

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SAMSON FOUNDATION
CHARITABLE TRUST

v. BOARD OF ASSESSORS OF
THE CITY OF SPRINGFIELD

Docket No. F262487

Promulgated:
March 4, 2004

This is an appeal under the formal procedure, pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes on certain real estate in the City of Springfield owned by and assessed to the appellant under G.L. c. 59, §§ 11 and 38, for fiscal year 2001.

Commissioner Rose heard this appeal. Former-Chairman Burns and Commissioner Egan joined him in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13, and 831 CMR 1.32.

John E. Pearson, Esq. for the appellant.

Wayman Lee, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits entered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") makes the following findings of fact. Appellant Samson Foundation Charitable Trust ("appellant") was at all material times the record owner of real estate

located at 56 Mulberry Street, Springfield. Appellant was established by a declaration of trust dated December 28, 1979. The trust agreement states that appellant was "created and shall be operated exclusively for religious, charitable, scientific, literary, or educational purposes." Appellant qualified at all material times as a charitable organization under Internal Revenue Code § 501(c)(3).

Appellant claimed that it occupied the subject property in furtherance of its charitable purposes and that, therefore, the property was exempt from real estate tax. The assessors advanced two arguments in defense of the subject assessment. First, the assessors maintained that the Board had no jurisdiction to hear and decide the appeal due to a late filed petition with this Board and the appellant's failure to timely pay the tax assessed. Secondly, the assessors argued that occupation of part of the subject property by a for-profit tenant of the appellant was fatal to the appellant's exemption claim. Because the Board found, as described below, that it had no jurisdiction over the appeal, it did not reach the merits of the appellant's exemption claim.

The parties agree that the taxpayer timely filed with the assessors its Form 3ABC and a copy of its Form PC by the statutory deadline of March 1, 2000. The assessors mailed the actual tax bills for fiscal year 2001 on December 29, 2000. The appellant's tax bill showed that no exemption was granted for the subject property. Payment of the first

installment of the actual tax bill was due on February 1, 2001. Accordingly, under G.L. c. 59, § 59, the deadline for filing an application for abatement of the tax on any ground, including a claimed exemption, was also February 1, 2001.

The appellant filed its application for abatement on June 29, 2001. No action was taken on the June 29, 2001 application for abatement, which was therefore deemed denied on September 29, 2001. The appellant then filed its appeal with this Board on November 8, 2001. As of the date of the hearing of this appeal, the appellant made no tax payments for fiscal year 2001.

For the reasons more fully described in the following Opinion, the Board has no jurisdiction over this appeal due to the appellant's failure to timely pay the tax assessed without incurring interest, its failure to timely apply for an abatement of the tax assessed, and its failure to timely appeal the assessors' determination concerning its exempt status. Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

G.L. c. 59, § 5, Third, ("Clause Third") provides an exemption for:

real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the

purpose of such other charitable organization or organizations.

That same clause further provides that a charitable organization

shall not be exempt for any year in which it omits to bring in to the assessors the list, statements and affidavit required by section twenty-nine and a true copy of the report for such year required by section eight F of chapter twelve to be filed with the division of public charities in the department of the attorney general. *Id.*

A charitable organization seeking an exemption under Clause Third must first comply with the foregoing requirement of timely filing with the assessors the documentation required under G.L. c. 59, § 29 ("Form 3ABC") and G.L. c. 12, § 8F ("Form PC"). See *Children's Hospital Medical Center v. Assessors of Boston*, 388 Mass. 832, 837 (1983) ("*Children's Hospital I*") (timely filing of Form 3ABC and copy of Form PC are jurisdictional prerequisites to action by assessors and review by Board). The assessors conceded, and the Board found that the appellant in this appeal timely filed its Form 3ABC and a copy of Form PC for fiscal year 2001.

Where, as here, a tax bill is issued which treats as taxable real estate which the appellant claims is exempt under Clause Third, the appellant has two choices: it may apply to the assessors for an abatement under G.L. c. 59, § 59 or it may appeal directly to the Board under G.L. c. 59, § 5B. See *Trustees of Reservations v. Assessors of Windsor*, 14 Mass. App. Tax Bd. Rep. 22, 25 (1991).

With regard to the first alternative, it is "well established that a statutory exemption is an appropriate ground for seeking an abatement." *Children's Hospital Medical Center v. Assessors of Boston*, 393 Mass. 266, 267 (1984) ("*Children's Hospital II*"). Accordingly, a taxpayer who has timely filed its Form 3ABC and a copy of its Form PC with the assessors may, within the time period provided under G.L. c. 59, § 59, file an application for an abatement based on a claim that its property was exempt under Clause Third. Such a taxpayer may use either the standard application for abatement form ("Form 128") or an "application for statutory exemption" ("Form 1B-3"). *Children's Hospital II*, 393 Mass. at 269.

In the present appeal, it appears that the appellant attempted to file its appeal under G.L. c. 59, § 59. It filed an application for statutory exemption with the assessors on June 29, 2001 and purported to appeal the deemed denial of that application by filing a petition with this Board on November 8, 2001.

