

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**JOSEPH R. OLSON**

**v.**

**COMMISSIONER OF REVENUE**

Docket Nos. C348906  
C349974

Promulgated:  
January 17, 2025

These are appeals 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 ("appellee" or "Commissioner") to abate personal income taxes assessed to Joseph R. Olson ("appellant") for tax years 2011, 2013, 2016, and 2017 (collectively, "tax years at issue").

Chairman DeFrancisco heard the appellee's Motion to Dismiss and the appellant's Motion for Summary Judgment. Commissioners Good, Elliott, Metzger, and Bernier joined him in allowing the appellee's Motion to Dismiss and denying the appellant's Motion for Summary Judgment.

These findings of fact and report are made on the motion of the Appellate Tax Board ("Board") pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.<sup>1</sup>

*Joseph R. Olson, pro se*, for the appellant.

*Eugene Langner, Esq.*, for the appellee.

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<sup>1</sup> This citation is to the regulation in effect prior to January 5, 2024.

## **FINDINGS OF FACT AND REPORT**

Based on evidence presented at the hearing of the Motion to Dismiss and the Motion for Summary Judgment, the Board made the following findings of fact.

The appellant was a resident of the Commonwealth to whom the Commissioner assessed personal income taxes for the tax years at issue for wages earned from employment.

The appellant filed two petitions with the Board, the first on June 22, 2023, concerning tax years 2011 and 2013, and the second on July 27, 2023, concerning tax years 2016 and 2017.

The Commissioner contended that the claim for tax year 2011 was barred by a prior decision of the Board, ***Joseph R. Olson v. Commissioner of Revenue***, Docket Nos. C337149, C337223, C342263 (September 30, 2022), wherein the Board ruled that "the income received by the appellant during tax year 2011 must be treated as gross income with respect to the Massachusetts personal income tax reporting" and thus granted summary judgment for the appellee. For the reasons explained more fully in the following Opinion, the Board ruled that the appellant's claim for tax year 2011 was barred by the prior Board decision.

For tax year 2013, the Commissioner assessed a tax liability on May 4, 2016. Some six years later, on November 30, 2022, the appellant filed an abatement application with the appellee, which the appellee denied on April 26, 2023.

For tax year 2016, the Commissioner assessed a tax liability on September 24, 2020. More than two years later, on November 30, 2022, the appellant filed an abatement application with the appellee, which the appellee denied on June 12, 2023.

Based on these facts, the Board found that the appellant's abatement applications for tax years 2013 and 2016 were not timely filed with the Commissioner. Accordingly, the Board ruled that it lacked jurisdiction to hear and decide the claims for tax years 2013 and 2016.

For tax year 2017, the Commissioner assessed a tax liability on July 6, 2021. The appellant timely filed an abatement application with the appellee on November 30, 2022, which the appellee denied on June 12, 2023. The appellant seasonably filed his petition with the Board on July 27, 2023. Based on these facts, the Board found and ruled that it had jurisdiction over the claim for tax year 2017.

The appellant presented no factual evidence concerning his income for tax year 2017; he relied instead on a legal argument to assert that his wages from employment were not "gross income" for purposes of the Massachusetts personal income tax.

For reasons explained more fully in the following Opinion, the Board found and ruled that the appellant failed to state a claim upon which relief can be granted.

Based on the foregoing, the Board granted the appellee's Motion to Dismiss for the tax years at issue and denied the appellant's Motion for Summary Judgment. Accordingly, the Board entered decisions for the appellee.

### OPINION

The appellant has previously filed appeals with the Board contesting his status as a taxpayer by raising a "now familiar argument ... which the Board has consistently rejected," namely, that compensation that he received from his employer for services was "not within the scope of 'gross income' as that term appears in 26 U.S.C. [\"Code\"] § 61." ***Joseph R. Olson v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 2003-492, 499, (citing ***Joseph R. Olson v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 2001-437, 440); see also ***Joseph R. Olson v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 2013-151, 155-56 (finding appellant's argument that he was not required to file a return "consisted mainly of the frivolous legal and constitutional claims that he and other tax protesters have advanced in the past, and which the Board has summarily rejected"), and ***Joseph R. Olson v. Commissioner of Revenue***, Decision with Findings, Docket Nos. C337149, C337223, C342263 (September 30, 2022) (ruling that Code § 61(a), incorporated into G.L. c. 62, § 2, defines "gross income" as "all income from

whatever source derived" and specifically includes "compensation for services").

