

Walter Borowski  
v.  
Town of Loudon

Docket Nos. 5010-88 and 7571-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1988 assessment of \$268,300 (land, \$168,800; buildings, \$99,500) and 1989 assessment of \$262,050 (land, \$202,550; buildings, \$59,500) on land and two manufactured homes in 1988 and one manufactured home in 1989 (the Property). For the reasons stated below, the appeal for abatement is granted for 1988 but denied for 1989.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden for 1988 and proved he was disproportionally taxed, but he did not carry the burden for 1989.

The Taxpayer argued the assessment was excessive in 1988 because the Town taxed a manufactured home that was held for sale or storage by an agent and therefore was not taxable under RSA 72:7-a. The Taxpayer testified this home was not hooked up to water and sewer and was solely held for sale.

The Town argued the 1988 assessment was proper because it had information that one manufactured home was hooked up to all utilities. The Taxpayer did not present any evidence to support a challenge to the 1989 assessment, and it was shown that in 1989 the Town did not assess any manufactured home held for sale or storage and thus nontaxable under RSA 72:7-a. The remainder of this decision is for 1988.

Based on the evidence, we find the correct 1988 assessment should be \$228,300 (land, \$168,800 and building, \$59,500). This assessment is ordered for 1988 because under RSA 72:7-a the manufactured home was held by a dealer for sale or storage should not have been taxed. If the taxes have been paid, the amount paid on the value in 1988 in excess of \$228,300 shall be refunded with interest at six percent per annum from date paid to refund date.

The parties asked the board to enunciate a methodology for properly assessing manufactured housing under RSA 72:7-a. Obviously, each case will depend on the specific facts presented to the board. Nonetheless, to provide some assistance the board makes the following recitation.

Under RSA 72:7-a, the Town shall not assess taxes on manufactured housing held for sale or storage by an agent or dealer. The board reads the term "sale or storage" to mean manufactured housing not "suitable" (see RSA 72:7-a) for domestic, commercial, or industrial uses. Thus, if all utilities, water, sewer, heat, and electricity are actually hooked up to the manufactured housing and there is nothing to prevent its use, the manufactured housing should be taxed regardless of whether it is actually being used because it would be "suitable" for use. If, however, all the utilities are not actually hooked up or there is some other impediment to its use it shall not be taxed.

We note that the RSA 72:7-a's intent is to treat stock and trade as personalty and not realty. It was not intended to allow dealers to avoid taxation when the property is actually realty. Thus, the board would have to examine the facts to determine whether the statute's grant of nontaxability was intended to apply to a specific situation.

Finally, there was much discussion at the hearing concerning the applicability of this decision to subsequent years. Each tax year is treated separately, and absent an appeal, the board cannot review the Taxpayer's assessment or the Town's actions. Nonetheless, the Town should apply the methodology stated herein to subsequent years. If a valid appeal is brought and the method has not been followed, the board can order the Town to pay costs for requiring the Taxpayer to appeal.

SO ORDERED.

May 13, 1991

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been sent this date, postage prepaid, to Timothy Bates, Esq., counsel for the Taxpayer, and to the Chairman, Board of Selectmen, Town of Loudon.

Marjorie J. West, Clerk IV

May 13, 1991  
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