The Commonwealth of Massachusetts
Appellate Tax Board

Real Estate Tax Appeals: A Helpful Guide for Taxpayers and Assessors

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Appellate Tax Board: An Introduction

The Massachusetts Appellate Tax Board ("ATB") is a quasi-judicial state agency designed to conduct hearings and render decisions on appeals of all types of state and local taxes, including property tax (both real estate and personal property), corporate excise, individual income tax, sales and use tax, and automobile and other excises.

The most frequent type of appeal filed with the ATB is real estate tax appeals. This booklet is designed to help taxpayers and assessors understand the overall process of appealing a real estate tax assessment. It provides general information about filing appeals, preparing cases, and what to expect at a hearing.

The material provided in this booklet is for informational purposes only and is not intended to substitute for the governing **statutes** (GL c. 58A and 59), the ATB's **rules** of practice and procedure (831 CMR) or competent legal advice. The **statutes** are reproduced on the Legislature's website at www.mass.gov/legis/laws/mgl/index.htm, and the ATB's **rules** are reproduced on our website at www.mass.gov/atb/rules.html. These materials may also be found at your local library.

For more information on issues addressed in this booklet, contact or visit the ATB at:

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Visit our website: www.mass.gov/atb

Office Hours
Monday – Friday, 8:45 AM to 5:00 PM

Accessible via MBTA. Located at Government Center

For information on filing appeals at the Appellate Tax Board, contact any of the following:

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I. What To Know Before the Filing of an Appeal

What is an abatement?

An abatement is a reduction in property tax granted by the assessors or, on appeal, by the ATB. Generally, abatements are granted when taxpayers are able to prove that the fair market value of their property is less than its assessed value. Taxpayers may also receive abatements if their property is entitled to an exemption or is improperly classified. Taxpayers may apply for abatement of real estate tax once the actual real estate tax bill is issued. Generally, in communities that bill quarterly, the third-quarter bill is the actual tax bill.

What are jurisdictional requirements?

The Massachusetts Legislature has established specific requirements which govern the tax appeal process. Taxpayers must comply with these statutory jurisdictional requirements in order for the ATB to have authority to hear an appeal. These requirements are mandatory and no exceptions can be made. Failure to perform certain actions in a timely manner, even if only one day late, will result in dismissal of a taxpayer's appeal.

Taxpayers should ensure that they have complied with the following jurisdictional requirements prior to filing an appeal with the ATB:

I.	**PAYMENT OF REAL ESTATE TAX BY THE DUE DATE INDICATED ON THE ACTUAL TAX BILL** (GL c.59, §§ 57, 57C, 64, 65)
II.	**FILING THE ABATEMENT APPLICATION WITH THE ASSESSORS ON TIME AND ON THE APPROVED FORM** (GL c.59, § 59)
III.	**FILING THE APPEAL WITH THE ATB ON TIME** (GL c.59, §§ 64, 65)

Failure to comply with these jurisdictional requirements will result in the dismissal of a taxpayer's appeal.

II. Filing Abatement Applications with the Assessors

What is the abatement application procedure?

The appeal process begins at the local level with a community's board of assessors. A taxpayer must timely file an application for abatement on the approved form with the local assessors in order for the assessors to consider the abatement request and to preserve the taxpayer's right of appeal to the ATB. The approved forms are available at the local board of assessors' office.

An application for abatement may only be filed with the assessors on or before the due date for payment of the first installment of the actual tax bill. *See* GL c. 59, § 59. The face of the tax bill should indicate the due date for payment and the filing of an application for abatement. *See* GL c. 60, § 3A. Generally, the due date of the application for abatement is February 1st in communities that bill quarterly. *See* GL c. 59, § 57C. In communities that bill twice a year, the due date is generally thirty days from the mailing of the actual tax bill. *See* GL c. 59, § 57.