However, G.L. c. 59, § 59 expressly provides that applications for abatement must be filed with the assessors:

on or before the last day for payment, without incurring interest in accordance with the provisions of . . . section fifty-seven C, of the first installment of the actual tax bill issued upon the establishment of the tax rate for the fiscal year to which the tax relates.

In the present appeal, the last day for payment without incurring interest of the first installment of the actual

tax bill was February 1, 2001. Accordingly, the appellant's June 29, 2001 application was filed well beyond the § 59 due date, thereby depriving this Board of jurisdiction. See, e.g., **A.P. East v. Assessors of Westborough**, 40 Mass. App. Ct. 912, rev. den., 422 Mass. 1108; **New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth**, 368 Mass. 745 (1975).

Moreover, because the appellant appealed to the Board from the "refusal of the assessors to abate a tax," it necessarily invoked G.L. c. 59, §§ 64 and 65. See **Trustees of Reservations**, 14 Mass. App. Tax Bd. Rep. at 30. Under §§ 64 and 65, persons challenging an abatement denial must either pay the tax due for the present fiscal year without incurring interest, or an amount equal to the average of the prior three years' taxes, without incurring interest, if the tax at issue is greater than \$3,000. In the present case, the tax for fiscal year 2001, and the average of the prior three years' taxes, exceeded \$3,000 and no payments were made as of the date of the hearing. Accordingly, for this additional ground, the Board had no jurisdiction over this appeal. See **Northampton Nursing Home v. Assessors of Northampton**, 383 Mass. 884 (1981).

Appellant argued that it did not need to make payment of the tax due, citing **Trustees of Reservations** for the proposition that:

it is not a requirement and not a condition precedent that such a charitable entity is required to have paid all taxes currently due and also to have made a request for a tax abatement to

the Board of Assessors as a prerequisite to an appeal to the Appellate Tax Board.

See Appellant's Opposition To Assessors' Motion to Dismiss for Failure to Pay Taxes in Timely Fashion, p. 1.

Trustees of Reservations dealt with the second alternative method of challenging the denial of a claim of exemption under Clause Third, which is a direct appeal to the Board pursuant to G.L. c. 59, § 5B. Under § 5B, any person who is aggrieved by a "determination" of a board of assessors as to the eligibility or noneligibility of a corporation or trust for the exemption under Clause Third may appeal directly to this Board within three months of the assessors' determination. The Board in **Trustees of Reservations** ruled that where a charitable entity files a direct appeal with this Board under § 5B, it does not need to comply with the filing and payment provisions of G.L. c. 59, §§ 59-65D. **Id.** at 31. The "determination" of the assessors which the charitable entity appeals under § 5B is the issuance of a tax bill which includes the property which the entity claims is exempt under Clause Third. **Id.** at 27-29.

It is clear under the facts of this appeal that the appellant did not file a direct appeal to this Board under § 5B. First, the petition and subsequent pleadings filed by the appellant state that the appellant initially filed with the assessors seeking an exemption, thereby invoking the

provisions of G.L. c. 59, §§ 59-65D.¹ Secondly, the appellant maintained that its appeal to this Board was from the deemed denial of its application for statutory exemption, once again following the statutory provisions of G.L. c. 59, §§ 59-65D. Finally, even if the appellant could somehow establish that it was appealing to the Board pursuant to § 5B, its November 9, 2001 appeal to this Board was filed long after the expiration of the statutory

¹ The petition also purports to appeal the assessors' refusal to abate taxes for three fiscal years. Given the statutory deadlines for filing appeals under both G.L. c. 59, §§ 59-65D and § 5B, the appellant could only challenge the assessors' action for one fiscal year. The appellant apparently abandoned his attempt to challenge the assessors' actions for all three fiscal years and focused on fiscal year 2001 at the hearing of this appeal.

deadline under § 5B. The assessors' "determination" under § 5B was the December 29, 2000 issuance of a tax bill on the subject property. See *Trustees of Reservations*, 14 Mass. App. Tax Bd. Rep. at 28-29 (a timely filed Form 3ABC puts the assessors on notice of a charitable organization's claim for exemption and the tax bill issued thereafter constitutes a "determination" concerning the charity's exemption claim). The appellant's § 5B appeal to this Board was therefore due on March 29, 2001. Accordingly, its November 9, 2001 appeal was filed well beyond the due date under § 5B.

On the basis of the foregoing, the Board ruled that the appellant's failure to timely pay the tax assessed and its late filing of its application for abatement under G.L. c. 59, § 59 deprived the Board of jurisdiction to hear and decide this appeal. Further, even if the appellant's appeal to this Board could be construed as a direct appeal under § 5B, the appeal was filed well after the applicable due date. Therefore, the appellant failed to properly prosecute its appeal under either of the alternative remedies provided under G.L. c. 59, §§ 59-65D and G.L. c. 59, § 5D.

Accordingly, the Board issued a decision for the appellee in this appeal.

APPELLATE TAX BOARD

By: _____
James D. Rose, Member

A true copy,

Attest: _____
Clerk of the Board