488.87.

Appellant failed to timely pay either installment of the assessed tax; it made a lump sum payment of the tax assessed plus interest and fees on July 21, 2016, in conjunction with the sale of the subject property in order to provide clear title to the purchaser.

In its motion to dismiss, the assessors raise 2 grounds: (1) the tax for the fiscal year at issue exceeded \$3,000 and was not timely paid, resulting in the incurring of interest; and (2) appellant failed to file Form 3ABC and a copy of Form PC with the assessors. In opposition to the motion, appellant argues: (1) the assessors were precluded from assessing the subject property under the terms of the Receiver Order;

and (2) appellant was financially unable to acquire a certified financial statement required for the filing of the Form 3ABC.

Regarding the late payment of tax, the Board has no jurisdiction over an appeal when: (1) the tax due for the fiscal year exceeds \$3,000; (2) interest is incurred on the actual tax bill; and (3) the three-year average provision under §§ 64 and 65 is not met. See, e.g. **Massachusetts Inst. Of Tech. v. Assessors of Cambridge**, 422 Mass. 337, 451-52 (1996); **Columbia Pontiac Co. v. Assessors of Boston**, 395 Mass. 1010, 1011 (1985) ("payment 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.").

In the present appeal, the tax due exceeds \$3,000, interest was incurred due to the late payment of the third and fourth quarter installment of the actual tax bill, and the appellant does not qualify under the three-year average provision because the property was exempt for the prior three fiscal years. See G.L. c. 59, § 64 (if no tax was due in any of the three years preceding the year at issue, the sum due without incurring interest is the full amount of the tax due).

Regarding the failure of appellant to file with the assessors Form 3ABC and a copy of form PC, G.L. c 59, § 5, Clause 3 explicitly provides that

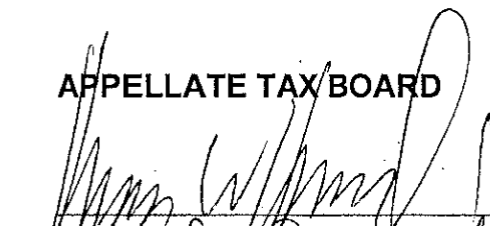
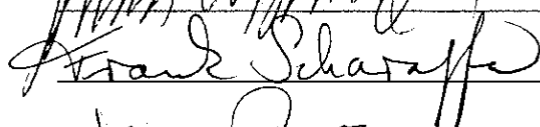

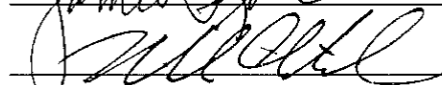
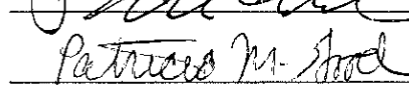
a charitable organization shall not be exempt for any year in which it omits to bring in to the assessors the list, statements and affidavit required by section twenty-nine [Form 3ABC] and a true copy of the report for such year required by section eight F of chapter twelve to be filed with the division of public charities in the department of the attorney general [Form PC].

The filing of Form 3ABC and a copy of Form PC is a jurisdictional prerequisite to the Board's authority to grant an abatement and, in the absence of such filing, the Board must dismiss this appeal. **Children's Hospital Medical Center v. Assessors of Boston**, 388 Mass. 832, 837 (1983).


Because the Board has no jurisdiction over this appeal for the reasons stated above, it cannot reach the question of whether the Receiver Order precludes the assessment at issue in this appeal. The Board notes that appellant has filed a Complaint for Contempt in Suffolk Superior Court alleging that the assessors breached the Receiver Order and that appellant is therefore entitled to a refund of the real estate tax assessed and paid. Appellant therefore has a forum to raise the issues which it cannot raise here.

Accordingly, the appeal is dismissed for lack of jurisdiction and the decision is for the appellee.

APPELLATE TAX BOARD

	Chairman
	Commissioner
	Commissioner
	Commissioner
	Commissioner

Attest:


Clerk of the Board

Date: NOV - 2 2016
(Seal)

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.