

The Appeal Process Assessors Survival Guide

Presentation WCAA 3/30/2016

By

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Chief Assessor, Town of Auburn

I am not a lawyer. Nor do I claim to be an expert on the ATB.

What I am going to attempt to do today is give you some structure to follow as you go through the appeal process to minimize your exposure and help to keep you out of the ATB.

Because

The only way you will always win at the ATB is when you don't go!

Topics

- The Abatement Application
 - 38D requests
 - 61A requests
 - Inspecting the properties
- The Appeal
 - Checking for Jurisdictional Defects
 - Gathering your documentation together
 - Interrogatories
 - Motions

Time Frames for Abatements

- Mailing of the Tax Bill
- Abatement Applications due by the due date of the Bill
 1. Must be in the Assessors Office by normal closing time

or

 2. USPS Postmark, or in hands of an alternative delivery service such as UPS or Fed Ex by the due date of the bill.
 - Watch for postmarks using postage meters
 - Save the envelope when it's close in case of an appeal

Processing the Abatement Application

- **Section 61A-** A person applying for an abatement of a tax on real estate or personal property shall, upon request, exhibit to the assessors the property to which the application for abatement relates and if required by said assessors, shall exhibit and identify such property, and further, shall, upon request, furnish under oath such written information as may be reasonably required by the board of assessors to determine the actual fair cash valuation of the property to which the application for abatement relates including, but not limited to, income and rents received, and the expenses of maintaining such property. Failure of the applicant to comply with the provisions of this section within thirty days after such request shall bar him from any statutory appeal under this chapter unless the applicant was unable to comply with such request for reasons beyond his control or unless he attempted to comply in good faith.

What 61A Does For You

- This gives you the ability to inspect both the interior and exterior and correct any mistakes in your data
- Allows you the opportunity to request documentation as to why they should get an abatement
 1. Let them prove their case
 2. Helps to eliminate frivolous filings
 3. Educates the Taxpayer on the process
- If they do not respond to your requests within 30 days you can deny their application for failure to comply, and they have compromised their right to appeal

Final Disposition

- The Board of Assessors has 90 days from the date of filing to respond
- Notice on State Tax Form 135/135E should go out within 10 days of action by the Board
- Inaction by the Board within 90 days results in Deemed Denied. Notice should be mailed within 10 days of the date the application was deemed denied
- Reasons for Denial – Not necessary, but you can include a letter or I prefer to use a form outlining the reason the application was denied along with your Denial Notice

Town of Auburn, Massachusetts

Julie A. Jacobson
Town Manager

Cynthia Coagross
Assessor



Dear Property Owner:

This form is provided to further explain why your application for abatement was denied. The attached State Tax Form 135 is a Department of Revenue approved form that must be provided, but it does not allow for an explanation. This form is an attempt to better explain why your application was denied.

The Board of Assessors has denied your application for abatement, for one or more of the following reasons.

<input checked="" type="checkbox"/>	Form was not signed.
<input checked="" type="checkbox"/>	Taxpayer's opinion of value was blank.
<input checked="" type="checkbox"/>	Abatement application was grossly incomplete.
<input checked="" type="checkbox"/>	Section, Sales Market Comparable Properties, was not completed.
<input checked="" type="checkbox"/>	Information submitted did not support your claim of disproportionate valuation.
<input checked="" type="checkbox"/>	Information submitted did not support your claim of overvaluation.
<input checked="" type="checkbox"/>	Property listing characteristics found to be correct.
<input checked="" type="checkbox"/>	Property listing characteristics found to be incorrect, but did not affect the value.
<input checked="" type="checkbox"/>	The application was submitted after the due date.
<input checked="" type="checkbox"/>	The Board's review of the assessment found the assessed value to be correct.
<input checked="" type="checkbox"/>	Failure to return annual Income and Expense Form for the current fiscal year (Ch59 38D). <i>The Board clearly stated on the request that it intended to enforce the provisions of this section which include a \$250.00 fine, and/or loss of right to appeal. 1st request was mailed 01/30/2012, 2nd with 2nd notice sent on 04/04/2012.</i>
<input checked="" type="checkbox"/>	Failure to return the Supplemental Documentation (61A) request within 30 days which is required for all abatement applications. Request was sent out certified mail on
<input checked="" type="checkbox"/>	No access to property for interior inspection.

