

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES**

Property Tax Bureau
Informational Guideline Release (IGR) No. 92-206
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**APPLICATION FOR AUTHORITY FROM THE COMMISSIONER OF REVENUE
TO
ABATE LOCAL TAXES AND CHARGES**

(G. L. Ch. 5 8, S. 8)

General Laws Chapter 58, Section 8 empowers the Commissioner of Revenue to authorize assessors or other local officers to fully or partially abate taxes, assessments, rates or other charges assessed or imposed by them.

The Commissioner's power to authorize abatements under this statute affords an administrative procedure whereby substantial inequities, which could not otherwise be remedied under the usual abatement process, may be rectified.

The statute, however, does not provide an alternative to the standard abatement procedures provided by G.L. Ch. 59 §59 or other applicable law. Neither does it constitute a process for assessors to correct routine assessment errors. Indeed, the Supreme Judicial Court has repeatedly declared that, absent extraordinary circumstances, the procedures set out in G.L. Ch. 59 §59 for the abatement of real and personal property taxes constitute the EXCLUSIVE remedy for an overassessment. For examples of the Court's expression of this position, see Nearis v. Gloucester, 357 mass. 203 (1970), Leto v. Assessors of Wilmington, 348 Mass. 144 (1964), Codman v. Assessors of Westwood 309 mass. 433 (1941) and Central National Bank v. City of Lynn, 259 mass. 1 (1927).

GUIDELINES:

I. **ELIGIBILITY REQUIREMENTS**

FOR THE ABATEMENT OF ANY TAX OR CHARGE UNDER G.L. CH. §8, EACH OF THREE REQUISITES MUST BE SATISFIED. First, sufficient evidence must be presented which establishes that the taxpayer was prevented by extraordinary or mitigating circumstances from seeking an abatement through the usual process. Second, the materials provided must make apparent that granting an abatement would correct a substantial inequity, cure a grievous hardship or provide a considerable public benefit. Third, the overassessment sought to be corrected must be appreciable in amount.

A. Extraordinary or Mitigating Circumstances Justifying Failure to File

A person is eligible for abatement relief under G.L. Ch. 58 §8 only upon a demonstration that extraordinary or mitigating circumstances precluded that person's having sought a remedy under the standard abatement process, afforded by G.L. Ch. 59 §59 or other applicable law. General Laws Ch. 59 §59 demands strict compliance with its provisions. A fundamental requirement of G.L. Ch. 59 §59 is that an aggrieved taxpayer file a timely application for abatement.

Massachusetts courts have repeatedly maintained that a timely filed abatement application is critical for abatement relief. For example, the Appeals Court, in Guzman v. Board of Assessors of Oxford, 24 Mass. App. Ct. 1(1987), stated, "As to the timeliness of abatement applications, the cases are severe and state the principle that failure timely to file for an abatement destroys the right. "For additional examples, also see Old Colony R.R. v. Assessors

of Quincy, 305 Mass. 509 (1940), Assessors of Brookline v. Prudential Ins. Co., 310 Mass. 300 (19), and Roda Realty Trust v. Assessors of Belmont, 385 Mass. 493 (1982).

This long-standing position was reaffirmed in a decision rendered by the Massachusetts Land Court on November 7, 1990, in City of Boston v. Johnson, Tax Lien Case No. 59982. The court held that a property owner was not entitled to an abatement which arose from the city's assessment of a building which it had, itself, demolished. The assessment was made on the razed building for six consecutive years following its removal. However, because the owner had not made a statutory abatement appeal under G.L. Ch. 59 §59, the court refused to grant relief. The court stated, "[I]t has long been the law of the Commonwealth that to attack the amount of an assessment as perhaps distinguished from the liability of an exempt entity to be taxed, the taxpayer must file an application for abatement."

