

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SUNSHINE VILLAGE, INC.

**v. BOARD OF ASSESSORS OF THE
CITY OF AGAWAM**

Docket No. F339713

Promulgated:
January 30, 2023

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 Agawam ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Agawam, owned by and assessed to ECS Realty, Inc. ("ECS" or "prior owner") as the owner as of January 1, 2019, from the denial of an abatement application filed by Sunshine Village, Inc. ("appellant") for fiscal year 2020 ("fiscal year at issue") pursuant to G.L. c. 59, § 59 as the subsequent owner.

This matter was before the Appellate Tax Board ("Board") on a Motion to Dismiss ("Motion") filed by the appellee and an Opposition to the Motion to Dismiss ("Opposition") filed by the appellant. Former Chairman Hammond, Chairman DeFrancisco, and Commissioners Good, Elliott, and Metzger all joined in a decision for the appellee.

These findings of fact and report are promulgated pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Michael R. Siddall, Esq., for the appellant.

Carolyn Reed, assessor, and Christine Pikula, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the Motion and the Opposition, and the documents and oral arguments offered in support thereof, the Board made the following findings of fact.

On January 1, 2019, the relevant date of valuation and assessment for the fiscal year at issue, ECS was the owner of real property located at 588 Silver Street in the Town of Agawam ("subject property"). The appellant purchased the subject property on July 17, 2019.

The assessors valued the subject property at \$1,020,500 for the fiscal year at issue and assessed a tax thereon, at the rate of \$31.61 per \$1,000 in the amount of \$32,258.01, plus a Community Preservation Act surcharge in the amount of \$322.58. The appellant incurred interest on the tax due for the second quarter tax bill.

The appellant timely filed an abatement application with the assessors on January 16, 2020, claiming that it was entitled to

the charitable exemption under G.L. c. 59, § 5, Clause Third ("Clause Third") as a nonprofit corporation. The assessors denied the abatement application on January 17, 2020. The appellant timely filed a petition with the Board on March 30, 2020.¹

Subsequently, the appellee filed the Motion, alleging that the Board must dismiss the appeal because the appellant did not timely pay the tax due without incurring interest. The second quarter tax bill was due on November 1, 2019, but remained unpaid until February 3, 2020.

The appellant responded by filing the Opposition, in which it stated that on July 17, 2019, counsel for the appellant sent a check covering the entirety of the first quarter tax bill to the Treasurer/Collector for the Town of Agawam, along with a letter "advising the Town of Agawam that Sunshine Village, Inc. was the new owner of the property and provided their mailing address."² The appellant argued that notwithstanding this letter, the Town of Agawam sent the second quarter tax bill to the prior owner and the appellant never received a copy of the second quarter tax bill.³

¹ The appellant's petition was stamped as received by the Board on April 29, 2020, but the petition was mailed in an envelope postmarked March 30, 2020. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

² A copy of the letter was attached to the Opposition. The letter stated, in pertinent part, "[p]lease note, as of July 17, 2019, the current owner of the property is Sunshine Village, Inc., 75 Litwin Lane, Chicopee, MA 01020." The letter did not specifically request that copies of tax bills for the fiscal year at issue be sent to this address.

³ The Board noted that miscellaneous tax bills attached as exhibits - as well as the provisions of G.L. c. 59, § 57C - informed the appellant of impending due dates for subsequent quarters, meaning the appellant would have had notice

Further, the appellant argued in its Opposition that it was undisputedly a tax-exempt organization whose real property was entitled to exemption under Clause Third, and that Clause Third has no "statutory requirement . . . that requires a charitable organization to own the property as of July 1 of the fiscal year in order to obtain an exemption."

Based upon the above and as discussed further in the Opinion below, the Board found and ruled that it lacked jurisdiction over this appeal because the second-quarter tax due was not timely paid. Though the Town of Agawam sent the tax bill to ECS in compliance with statutory requisites,⁴ even the failure to send a bill entirely does not excuse late payment and the accrual of interest. The language of G.L. c. 60, § 3 is clear that such an omission does not affect the validity of the tax or its collection.

Further, claiming a Clause Third exemption does not excuse jurisdictional defects. Exemption is the exception, not the rule, of taxation, and the appellant was bound to comply with all requisites, including timely payment. The appellant mistakenly conflated organization as a nonprofit corporation with a presumed entitlement to property tax exemption. Clause Third is more rigid in its application than conceived by the appellant. General Laws

via the first quarter tax bill as to the due date of the second quarter tax bill.

