

EM2006-939

**Question:**

Hello...

I am preparing to have my board review a Chapter 61A application which was filed late, and the issue has created a couple of questions in my mind. First, and this may be a bit abstract... It has always been my understanding that the Board of Assessors has no jurisdiction to act on applications which are not timely filed, which is the reason this issue came up in the first place. I have only applied that theory to abatement applications in the past, which we do not deny as a denial is an action. We send them a notice of late application.

The chapter laws, however, are pretty specific that no action on our part means the application is approved... Could we take no action for lack of jurisdiction, and by our lack of action the property would be approved for Chapter? Am I pushing the limit of the intent here? Can you tell that I really do not want to deny this person? I am just so afraid of setting a precedent if we allow him to stay in chapter after filing late.

My next question arises if we do not allow his application, and is in regard to his right to appeal our decision. Section 19 says that he has 30 days from the date of our notice or 90 days from the date of his application to appeal... I get that part. However, section 19 seems to be more about rollbacks and assessments - it refers to payment of the tax and other similar issues.

In this case the application is for Fiscal 2008, so I guess the question is what exactly would he be appealing? The full value will not hit his tax bill until 7/1/2007.

I have to spell out his appeal rights when I send him notice of our decision, but I am not sure I understand them myself.

Sorry that I always seem to have so many questions...

Thanks,  
Linda Swadel  
Chief Assessor  
Town of Westborough

**Answer:**

Linda: Your first question is quite pertinent, given the deemed allowed provision of Chapter 61A, §9. The failure to deny a "late-filed" application using the filing date provided in GL c. 61A, §6 (October 1 of the year preceding the tax year of the application) may very well result in an automatic allowance of an application under GL c. 61A, §9 in any year the town has conducted an interim year adjustment, since that could

be considered a "program of revaluation of all property" under GL c. 61A, §8. Section 8 provides that when such a revaluation program is undertaken or shall be undertaken the deadline for filing the application is extended to 30 days after the sending of the actual tax bill for the revaluation year. It also specifically provides that:

“...any such application which has been or shall be filed with the board of assessors after October first and not more than thirty days following the mailing of the tax bill containing the new valuation shall be deemed to have been timely made for the tax year of the revaluation program...”

This suggests that the application is deemed to have been timely made at that time, and the 3 month period for action would arise within 3 months of the actual filing date.

For reasons that more fully follow, it would be prudent for the board to treat applications for any fiscal year as if a general revaluation has or will be undertaken and to apply the extended deadline. Thus, the board would treat any application filed up to 30 days after the tax bills for the classification year as timely and act upon it within 3 months of filing.

Historically the section 6 deadline has been considered jurisdictional in the years in which it applies and the section 8 deadline extension has been regarded as applying in a triennial certification year in which a general revaluation program is conducted. We have also opined in recent years that any October 1 application deadline for the fiscal year after a certification year revaluation program must be extended to 30 days after the sending of the tax bill for the certification year, if by October 1 of the certification year the actual tax notices in the certification year have not been sent. The basis for that opinion is that it would make no sense to require an application in a later year to be filed prior to an application in the certification year, with no knowledge of the value for the certification year in either case.

More recently, we have begun to consider the effect of interim year adjustments on the Chapter 61A application deadline, since our guidelines now require more formal consideration and reporting of them, and that might be considered a "program of revaluation of all property," under GL c. 61A, §8. The issue is not easily resolved. The board of assessors has always been required to assess property annually at its fair cash valuation, under GL c. 59, §38. In IGR 04-401 & subsequent annual IGRs for the annual assessment of taxes (the latest being IGR 06-401), we suggested that adjustments to the valuation schedule must be made to reflect new construction, alterations, demolitions, and the like, but also indicated that "[i]f there has been a change in market conditions, assessors must also adjust their valuation schedules ... so that all property valuations reflect full and fair cash value as of [the appropriate January 1 assessment date.]" IGR Sections II. B. These pronouncements suggest that in some interim years a program of revaluation might occur and in other years not.

That would support an interpretation of the extended deadline statute that it would only apply in interim years in which an adjustment is found to be necessary and occurs. While

that interpretation at least makes each deadline provision have some force and effect, it could have some peculiar results.

First, it makes the question of whether a program of revaluation is or shall be undertaken one that may not be answerable as of the October 1 filing deadline of Section 6. Second, it would require an individual analysis to determine whether any adjustment made qualified as a revaluation of all property. Third, it would create uncertainty at the time of filing, and create the contradictory requirements that the assessors may have no jurisdiction to act on the application at the time but be deemed to have acted favorably retroactively if a revaluation program later occurs.

In the alternative, an interpretation that an interim year adjustment always qualifies as a program of revaluation would vitiate the previous year October 1 deadline provided in GL c. 61A, §6. Ordinarily statutory provisions must be read as a harmonious whole to avoid any particular provision being considered without any force and effect.

We think the better interpretation is that the interim year adjustment requirements provided in the IGRs make every year a general revaluation year, because in each such year the board of assessors must make an analysis of all property valuations to determine whether an adjustment is necessary.

Whether or not an adjustment is made, property values for assessment purposes will every year be subject to change, leading to uncertainty and a potential need for the applicant to wait for the actual valuation determination prior to filing an application for classification. While that would lead to the elimination of the October 1 filing deadline, that result is necessitated by changing circumstances not contemplated at the time the deadline and extension provisions were enacted.

In addition, the interpretation establishes a bright line test that would allow the assessors to act with certainty, knowing the true deadline is a fixed date.

In this case it appears that Westborough went through its triennial certification program in FY2006, so the deadline would have been extended in FY2006 and FY2007. Under our interpretation the deadline will be extended in FY2008 as well. We understand the board decided it had no jurisdiction to act and so notified the applicant. Since the board appears to have acted on the basis it had no jurisdiction, it may wish to reconsider in light of this response. We believe the board has the authority to act on the application and that its failure to actually approve or deny the application could result in a deemed approval. We think the board should either approve or deny the application based on its merits prior to the three month deadline for action, using the filing date as the start date.

If the board disallows the application, GL c. 61A, §19 sets out the appropriate procedure and the applicable deadlines. The section not only provides for appeals of the roll-back or conveyance taxes, but also provides a mechanism to appeal "any determination" of the board. The procedures are set forth in the various notice forms in the series CL-1 through

CL-9. They are set out in their entirety in CL-1, the Property Owner's Acknowledgment of Rights and Obligations Under Classified Agricultural or Horticultural Land Program.

CL-2, the notice of disallowance provides a statement of the method of appealing to the Board of Assessors within 60 days of the notice. Form CL-7 is the application to modify a decision of the board after notice of disallowance, and CL-8 sets out the appeal process from the denial of the application for modification by an appeal to the Appellate Tax Board within 30 days of the notice of the decision or 3 months from the date the application was filed, whichever is later.

I hope this addresses your concerns.

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