In fact, the Decision with Findings from September 30, 2022, pertained to tax year 2011, a tax year the appellant again appealed to the Board in the instant appeals. In that Decision with Findings, the Board weighed the evidence presented by the parties and "ruled that the income received by the appellant during tax year 2011 must be treated as gross income with respect to Massachusetts personal income tax reporting." The Board in the instant appeals thus ruled that the appeal for tax year 2011 is barred by the Board's prior ruling in **Joseph R. Olson v. Commissioner**, Docket Nos. C337149, C337223, C342263 (September 30, 2022).

With respect to the claims for tax years 2013 and 2016, the abatement applications were submitted more than two years after the dates that taxes were assessed, in contravention of G.L. c. 62C, § 37.<sup>2</sup> It has long been the law of this Commonwealth that, when a remedy is created by statute, and the time within which it may be availed of is one of the prescribed conditions for relief, failure to meet that time limit deprives a judicial body, court, or administrative appeals board of jurisdiction to hear the case.

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<sup>2</sup> G.L. c. 62C, § 37 requires that an abatement application be filed with the Commissioner on or before the later of: three years from when a return was filed; two years from when the tax was assessed; or one year from when the tax was paid.

**Nissan Motor Corp. in USA v. Commissioner of Revenue**, 407 Mass. 153, 157 (1990) (citing **Greeley v. Zoning Bd. of Appeals of Framingham**, 350 Mass. 549, 552 (1966)). The Supreme Judicial Court has stated that "[s]ince the remedy by abatement is created by statute the board . . . has no jurisdiction to entertain proceedings for relief by abatement begun at a later time or prosecuted in a different manner than is prescribed by statute." **Assessors of Boston v. Suffolk Law School**, 295 Mass. 489, 492 (1936); see also **Stilson v. Assessors of Gloucester**, 385 Mass. 724, 732 (1982).

Adherence to statutory prerequisites is "essential to 'effective application for abatement of taxes and to prosecution of appeal from refusals to abate taxes.'" **Commissioner of Revenue v. Pat's Super Market, Inc.**, 387 Mass. 309, 311 (1982) (quoting **New Bedford Gas & Edison Light Company v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975)). Consequently, "there can be no appeal to the board on the merits after the right to apply . . . for abatement has been lost through failure to follow statutory procedures." **New Bedford Gas & Edison Light Company**, 368 Mass. at 748. The abatement applications for tax years 2013 and 2016 were not filed timely in accordance with G.L. c. 62C, § 37. Accordingly, the Board found and ruled that it had no jurisdiction over tax years 2013 and 2016.

With respect to tax year 2017, the appellant's argument, as with his prior appeals to the Board, was that his wages do not

constitute "income" as that term is used in G.L. c. 62, § 2. He relied on Code § 83, the application of which is to the transfer of stock or other business interests in connection with the performance of services. The appellant did not establish that Code § 83 applies to and exempts his wages. Moreover, the appellant ignored Code § 61, a section of general applicability, that defines "gross income" as "all income from whatever source derived," and specifically includes compensation for services. The appellant cited no applicable exception to Code § 61 for income from wages. As the Board has explained in the past regarding others as well as the appellant himself:

the appellant's argument "that his wages were not within the scope of 'gross income' as that term . . . is incorporated at G.L. c. 62, § 2" [is] "frivolous." [*Olson*,] 26 Mass. App. Tax Bd. Rep. 478. The Board found that the wages . . . are "definitionally 'compensation for services', and well within the statutory ambit of 'income' and 'gross income.'" *Id.* Accordingly, the Board found the appellant's wages were subject to the Massachusetts personal income tax. *Id.*

*Olson*, Mass. ATB Findings of Fact and Reports at 2003-499-500. The appellant's argument here, as it was in his previous appeals, is frivolous. Therefore, the Board found and ruled that the appellant failed to state a claim upon which relief can be granted.

## **Conclusion**

The appeal for tax year 2011 was barred by a previous Board decision regarding the same tax year. The Board lacked jurisdiction over tax years 2013 and 2016 because the appellant filed untimely abatement applications for those tax years. With respect to tax year 2017, the appellant failed to state a claim upon which relief can be granted.

Therefore, the Board granted the appellee's Motion to Dismiss and denied the appellant's Motion for Summary Judgment. Accordingly, the Board issued decisions for the appellee.

### **THE APPELLATE TAX BOARD**

By:   
Mark J. DeFrancisco, Chairman

A true copy,

Attest:   
Clerk of the Board