



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. X308011

LANA B. KREDENSER
Appellant.

v.

**BOARD OF ASSESSORS OF
THE TOWN OF NORWOOD**
Appellee.

DECISION WITH FINDINGS

The decision is for the appellant. After considering the testimony and documentary evidence introduced at the hearing of this appeal, as well as the appellant's memorandum and attached documents, the Presiding Commissioner makes the following findings of fact and rulings of law.

This is an appeal from the assessors' denial of the appellant's application for property tax deferral under G.L. c. 59, § 5, Clause 41A ("Clause 41A"). The appellant timely filed with the assessors her fiscal year 2017 application for a Clause 41A deferral, along with a signed tax deferral and recovery agreement, on January 31, 2017.

In response, the assessors purportedly mailed to the appellant a letter dated March 1, 2017 that requested, without referencing any statutory authority, additional information from the appellant, including: "existing and current bank statements"; an explanation of the "disposition of the monies that were given to you by the reverse mortgage company;" the amount of the mortgage and the amount owed on the mortgage; and any additional financial information other than that which the appellant had already been forwarded to the assessors. The March 1, 2017 letter did not inform the appellant of a date by which she was to provide the additional information to the assessors.

On March 22, 2017, some three weeks after the assessors' letter requesting information and without any follow up with the appellant, the assessors denied the application for deferral without explanation. The appellant timely filed her appeal of the denial with this Board on June 21, 2017. On the basis of these facts, the Presiding Commissioner finds and rules that the Board has jurisdiction over this appeal.

At the hearing of this appeal, the appellant testified that she never received the assessors' March 1, 2017 letter. Regardless of whether she received the letter or not, counsel for the appellant was made aware of the request and sent a letter to the assessors' counsel dated November 28, 2017 that included all of the information that the assessors requested in their March 1, 2017 letter.

There is no question that the appellant meets the statutory criteria under Clause 41A to qualify for a property tax deferral. The appellant is over sixty-five years of age, she has owned and occupied the subject property for over five years, she has been domiciled in the Commonwealth for over ten years, and her gross receipts, as indicated on her application for tax deferral, did not exceed \$20,000. Although there was nothing in the record to suggest that the appellant did not meet any of these criteria, the assessors argued at the hearing that they properly denied the deferral application because of perceived defects in the appellant's application and the information that she provided was somehow inadmissible in these proceedings. Neither of these grounds has merit.

The appellant properly filled out her application for deferral on the form approved by the Commissioner of Revenue for this purpose. There is no requirement that a taxpayer provide detailed information supporting a claim in an application to the assessors, even in a situation where the approved application form itself requests that information. See, e.g., **MacDonald v. Assessors of Mashpee**, 381 Mass. 724, 725 (1980) (the commissioner could not under the guise of approving a form for an application impose upon the taxpayer an obligation to furnish information not required by the statute expressly or by implication." See also **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 312 (an application is "not in its nature the presentation of evidence in support of such claim").

In her application for deferral, the appellant provided all of the information that was necessary under Clause 41A to establish a claim for tax deferral and all that was requested on the form application. The exhaustive follow up information requested by the assessors was not required to be filed with the application; the assessors may deny the application if they feel that they have insufficient information to determine the appellant's qualification for the deferral, but the absence of such information does not make the application defective.

In the proceedings before this Board, the appellant has produced detailed information showing that she has not only given the assessors what they asked for but establishes beyond any doubt that she qualifies for the deferral. The assessors' argument that this information is inadmissible because the appellant's counsel provided it to the assessors' counsel in settlement discussions is without merit.

Any confidentiality or privilege that attached to this information can be waived by the appellant, the party who designated the information as "confidential" when she provided it to the assessors. See generally MASSACHUSETTS GUIDE TO EVIDENCE, Article V, § 523(a) ("a privilege holder . . . can waive the privilege"). The appellant had every

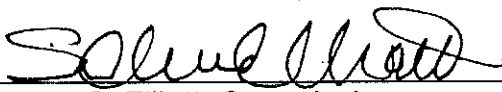
right to meet her burden of proof by waiving her confidentiality request to introduce into the record before the Board documents that supported her claim for tax deferral; to hold otherwise would create the absurd result that any time a taxpayer supported a settlement proposal with documentary support, those documents would be inadmissible at trial. Because proceedings at the Board are *de novo* and the abatement application "is not in its nature the presentation of evidence in support" of a claim, the appellant was entitled to introduce evidence in these proceedings establishing her right to the Clause 41A tax deferral. See **Board of assessors of Sandwich v. Commissioner**, 393 Mass. 580, 586 (1984); **Prudential Insurance Co.**, 310 Mass. at 312.

Accordingly, the Board finds and rules that the appellant met her burden of proving her entitlement to a Clause 41A tax deferral for fiscal year 2017. Any property taxes that she paid for fiscal year 2017 are therefore subject to the tax deferral agreement and are to be refunded to the appellant.

This is a single-member decision promulgated in accordance with G.L. c. 58A, § 1A.

APPELLATE TAX BOARD

By:


Steven G. Elliott, Commissioner

Attest


Clerk of the Board

Date: NOV - 5 2018
(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.