The local assessors have three months to act on an abatement application. *See* GL c. 59, § 64. Within that three months, they may (1) deny the application; (2) grant an abatement, including a partial abatement; or (3) take no action on the application.

The assessors must send written notice to the taxpayer within ten days of their action on an application. *See* GL c. 59, § 63. If an application is approved in whole or in part, the taxpayer is granted an abatement of a specified amount. If an application is denied, the taxpayer receives no abatement. If the assessors are unable to process the abatement application within three months, they must send written notice to the taxpayer of their inaction within ten days after the expiration of three months. *See* GL c. 59, § 63. If the assessors fail to act on the application for abatement within three months, the application is deemed denied three calendar months (not ninety days) from the date on which the taxpayer filed the application with the assessors. *See* GL c. 58A, § 6; GL c. 59, § 64. For example, if a taxpayer files an application with the assessors on February 1, the application will be deemed denied on May 1 if the assessors fail to act on the application prior to May 1.

III. Filing An Appeal with the Appellate Tax Board

How should a taxpayer file an appeal with the ATB?

Appeals may be filed with the ATB in person or by mail.

Where do taxpayers get appeal forms?

Forms are available at the ATB office or online at www.mass.gov/atb/forms.html.

How much does it cost to file an appeal?

The filing fee is based upon the assessed value of the property. If the assessed value is $20,000 or less, the filing fee is $10. If the assessed value is over $20,000 and not in excess of $100,000, the filing fee is $50.00. If the assessed value is over $100,000 and

not in excess of $999,999, the filing fee is $100.00. If the assessed value is $1,000,000 or higher, the filing fee is $0.10 per $1,000 of the assessed value with a maximum filing fee of $5,000. These fees are outlined in Rule 1.10 of the Rules of the ATB. You can find this rule on our website at www.mass.gov/atb/rules.html#10.

When should a taxpayer file an appeal?

Where assessors act within three months on an application for abatement, a taxpayer may only file an appeal with the ATB within three months of the date of the assessors' action. *See* GL c. 59, § 64 and GL c. 59, § 65. Note that the notice of action that the assessors send generally has two dates on it: the date of action and the date the notice is mailed. ***An appeal may only be filed within three months after the date of action, not the date of mailing***.

If the assessors take no action on the application within three months, a taxpayer may file an appeal with the ATB within three months after the date the application is deemed denied by operation of law. As explained above, the application is deemed denied three months after it is filed with the assessors. Put another way, if the assessors fail to act on an application, a taxpayer has six months from the date of filing an application for abatement with the assessors to file an appeal with the ATB. *See* GL c. 58A, § 6; GL c. 59, § 64.

For more information on when to file an appeal, contact an ATB clerk.

What is a petition for late entry?

The assessors are required to send a notice of inaction if they fail to act on an application. If they fail to send the notice within 10 days following the deemed denial of an application and a taxpayer fails to file an appeal within three months of the deemed denial, the taxpayer may file a petition for late entry of appeal ("PLE") with the ATB. PLEs should be filed within 2 months after the date the appeal was due. For more information regarding PLEs, check the appropriate statute at GL c. 59, § 65C or contact an ATB clerk.

Should a taxpayer file an appeal under the formal or informal procedure?

Taxpayers may elect to file real or personal property tax appeals under either the formal procedure (GL c. 58A, § 7) or the informal procedure (GL c. 58A, § 7A). The filing fee is the same, and both procedures guarantee a hearing between the taxpayer and assessor before a hearing officer of the ATB. The major differences between the two procedures are:

1. In the **informal** procedure, the ATB may eliminate formal rules of pleading, practice, and evidence, and every effort is

made to reduce the expense associated with the appeals process.

