



Abatements, ATB Appeals & Overlays

Common Sense Strategies To Save Your Overlay Dollars

2023 MAAO Summer Conference

June 20, 2023

Abatements, ATB Appeals & Overlays

Common Sense Strategies To Save Your Overlay Dollars

Municipal Tax Collection is based on the premise that Real & Personal Property will be assessed equitably, and at its fair cash value.

As we recently discussed during the Spring Conference, Municipal Tax Collection is also a relay race with the Assessors running the first leg, and then cleanly handing off the baton to the Tax Collector.

Abatements, ATB Appeals & Overlays

Common Sense Strategies To Save Your Overlay Dollars

Just as in a relay race, the decisions made during this first leg will impact the successful completion of subsequent legs of the race.

- Current FY Tax Receivables
- Tax Titles
- Tax Possessions

They will also affect the municipal budget and tax rate through the Tax Recap.

Abatements, ATB Appeals & Overlays

A Quick Review - Process

Let's first take a quick look at who can file:

- Owner of the property;
- Personal Representative of the deceased owner;
- Trustee or Attorney;
- Subsequent Owners, Certain Tenants;
- Mortgagees

Abatements, ATB Appeals & Overlays

A Quick Review - Process

Now, let's take a quick look at when to file:

- The Application must be received on, or before, the last day on which the first installment of the actual tax bill can be paid without incurring interest;
 - Revised, Omitted, and Reassessments have 90 days from date the bill mailed
 - Rollbacks have 30 days
- Mailbox Rule.

Abatements, ATB Appeals & Overlays

A Quick Review - Process

An Abatement Application does not need to set forth the reason for the Abatement or include any specific information justifying the request.

- The Abatement Application is really nothing more than notice to the Assessors that the Taxpayer objects to the assessment.

MacDonald v. Bd. Of Assessors of Mashpee, 384 Mass 724, 726 (1980).

Abatements, ATB Appeals & Overlays

A Quick Review - Process

There is no constitutional or statutory requirement that a Hearing be held before acting on an Abatement Application.

- Chapter 59 does not preclude them;
- The Taxpayer must typically request a Hearing;
- In any case, the Assessors' Office should make sure that they have sufficient information to make a recommendation to the Board.

Abatements, ATB Appeals & Overlays

A Quick Review - Process

Discussions by the Board of an Abatement Application should be done in Executive Session.

- Discussion of Abatements & Exemptions per submitted list pursuant to M.G.L. Chapter 30A, Section 21(a)(7), and M.G.L. Chapter 59, Section 60.
- Property Address, Map & Lot, Name of Assessed Owner, Fiscal Year, Date Abatement Granted, Amount of Abatement are public information.

Abatements, ATB Appeals & Overlays

A Quick Review - Process

In deciding whether to grant or deny an Application for an Abatement, the Assessors are bound by the following standard:

- Has the Taxpayer been taxed:
 - at more than his just proportion, or
 - upon an improper classification, or
 - upon an assessment of any of his property in excess of its fair cash value.

Abatements, ATB Appeals & Overlays

A Quick Review - Process

Decisional Timeframes:

- Three months from the date the Application was filed.
 - Taxpayer may extend this period in writing, prior to its expiration.
- If no action within three months, then Application is deemed denied and the Board has no further authority to act unilaterally.
 - Notice must be sent within ten days.

Abatements, ATB Appeals & Overlays

A Quick Review - Process

Appealing to the ATB:

- Three months from the date the Abatement Application was denied, or the Partial Abatement rejected by the Taxpayer.
- Statement Under Informal Procedure
 - No Appeal
 - Ability to Transfer to Formal Procedure
- Petition Under Formal Procedure
- Postmark Rule.

Abatements, ATB Appeals & Overlays

A Quick Review - Process

ATB Jurisdictional Documents:

- The ATB looks to the Assessors to file the “Jurisdictional Documents”.
- Copy of Abatement Application & Denial;
- Affidavit of Mailing Tax Bills;
- Affidavit of Tax Payments Made;
 - Attach Copies of Tax Collector’s Records that show that all preliminary and actual installments, have been paid without the incurring of any interest charges.

