

Raymond C. Cummings

v.

Town of Belmont

Docket No.: 6048-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$2,600 (building only) on a mobile home located in Mallard's Landing (the Property). For the reasons stated below, the appeal for abatement is granted.

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.

The Taxpayer argued the assessment was excessive because:

- (1) the unit is a travel trailer, not a manufactured home over 320 square feet as defined in RSA 674:31;
- (2) the unit sets on concrete blocks, has a temporary cold water line to it and is attached by a 4 inch septic line to the park septic system; all can be quickly removed and the travel trailer is again mobile; and
- (3) the unit could be registered as a travel trailer.

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The Town argued the assessment was proper because:

(1) the unit by being set on blocks and connected to utilities is taxable under RSA 674:31.

Board's Rulings

This case raises two issues.

- 1) Are there certain rights or "leasehold" interests held by the Taxpayer as member of the Mallard's Landing Association (Assoc.) that were not fully assessed?
- 2) Is the taxpayer's 208 square foot mobile home ("unit") as connected to a community water supply and sewer system taxable?

Regarding the first issue, the board finds that the value of any interests the Taxpayer may have acquired with his lease of a site from the Assoc. was assessed to the Assoc. and was the subject of an appeal by the Assoc. to the Belknap County Superior Court (Docket No. E-90-137).

Consequently, the board finds there was no convincing evidence submitted to conclude that there was value remaining to the Taxpayer that had not already been assessed to the Assoc.

Regarding the second issue, the board rules that, based on the facts presented in this case, the unit is neither taxable as manufactured housing in accordance with RSA 21:21 (II) and RSA 72:7-a nor taxable as personal property that has become a fixture to real estate in accordance with RSA 21:21 (I) and

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RSA 72:6.

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Our analysis is in four steps:

- A) review of the statutes;
- B) determination of whether the property is a "manufactured house" or personal property;
- C) if personal property, determination of whether it is taxable as real estate; and
- D) review of the constitutionality of the pertinent statutes.

Statutes

The pertinent statutes are:

RSA 21:21 Land; Real Estate.

- I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.
- II. Manufactured housing as defined by RSA 674:31 shall be included in the term "real estate."

RSA 72:6 Real Estate.

All real estate, whether improved or unimproved, shall be taxed except as otherwise provided.

RSA 72:7-a Manufactured Housing

- I. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year; except that manufactured housing as determined by the commissioner of revenue administration, registered in this state

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for touring or pleasure and not remaining in any one town, city or
unincorporated place for more than 45 days, except for storage only,
shall be exempt from taxation.

RSA 674:31 Definition.

As used in this subdivision, "manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a.

The various statutes dealing with manufactured housing were intensely studied and generally amended in 1983. A review of the legislative records and minutes reveals the intent of the amendments was to treat manufactured housing as real estate for both local property tax and state transfer tax purposes and to separate it from travel trailers which were to remain as vehicles to be registered by the state. The threshold size for manufactured housing of 320 square feet was chosen to correspond with HUD minimum size standards for living units.

Taxable as Manufactured Housing

RSA 674:31 states four conditions must exist for a unit to be taxable as manufactured housing: 1) it must be larger than 320 square feet; 2) it must have a permanent chassis; 3) it must be designed to be used as a dwelling; and

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4) it must be connected to basic utilities. In the present case, the unit has a permanent chassis, is used as a seasonal camp, has power, water and sewer hookups but is less than 320 square feet. Thus, the unit is not "manufactured housing" as defined in RSA 674:31 and taxed under RSA 72:7-a. Under the present statutory construction, the unit is then considered personal property eligible for registration as a "trailer" with the Division of Motor Vehicles as provided in RSA 259:113 and RSA 261:141. Further, RSA 261:69 and RSA 261:70 make it clear that a unit should not be assessed as manufactured housing and registered as a motor vehicle at the same time.

Taxable as Real Estate

However, having determined the unit is personal property, does not automatically mean the unit is not taxable. In fact, three different possibilities exist.