2. In the **informal** procedure, neither party may file, or be made to answer, formal discovery requests such as interrogatories, document requests, and requests for admission.
3. In the **informal** procedure, the ATB will serve a copy of the taxpayer's appeal on the board of assessors. In the **formal** procedure, it is the taxpayer's responsibility to serve a copy of the appeal on the board of assessors and file a certificate of service with the ATB. *See* ATB Rule 1.04.
4. In the **informal** procedure, all rights of appeal from the ATB's decision are waived by both parties, except in very limited circumstances. *See* GL c. 58A, § 7A. In the **formal** procedure, the parties do not waive any rights of appeal to the Massachusetts Court of Appeals.
5. In the **informal** procedure, the ATB is not required to issue a written explanation of the reasons for its decisions. In the **formal** procedure, either party may request, within 10 days of an ATB decision, a "findings of fact and report," which will explain the factual and legal basis for the ATB's decision. *See* GL c. 58A, § 13.

Most taxpayers filing appeals concerning single-family homes file under the informal procedure. For more information on the formal and informal procedures, consult GL c. 58A, § 7 and ATB Rule 1.04 (formal procedure) and GL c. 58A, § 7A and ATB Rule 1.07 (informal procedure) or contact an ATB clerk.

IV. Payment of Tax

When are payments due?

Taxpayers must pay their *actual* real estate tax bill on time in order to preserve their right of appeal to the ATB. In communities that bill quarterly, the actual tax bill is generally due on February 1 and May 1. Quarterly payments received by the collector/treasurer after February 1 or May 1 are late and will generally result in the dismissal of an appeal at the ATB. The quarterly bills due on August 1 and November 1 are considered "preliminary" tax bills and, therefore, timely payment of these is not necessary to establish the ATB's jurisdiction. Late payment of preliminary tax bills will, however, expose a taxpayer to interest charges. *See* GL c. 59, § 57C.

Under very limited circumstances, the ATB has jurisdiction over an appeal even if a taxpayer has not timely paid an actual tax bill. For more information, see GL c. 59, § 64 or contact an ATB clerk.

Taxpayers should note that it is their responsibility to ensure that property tax payments made by banks and mortgage companies are paid timely.

How long before a case is heard by the ATB?

It usually takes between four months to one year before a case is heard.

V. Preparing Your Case

Because every parcel of real estate is unique and each case depends on its own particular facts, it is impossible to give a complete description of how parties should present their cases at the ATB. However, based on the type of evidence which many taxpayers and assessors present in support of their cases, the following information is provided for your consideration in preparing a case for hearing.

What do taxpayers need to prove?

Taxpayers who claim that the assessed value of their property is too high should be prepared to show that the fair market value[1] of their property for the fiscal year at issue is lower than the assessed value. The law provides that the property must be valued as of the January 1st preceding the fiscal year at issue. For example, for fiscal year 2004, which runs from July 1, 2003 to June 30, 2004, the valuation date is January 1, 2003.

What do the assessors need to prove?

Because the assessment is presumed by law to be valid, taxpayers bear the burden of proving that their property is overvalued. The assessors may therefore decide to "rest on the assessment" and not present any evidence in support of their assessed value. If the ATB decides that the taxpayer's evidence fails to prove that the assessed value of the property exceeds the property's fair market value, the ATB will issue a decision in favor of the assessors even if the assessors did not produce any evidence at the hearing. The assessors may, of course, choose to offer testimony and evidence to support their opinion that the assessed value of the property represents the property's fair market value.

[1] The law provides that the fair market value of property is the price on which a willing seller would sell the property to a willing buyer in an arm's-length sale if neither party was under compulsion and each was aware of all relevant facts. See ***Boston Gas Co.*** v. ***Assessors of Boston,*** 334 Mass. 549 (1956).

Do I need an attorney?

You are not required to have an attorney represent you at the hearing. In single-family residence appeals, many taxpayers and assessors represent themselves without attorneys.

Only you can decide if you should hire an attorney. If you decide to act on your own behalf at your hearing, you will be responsible for presenting your case to the hearing officer. In informal appeals, the ATB makes every effort to minimize formal rules of pleading, practice, procedure, and evidence.