Abatements, ATB Appeals & Overlays

The Overlay

MGL Chapter 59, Section 25 provides:

- The assessors of each city or town shall raise by taxation each year a reasonable amount of Overlay as the Commissioner may approve.
- The Overlay may only be used:
 - for avoiding fractional divisions of the amount to be assessed;
 - for abatements granted for any fiscal year;
 - for any interest payable on such abatements under Section 64 or 69;

Abatements, ATB Appeals & Overlays

The Overlay

Some Municipal Finance Overlay basics -

- DOR treats the Overlay Reserve as an “Allowance for Abatements & Exemptions”, which is a counter-asset, and so it should have a negative balance.
- Since Massachusetts Municipal Finance assumes every tax dollar will be collected (and so is budgeted), the Overlay allows adjustment to tax bills without requiring a corresponding reduction in a budget line item.

Abatements, ATB Appeals & Overlays

The Overlay

Some More Municipal Finance Overlay basics -

- The Municipal Modernization Act allowed municipalities to merge different Fiscal Year Overlays into one account.
- But, the OL-1 still requires a municipality to separately list the total Abatements granted in each of the last five (5) years and then averages them.
- As we'll see, this can affect a future Fiscal Year's Municipal Budget

Abatements, ATB Appeals & Overlays

The Overlay

A Sample Overlay Worksheet – Schedule OL-1

Overlay Available

1.	Overlay Balance as of 6/30/2020	575,650.50
2.	Overlay from FY 2021 (Tax Rate Recap Page 2 Ild)	852,202.80
3.	Overlay Balance Available (Add lines 1 and 2)	1,427,853.30

Overlay Use

4.	Overlay Transferred to Overlay Surplus after 7/1/2020	0.00
5.	Other Overlay Charges after 7/1/2020	49,898.91
6.	5 year Average Abatements And Exemptions Granted thru 6/30/2020	852,202.80
7.	Overlay Balance Needed (Add lines 4 thru 6)	902,101.71
8.	Overlay Balance Available in excess of Overlay Balance Needed (negative indicates a Shortfall) (subtract line 7 from line 3)	525,751.59

Abatements, ATB Appeals & Overlays

The Overlay

Let's take a closer look at the Line 6:

6.	5 year Average Abatements And Exemptions Granted thru 6/30/2020	852,202.80
----	---	------------

These are the actual Abatement Totals for the respective years.

Abatements and Exemptions Granted				
FY 2020	FY 2019	FY 2018	FY 2017	FY 2016
725,650.00	745,600.00	755,800.00	1,270,214.00	763,750.00
5-year average FY 2016 to FY 2020				852,202.80

The amount we need to include is \$100,000.00 higher than the average of the last three years.

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

There are a number of best practices that a Board can implement to effectively and fairly consider Abatement applications, while providing a strong foundation for building a defense for an appeal to the ATB

These best practices can also help the municipality:

- Build public confidence in the Assessment practices;
- Protect the Overlay;
- Minimize impacts on future municipal budgets.

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Accept Chapter 59, Section 57D -

- Affidavit of Address
- Name of the Owner, Owner's Address, Telephone Number, and e-mail address.
- Owner must notify Assessors “immediately” if there is a change in any of the information by sending new Affidavit.
- Presumptive correct address for mailings

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Keep the Tax Maps Current & Accurate -

- Avoid “Twilight Zone” Maps & Parcels
- Establish policy for periodic updates
- Make sure Tax Bills match the Tax Maps

Map 25, Lot 100 10,000 sf	Map 25, Lot 101 10,000 sf
------------------------------	------------------------------

Main Street

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Be Proactive Responding to Regulatory Changes-

- FEMA Map Changes
 - Parcels may now be more greatly impacted by Velocity Zones
- Municipal Ordinance/Bylaw Changes
 - Sewer Connection Regulations, Board of Health Regulations, Conservation Commission, Zoning Ordinances/Bylaws

