



THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board

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Boston, Massachusetts 02114*

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Docket No. X309257

RAYMOND & ANN URBAN
Appellants.

v.

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

DECISION WITH FINDINGS

The assessors' Motion to Dismiss ("Motion") is allowed and the appeal is dismissed for lack of jurisdiction. On the basis of the documents submitted in support of the Motion, and the arguments advanced at the April 26, 2021 hearing of the Motion, the Board finds and rules as follows.

This appeal concerns the fiscal year 2020 ("fiscal year at issue") assessment of real estate tax in the amount of \$8,838.77 on property located at 40B Cloutmans Lane ("subject property"). Evidence submitted by the assessors shows that the tax bill for the fiscal year at issue for the subject property exceeded \$5,000 and that the appellants failed to timely pay the first quarter real estate bill without incurring interest. The assessors presented various business records and testimony reflecting that the appellants made an electronic payment at 6:44 a.m. on August 2, 2019 and that the Town's electronic payment system credits a payment when a taxpayer presses the submit payment button on the Town's payment website. The assessors also presented sufficient evidence to establish that the appellants failed to make payments sufficient to satisfy the three-year average provision under G.L. c. 59, §§ 64 and 65.

The appellants argued that they timely paid the first quarter bill on August 1, 2019. Although they were not certain of when during the day of August 1, 2019 they made the payment and had no evidence of when they made the payment, they are certain that it could not have been at 6:44 a.m. on August 2, 2019 because they do not wake up that early in the morning.

On the basis of the record, the Board finds that there is insufficient evidence to refute the assessors' business records and testimony and therefore finds that the first quarter bill for the fiscal year at issue was paid on August 2, 2019, one day after its due date, and that interest was incurred.

The Board has no jurisdiction over an appeal when: (1) the tax due for the fiscal year exceeds \$5,000; (2) interest is incurred on the tax bill; and (3) the three-year average provision under G.L. c. 59, §§ 64 and 65 is not met. See, e.g. **Massachusetts Inst. of Tech. v. Assessors of Cambridge**, 422 Mass. 447, 451-52 (1996); **Columbia Pontiac Co. v. Assessors of Boston**, 395 Mass. 1010, 1011 (1985) (ruling that payment of the full amount of the tax due without incurring interest charges is a condition precedent to the Board's jurisdiction over an abatement appeal).

In the present appeal, the tax on the subject property exceeds \$5,000, interest was incurred due to the late payment of the first quarter bill, and the appellants failed to make payments sufficient to satisfy the three-year average provision of G.L. c. 59, §§ 64 and 65.

The Board has only that jurisdiction conferred on it by statute. **Stilson v. Assessors of Gloucester**, 385 Mass. 724, 732 (1982). Adherence to the statutory prerequisites is essential to the prosecution of appeals from refusals to abate taxes. **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975); **Old Colony R.R. Co. v. Assessors of Quincy**, 305 Mass. 509, 511-12 (1940).

Accordingly, the Motion is allowed and the appeal is dismissed for lack of jurisdiction.

This is a single-member Decision promulgated in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20.

APPELLATE TAX BOARD

By: Is/ Mark J. DeFrancisco
Mark J. DeFrancisco, Commissioner

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

Property address: 40B Cloutmans Lane

Date: April 29, 2021

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. An appeal under the Informal Procedure is limited by G.L. c. 58A, § 7A to questions of law raised by the pleadings or by a statement of agreed facts. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.