How do I prove my case?

The hearing affords both parties with the opportunity to prove their cases through testimony and evidence. The single most important action both parties can take to effectively prove their cases is to ***prepare.*** Taxpayers who come to a hearing and testify simply "my taxes are too high" or "my taxes went up 20% from last year" are generally not successful. A good presentation at the hearing requires research, thought, and planning prior to the day of the hearing. Following are examples of the type of research and preparation which many well-prepared taxpayers and assessors have done for past cases.

Describe the subject property. Any effective presentation concerning the value of property begins with its description. The parties should assume that the hearing officer is not familiar with the property or its neighborhood. Identification of the property by style (*e.g.,* colonial, ranch, condominium), number of rooms, number of bathrooms, living area, land area, amenities (*e.g.,* enclosed porch, finished basement, fireplaces, swimming pool), setting (*e.g.,* busy street, cul-de-sac, rural, water front, water view), general condition, age of construction, and any other issues which the parties feel will convey a sense of the property to the hearing officer should be provided. Photographs, maps, and plans can also be helpful in describing the property to the hearing officer.

Review assessors' records concerning the subject property. Taxpayers may review and obtain copies of the assessors' records concerning their property and other properties in the community. These records include "property record cards," maps, plans, and other documents. Taxpayers and assessors should ensure prior to the hearing that the assessors' records accurately reflect the subject property.

Research sales of comparable properties. Sales of nearby, similar properties, within a reasonable time of the relevant assessment date, generally provide a good indication of the market value of the subject property. Since no two properties are identical, and properties generally do not sell exactly on the relevant valuation date, some adjustments are necessary to arrive at an opinion of value for the subject property based on sales of comparable properties. Following are some of the similarities and differences between the comparables and the subject property which should be brought to the attention of the hearing officer.

1. *Property type.* It is important to compare similar types of properties. If the subject property is a two-story colonial, sales of ranches or condominiums are generally not very helpful.
2. *Location:* Properties on the same street or in the same neighborhood are generally the most helpful to the ATB. If the property is too far away from the subject property, its sale price may be of little help in determining the subject's market value.
3. *Description:* Comparable properties having similar living areas, land area, number of rooms, and other features that are similar to those of the subject property are generally most helpful to the ATB.
4. *Time:* Sales of comparable properties that take place within a reasonable time either before or after the ***relevant assessment date*** may be used. Consider whether the real estate market has risen or declined between the date of sale and the assessment date.
5. *Condition:* Comparable properties built at approximately the same time and that are in the same general condition as the subject property are generally the most helpful to the ATB. If the subject property was built long before or after the comparables, or its condition is different from the comparables in terms of deferred maintenance, or updating of appliances, heating, plumbing or electrical systems, the comparables may not be helpful in finding market value.

Photographs of the comparable properties and their property record cards are often useful. Copies of deeds for the comparable sale properties confirm the sale price for the properties you use as comparables. In addition, maps, plans, and diagrams may also be helpful.

Research comparable assessments. If there are not many sales of comparable properties, or if you wish to further support your comparable sales analysis, the assessed value of comparable properties may also be used to help prove the fair market value of the subject property. The same issues regarding consideration of the similarities and differences between the subject property and the comparables discussed above concerning comparable sales are equally applicable to a comparable assessment presentation. The only difference is that the assessed value of the comparable is used instead of its sale price.

Using an expert witness. Either party may choose to hire an expert witness to offer an opinion of value. Expert witnesses generally prepare an appraisal report which includes a description of the property, a valuation analysis, and an opinion of value.

Pre-hearing discussions. Once the parties have gathered their evidence, it may be beneficial for them to meet to discuss the possibility of settling the case prior to the hearing. Parties are often able to reach an agreement once they discuss the valuation issues involved in their cases.

VI. About The Hearings

Where are hearings held?

