



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Boston, Massachusetts 02114*

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Docket No. F341799

**ANDREW & ANNE WERT,
Appellants.**

v.

**BOARD OF ASSESSORS OF THE TOWN OF WESTPORT,
Appellee.**

DECISION WITH FINDINGS

The appellee's motion to dismiss is allowed and the appeal is dismissed for lack of jurisdiction.

The due date of the first installment of the fiscal year 2020 actual tax bill was February 3, 2020. The appellants were therefore required to file their application for abatement on or before February 3, 2020. See G.L. c. 59, § 59. The appellants did not file their abatement application until October of 2020, well beyond the § 59 due date.

Timely filing of an abatement application is an "integral part of the right, and the failure to apply in writing in the prescribed time destroys the right." ***Assessors of Brookline v. Prudential Insurance Co.***, 310 Mass. 300, 308 (1942). See also ***MacDonald v. Assessors of Mashpee***, 381 Mass. 724, 725 (1980); ***New Bedford Gas & Electric Light Co. v. Assessors of Dartmouth***, 368 Mass. 745, 748 (1975) ("Adherence to the statutory prerequisites is essential to [an] 'effective application for abatement of taxes and to [the] prosecution of appeals from refusals to abate taxes.'").

The appellants assert that, having filed an abatement application and an appeal at the Board for the fiscal year preceding the fiscal year at issue, they were verbally misinformed by the assessors regarding the requirement to file the abatement application at issue in this appeal. Relying on the assessors' representations, they filed their abatement application long after its due date.

Even assuming that the appellants' assertions are accurate, the obligation to file a timely abatement application remains undisturbed, as "a taxpayer relies at his own risk on the oral representations of a government official." ***WRC Properties, Inc. v. Assessors of Westborough***, Mass. ATB Findings of Fact and Reports 1994-270, 276 (citing ***Harrington v. Fall River Housing Authority***, 27 Mass App. Ct. 301, 309-10 (1989)).

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 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). The Board cannot waive jurisdictional requirements.

Accordingly, the motion is allowed and the appeal is dismissed 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

Property Address: 31 Atlantic Avenue

Date: May 21, 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.