



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

*100 Cambridge Street
Suite 200
Boston, Massachusetts 02114*

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

Docket No. F333327

**SZAL DESIGN, LLC
Appellant.**

**BOARD OF ASSESSORS OF
THE TOWN OF LITTLETON
Appellee.**

DECISION WITH FINDINGS

The decision is for the appellee. After considering the testimony of the witnesses and the documentary evidence introduced at the hearing of this appeal, the Board makes the following findings of fact and rulings of law.

This is an appeal from the refusal of the assessors to abate a fiscal year 2017 personal property tax on property owned by the appellant and located in the Town of Littleton as of the relevant assessment date, January 1, 2016. The personal property at issue ("subject property") consists of various equipment used in a graphic and product design business operated by the principal of the appellant ("Mr. Szal") out of the personal residence that he shared with his wife. From March 30, 2015 until December 27, 2016, when Mr. Szal and his wife (together, the "Szals") moved to Maine, the business was operated out of the Szals' residence in Littleton.

The appellant timely filed a Form of List with the assessors for fiscal year 2017, but had not received a personal property tax bill prior to the Szals' move from their Littleton residence on December 27, 2016. The Town did not issue preliminary personal property tax bills to the appellant and, although the actual tax bill was issued on December 21, 2016, the bill was not received by the Szals prior to their December 27, 2016 move. The Board finds credible the Szals' explanation that they did not receive the bill because of the Christmas mailing season and the federal holiday on December 26, 2016. Shortly after the Szals' move, the bill was received by the purchasers of the Szals' Littleton residence; the purchasers assumed that the bill was their responsibility and paid it without forwarding it to the Szals or otherwise notifying them about the bill.

On or about March 29, 2017, the Town issued its fourth-quarter tax bills. The bill for the subject property was delivered to the Szals at their new Maine address, in accordance with a mail forwarding arrangement they had made with the U.S. Postal

Service. The appellant filed an abatement application on or about April 10, 2017, which the assessors denied for late filing on April 21, 2017. The appellant timely filed this appeal with the Board.

At the hearing of this appeal, the assessors made an oral motion to dismiss, arguing that the appellant failed to file its abatement application by the February 1 deadline established under G.L. c. 59, § 59. The appellant did not dispute the subject property's assessed value of \$14,780; rather, the appellant contended that the tax should be abated in full because: (1) it did not receive timely notice of the bill; (2) the appellant and the subject property left Littleton "prior to the assessment of the taxes at issue," presumably meaning that they were no longer in Littleton for the second-half of fiscal year 2017 to which the third and fourth quarter bills related.

Regarding the first ground, a lack of notice to a taxpayer does not invalidate a tax assessment. First, no preliminary tax bills were issued to the appellant because the preliminary bills are based on a percentage – 50 percent plus up to 2.5 percent and any approved overrides – of the prior years' tax. See G.L. c. 59, § 57C; see also IGR 17-05. The appellant owed no tax to Littleton for the prior fiscal year because the property was not located in Littleton on the January 1, 2015 valuation date for fiscal year 2016; the Szals lived in Newton at that time. Accordingly, because there was no tax due to Littleton for the prior fiscal year, no preliminary tax bills were issued to the appellant.

Further, the failure to receive, or a delay in receiving, the actual tax bill does not excuse the appellant's failure to timely file its abatement application. The filing of a timely application for abatement is a prerequisite to the Board having jurisdiction over an appeal. **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 748 (1975) ("Manifestly, there can be no appeal to the board on the merits after the right to apply to the assessors for abatement has been lost through failure to follow statutory procedures."). See also, **Old Colony R.R. v. Assessors of Quincy**, 305 Mass. 509, 511-12 (1940) ("[T]he time within which the application is to be made is not a mere matter of limitation but is an integral part of the right [to apply for abatement of taxes assessed], and the failure to apply within the prescribed time destroys the right.").

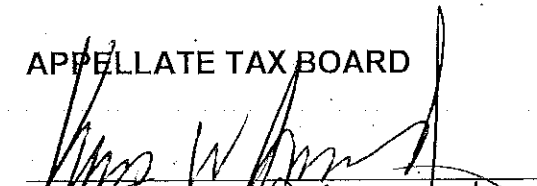


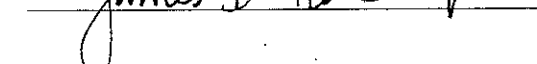
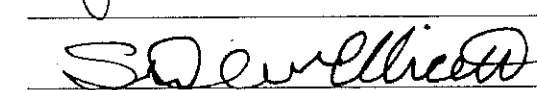
After ruling that there is "no statutory requirement that the [tax] bill actually be received," the Supreme Judicial Court rejected the same argument that the appellant advances here, *i.e.* that its failure to timely receive its tax bill should excuse its late filing of an abatement application. See **Bible Baptist Church of Plymouth, Inc. v. Assessors of Plymouth**, 391 Mass. 1015, 1016 (1984). The Board has also rejected this argument, ruling that "the failure to receive a tax bill, even if proved, cannot restore jurisdiction." **Gargano v. Assessors of Barnstable**, Mass ATB Findings of Fact and Reports, 2003-501, 521. Accordingly, because the appellant filed its abatement application beyond the February 1, 2017 deadline under G.L. c. 59, § 59, the Board has no jurisdiction over this appeal.

The Board also rejects the appellant's argument that the property was not present in Littleton during the second half of fiscal year 2017. The relevant inquiry for

purposes of the taxation of personal property is where the property was located as of the January 1 preceding the fiscal year at issue. See G.L. c. 59, § 18, Clause First (tangible personal property other than ships and vessels is "taxed to owner in the town where it is situated on January first"). The property is still taxable to the owner in the town where it is located even if, for example, the owner sells the property prior to the commencement of the fiscal year at issue, so long as it was located in the taxing jurisdiction on the preceding January first. See **Spinosa d/b/a Gourmet Decisions v. Assessors of Wellesley**, Mass. ATB Findings of Fact and Reports 2009-744. Accordingly, the fact that the property was no longer in Littleton after December 27, 2017 has no bearing on its taxability in Littleton for fiscal year 2017. While this rule makes the property taxable in Littleton for fiscal year 2017, it also allowed the appellant to keep its property in Littleton from March 20, 2015 through December 27, 2016 – encompassing all of fiscal year 2016 plus several months – without being liable to Littleton for a fiscal year 2016 personal property tax.

Accordingly, the Board finds and rules that the appellant failed to meet its burden of proving entitlement to an abatement and issued a decision for the appellee in this appeal.

APPELLATE TAX BOARD

	Chairman
	Commissioner
	Commissioner
	Commissioner
	Commissioner

Attest: 
Clerk of the Board

Date: SEP 18 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.