



THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board

100 Cambridge Street
Suite 200
Boston, Massachusetts 02114

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

Docket No. S339577

SEAN & ANNE MARIE SAVAGE
Appellants.

v.

COMMISSIONER OF REVENUE
Appellee.

DECISION WITH FINDINGS

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

On April 11, 2015, the appellants timely filed a joint Massachusetts Resident Income Tax Return for the tax year 2014, and timely paid the tax shown as due on the Return. On May 28, 2019, the appellants filed an Application for Abatement with respect to items of income and tax shown on the 2014 Return.

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 that the appellants could have filed an abatement application for the tax year 2014, therefore, was during April of 2018, more than a year before the actual date of filing.

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 of Revenue***, 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 has 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); ***Peterson v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 1994-305.

Because the appellants did not timely file their application for abatement with the Commissioner in accordance with G.L. c. 62C, § 37, the Board finds and rules that it has no jurisdiction over this appeal. On this basis, the Board allows the Commissioner's Motion to Dismiss for lack of jurisdiction, and enters a decision for the appellee.

APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond, Jr.
Thomas W. Hammond, Jr. Chairman

Attest: /s/ William J. Doherty
Clerk of the Board

Date: January 12, 2021

NOTICE: Pursuant to G.L. c. 58A, §§ 7B and 13, no further appeal is available and the Board will issue no further findings of fact or reports.