

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CHARLOTTE K.C. SONG

v.

BOARD OF ASSESSORS OF
THE TOWN OF SCITUATE

Docket No. F342397

Promulgated:
July 26, 2022

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 Town of Scituate ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Scituate, assessed to Charlotte K.C. Song ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2021 ("fiscal year at issue").

Chairman DeFrancisco ("Presiding Commissioner") heard the appellee's Motion to Dismiss ("Motion") and, pursuant G.L. c. 58A, § 1A and 831 CMR 1.20, allowed the Motion and issued a single-member decision for the appellee.

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.

Charlotte K.C. Song, pro se, for the appellant.

Joseph DiVito, Jr., Director of Assessing, for the appellee.

FINDINGS OF FACT AND REPORTS

Based on documentary evidence and testimony offered by the parties during the hearing of the Motion, the Presiding Commissioner made the following findings of fact.

As of January 1, 2020, the valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 19,123-square-foot parcel of land improved with a single-family home with an address of 118 Kent Street in Scituate ("subject property"). For the fiscal year at issue, the appellee valued the subject property at \$434,700 and assessed a tax thereon, at the rate of \$13.33 per thousand, in the total amount of \$5,794.55, exclusive of the Community Preservation Act surcharge.

The appellant paid the tax due, but the fourth-quarter tax payment incurred interest for late payment. Because the statutory due date of May 1 for the fourth-quarter payment was a Saturday, the appellant's payment was due on Monday, May 3, 2021. The appellant paid the fourth-quarter bill electronically. The town's records reflected that the appellant's electronic payment was made one day late on May 4, 2021.

In her opposition to the Motion, the appellant submitted evidence which included an email from the town's online payment platform, UNIPAY. This email stated that the appellant's electronic payment had been confirmed on May 4, 2021. At the hearing of the Motion, the appellant raised several theories as to

the possibility that her payment could have been made earlier than the confirmed date; however, she submitted no evidence to establish the time of payment or any credible evidence that the payment was made on or before its due date. Based on the evidence submitted by the assessors and the email confirming the May 4 date of payment, the Presiding Commissioner found that the fourth-quarter tax payment was not timely.

Because the fourth-quarter tax bill was not paid timely, interest was incurred on the tax due. Furthermore, the average of the tax amounts due on the subject property for the three prior fiscal years was \$5,351.16. As of the May 3, 2021 due date of the fourth-quarter bill, the appellant had not paid at least the average of the prior three-years' tax bills. Therefore, as will be explained in the Opinion below, the Presiding Commissioner found and ruled that the Appellate Tax Board ("Board") lacked jurisdiction to hear and decide this appeal.

Accordingly, the Presiding Commissioner allowed the Motion and issued a decision for the appellee.

OPINION

The Board has only that jurisdiction conferred on it by statute. *Stilson v. Assessors of Gloucester*, 385 Mass. 724, 732 (1982). "Since the remedy of abatement is created by statute, the board lacks jurisdiction over the subject matter of proceedings

that are commenced at a later time or prosecuted in a different manner from that prescribed by statute." **Nature Church v. Assessors of Belchertown**, 384 Mass. 811, 812 (1981) (citing **Assessors of Boston v. Suffolk Law School**, 295 Mass. 489, 495 (1936)). Adherence to the statutory prerequisites is essential "to prosecution of appeal from refusals to abate taxes." **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975); see also **Old Colony R. R. Co. v. Assessors of Quincy**, 305 Mass. 509, 511-12 (1940).

General Laws c. 59, § 64 provides in pertinent part that

if the tax due for the full fiscal year on a parcel of real estate is more than \$5,000, said tax shall not be abated unless the full amount of said tax due, including all preliminary and actual installments, has been paid without the incurring of any interest charges on any part of said tax . . .

Accordingly, the Board has no jurisdiction over an appeal where a taxpayer incurs interest for untimely payment of the tax assessed, if the \$5,000 tax liability threshold is exceeded. However, there is an exception under G.L. c. 59, §§ 64 and 65 - if a taxpayer has timely paid at least the average of the tax assessed for the prior three fiscal years, or the average tax for the prior three years is \$5,000 or less, the incurring of interest does not deprive the Board of jurisdiction. See **Stilson**, 385 Mass. at 732.

Under the facts of this appeal, the tax due for the fiscal year at issue exceeded \$5,000. The average of the tax amounts due

on the subject property for the three fiscal years prior to the fiscal year at issue was \$5,351.16. Because the average of the tax assessed for the prior three fiscal years exceeded \$5,000 and the appellant failed to pay at least \$5,351.16 on or before the May 3, 2021 due date, the appellant failed to satisfy the three-year average provision under G.L. c. 59, §§ 64 and 65.

Because the appellant did not comply with the statutory requirement for timely payment of taxes, the Presiding Commissioner allowed the Motion and issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

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