AS A CONSEQUENCE OF COURT PRECEDENT AND IN THE INTEREST OF OVERALL PUBLIC BENEFIT, THE COMMISSIONER HAS DETERMINED THAT AN ESSENTIAL REQUISITE FOR ABATEMENT ELIGIBILITY UNDER G.L. CH. 58 §8 IS A SUFFICIENT EXPLANATION OF WHY THE TAXPAYER DID NOT FILE A TIMELY APPLICATION FOR ABATEMENT.

B. Commissioner's Discretion

Other than providing limitations regarding the abatement of a paid tax, the language of G.L. Ch. 58 §8 does not provide parameters to aid either local officials or the Commissioner in deciding when an abatement is appropriate. In exercising his discretion, therefore, the Commissioner will take due note of the guidance provided by Massachusetts courts. The following criteria are among those which the courts have established as factors to be considered by the Commissioner:

1. Grievous Hardship

In Guzman v. Board of Assessors of Oxford, 24 mass. App. Ct. 118 (1987), the Massachusetts Appeals Court stated, "To alleviate a grievous hardship, if there is one, the assessors may request the Commissioner of Revenue to authorize an abatement under the provisions of G.L. 58 §8..." Id. at 121.

2. Lack of Access to Standard Process

In Leto v. Assessors of Wilmington, 348 Mass. 144, the Supreme Judicial Court stated that extraordinary abatement relief should only be available where "relief by ordinary abatement procedures ... [is] seriously inadequate." See also, Nearis V. Gloucester, 357 mass. 203. Such relief, therefore, is not intended as a means for assessors to routinely correct assessment errors. If some mistake, such as incorrect information on a property record card, produces an overassessment, relief will only be available under G.L. Ch. 58 §8 where extraordinary or mitigating circumstances are present.

3. Public Interest

In Codman v. Assessors of Westwood, 309 Mass. 433 (1941), the Court stated, "It is needless to say that such power [the Commissioner's power to authorize abatements under Ch. 58 §81 is to be exercised only in the public interest."

Ultimately, when acting on applications under G.L. Ch- 58 §8, the Commissioner will base his decisions on a consideration of what will result in the greatest equity for the taxpayer involved and for all taxpayers in the affected community.

C. Substantial Adverse Impact

The Commissioner will not exercise his authority under G.L. Ch. 58 §8 to correct assessment errors which have inappreciable effects on taxes or charges.

II. ABATEMENT OF PAID TAXES AND CHARGES

No abatement of any tax or charge will be granted under G.L. Ch. 58 §8 unless the requirements enunciated in Section I, above, are satisfied. IN CASES WHERE THE TAX OR CHARGE HAS BEEN PAID, HOWEVER, AN ABATEMENT WILL ONLY BE GRANTED IF ADDITIONAL REQUISITES ARE SATISFIED.

A. Additional Requirements When Tax Has Been Paid

The Legislature placed specific restrictions upon the Commissioner's power to authorize the abatement of a paid tax or charge. The Commissioner can only authorize such an abatement if the paid tax or charge:

1. was made no more than three fiscal years prior to the year when an application for abatement authority is made to the Commissioner, and
2. arose through an "obvious clerical error."

B. Time Limitation

THE COMMISSIONER CANNOT APPROVE ANY REQUEST TO ABATE A PAID TAX OR CHARGE THAT WAS ASSESSED PRIOR TO THE THREE FISCAL YEARS PRECEDING THE YEAR OF THE REQUEST. For example, if a request were submitted on May 15, 1995, (viz., during fiscal year 1995), the Commissioner could only abate it if the underlying assessment had been made during or after FY92.

C. Clerical Error

1. Definition

Since "clerical" pertains to a clerk, copyist, or writer, or to a writing, a "clerical error" is a mistake in copying, writing, recording or processing information. Such an error occurs when a person intends to enter some particular factor or detail, but unintentionally enters some other detail. For example, if an assessor believes that a home is heated with forced hot water, but mistakenly marks forced hot air on the property record card, he has committed a clerical error. If, on the other hand, that home is, in fact, heated with forced hot water but the assessor believes it is heated with forced hot air and enters forced hot air on the property record card, he has not committed a clerical error.

