**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**TOMOMI KUBINEC  v. BOARD OF ASSESSORS OF**

**THE CITY OF BOSTON**

Docket No. F329968   Promulgated:

 November 14, 2018

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Boston (“appellee” or “assessors”) to abate a tax on real estate located in the City of Boston, owned by and assessed to Tomomi Kubinec (“appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (“fiscal year at issue”).

Commissioner Rose heard this appeal. Chairman Hammond and Commissioners Scharaffa, Good, and Elliott joined him in the revised decision for the appellant, which is promulgated herewith.

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.

*Tomomi Kubinec*, *pro se*, for the appellant.

*Laura Caltenco,* Esq. for the appellee.

**FINDINGS OF FACT AND REPORT**

 On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2015, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 1,500-square-foot parcel of real estate, improved with a two-story, row-style dwelling, located at 179 Chelsea Street in East Boston (“subject property”). For the fiscal year at issue, the subject property was classified as mixed-use residential/commercial. The assessors valued the subject property at $306,000 and assessed a tax, at a combined rate of $11.00 per thousand for the residential portion of the subject property and $26.81 per thousand for the commercial portion of the subject property,[[1]](#footnote-1) in the total amount, after application of the Boston residential exemption, of $3,678.21. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest.

On January 4, 2016, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which they denied on March 17, 2016. On April 26, 2016, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal under the informal procedure with the Board. Subsequently, the assessors timely elected to transfer this appeal to the formal procedure. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The sole issue raised in this appeal is the proper classification of the subject property. The appellant maintained that the assessors erred by classifying the subject property as mixed-use and applying the commercial tax rate to a percentage of the subject property’s assessed value and argued instead that the subject property should be classified and taxed solely as residential property. The appellant did not challenge the assessed value of the subject property for the fiscal year at issue.

At the hearing of this appeal, both the appellant and her husband, Josef Kubinec, testified. The appellant testified that she, her husband, and their six children reside at the subject property. Mr. Kubinec has been a taxi driver in Boston for more than 20 years. Mr. Kubinec testified that he placed signs in the first-floor windows of his home advertising his taxi and notary services. He further testified, however, that aside from the taxi being registered at the subject property’s address, in compliance with the City of Boston, Hackney Division’s regulations, no business was conducted at the subject property. He testified that neither he nor his wife initiated or received calls for the taxi service, but that he pays a dispatch service for all fares. With respect to his notary services, Mr. Kubinec testified that he does all notarizations at local banks. Mr. Kubinec also testified that although he does maintain business files and materials in his home, these records are solely for accounting and tax purposes.

John Walsh, assistant assessor for the City of Boston, testified for the assessors. Mr. Walsh testified that, prior to the issuance of the subject property’s actual tax bills for the fiscal year at issue, he drove by the subject property and noticed several signs in the first-floor window advertising the appellant’s taxi business, handicapped accessibility, and notary public services. Mr. Walsh further testified that upon inspection of the interior of the subject property he “observed” file cabinets, a computer, and a telephone. Based on his observations, Mr. Walsh concluded that the appellant and her husband were operating a business out of the subject property and therefore the assessors re-classified the subject property as mixed-use and taxed a percentage of its value at the commercial tax rate.

Based on the evidence presented, the Board found that the subject property was not used for commercial purposes for the fiscal year at issue. The Board found that the subject property is occupied by the appellant and her family as their primary residence. The Board also found that although the vehicle used for Mr. Kubinec’s taxi service is registered at the subject property, this is only for regulatory compliance purposes, and that all business is generated elsewhere. Further, the Board found that the appellant’s possession of a file cabinet, computer, and telephone does not *ipso facto* prove that the subject property was being used for a commercial enterprise. Rather, the Board found that the appellant merely possessed several pieces of personal property that contained some records associated with his livelihood. There was no convincing evidence that any part of the real estate was devoted to a commercial purpose. Therefore, the Board found that the subject property should have been classified and taxed as solely residential for the fiscal year at issue.

Accordingly, the Board issued a revised decision for the appellant in this appeal and granted an abatement in the amount of $2,273.79.[[2]](#footnote-2)

**OPINION**

General Laws c. 59, § 2A(b) requires the assessors of each city or town to classify all real property according to its particular usage. *See* ***Meachen v. Assessors of the Town of Sudbury***, Mass. ATB Findings of Fact and Reports 2001-211, 215-16. Section 2A(b) provides four distinct usage classifications, two of which are at issue in this appeal: “Class one, residential, property *used or held for human habitation* containing one or more dwelling units”and “Class three, commercial, property used or held for use for business purposes *and not specifically includible in another class.”* (emphasis added). Section 2A(b) goes on to provide that where property is “used or held for use for more than one purpose and such uses result in different classifications, the assessors shall allocate to each classification the percentage of the fair cash valuation of the property devoted to each use according to the guidelines promulgated by the commissioner.” In the present appeal, the assessors maintained that in addition to being used as the appellant’s residence, a portion of the subject property was also used for commercial purposes and, therefore, that part should be taxed at the commercial rate.

Based on the evidence presented, the Board found that the subject property was not used for commercial purposes for the fiscal year at issue. The Board found that the subject property was used by the appellant and her family as their primary residence. The Board further found that although the vehicle used for Mr. Kubinec’s taxi service is registered at the subject property, this is only for regulatory compliance purposes, and all business is generated elsewhere. Further, the Board found that the appellant’s possession of a file cabinet, computer, and telephone did notprove that the subject property was being used for a commercial enterprise. Rather, they were merely items of personal property containing some records relating to the appellant’s livelihood. There was no convincing evidence that any part of the real estate was devoted to a commercial purpose.

The Board therefore found and ruled that the assessors erroneously classified the subject property as mixed-use and should not have assessed a percentage of the subject property at the commercial tax rate. Accordingly, the Board issued a revised decision for the appellant in this appeal and granted an abatement in the amount of $2,273.79.

 **THE APPELLATE TAX BOARD**

 **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Thomas W. Hammond, Jr, Chairman**

**A true copy:**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. The parties did not provide a breakdown of the mixed-use classification and tax assessed. [↑](#footnote-ref-1)
2. On its own motion, the Board issued a revised decision to properly include a residential exemption of $1,961.58 in calculating the abatement amount. [↑](#footnote-ref-2)