



THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board

*100 Cambridge Street
Suite 200
Boston, Massachusetts 02114*

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

Docket Nos. C339469, C339602

THERESA WEIR & MARK LATHAM
Appellants.

v.

COMMISSIONER OF REVENUE
Appellee.

DECISION WITH FINDINGS

The commissioner's Motions to Dismiss ("Motions") are allowed and the appeals are dismissed for lack of jurisdiction. On the basis of the documents submitted in support of the Motions and the arguments advanced at the April 12, 2021 hearing of the Motions, the Board finds and rules as follows.

These appeals concern the appellants' 2012 income tax ("tax year at issue"). On May 17, 2015, the commissioner issued to the appellants a Notice of Failure to File ("NFF") a return for the tax year at issue that informed the appellants that they owed \$3,467.68. The NFF instructed the appellants to file a return for the tax year at issue within thirty days and to pay the amount that the commissioner had determined was due.

In response, the appellants paid, prior to August 18, 2015, the \$3,467.68 shown on the NFF but did not at that time file a return for the tax year at issue. On August 18, 2015, the commissioner issued a Notice of Assessment ("NOA") that reflected the appellants' payment of \$3,467.68.

The appellant finally filed a return for the tax year at issue on February 9, 2019 requesting a refund of \$3,823. On March 25, 2019, the commissioner issued a Notice of Late Filed Return indicating that the appellants were not entitled to an abatement because the appellants' return was not filed within three years of the original due date of the return or two years from when the tax was paid.

In response, the appellants filed an abatement application for the tax year at issue with the commissioner on March 31, 2019, which the commissioner denied on June 17,

2019. The appellants filed an appeal with the Board from this denial on August 19, 2019, which was assigned Docket Number C339469.

On October 27, 2019, the appellants filed a second abatement application seeking a refund for the tax year at issue, which the commissioner denied on November 14, 2019. The appellants then filed a second petition with the Board that was assigned Docket Number C339602

The commissioner moved to dismiss these appeals on the ground that the appellants' refund request was not filed within the time limits prescribed under G.L. c. 62C, § 36, which provides in pertinent part:

A request for a refund or credit of an overpayment of any tax where a required return has not been timely filed, shall be made by filing the overdue return within 3 years from the due date of the return, taking into account any extension of time for filing the return, or within 2 years of the date that the tax was paid, whichever is later . . . Any request for a refund or credit filed beyond these deadlines shall be denied by the commissioner.

The appellants' tax return for the tax year at issue was due on April 15, 2013. No extension of time to file the return for the tax year at issue was requested or granted. The appellants paid tax for the tax year at issue in the amount of \$3,467.68 prior to August 18, 2015, as reflected in the commissioner's August 18, 2015 NOA. Accordingly, under § 36, the appellants had the later of 3 years from April 15, 2013 or 2 years from August 18, 2015¹ to file their request for refund for the tax year at issue. Therefore, the appellants' deadline for filing a request for refund under § 36 was August 18, 2017.

The appellants first requested a refund by filing their return for the tax year at issue on February 9, 2019, well after the expiration of the August 18, 2017 deadline under § 36. Under the plain terms of § 36, the appellants' request for refund was filed late and the Board has no jurisdiction over these appeals. See also ***Nature's Way, Inc. v. Commissioner of Revenue***, Mass ATB Findings of Fact and Reports 2009-223.

¹ There is no evidence in the record as to the date that the appellants made their tax payment for the tax year at issue, other than the commissioner's NOA on August 18, 2015 acknowledging the payment and indicating that the appellants' payment had been assessed. The Board therefore used the date of the NOA to compute the two year from payment measure in § 36.

Accordingly, the Board allowed the Motions and dismissed these appeals for lack of jurisdiction.

APPELLATE TAX BOARD

/s/ Thomas W. Hammond, Jr. Chairman

/s/ Patricia M. Good Commissioner

/s/ Steven G. Elliott Commissioner

/s/ Patricia Ann Metzger Commissioner

/s/ Mark J. DeFrancisco Commissioner

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

Date: April 23, 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. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.