⁴ Taxes on real estate are assessed to the owner of the property as of January 1. The owner on January 1, 2019 was ECS, not the appellant. Affidavits provided by the assessors confirm that tax bills were sent "to each person assessed."

c. 59, § 5 specifically sets forth July 1 as the date of determination for qualifying criteria, including for Clause Third. The appellant did not own the property until July 17, 2019, beyond the date of determination for the fiscal year at issue.

The appellant also raised concerns about equity and fairness in its Opposition, stating that "it would be completely unfair to burden any tax exempt charitable organization with a five-figure annual real estate tax bill where there is no dispute that they owned the property for 95.4% of the fiscal year and are otherwise entitled to the exemption." Notwithstanding that the appellant is not "otherwise entitled to the exemption," the Board's powers are delineated by statute and not by principles of equity and fairness.

Accordingly, on the basis of the above findings and as discussed further in the Opinion, the Board allowed the assessors' Motion and dismissed this appeal for lack of jurisdiction.

OPINION

In accordance with G.L. 59, § 64, a taxpayer aggrieved by the assessors' refusal to abate a tax on real property may file an appeal with the Board, provided 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 . . .

G.L. c. 59, § 64 (emphasis added).⁵ "The Board is a creature of statute and, therefore has no jurisdiction to entertain any proceedings for relief other than in a manner prescribed by statute." **Pepperell Power Assoc. v. Assessors of Pepperell**, Mass. ATB Findings of Fact and Reports 1996-503, 507. "Adherence to the statutory prerequisites is essential 'to prosecution of appeal from refusals to abate taxes.'" *Id.* (quoting **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975)). Given that the appellant failed to satisfy the statutory prerequisites to filing an appeal by paying the tax due without incurring interest, the Board was deprived of jurisdiction to hear and decide this matter. See **Columbia Pontiac Co. v. Assessors of Boston**, 395 Mass. 1010, 1011 (1985); **Filippone v. Assessors of Newton**, Mass. ATB Findings of Fact and Reports 1995-216.

The appellant's allegations regarding non-receipt of the second quarter tax bill did not justify untimely payment. Even if no notice of the second quarter tax had been sent, G.L. c. 60, § 3 states that "[a]n omission to send a notice under this section shall not affect the validity either of a tax or of the proceedings for its collection." See also **Boston v. Du Wors**, 340 Mass. 402, 404 (1960) ("The direction in c. 59, § 57, for sending bills,

⁵ Alternatively, a taxpayer may appeal to the Board if it has made a timely payment of tax that is at least equal to the average tax for the three preceding years. G.L. c. 59, § 64. However, the evidence did not support a conclusion that the three-year average provision was met and the appellant did not argue that it was.

although in the chapter dealing with assessments, is, we think, addressed to the collector. . . . In any event, the liability to pay the tax was not conditioned on the sending of a bill. The tax was due when, after July 1, its amount was fixed. There being a present obligation to pay, no demand was necessary.”).

The liability for the second quarter tax for the fiscal year at issue was valid and due on November 1, 2019, whether or not the assessors sent a notice or whether or not a notice was received. See *Orrall et al., Trustees v. Assessors of Boston*, Mass. ATB Findings of Fact and Reports 1983-78, 88 (holding that “[e]ven if the [taxpayer] did not receive the tax bill, it is obligated to pay the tax bill . . . whether or not the tax bills are sent and received”); *M. & J. Realty v. Assessors of Walpole*, Mass. ATB Findings of Fact and Reports 1992-11, 17 (holding that “taxpayers are obligated to pay taxes on time whether or not the bills are sent out and received”) (citing *Boston v. Du Wors*, 340 Mass. 402 (1960)).

Regardless, the Town of Agawam complied with statutory mandates by sending the tax bill to ECS. Pursuant to G.L. c. 59, § 21, “all taxes shall be assessed as of January first preceding the fiscal year with respect to which the taxes are assessed.”

General Laws c. 59, § 11 requires that taxes on real property shall be assessed . . . to the person who is the owner on January 1, and the person appearing of record, in the records of the county, or of the district, if such county

is divided into districts, where the estate lies, as owner on January 1, even though deceased, shall be held to be the true owner thereof . . .

