

Kenick Family Homestead Trust
v.
Town of Exeter

Docket No. 5611-88

DECISION

A hearing in this appeal was held, as scheduled, on August 1, 1990. The Taxpayer was represented by Joseph L. Kenick, Jr., Trustee. The Town was represented by John L. DeVittori, Assessor.

As indicated on the hearing notice, the Board initially received testimony and evidence on the issue of the Taxpayer's timely filing the appeal with the Town per RSA 76:16. Based on the testimony and evidence, the Board ruled that the Taxpayer had timely filed with the Town and then proceeded to the merits of the case.

The Taxpayer appeals, pursuant to RSA 76:16-a, the assessment of \$176,400 (land, \$63,700; buildings, \$112,700) placed on its real estate, located on Hobart Street, for the 1988 tax year. The property consists of a 1.15-acre lot with dwelling, garage, and shed and is identified as Map 08-11, Block 004, lot 006.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100 percent for the 1988 tax year for the Town of Exeter.

Mr. Kenick testified that in 1989 the Town had adjusted the value to \$150,600, which was agreeable to him. He testified that a sun porch, valued

by the Town in 1989 at \$2,300, had been added between the 1988 and 1989 assessment dates. Mr. Kenick submitted an appraisal by Michael Daigneault, as of June 2, 1988, that estimated the value for the purpose of obtaining an equity loan at \$137,000.

Mr. DeVittori testified that the Taxpayer had not allowed an interior inspection of the property and that interior descriptions and depreciations were obtained from conversation with Mr. Kenick.

The Board's investigator, in his report to the Board, recommended the reduced 1989 valuation was appropriate for the 1988 tax year, minus the added value of the sun room added after 1988.

The Board rules as follows.

The Taxpayer's appeal is based on The Constitution of New Hampshire, Part 2, Article 5, which states in part:
And further, full power and authority are hereby given and granted to the said general court, from time to time . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp) which states:
Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine

R.R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds that the best evidence as to the property's 1988 value is the 1989 assessment, less the value of the sun room added after April 1, 1989. While the Board does not entirely dismiss the Taxpayer's appraisal, the Board finds that an appraisal done for lending purposes is not conclusive evidence of market value.

Therefore, the Board rules that the proper assessment for the 1988 tax year is \$148,300 (1989 assessment, \$150,600, less the 1989 assessed value of the sun room of \$2,300).

If the taxes have been paid, the amount paid on the value in excess of \$148,300 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Joseph L. Kenick, Jr., Trustee, representing the Taxpayer, and to the Chairman, Board of Selectmen, Town of Exeter.

Michele E. LeBrun, Clerk

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ORDER RE TIMELY FILING

The Taxpayer filed an appeal with the Board of Tax and Land Appeals (hereafter Board) on May 17, 1989, appealing its 1988 property taxes pursuant to RSA 76:16-a.

RSA 76:16 states:

Selectmen or assessors, for good cause shown, may abate any tax assessed by them or by their predecessors. Any person aggrieved by the assessment of a tax and who has complied with the requirements of RSA 74, may, within four months after notice of the tax, and not afterwards, apply in writing to the selectmen or assessors for an abatement of the tax. (emphasis added)

New Hampshire Code of Administrative Rules Part Tax (hereafter Tax)

201.01(c) states in part:

An appeal to the board may be made only if the taxpayer has

first made an application for abatement in writing to the board of selectmen or other local assessing official(s) within 4 months of notice of the final tax bill. "Notice of the final tax bill" means the date the department of revenue administration determines to be the last date of mailing of tax bills by the taxing district. (emphasis added)

The Board rules the deadline for filing a written appeal with the Town expired on March 17, 1989.

The Board finds as follows. A hearing on the question of overassessment was held by the Town on October 14, 1988, and a written denial was made on

January 18, 1989. No written application for an abatement was filed by the Taxpayer with the Town.

The Board rules the Taxpayer failed to timely file with the Town.

The order is, therefore:

Appeal dismissed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within order have been mailed this date, postage prepaid, to Joseph L. Kenick, Jr., Trustee, Kenick Family Homestead Trust, and to the Chairman, Board of Selectmen, Town of Exeter.

Michele E. LeBrun, Clerk