**TOWN of AUBURN
Board of Assessors**

104 Central St
Auburn, MA 01501

1-Feb-16

AGREEMENT for SETTLEMENT

Owner: Joe Taxpayer
Property Location: 1 Central St

1/1

Mail Address: Joe Taxpayer
1 Central St

Auburn MA 01501

In consideration of the terms for an abatement set forth below, the right to appeal to the Appellate Tax Board and/or County Board of Commissioners is hereby waived.

This agreement is made between the applicant and the Auburn Assessors as final settlement for FISCAL YEAR 2016

TERMS

	Current Assessed Value		Proposed Assessed Value	=	Sum Abated
Residential:	\$ 300,000		\$ 280,000	=	\$ 20,000
Commercial:	-	-	-	=	-
	-	-	-	=	-
Taxable Value:	300,000	-	280,000	=	20,000
Taxes:	\$ 5,427.00	-	\$ 5,065.20	=	\$ 361.80

Signature of Applicant	Date

Signature of Assessor	Date

Please sign and return this document to the Board of Assessors within 10 days. Your abatement will be processed upon receipt.

The Appeal to the ATB

- **WHO MAY FILE AN APPLICATION**

The same rules apply for the Appeal to the ATB as with the Abatement Application

1. The assessed owner or subsequent (acquiring title after January
2. The owner's administrator or executor
3. A person owning or having an interest in the property
4. A tenant paying rent required to pay more than 50% of tax
5. A Mortgagee – if the assessed owner has not applied

** In some cases, you must pay all or a portion of the tax before you can file.*

The Appeal to the ATB (cont.)

- **Did they file the appeal formal or informal**
 1. Informal- no formal discovery requests (interrogatories)
 2. No requests for admission
 3. No document Requests
 4. Rights of appeal are waived by both parties

- **Electing to transfer the Appeal to Formal**
 1. Value must be greater than \$20,000
 2. \$65.00 Fee must accompany the request
 3. Clerk must receive written notice within 30 days

Reasons to Transfer

- For Residential properties that you have inspected, if you are comfortable you have the information you need to defend your value you may elect to leave the hearing informal.
- Larger Commercial Properties – you should consider transferring to formal to protect your rights to discovery, as well as your rights to appeal.
- Residential properties that have denied access to should also be transferred so that inspection can be compelled.

Checking for Jurisdictional Defects

- Was the abatement application filed on time
- Was the appeal filed on time
 1. Must be filed within 3 months of the date the application was denied by vote of the Board of Assessors
 2. For deemed denied where the Assessors failed to send notice to the taxpayer a Petition for Late Entry may be filed up to 2 months after the date the appeal is due.
- Were the taxes timely paid?
 - If not – complete the 3 year average worksheet

Other Potential Jurisdiction Defects

- **Did they respond to their Ch 59 §38D requests if Commercial**
- **Did they respond to their Ch 59 §61A request**
- **Did they deny entry and inspection of the property**

**JURISDICTION CHECKLIST
PERSONAL PROPERTY**

_____ v. Assessors of _____
(Appellant's name) (Appellee)

ATB Docket No. _____

DATE FORM OF LIST FILED: _____

DATE ACTUAL TAX BILL MAILED: _____

DATE AT LEAST ONE-HALF BILL PAID: _____

DATE ABATEMENT APPLICATION FILED: _____

DATE OF ASSESSORS' ACTION OR INACTION: _____

DATE OF NOTICE OF ACTION OR INACTION: _____

IF PARTIAL, REVISED ASSESSMENT AMOUNT: _____

DATE PETITION FILED: _____

**JURISDICTION CHECKLIST
REAL ESTATE**

_____ v. Assessors of _____
(Appellant's name) (Appellee)

ATB Docket No. _____

DATE ACTUAL TAX BILL MAILED: _____

PAYMENT DATES:

