

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BERNARD GITAU KAMIRI

v. COMMISSIONER OF REVENUE

Docket No. C347301

Promulgated:
September 29, 2023

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 personal income taxes assessed to Bernard Gitau Kamiri ("appellant") for the tax years ended December 31, 2010, December 31, 2011, and December 31, 2012 ("tax years at issue").

Chairman DeFrancisco heard the appellee's Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss"). Commissioners Good, Elliott, and Metzger joined the Chairman 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 appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Bernard Gitau Kamiri, pro se, for the appellant.

Celine de la Foscade-Condon, Esq., and Robert E. Murphy, Esq., 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.

Based on information received from the Internal Revenue Service, the Commissioner timely assessed additional personal income taxes for the tax years at issue. In response, the appellant timely filed an abatement application on April 26, 2018, seeking an abatement of the additional assessment of personal income taxes for the tax years at issue. By Notice of Abatement Determination ("Determination Notice"), dated March 15, 2021, the Commissioner notified the appellant of his determination that the taxes in dispute had been properly assessed and that the appellant's abatement application was denied.

The appellant did not file a petition with the Board until August 11, 2022, 514 days after the Commissioner issued the Determination Notice.

The Commissioner filed the Motion to Dismiss on September 16, 2022, alleging that the appellant failed to file his appeal with the Board within the statutory time period prescribed by G.L. c. 62C, § 39. On October 6, 2022, the Board held a hearing relating to the Commissioner's motion.

Based on the arguments presented during the hearing and supporting memoranda and documents submitted by the parties, the

Board allowed the Motion to Dismiss. Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

General Laws c. 62C, § 39 provides in relevant part as follows:

Any person aggrieved by the refusal of the commissioner to abate a tax, in whole or in part, may appeal therefrom, within sixty days after the notice of the decision of the commissioner . . . by filing a petition with the clerk of the appellate tax board.

The abatement remedy is created by statute. Therefore, the Board has only that jurisdiction conferred on it by statute. *Commissioner of Revenue v. Pat's Super Market, Inc.*, 387 Mass. 309, 311 (1982). The Board has no jurisdiction to hear an appeal filed later than authorized by § 39. *Watjus Electric, Inc. v. Commissioner of Revenue*, Mass. ATB Findings of Fact and Reports 1993-139, 142. Neither the courts nor the Board has the authority to make an exception to the time limits that are specified by the statute. *Sears Roebuck & Co. v. State Tax Commission*, 370 Mass. 127, 130 (1976).

In the present appeal, the appellant had until May 14, 2021 to file a petition with the Board. The appellant did not file his petition until August 11, 2022, 514 days after the Commissioner's March 15, 2021 Determination Notice, and well beyond the 60-day time limit specified by G.L. c. 62C, § 39. Since the appellant did

not comply with the statutory deadline for filing his appeal, the Board allowed the Motion to Dismiss on the basis that the Board lacked jurisdiction over the appeal and issued a decision for the appellee.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board