



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

100 Cambridge Street
Suite 200
Boston, Massachusetts 02114

(617) 727-3100
(617) 727-6234 FAX

Docket No. C332186

RAYTHEON COMPANY
Appellant.

V.

COMMISSIONER OF REVENUE
Appellee.

DECISION WITH FINDINGS

The Commissioner's Motion to Dismiss ("Motion") is allowed and the appeal is dismissed for lack of jurisdiction. On the basis of the parties' pleadings and the memoranda submitted by both parties in connection with the Motion, the Board makes the following findings and rulings.

This appeal concerns the Commissioner's denial of Raytheon's abatement application concerning corporate excise, interest, and penalties assessed against Raytheon for tax year 2012 ("tax year at issue"). Raytheon filed its 2012 Massachusetts corporate excise return on August 29, 2013. Following an audit, the Commissioner issued a Notice of Assessment dated July 25, 2016, notifying Raytheon of an assessment of \$2,885,572 in tax, \$443,356.89 in interest, and \$577,114 in penalties, for a total assessment amount of \$3,906,042.89 ("assessment"). The assessment was based on the Commissioner's denial of a research and development credit for the tax year at issue ("R&D credit").

Raytheon timely filed its abatement application on August 24, 2016; the application was filed within 3 years of Raytheon's filing of its return for the tax year at issue and within 2 years of the assessment. The abatement application requested an abatement of the amount of the assessment and gave a detailed explanation of the basis of Raytheon's disagreement with the Commissioner's denial of the R&D credit.

The Commissioner denied the abatement application on February 24, 2017 and Raytheon timely appealed the denial of its application by filing its petition with the Board on March 24, 2017. In its petition, Raytheon claimed to be aggrieved by the refusal of the Commissioner to abate the assessment and specifically referenced the abatement amount it was requesting.

On November 15, 2017, approximately 8 months after Raytheon's filing of this appeal, the parties settled appeals related to tax years 2008 and 2009 concerning the amount of Raytheon's gross receipts for those years. The treatment of Raytheon's

gross receipts for tax years 2008 and 2009 affected the calculation its R&D credit for the tax year at issue; as a result of the settlement, the Commissioner recalculated Raytheon's R&D credit, resulting in a reduction of the assessment amount to \$119,929.

The settlement also resulted in investment tax credits ("ITC") carryforwards for tax years after 2009 in the amount of \$2,737,091. The Commissioner applied part of the carryforward to the \$119,929 remaining assessment, leaving a zero balance due. Accordingly, on April 12, 2018, the Commissioner issued a notice of abatement in the full amount of the assessment. The following day, April 13, 2018, the Commissioner filed the Motion, maintaining that Raytheon was no longer aggrieved by the refusal of the Commissioner to grant an abatement.

In response, Raytheon filed an "Amended and Restated Petition Under Formal Procedure" ("amended petition") on April 20, 2018, seeking a further abatement for the tax year at issue equal to the amount of the remaining ITC carryforwards, \$2,617,162. The parties agree that the ITC carryforwards do not lapse and are available for use by Raytheon for years after the tax year at issue; the fundamental disagreement between the parties is that the Commissioner argues that the carryforwards may only be used in the tax year at issue to the extent of the assessment, with the balance available for future years, while Raytheon believes that the carryforwards can be used in their entirety for the tax year at issue to create a refund.

Raytheon argues that it is free to raise the carryforwards issue for the first time at the Board because it is not limited to the issues it raised in its abatement application, citing as support *Commissioner of Revenue v. Exxon Corp.*, 407 Mass. 17 (1990) and *Commissioner of Corp.s & Taxation v. J.G. McCrory Co.*, 280 Mass. 273 (1932). Neither of these cases, however, allowed a taxpayer to claim an abatement in excess of the amount of the additional assessments at issue and neither addressed the situation where, as in the present appeal, the entire amount of the additional assessment was abated.

In *McCrory*, the commissioner appealed from a Board of Tax Appeals decision that granted an abatement of the "entire amount of an additional excise tax assessed upon it." *Id.* at 274. The commissioner argued on appeal that the function of the board was limited to a review of the commissioner's actions and it was not empowered to "try the whole matter anew." *Id.* In rejecting the commissioner's argument, the court held:

It is plain that the taxpayer was aggrieved by the decision of the commissioner of which complaint is here made. A considerable additional tax was assessed upon it. The taxpayer has been constant in the contention that the additional tax was without justification in law or in fact. It was entitled to have heard anew by the board whatever issues touching that subject were adequately disclosed on its petition and the answer of the commissioner.

Id. at 277-78. Accordingly, all that the court in *McCrory* decided was that the taxpayer was entitled to raise issues "touching" the subject of its claim that the additional assessment was without justification, even if those issues were raised for the first time

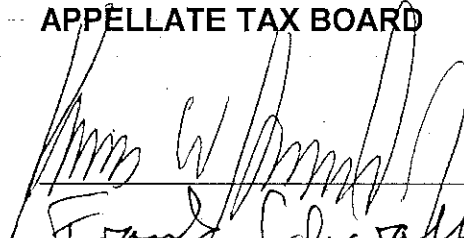
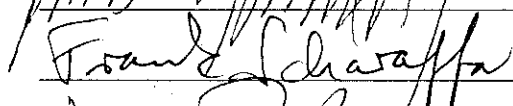
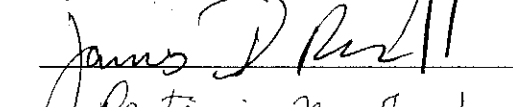
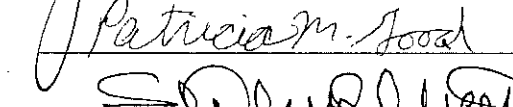
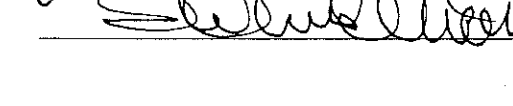
at the board. The court did not authorize a further claim for an additional abatement beyond the amount of the assessment at issue.

Similarly, in *Exxon*, the only issue before the court was whether the taxpayer could challenge an additional assessment by raising a new issue that it had not raised in its abatement application. The court ruled that the taxpayer was "not required to identify its specific claims or legal theories in its application for abatement in order to preserve those matters for review by the board." *Id.* at 19. As in *McCrary*, there is nothing in the court's analysis in *Exxon* that suggests that a taxpayer can claim an abatement for amounts in excess of the assessment at issue.

In the present appeal, the Commissioner has abated the full amount of the assessment that Raytheon challenged by filing its abatement application and its appeal to the Board. Accordingly, Raytheon is no longer aggrieved by the assessment and neither *McCrary* nor *Exxon* justify an abatement in excess of the assessment. Because the time for filing an abatement application for amounts in excess of the assessment has long since passed, no further challenges to Raytheon's tax liability for the tax year at issue may be raised. The balance of its carryforwards is, however, available for tax years after the tax year at issue.

Accordingly, the Motion is allowed and the decision is for the appellee.

APPELLATE TAX BOARD

	Chairman
	Commissioner
	Commissioner
	Commissioner
	Commissioner

Attest: Stephanie B. Miller
Clerk of the Board

Date: AUG 10 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.