QUARTERLY _____
3RD 4TH

BI-ANNUAL _____
1ST 2ND

TIMELY AND FULL PAYMENT? _____
Yes or No

IF NO, COMPLETE ATTACHED 3-YEAR AVERAGE WORKSHEET:

DATE ABATEMENT APPLICATION FILED: _____

DATE OF ASSESSORS' ACTION OR INACTION: _____

DATE OF NOTICE OF ACTION OR INACTION: _____

IF PARTIAL, REVISED ASSESSMENT AMOUNT: _____

DATE PETITION FILED: _____

THREE-YEAR AVERAGE WORKSHEET

Is Tax Under \$3,000?

_____ **Yes or No**

IF YES, STOP: ATB HAS JURISDICTION

Tax¹ for year preceding year at issue²:

Tax for 2 years preceding year at issue:

Tax for 3 years preceding year at issue:

Total tax for 3 preceding years:

3-year average (previous line divided by 3):

Is 3-year average under \$3,000?

_____ **Yes or No**

IF YES, STOP: ATB HAS JURISDICTION

If No, determine if 3rd or 4th quarter is late:

If only 3rd quarter is late,³ is total of payments by February 1 greater than 75% of 3-year average?

_____ **Yes or No**

IF YES, STOP: ATB HAS JURISDICTION

If only 4th quarter is late, is total of payments by May 1 greater than 3-year average?

_____ **Yes or No**

IF YES, STOP: ATB HAS JURISDICTION

If the answer to the first 2 questions is "no" and the answer to either or both of the second 2 questions is also "no," the ATB does not have jurisdiction over the appeal.

¹ "Tax" for purposes of all 3 preceding tax years at issue is the real estate tax due for the full year less abatements.

² If the parcel at issue did not exist or was exempt for any of the 3 preceding years, that year is not counted in the 3-year average calculation. For example, if the parcel did not exist or was exempt for 1 of the 3 preceding years, then the average of the tax for the 2 years that the parcel was taxable is used, and if it was taxable for only 1 of the preceding 3 years then that year is used.

³ In bi-annual communities, determine if total payments by 1st half due date exceed one-half the 3-year average and if total payments by 2nd half exceed 3-year average.

Motions

- If you have identified a Jurisdiction Defect you should file a motion to dismiss
- Motions as of January 2016 are being heard on Thursdays
 1. In person at 1:00 PM in Boston
 2. Telephonic on Thursdays - time set by the Board
- Motions, accompanied by Notice of hearing and affidavits should be filed in writing, and a copy served to the adverse party or attorney at least 7 days prior to the hearing date requested
- If you fail to appear for a motion session the ATB may still proceed to hold the hearing

Motions (cont.)

- Motion to Dismiss
 1. File for late filing of abatement or appeal to ATB
 2. File for late payment of taxes
 3. Failure to return 38D request
 4. Failure to return 61A request
 5. Failure to respond to interrogatories
- Motion to Compel
 1. Answers to interrogatories
 2. Answers to interrogatories are incomplete
 3. Appellant refuses to allow inspection

Motions

- Can be filed by the Assessors, or by their Attorney
- Should consist of 3 Documents
 1. Motion – the formal request to dismiss on grounds, citing the specific Chapter and Section of M.G.L. that are applicable
 2. Affidavit of the Assessor citing the specifics of the motion
 3. Notice of Motion and Certificate of Service showing that copies were served to the Appellant

Jurisdictional Documents to Bring

- Affidavit of Mailing for the Actual Tax Bill
- Tax Collectors proof of timely payment
 - If not paid timely-copy of the 3 year average worksheet
- Copy of the Abatement Application
- Copy of the Denial Notice or Abatement Certificate