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Be proactive in updating real estate records-

- Download Deeds Weekly/Monthly
 - This can be done through most online Registry of Deeds databases
- Review Probate Records
 - The law assumes you have knowledge of everything in the Registry of Probate.
- Research Owners Unknown

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Be aware of, and proactive regarding -

- TIF/TIE/STA Agreements
 - These will impact New Growth
- Affordable Housing Restrictions
 - These impact normal residential valuation.
- Municipal Real Estate Purchases
 - MGL Chapter 59, Section 72A

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Use Chapter 59, Sections 38D & 38F -

- Request the owner or lessee of any real property to make a written return under oath within 60 days containing such information as may reasonably be required to determine the actual fair cash valuation of such property.
- Owner's failure to do so, is automatic grounds for dismissal of a filing at the ATB.

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Use Chapter 59, Sections 61 & 61A -

- No abatement of a personal property tax unless owner has brought in to the Assessors a list of his personal estate as required by Section 29, and complied with any requests by the assessors to examine books, papers, records and other data under Section 31A
- Section 61A bars ATB Appeal unless there was a reason beyond Owner's control, or good faith effort.

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Assume that every valuation will be appealed -

- Implement a data collection/assessment process that you will use on every parcel.
- This may be difficult sometimes due to staffing/budget constraints.
- New technologies can help.

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Be aware of Chapter 59, Section 71 -

- Tax Collector can deem Personal Property Tax uncollectable.
 - Reasons include death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay.
- Assessors must act within 30 days of Notice.
- 8 of 58 Authority not required for prior years.

Abatements, ATB Appeals & Overlays

Some Best Practices to Consider

Some final thoughts to remember-

- Neither you, nor your office staff, are infallible;
- Most Taxpayers have no idea what Mass Appraisal is;
- Most Taxpayers don't care what Mass Appraisal is;

Abatements, ATB Appeals & Overlays

Proposed ATB Rules Revision

On April 20, 2023, the ATB issued a Notice inviting comments by June 5, 2023 on its proposed Rules Revision-

- to make litigation of tax appeals at the Board more transparent and understandable both for taxpayers and boards of assessors who are not represented by counsel and for attorneys representing parties in Board proceedings; and
- to encourage parties to confer at various stages of the litigation process to narrow contested issues and reach settlements of disputes.

Abatements, ATB Appeals & Overlays

Proposed ATB Rules Revision

The MAAO appointed a Review Committee to review the Proposed Rules, and offer comments and suggested edits.

The Proposed Rules retain the vast majority of the substance of the old rules but reorganize them according to the stage of the Appeal Process - Commencement, Pre-Hearing, Discovery & Stipulations, Hearing, Post-Hearing.

Abatements, ATB Appeals & Overlays

Proposed ATB Rules Revision

The Proposed Rules adopt, on a permanent basis, many of the procedures that were successfully implemented during the pandemic, including

- Options for remote hearings;
- Email filing and service for many pleadings;
- Exchange of exhibits in advance of hearings; and
- New emphasis on status conferences; mediation conferences; stipulations and agreed statements of fact;

Abatements, ATB Appeals & Overlays

Proposed ATB Rules Revision

The MAAO Review Committee had no negative comments to make and offered some additional amendments concerning:

- Clarification re: the Small Claims Process;
- Issuance of Tracking Orders;
- Requirement of an Initial Disclosure;
- Recording of all Motions & Hearings;
- Clarification re: Status Conferences;
- Use of DOR Property Use Codes; and
- Templates for Affidavits and Forms.

Abatements, ATB Appeals & Overlays

Finally, and most importantly -

- Sometimes the only resolution to a Taxpayer's concerns is to deny the Abatement, and let them go to ATB.
- It helps to keep a sense of humor, which as William James said is "just common sense dancing."



Matthew J. Thomas, Esq.
4 Park Place, Suite 101
New Bedford, MA 02740
www.mjthomaslaw.com
mjt@mjthomaslaw.com

© Law Office of Matthew J. Thomas, 2023