



**THE COMMONWEALTH OF MASSACHUSETTS**

***Appellate Tax Board***

*Leverett Saltonstall Building  
100 Cambridge Street, Suite 200  
Boston, Massachusetts 02114*

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

**Docket No. X308264**

**WILLIAM L. DALEY & MARY ANN DALEY**

Appellants.

**v.**

**BOARD OF ASSESSORS OF THE  
TOWN OF WEST NEWBURY**

Appellee.

**DECISION WITH FINDINGS**

The Decision is for the appellants. Abatement is granted in the full amount of the roll-back taxes assessed, \$26,816.43. On the basis of the evidence of record, the Board makes the following findings of fact and rulings of law.

The subject property consists of 2 parcels of land located at 716 and 718 Main Street in the Town of West Newbury ("Town"). The subject property was part of a larger parcel, 720 Main Street, that was classified under Chapter 61A as of fiscal year 2013 and for several prior fiscal years. The last application for classification under Chapter 61A that the appellants filed was in September of 2011, requesting classification for fiscal year 2013.

By letter dated September 30, 2013, the assessors informed the appellants that their fiscal year 2015 Chapter 61A application was "not resubmitted" and that the appellants also needed to submit to the assessors certain other documents necessary for classification under Chapter 61A. In response, the appellants delivered to the assessors a letter dated October 4, 2013 informing the assessors that "Mr. Daley does not wish to reapply" for Chapter 61A classification.

In the fall of 2016, the appellants entered into a purchase and sale agreement to sell the subject property for the construction of a single-family home on each lot. Through counsel, the appellants notified the Town of their intent to sell the subject property and requested notification as to whether the Town intended to exercise its right of first refusal to purchase the subject property. The Town waived its right of first refusal on February 6, 2017 and the property was sold on March 22, 2017.

On January 9, 2017, the assessors purported to assess roll-back tax in the amounts of \$13,436.06 for 716 Main Street and \$13,380.37 for 718 Main Street. The appellants timely filed abatement applications on January 31, 2017. The appellants appended to each abatement application a statement of their reasons for requesting the

abatements that outlined the bases for their objection to the assessment of the roll-back tax.

On March 22, 2017, the appellants paid the disputed roll-back tax and granted the assessors an extension, until June 1, 2017, to consider their abatement applications.

In response to the appellants' abatement applications, the assessors issued notices advising the appellants that the assessors voted to deny the appellants' applications on May 10, 2017. The notices went on to provide that any appeal of the assessors' action must be filed with this Board "within three months of the date your application was denied by vote of the assessors." The appellants' August 4, 2017 appeal met this 3-month requirement.

The assessors argued that the Board has no jurisdiction over this appeal because the appellants failed to file with the assessors a request for relief from the roll-back taxes. However, the appellants attached a clear and concise statement of their objections concerning the roll-back taxes to their January 31, 2017 abatement applications. G.L. c. 61A, § 19 does not require a separate form for requesting abatement of roll-back taxes, or even that the request be on any particular or approved form.

In addition, notwithstanding the assessors' notice that the appellants had 3 months to appeal the assessors' decision, the assessors argued that the appeal is barred because G.L. c. 61A, § 19 requires that appeals of roll-back tax must be filed within thirty days of the assessors' decision. The Board does not attribute to the assessors an intention to mislead the appellants by providing them the wrong date for appealing the decision. See **General Dynamics Corp. v. Assessors of Quincy**, 388 Mass. 24, 31 (1983). However, the Board will not countenance an obvious trap for unwary taxpayers by dismissing this appeal where the appellants followed the clear language of the abatement denial issued to them. See, e.g., **Phifer v. Assessors of Cohasset**, 28 Mass. App. Ct. 552, 555 (1990). Accordingly, the Board finds and rules that the appellants had 3 months from the denial of their abatement applications to file their appeal and their appeal was timely.

Regarding the substance of the appellants' appeal, it is clear that the assessors failed to properly assess a roll-back tax. G.L. c. 61A, § 6 provides that eligibility of land for valuation, assessment, and taxation under Chapter 61A "shall be determined separately for each tax year." The application for classification under Chapter 61A must be submitted to the assessors no later than October 1 of the year preceding "each tax year for which such valuation, assessment, and taxation are being sought." *Id.* Because Chapter 61A requires an annual application and it is uncontested that the appellants did not apply for classification for any year after fiscal year 2013, the assessors improperly valued, assessed, and taxed the appellants under Chapter 61A for fiscal year 2014, 2015, and 2016.

G.L. c. 61A, § 16 provides that liability for roll-back taxes attaches when land "no longer qualifies as actively devoted to agricultural or horticultural use." Accordingly, when the October 1, 2012 application deadline for Chapter 61A classification for fiscal year 2014 came and went without an application by the appellants, the subject property

no longer qualified for Chapter 61A classification and roll-back tax liability attached at that point.

Where, as here, land that had been classified under Chapter 61A no longer qualifies for classification, it shall be subject to roll-back taxes "in the current year in which it is disqualified and in those years of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed." G.L. c. 61A, § 13. Accordingly, under §§ 13 and 16, the appellants were liable for a roll-back tax for the fiscal year in which it was disqualified -- 2014 -- and in the 4 immediately preceding tax years, 2013, 2012, 2011, and 2010.

In assessing roll-back taxes, the assessors are governed by the procedures for the assessment and taxation of omitted property under G.L. c. 59, § 75. See G.L. c. 61A, § 19. Under G.L. c. 59, § 75, the assessors are required to assess omitted property no later than "June 20 of the taxable year or 90 days after the date on which the tax bills were mailed, whichever is later." Accordingly, the purported roll-back taxes at issue in this appeal should have been assessed by June 20, 2014 or 90 days after the fiscal year 2014 bills were mailed, whichever was later. Clearly, the January 9, 2017 roll-back tax bills were issued long after the statutory deadline, rendering the subject assessment invalid. See, e.g., **United Orthodox Services, Inc. v. Assessors of Brookline**, Mass. ATB Findings of Fact and Reports, 2004-515, 522-23.

Accordingly, the Board found and ruled that because the assessors failed to properly assess the roll-back taxes at issue, the Decision is for the appellants in the full amount of the roll-back taxes assessed, \$26,816.43.

This is a single-member decision promulgated in accordance with G.L. c. 58A, § 1A.

#### APPELLATE TAX BOARD

By: Patricia M. Good  
Patricia M. Good, Commissioner

Attest Janice Brown  
Clerk of the Board  
Asst.

Date: APR 26 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 and G.L. c. 58A, § 7A. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.