See also **Hardy v. Jaeckle**, 371 Mass. 573, 578 (1976) (stating that "General Laws c. 59, § 11 . . . prescribes 'who is the owner' for such purpose by saying that . . . 'the person *appearing of record* . . . shall be held to be the true owner thereof'" (emphasis in original)). The appellant was not the record owner of the property on January 1, 2019, the relevant date of assessment for the fiscal year at issue. See G.L. c. 59, § 21; G.L. c. 59, § 11; G.L. c. 59, § 2A. See also G.L. c. 60, § 3 (Collectors of taxes "shall immediately, after receiving a tax list and warrant send notice to each person assessed, resident or non-resident, of the amount of the person's tax.") (emphasis added).

The appellant's claim that Clause Third exempted the subject property from taxation similarly failed to excuse untimely payment. "Taxation is the general rule, and exemption is the exception." **Sylvester v. Assessors of Braintree**, 344 Mass. 263, 264-65 (1962) (citations omitted) ("Exemption from taxation is a matter of special favor or grace, and will be recognized only where the property falls clearly and unmistakably within the express words of a legislative command."); **Mount Auburn Hospital v. Assessors of Watertown**, 55 Mass. App. Ct. 611, 616 (2002) (In a matter involving what portion of hospital property was entitled to exemption, the court held that "timely payment by the hospital is

required for the board to have jurisdiction to hear the appeal.”), *rev. denied*, 438 Mass. 1102 (2002).

Clause Third requires more than mere organization as a nonprofit corporation to receive the benefit of property tax exemption. See G.L. c. 59, § 5, Clause Third (requiring ownership and occupation of the property for expressly indicated purposes, as well as requiring the charitable organization to provide certain documentation to the assessors). See also ***Western Massachusetts Lifecare Corporation v. Assessors of Springfield***, 434 Mass. 96, 102 (2001) (“The mere fact that the organization claiming exemption has been organized as a charitable corporation does not automatically mean that it is entitled to an exemption for its property.”).

Clause Third exempts, in relevant part, “real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations.” G.L. c. 59, § 5, Clause Third. Ownership is a critical component of Clause Third, and the introductory paragraph of G.L. c. 59, § 5 states that “the date of determination as to age, ownership or other qualifying factors required by any clause shall be July 1 of each year unless another meaning is clearly apparent from the context.”

The appellant did not become the owner of the subject property until July 17, 2019, beyond the date of determination for the fiscal year at issue. See G.L. c. 59, § 5. See also **Collings Foundation v. Assessors of Stow**, Mass. ATB Findings of Fact and Reports 2015-1, 4 (“On October 1, 2010, the Collings transferred ownership of the 16.35-acre parcel of land, which included the hangar . . . to the Foundation. Accordingly, on July 1, 2011 (the ‘determination date’), the relevant date of qualification for the claimed exemption under [Clause Third] for fiscal year 2012, the Foundation was the assessed owner of the subject property.”); **The Church in Cambridge, Inc. v. Assessors of Cambridge**, Mass. ATB Findings of Fact and Reports 1998-960, 965 (“In the present appeal, the Board found that the Church had not met the statutory requirements of G.L. c. 59, § 5 since it did not own the subject property on July 1, 1995.”); **Healthtrax International, Inc. and Hanover Club Properties, Inc. v. Assessors of Hanover and South Shore Young Men’s Christian Association**, Mass. ATB Findings of Fact and Reports 2001-366, 386 (“[H]aving met the qualifying factors under [Clause Third] by July 1, 1998, the Assessors did not err in considering the Mill Pond facility’s charitable exemption status.”), *aff’d*, 56 Mass. App. Ct. 1116 (2002) (decision under Rule 1:28).

Further, the appellant’s plea for equity and fairness was misplaced. Proceedings before the Board are strictly defined by

statute. See G.L. c. 58A, § 6. See also *Whiteside et al., Trustees v. Commissioner of Revenue*, Mass. ATB Findings of Fact and Reports 1984-90, 94 ("If fairness is the chief argument on behalf of the appellants, it is submitted that their grievance can only be remedied by the legislature and not by this Board."), *aff'd*, 394 Mass. 206 (1985).

Based upon the above, the Board ruled that it lacked jurisdiction to hear this appeal and accordingly allowed the assessors' Motion to Dismiss.

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