

Exhausting Administrative Remedies in a Tax Appeal

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In the state and local tax world, it is widely understood that the road to relief requires going through the Appellate Tax Board and the statutorily created administrative

appeal process. To the Board's credit, it has admirably managed to organize and process a tremendously high volume of state and local tax appeals. However, state tax audits can drag on and an initial appeal to the Commissioner of Revenue can languish for a year or more. By the time an appeal gets to the Appellate Tax Board, it may have already been in the appeal process for a year or two. Could such delays encourage frustrated taxpayers to try to bypass the Board and seek judicial relief?

When the Appellate Tax Board was created in 1930, the Legislature intended to establish a comprehensive system for appealing local property and state tax assessments. Prior to that time, tax appeals were addressed by the Superior Court, which did not necessarily allow for consistent and uniform decisions on issues that impacted many taxpayers. Depending on where the action was filed or the expertise of the judge hearing the case, decisional guidance on common tax issues may have been inconsistent. The Legislature reasoned that funneling all appeals through the Appellate Tax Board would address this problem, as the Board

consists of administrative judges with sufficient knowledge of the tax laws to properly address state and local tax disputes. Since its creation, the Board's expertise in tax matters has been recognized and afforded deference from the Appeals Court and Supreme Judicial Court.

In general, a taxpayer may contest a tax assessment by requesting that the Commissioner of Revenue, or the municipality in the case of property taxes, abate (or reduce) the tax. If the abatement is not granted, the taxpayer can appeal to the Appellate Tax Board. It is well-settled that, absent exceptional circumstances, the statutory abatement process is the taxpayer's exclusive administrative remedy. Generally, where an administrative procedure is available, courts require a party seeking declaratory relief to first exhaust that administrative remedy.

The Supreme Judicial Court has recognized that where a plaintiff has not exhausted administrative remedies, a court cannot grant relief, absent exceptional circumstances. In the Court's view, it is best to give the administrative agency a full and fair opportunity to apply its expertise to the matter prior to judicial intervention.

Instances where taxpayers have been able to bypass the Appellate Tax Board and pursue a judicial remedy are rare. In order to allow civil action to proceed, the judge must conclude that the administrative remedy is seriously inadequate, which occurs when

critical, novel, or recurrent issues are at stake, when the decision has public significance, or when the dispute can be reduced to a question of law.

In a May 2025 opinion and order in *Boston Seaport MI&2 Land, LLC v. Commissioner of Revenue*, a Massachusetts Superior Court judge allowed an action to proceed even though the plaintiff had an administrative appeal pending with the Commissioner of Revenue. Boston Seaport initially filed an administrative appeal in response to the Commissioner's denial of its Brownfields tax credit application. Two years later, the appeal was still pending with no resolution, so Boston Seaport filed an action in Superior Court. The Court concluded that Boston Seaport should not have to exhaust its administrative appeals before seeking judicial relief. The administrative process was inadequate because, in this Court's view, the case presented a purely legal question of wide public significance.

Clearly, Boston Seaport had grown impatient with the administrative process and filed in Superior Court as a last resort. Whether a long delay, in and of itself, could be grounds for shortcutting administrative remedies and obtaining judicial relief is currently being considered in federal court with respect to New York City's tax appeal process.

In *Gresham Investment Management LLC v. Niblack*, an investment management company filed an action in federal court to resolve its tax dispute with the New York City Department of Finance. Prior to filing an

action in federal court, Gresham had appealed to the New York City Tax Appeals Tribunal, which is part of the administrative review process. However, the Appeals Tribunal currently has no administrative judges to hear or decide cases. Instead, it only has a Chief Administrative Law Judge who is responsible for ministerial matters, such as granting extensions and assigning matters to other administrative judges if or when they are ever appointed. The plaintiff claims that, without available judges, there is no meaningful procedural option to challenge the disputed tax. The Court has not yet decided whether the appeal will be allowed to proceed, but it does present a novel argument for bypassing the administrative process for tax disputes.

Whether a taxpayer could successfully cite long administrative delays as grounds for judicial relief in a Massachusetts tax case is an open question. Many state tax disputes theoretically impact numerous taxpayers and can be reduced to a question of law, which, according to the *Boston Seaport* case, might allow for a judicial appeal. The Appellate Tax Board manages thousands of appeals annually and delays are inevitable. It remains to be seen whether some impatient taxpayers may decide to take a chance with a judicial appeal.

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