Moreover, a clerical error does not involve the exercise of any judgment or discretion. IT FOLLOWS THAT ANY ASSESSMENT ERROR WHICH RELATES TO THE GRADE, USE, CLASSIFICATION, QUALITY OF CONSTRUCTION, OR OTHER ELEMENT OF A PROPERTY WHICH INVOLVES THE EXERCISE OF AN ASSESSOR'S OPINION IN THE VALUATION PROCESS, IS NOT A "CLERICAL ERROR."

2. Person Who Commits obvious Clerical Error

It does not matter which municipal official or agent committed the error, so long as the error was made in the execution of a clerical or data processing function and pertained to the valuation, assessment or collection process. It might have been made by an assessor, revaluation company employee or tax collector. However, an error made by a taxpayer does not qualify.

THEREFORE, WHILE THE ABATEMENT OF ANY TAX OR CHARGE REQUIRES A SUFFICIENT EXPLANATION OF WHY THE TAXPAYER DID NOT FILE A TIMELY APPLICATION FOR RELIEF, THE ABATEMENT OF A PAID TAX OR CHARGE REQUIRES A SHOWING, IN ADDITION, THAT AN OVERASSESSMENT AROSE AS THE RESULT OF AN "OBVIOUS CLERICAL ERROR."

III. SITUATIONS JUSTIFYING ABATEMENT APPROVALS

Situations which may justify the approval of abatement requests under G.L. Ch. 58 §8 include, but are not limited to, the following- In every case, whether the tax or charge is paid or unpaid, sufficient reason must exist to explain why the taxpayer did not avail himself of the usual abatement process.

A. Examples of Situations Where Tax or Charge is unpaid

Where a tax or charge is unpaid, the standards for abatement eligibility are less strict than where the tax or charge is paid.

1. A property owner who has received tax exemptions in the past unintentionally fails to file seasonably for such exemption during the most recent year involved, due to disability, illness or some other mitigating cause.
2. A new owner of deteriorated property of relatively low value seeks a partial abatement of a delinquent tax in return for obligating himself to an immediate rehabilitation of the property to make it more tax productive for

the municipality; there must be a clear showing that the abatement is absolutely essential to the economic feasibility of the project.

3. A charitable corporation seeks an abatement of post-acquisition taxes, and the Commissioner determines that an abatement would be in the public interest.

B. Examples of Situations Where Tax or Charge is Paid

Where a tax or charge is paid, the standards which must be satisfied for abatement eligibility are stricter. Therefore, where circumstances would warrant abatement authority and the tax or charge is paid, abatement authority would also be warranted if the tax or charge were unpaid.

1. A property is overassessed due to a typographical error on a tax bill or on some other assessment or billing record.
2. An obvious recording or processing error, such as a transposition of numbers on an assessment or billing record, results in:
 - a. The assessment of a non-existent structure or a tax exempt property.
 - b. The issuance of duplicate bills for the same property.
 - c. The addition of a water charge (or some other charge) to the tax bill for the wrong property.

IV. EXAMPLES OF SITUATIONS NOT JUSTIFYING ABATEMENT APPROVALS

The Commissioner will not generally authorize an abatement under G.L. Ch. 58 §8, whether or not the tax or charge has been paid, if granting the abatement would result in an unwarranted benefit to any party. In addition, the abatement remedy provided by G.L. Ch. 58 §8 will be available only in exceptional circumstances where equity requires relief to a taxpayer. The remedy does not constitute a means for assessors to routinely correct errors on assessment records. In usual situations, a taxpayer is confined to the abatement remedies set out in G.L. Ch. 59 §59 or other-applicable law.

