



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. C325584

MARIA ASENITH SALMON-SARGEANT
Appellant.

COMMISSIONER OF REVENUE
Appellee.

DECISION WITH FINDINGS

The decision is for the appellant with respect to tax year 2006 in the amount of \$3,012.00. The Commissioner's Motion to Dismiss ("Motion") is allowed without prejudice with respect to the remainder of the amount claimed for tax year 2006 and all amounts claimed for tax years 2007, 2008, and 2009 due to lack of jurisdiction and the Decision is for the appellee with respect to those amounts and tax periods. On the basis of the documents filed by the Commissioner in connection with the Motion and the testimony of the appellant, the Board makes the following findings and rulings.

This appeal involves income tax self-assessed by the appellant for tax years 2006, 2007, 2008 and 2009. The appellant has made no payments toward the amount of tax shown on her returns and the Commissioner has not made a deficiency assessment against the appellant for the periods at issue. In addition, the appellant filed her abatement applications beyond 3 years from the due date of the return for tax years 2006 and 2007 and beyond 3 years from the filing of her return for tax years 2008 and 2009, as required by the applicable versions of G.L. c. 62C, § 37.

For tax year 2006, the Commissioner concedes that, as a result of an assessment made against the appellant by the state of Maryland on October 1, 2014, the appellant timely claimed and is entitled to a Massachusetts credit in the amount of \$3,012.00 under G.L. c. 62C, §30A. Accordingly, the Board grants an abatement in the amount of \$3,012.00 for tax year 2006.

With respect to the appellant's abatement claims for the remainder of tax year 2006 and tax years 2007, 2008 and 2009, her failure to timely file an abatement application is fatal to the Board's jurisdiction. See, e.g. *Nissan Motor Corp. in U.S.A. v. Commissioner of Revenue*, 407 Mass. 153, 157 (1990) ("The board lacks subject matter jurisdiction over abatement proceedings where the process was commenced at a later time or prosecuted in any manner different from that dictated by statute."; *Commissioner of Revenue v. Pat's Supermarket, Inc.*, 387 Mass. 309, 311 (1982) (quoting *New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth*, 368 Mass. 745, 747 (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.'").

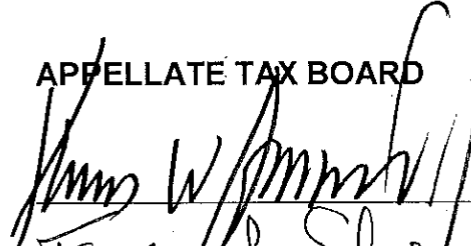
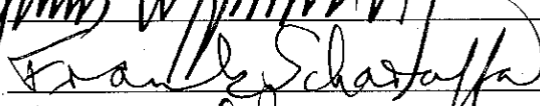
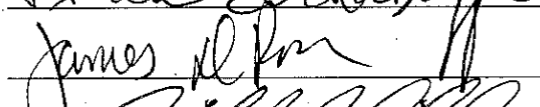
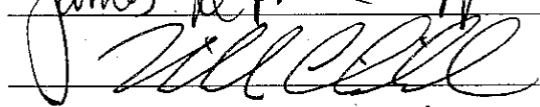
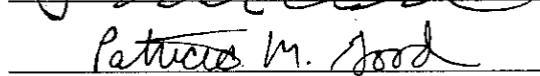
The filing of an abatement application is a jurisdictional prerequisite to the Board's authority to grant an abatement. See G.L. c. 62C, § 39 ("Any person aggrieved by the **refusal of the commissioner to abate or to refund a tax**, in whole or part, whether such refusal results from the **denial of an abatement application made under section 36 or 37**, may appeal therefrom"); see also *Boston Safe Deposit & Trust Co., Executor, Estate of Peter T. Hartmann v. Commissioner of Revenue*, Mass. A.T.B. Findings of Fact and Reports, 1995-238, 242 (ruling that the Board has no jurisdiction over a purported appeal where a taxpayer failed to file an abatement application with the Commissioner but filed an appeal directly with the Board).

The abatement remedy is created by statute and, therefore, the Board has only that jurisdiction conferred on it by statute. *Pat's Super Market Inc.*, 387 Mass. at 311. Timely filing of an abatement application has long been held a condition of invoking the Board's jurisdiction. See, e.g., *Dana Lease Finance Corp. v. Commissioner*, 53 Mass. App. Ct. 840, 843 (2002); *Tilcon Massachusetts, Inc. v. Commissioner of Revenue*, 30 Mass. App. Ct. 264, 264-267, (1991). Neither the courts nor this Board have the authority to create an exception to the time limit specified by statute. *Sears Roebuck & Co. v. State Tax Commission*, 370 Mass. 127, 130 (1976); *Peterson v. Commissioner of Revenue*, Mass. ATB Findings of Fact and Reports 1994-305.

However, because the subject assessments remain unpaid, the appellant may still challenge the assessments by paying all or a portion of the assessments and then filing an abatement application within one year of the payment. See *Electronics Corporation of America v. Commissioner of Revenue*, 402 Mass. 672 (1988). Any abatement granted on the abatement application will be limited to the amount of the assessment that appellant pays. *Id.*

Accordingly, the Commissioner's Motion is allowed without prejudice and appellant may file a new abatement application with respect to the remainder of the amount claimed for tax year 2006 not abated by this Decision and all amounts claimed for tax years 2007, 2008, and 2009.

APPELLATE TAX BOARD


Chairman

Commissioner

Commissioner

Commissioner

Commissioner

Attest: 
Clerk of the Board

Date: JAN - 3 2017
(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.