



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. C331849

ANNE M. TORCIVIA
Appellant.

COMMISSIONER OF REVENUE
Appellee.

DECISION WITH FINDINGS

The decision is for the Commissioner. The Commissioner's Motion to Dismiss ("Motion") is allowed as to tax year 2012 and allowed without prejudice as to tax year 2013. On the basis of the documents filed by the Commissioner in connection with the Motion, the Board makes the following findings and rulings.

This appeal involves income tax self-assessed by appellant for tax years 2012 and 2013. For tax year 2012, appellant filed her return and paid the tax shown as due on the return on April 15, 2013. The Commissioner made no deficiency assessment. Accordingly, under G.L. c. 62C, § 37, appellant had 3 years from the filing of her return, or April 15, 2016, to file an abatement application. Appellant did not file her abatement application until June 1, 2016.

Appellant's 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.'"). Accordingly, the Board has no jurisdiction to grant an abatement for tax year 2012.

Regarding tax year 2013, appellant filed her return and paid the tax shown as due on the return on April 15, 2014. The Commissioner made no deficiency assessment. Accordingly, under G.L. c. 62C, § 37, appellant has 3 years from the filing of her return, or April 15, 2017, to file an abatement application. Appellant has not yet filed an abatement application for tax year 2013.

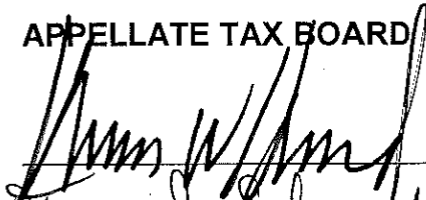
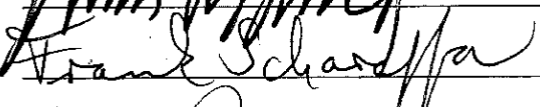
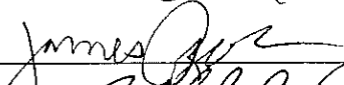

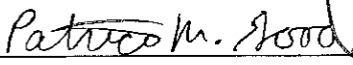
The filing of an abatement application is a jurisdictional prerequisite to the Board's authority to grant an abatement. See G.L. c. 62C, § 39. ("Any person aggrieved by the *refusal of the commissioner to abate or to refund a tax*, in whole or part,

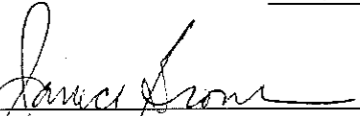
whether such refusal results from the **denial of an abatement application made under section 36 or 37**, may appeal therefrom"); see also **Boston Safe Deposit & Trust Co., Executor, Estate of Peter T. Hartmann v. Commissioner of Revenue**, Mass. A.T.B. Findings of Fact and Reports, 1995-238, 242 (ruling 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.

Although the time has passed for appellant to file an abatement application for tax year 2012, appellant has until April 15, 2017 to file an abatement application for tax year 2013. Accordingly, the appeal is dismissed as to tax year 2012, but is dismissed without prejudice as to tax year 2013. If appellant files a timely abatement application for tax year 2013 on or before April 15, 2017, appellant may seek to expunge the dismissal of this appeal as to tax year 2013 by filing a motion to expunge within 60 days of the Commissioner's denial of the abatement application.

APPELLATE TAX BOARD

	Chairman
	Commissioner
	Commissioner
	Commissioner
	Commissioner

Attest: 
Clerk of the Board

Date: **NOV 15 2016**
(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.