Hearings are generally held in Boston at the ATB's Government Center location at 100 Cambridge Street. For the convenience of those taxpayers and assessors from municipalities far from Boston, hearings are held periodically in Barnstable, Gardner, Lawrence, Milford, Northampton, Pittsfield, Springfield, Worcester, and southeastern Massachusetts. Hearing notices indicate the location where the hearing is to be held.

Hearings begin at 9:30 AM. Allow ample time to arrive so that you are relaxed and do not feel rushed. An assistant clerk will direct the parties to the room where the hearing will be held.

What should I bring to the hearing?

You should bring all of the evidence that you wish the ATB to consider. For ease of presentation, bring three copies of any document you plan to present: one for the hearing officer, one for the opposing party, and one for your records.

What happens at the hearing?

At the start of the hearing, the assistant clerk announces which appeal is to be heard. Several appeals involving the same community may be scheduled on the same day.

By law, the assessed value of property is presumed valid and taxpayers have the burden of proving that the assessors overvalued their property. Therefore, taxpayers present their evidence first.[2] At the completion of the taxpayer's presentation, the assessors will have an opportunity to cross-examine by asking the taxpayer questions. The hearing officer also may wish to ask the witness questions.

After the cross-examination, the assessors may either present evidence in support of their assessed value or rely on the validity of the assessment and rest their case. If the assessors present evidence, the taxpayer is entitled to cross-examine the assessors' witnesses.

In order to conduct a useful cross-examination, a party should listen carefully to the opposing party's presentation. Make notes about any comments with which you disagree or which you want the witness to explain further. Do not argue with the witness. The

[2] In those appeals where the assessors have increased the value of property within 2 fiscal years of a year for which the ATB has determined a value, the assessors bear the burden of showing that the increased value is justified. *See* GL c. 58A, § 12A. In these cases, the assessors present their evidence first. For example, if the ATB found the fair cash value of property to be $250,000 for FY2002, and the assessors valued the property at $300,000 for FY2003, the assessors would bear the burden of proving that the increase in value was warranted and would present their evidence first.

hearing officer may ask questions during either parties' presentations to clarify points which come up during the testimony.

The hearing officer closes the record after all the evidence has been presented and takes the case under advisement. No further evidence will be accepted by the ATB once the record is closed.

How long does the hearing last?

Most hearings of single-family residences take about an hour.

When will I receive a decision?

Your decision should arrive by first class mail within approximately 3 months of your hearing date.

VII. After You Receive Your Decision

Order Directing Refund

If the ATB decides in the taxpayer's favor, the decision indicates the amount of abatement the taxpayer is granted. If the ATB decides in favor of the assessors, the decision will say that the decision is for the appellee. If no party files a notice of appeal and the ATB granted an abatement, the ATB issues an Order Directing Refund of the abatement to both parties.

Request for Findings of Fact and Report

In a case heard under the ***Formal Procedure***, either party has the right to request a "findings of fact and report" after a decision has been rendered. This report is a written opinion that explains the factual and legal basis on which the ATB made its decision. A written request for report must be made to the ATB within 10 days of the date of the decision.

Notice of appeal

In a case heard under the ***Informal Procedure***, the parties waive their right of appeal except as to very limited circumstances. *See* GL c. 58A, § 7A. In a case heard under the ***Formal Procedure***, the ATB's decision can be appealed to the Massachusetts Appeals Court. *See* GL c. 58A, § 7. If you appeal your decision, you must file a notice of appeal

with the ATB within 30 days of the date of your decision. *See* Mass. Rules of Appellate Procedure Rule 4(a).

For information about the appeal procedure at the Massachusetts Appeals Court, contact their clerk's office at (617) 725-8106. The Appeals Court is located in the John Adams Courthouse at One Pemberton Square in Boston.

Return of exhibits

Exhibits are returned to you 30 days after the date of your decision, unless you are appealing the decision to the Appeals Court. In that event, exhibits are returned after the court renders its decision.