



**THE COMMONWEALTH OF MASSACHUSETTS**

**Appellate Tax Board**

100 Cambridge Street  
Suite 200  
Boston, Massachusetts 02114

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

**Docket No. C331946**

**LSBM MANAGEMENT, LLC**  
**Appellant.**

**COMMISSIONER OF REVENUE**  
**Appellee.**

**DECISION WITH FINDINGS**

The Commissioner's Motion to Dismiss ("Motion") is allowed and the appeal is dismissed for lack of jurisdiction. On the basis of the affidavits submitted in connection with the Motion, the Board makes the following findings and rulings.

This appeal concerns the Commissioner's denial of the appellant's abatement applications concerning room occupancy taxes assessed for various periods ("periods at issue"). The Commissioner mailed all Notices of Abatement Determination ("Notices") to the appellant at its address of record, 675 VFW Parkway, Suite 161, Chestnut Hill, MA, 02467-3656, the same address that the appellant used on its appeal to this Board.

The Commissioner mailed a total of 71 Notices to the appellant: 57 Notices dated May 31, 2016 were mailed to the appellant on June 6, 2016; 13 Notices dated June 2, 2016 were mailed to the appellant on June 7, 2016; and 1 of the Notices dated June 6, 2016 was mailed to the appellant on June 8, 2016. None of the Notices was returned to the Commissioner for incorrect or insufficient address.

Under G.L. c. 62C, § 39, appellant's appeal was due 60 days after the date of notice of the Commissioner's decision. Sixty days after the latest mailing date of the Notices, June 8, 2016, was Sunday, August 7, 2016; accordingly, the latest due date of the appeal was Monday, August 8, 2016. The appellant filed its Petition with the Board on September 6, 2016.

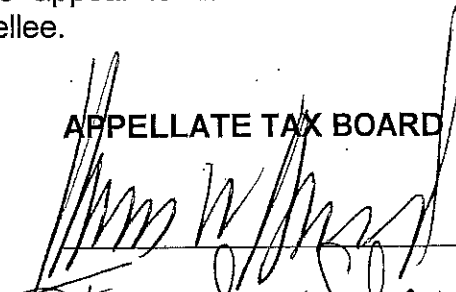
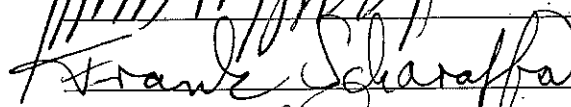
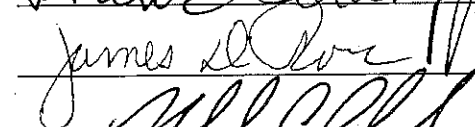
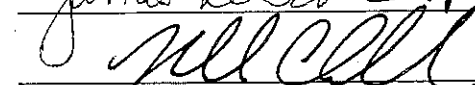
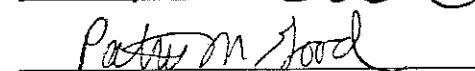
The appellant failed to appear at the hearing of the Motion, filed no opposition, and did not otherwise challenge the affidavits and arguments advanced by the Commissioner. Accordingly, the Board finds that the appellant failed to file its appeal with this Board within 60 days after the date of notice of the Commissioner's decisions as required under G.L. c. 62C, § 39.

The Board has only that jurisdiction conferred on it by statute. **Stilson v. Assessors of Gloucester**, 385 Mass. 724, 732 (1982). "Since the remedy of abatement is created by statute, the board lacks jurisdiction over the subject matter of proceedings that are commenced at a later time or prosecuted in a different manner from that prescribed by statute." **Nature Church v. Assessors of Belchertown**, 384 Mass. 811, 812 (1981) (citing **Suffolk Law School**, 295 Mass. at 495 (1936)). Adherence to the statutory prerequisites is essential "to prosecution of appeal from refusals to abate taxes." **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745, 747 (1975). **Old Colony R. Co. v. Assessors of Quincy**, 305 Mass. 509, 511-12 (1940).

The Board has no jurisdiction over an appeal that is filed more than 60 days after the date of notice of the Commissioner's decision. **Good v. Commissioner of Revenue**, 395 Mass. 685 (1985); **Sears, Roebuck & Co., v. State Tax Commission**, 370 Mass. 127 (1976). The appellant's Petition to the Board was due no later than August 8, 2016 but was not filed until September 6, 2016. The appellant's appeal is therefore beyond the 60-day period mandated in G.L. c. 62C, § 39.

Accordingly, the appeal is dismissed for lack of jurisdiction and the decision is for the appellee.

APPELLATE TAX BOARD

  
Chairman  
  
Commissioner  
  
Commissioner  
  
Commissioner  
  
Commissioner

Attest:   
Clerk of the Board

Date: JUN - 8 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.