This is an appeal under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Hinsdale (“assessors” or “appellee”) to abate a tax on certain real estate in the Town of Hinsdale assessed to David J. Duquette (“appellant”) under G.L. c. 59, §§ 11 and 38 for fiscal year 2013.

Chairman Hammond heard the appellee’s Motion to Dismiss this appeal due to the appellant’s failure to respond to a request for information under G.L. c. 59, § 38D. Commissioners Scharaffa, Rose, Chmielinski, and Good 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.

David J. Duquette, pro se, for the appellant.

Rosemary Crowley, Esq. for the appellee.
FINDINGS OF FACT AND REPORT

The Appellate Tax Board ("Board") heard the assessors' Motion to Dismiss this appeal due to the appellant’s failure to respond to a request for information under G.L. c. 59, § 38D ("§ 38D"). The salient facts are essentially undisputed.

On January 1, 2012, the relevant valuation date for fiscal year 2013 ("fiscal year at issue"),¹ the appellant was the assessed owner of a certain parcel of real estate located at 0 Bullard’s Crossing in the Town of Hinsdale ("subject property"). The subject property was improved with a building housing a commercial garage business. The assessors valued the subject property at $499,700, and assessed a tax thereon, at a rate of $12.22 per thousand, in the total amount of $6,106.33, which the appellant timely paid without incurring interest.

On January 11, 2013, the appellant timely filed an Application for Abatement with the assessors, appealing the valuation of the subject property. The assessors denied the appellant’s abatement application on February 19, 2013, and the appellant seasonably filed his appeal with this Board on May 10,

¹ Fiscal year 2013 was a revaluation year in the Town of Hinsdale. Revaluation is a process mandated by G.L. c. 40, § 56 during which the assessors update and analyze all property records and assessed values to ensure that they are certified by the Commissioner of Revenue as assessing property at full and fair cash value. The Commissioner of Revenue’s certification is required in order for municipalities to set their tax rate.
On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

Prior to the appellant’s filing of his abatement application, however, on or about February 9, 2012, the assessors sent to the appellant a request for certain income and expense information pursuant to § 38D, which allows boards of assessors to request from property owners and lessees “such information as may reasonably be required by [it] to determine the actual fair cash valuation of such property.” The statute further provides that failure to respond to such a request “shall be automatic grounds for dismissal” of the taxpayer’s appeal to the Board. The assessors had sent similar requests for information under § 38D to the appellant for both fiscal years 2011 and 2012 and the appellant did not respond to either request.

As in the previous two fiscal years, the appellant did not respond to the assessors’ request for information under § 38D for the fiscal year at issue. As a result, the assessors valued the subject property without the benefit of the requested income and expense information.

On October 15, 2013, the Board heard the assessors’ Motion to Dismiss. The appellant opposed the motion on the ground that the information sought was not “reasonably. . . required” for a determination of the actual fair cash value of the subject
property for fiscal year 2013 and, therefore, he was not required under § 38D to provide the requested information to the assessors. He did not contend that he had made a good faith effort to comply with the request, or that his failure to comply with the request was occasioned by reasons beyond his control, nor did he offer any other argument or evidence in support of his position.

On the basis of the evidence presented at the Motion hearing, the Board allowed the assessors’ Motion to Dismiss this appeal due to the appellant’s failure to respond to their request for information under § 38D. The Board found that the information requested was reasonably required by the assessors to determine the actual fair cash value of the subject property for the fiscal year at issue. The Board further found that the appellant made no good faith effort to comply with the request, and that the appellant’s failure to respond was not occasioned by reasons beyond his control. Accordingly, the Board decided this appeal for the assessors.

**OPINION**

General Laws chapter 59, § 38D states in pertinent part:

A board of assessors may request the owner or lessee of any real property to make a written return under oath within sixty days
containing such information as may reasonably be required by it to determine the actual fair cash valuation of such property. **Failure of an owner or lessee of real property to comply with such request within 60 days after it has been made by the board of assessors shall be automatic grounds for dismissal of a filing at the appellate tax board.** The appellate tax board and the county commissioners **shall not grant extensions for the purposes of extending the filing requirements unless the applicant was unable to comply with such request for reasons beyond his control or unless he attempted to comply in good faith.**

(emphasis added). Accordingly, when an owner or lessee ("taxpayer"), as the case may be, fails to respond under oath within sixty days to a written request from the assessors for information reasonably required by the assessors to determine the fair cash value of the property at issue, the taxpayer’s right to appeal an assessment to this Board is foreclosed unless the taxpayer was unable to comply for reasons beyond his control or attempted to comply in good faith. See **Marketplace Center II Limited v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2000-258, 276-77 ("Marketplace Center II"), aff’d, 54 Mass. App. Ct. 1101, 1107 (2002) (decision pursuant to Rule 1:28).

There was no dispute in the present appeal that the appellant failed to respond to the assessors’ request for information pursuant to § 38D at all, let alone within sixty days. The appellant did not demonstrate that he made a good
faith attempt to comply with the request, nor did he demonstrate that his failure to comply with the request was occasioned by reasons beyond his control. See Marketplace Center II, Mass. ATB Findings of Fact and Reports at 276-77.

The appellant instead argued that the information sought by the assessors was not reasonably required to value the subject property. After examining the relevant evidence, the Board found that these allegations were without merit. The evidence revealed that the subject property housed a commercial garage business, and the appellant offered no explanation regarding why the income and expense information sought by the assessors was not reasonably required to value the subject property. Moreover, the evidence showed that the appellant had failed to respond to the assessors’ requests for information in each of the two fiscal years preceding the fiscal year at issue, and thus it was reasonable to conclude that the assessors were in need of more current income and expense information in order to accurately value the subject property.

Furthermore, fiscal year 2013 was a revaluation year for the Town of Hinsdale. Part of the revaluation process involves gathering and updating relevant information about each property, and thus it was reasonable for the assessors to request the information from the appellant. Based on these facts, the Board found that the information requested by the assessors pursuant
to § 38D was reasonably required to determine the fair cash value of the subject property. Accordingly, the Board rejected the appellant’s argument.

Based on the foregoing, the Board granted the assessors’ Motion to Dismiss under G.L. c. 59, § 38D and decided this appeal for the appellee.

THE APPELLATE TAX BOARD

By: __________________________________________

Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _______________________________________

Clerk of the Board