

THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. C334719

SARAH RICHARDS

Appellant.

COMMISSIONER OF REVENUE

Appellee.

DECISION WITH FINDINGS

The Commissioner's Motion to Dismiss is allowed and the appeal is dismissed for lack of jurisdiction.

The appellant and her husband filed timely joint returns for tax years 2003 through 2008 ("periods at issue") and timely paid the tax shown as due on those returns. On October 27, 2010, the Commissioner assessed additional amounts for the periods at issue based on the appellant's conviction of embezzlement from her former employer. No payment has been made toward the additional assessment.

G.L. c. 62C, § 37 provides, in pertinent part, that an application for abatement must be filed with the Commissioner within 3 years of the filing of the return, 2 years of an assessment, or 1 year of tax payment, whichever is later. The latest date that the appellant could have filed an abatement application for the latest period at issue was October 27, 2012. The appellant filed her abatement application on May 23, 2016, which is well beyond the period provided in G.L. c. 62C, § 37.

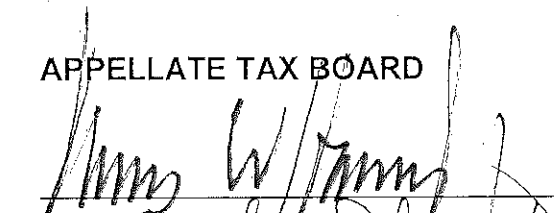
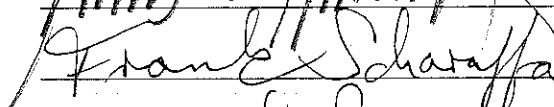
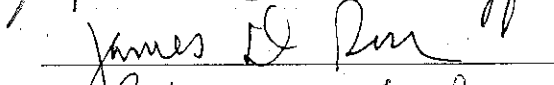
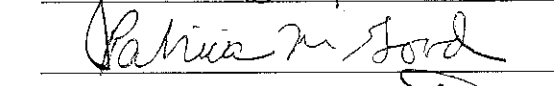
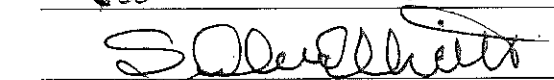
The abatement remedy is created by statute and, therefore, the Board has only that jurisdiction conferred on it by statute. **Commissioner of Revenue v. Pat's Super Market Inc.**, 387 Mass. 309, 311 (1982). Timely filing of an abatement application has long been held a condition of invoking the Board's jurisdiction. See, e.g., **Dana Lease Finance Corp. v. Commissioner**, 53 Mass. App. Ct. 840, 843 (2002); **Nissan Motor Corp. in U.S.A. v. Commissioner of Revenue**, 407 Mass. 153, 157, (1990); **Tilcon Massachusetts, Inc. v. Commissioner of Revenue**, 30 Mass. App. Ct. 264, 264-267, (1991). Neither the courts nor this Board have the authority to create an exception to the time limit specified by statute. **Sears Roebuck & Co. v. State Tax Commission**, 370 Mass. 127, 130 (1976); and **Peterson v. Commissioner of Revenue**, Mass. ATB Findings of Fact and Reports 1994-305.

Because the appellant did not timely file her abatement application with the Commissioner in accordance with G.L. c. 62C, § 37, the Board finds and rules that it has no jurisdiction over this appeal.


The Board notes that the appellant could file a new abatement application with the Commissioner within 1 year of payment of the assessment. At the hearing of the Motion to Dismiss, the appellant indicated that she did not intend to pay any part of the assessment due to an inability to pay because of her restitution obligation and her belief that embezzled funds should not be taxable. However, it has long been settled that embezzled funds constitute gross income and are therefore taxable. See **James v. U.S.**, 366 U.S. 213 (1961).

On the basis of the foregoing, the Board allows the Commissioner's Motion to Dismiss for lack of jurisdiction and enters a decision for the appellee in this appeal.

APPELLATE TAX BOARD

	Chairman
	Commissioner
	Commissioner
	Commissioner
	Commissioner

Attest:


Clerk of the Board

Date: AUG - 7 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.