Accordingly, the Commissioner has determined that the following situations are among those which do not justify an abatement under G.L. Ch. 58 §8, regardless whether the tax or charge has been paid:

- A. The assessors discover after the fact that a property record card contained some error which resulted in an overvaluation, but the taxpayer never questioned the assessment nor was he precluded by extraordinary or mitigating circumstances from access to the usual abatement remedy. Examples of such errors on a property record cards include, but are not limited to, incorrect statements concerning the year of construction, the number of stories, the type of heating system, the construction materials or the condition of a building or the neighborhood of a parcel of real estate.
- B. Assessors allow an abatement for a particular fiscal year but fail to carry the abatement over to the subsequent year.
- C. A domiciliary in a municipality which has adopted a residential exemption fails to receive the exemption on his domicile, yet he fails to make an application for abatement through the usual process, although not precluded from doing so by extraordinary or mitigating circumstances.
- D. Granting an abatement would result in an unwarranted benefit to a taxpayer, as when the purchase price may reflect the existence of the outstanding tax obligation. In that case, an abatement would unfairly benefit the purchaser.

V. SUBMISSION OF APPLICATIONS UNDER G.L. CH. 58 §8

A. Application Must be Made by the Board or Officers Which Assessed the Underlying Tax or Charge

A request for abatement authority can be properly made to the Commissioner only by the assessors or the board or officer which assessed the underlying tax or charge. A request submitted directly by a taxpayer will not be entertained. The Supreme Judicial Court enunciated this rule in Codman v. Assessors of Westwood, 309 Mass. 433

(1941), where it stated, "A taxpayer has no standing to interject himself into such administrative matters in which the commissioner and the assessors are engaged, simply for the purpose of enhancing his private interest."

B. Mailing Address for Submissions

Requests for abatement authority should be addressed to:

Deputy Commissioner
Division of Local Services P.O. Box 9655
Boston, MA 02114-9655

VI. FORM AND CONTENT OF APPLICATIONS

An application for abatement authority under G.L. Ch. 58 §8 should consist of a letter with all relevant supporting documentation. The letter should fully discuss the reasons why the assessors or officers believe an abatement is warranted. In addition, the letter should provide the following specific information:

- A. The address of the property in question.
- B. An itemization by fiscal year of the (a) taxes or charges, (b) interest and/or (c) collection costs and charges outstanding with regard to the property in question.
- C. A statement itemizing the amounts of the (a) taxes or charges, (b) interest and/or (c) collection costs and charges for which abatement authority is requested.
- D. The assessed value of the property for each of the tax years in question.
- E. The name and address of the current assessed owner(s). If that owner is other than an individual, the principals or officers' of the entity must be listed. If the property was owned by a different party during the period that the taxes became delinquent, that owner must be similarly identified.
- F. The social security number of the current assessed owner. If that owner is other than an individual, the social security numbers of the principals or officers of the entity must be provided. In addition, if the subject property is owned by a business or charitable entity, the Federal I.D. number must be listed.
- G. If the owner failed to timely file an application for abatement (or exemption) for any of the tax years in question, the reason for that failure.
- H. If the present or prospective purchaser is intent upon developing or rehabilitating the property in question, all relevant details, including plans and drawings of the work to be done, itemized copies of expenses, copies of financing- arrangements and loan commitment letters, and anticipated commencement and completion dates.
- I. If the current -assessed owner intends to convey or otherwise dispose of the property in question, all relevant details of this transaction.
- J. If any assessor, or member of his or her family, has an interest in the property, a thorough description of that interest.
- K. If the tax or charge has been paid, a statement specifying whether a deduction was taken for that payment on any state or federal income tax return. If such deduction was taken, provide all details.
- L. if the application is based upon an allegation of financial hardship of the taxpayer, all relevant information, including income and expense statements, copies of income tax returns for the most recent year, copies of all bank statements, pertinent medical records, etc.

Finally, assessors or officers seeking abatement authority should include with their applications copies of all relevant information on the subject property and applicant which any way lends support to the application.

To the extent he deems appropriate, the Commissioner may request that the assessors or officers provide additional specific information relating to the application.

The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management.

The Division regularly publishes IGRs (informational Guideline Releases detailing legal and administrative procedures) and the BULLETIN (announcements and useful information) for local officials and others interested in municipal finance.

P.O. Box 9655, Boston, MA 02114-9655 (617) 626-2300