- 1) The unit can be registered as a motor vehicle if it is "to be driven on the ways of this state"(RSA 261:40) and thus remain as mobile personal property.
- 2) It can exist simply as immobile personal property without being registered and used on the highways and without taking on the aspects and rights of realty.
- 3) It can by its very use and nature become a fixture to the realty and taxable as such.

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The second option is the case with the Taxpayer's unit. In arriving at this decision, no one fact was controlling. Rather, the board was convinced by the collective weight of the following facts.

- a) While the unit has been on the site for forty years, the Taxpayer testified there has not been on his part any long term intent to consider this unit as an integral part of the interests he acquired with the lease from the Assoc.; in fact, he stated he has briefly explored the possibility of removing the unit and replacing it with a more modern and functional manufactured home or dwelling.
- b) While the unit sets on concrete blocks and is hooked to utilities, the tires are still on and the it could be moved with minimal disconnecting of the water and sewer lines.
- c) The site has not been significantly modified to receive the unit.

Taxable as a Fixture

To understand why this unit is not considered a fixture, a review of the definition of fixtures and the authority to tax fixtures follows.

The authority to tax fixtures as real estate is found in RSA 72:6 and RSA 21:21. RSA 72:6 states: "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided." This statute is to be broadly interpreted. King Ridge, Inc. v. Sutton, 115 N.H. 294, 298-99 (1975).

RSA 21:21 (emphasis added) states: "The words `land,' `lands' or `real

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estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein."

In addition to these statutory criteria, the caselaw on fixtures must be examined--fixtures being taxable as realty. As stated in The Saver's Bank v.

Anderson, 125 N.H. 193, 195 (1984):

A chattel loses its character as personalty and becomes part of the realty when there exists "an actual or constructive annexation to the realty **with the intention of making it a permanent accession to the freehold**, and an appropriation or adaptation to the use or purpose of that part of the realty with which it is connected." However, if a chattel becomes an intrinsic, inseparable and untraceable part of the realty, it is deemed a fixture regardless of the intent of the parties. (Citations omitted)

Black's Law Dictionary defines "fixture," in part, as "an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the land. . . . Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law."

Based on this review, especially the facts here, the board rules this unit has not become such "an intrinsic, inseparable and untraceable part of the realty" to be considered taxable as a fixture. We note that a different result could be reached concerning other units if that unit qualified as a fixture under the above fixture analysis.

Constitutional Review

While not raised as an issue by either party, the

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board researched whether the right of reciprocal protection and taxation as provided in Pt. 1, Art.12 of the New Hampshire Constitution was violated by RSA 21:21 (II), RSA 72:7-a and RSA 674:31 or by this decision. We find no constitutional violation.

The legislature has the authority to classify property differently for taxation as long as the classification bears some rational relationship to the statute's legislative purpose. State v. Scoville, 113 N.H. 161, 163 (1973); Belkner v. Preston, 115 N.H. 15, 17 (1975). "Inequality of taxes laid is forbidden, but inequality caused by taxing some property and not taxing other is permitted." Opinion of the Justices, 95 N.H. 548, 550 (1949). "(T)he rule of equality and proportionality does not apply to the selection of subjects for taxation, provided just reasons exist for the selections made." Opinion of the Justices, 94 N.H. 506, 508 (1947).

In the 1983 amendments dealing with manufactured housing, the legislature created two classifications -- units greater than 320 square feet to be treated as real estate and those less than 320 square feet to be treated as personal property. The legislative intent appears to have been to facilitate the assessment of real estate by making a distinction between manufactured housing as real estate and travel trailers as personal property, based on size, mobility and the utility of the unit. Further, the minimum 320-square-foot size has a basis in the H.U.D. minimum living unit size.

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Therefore, these statues meet the "rational basis" requirement of equal protection provisions of the New Hampshire Constitution.

Conclusion

Based on the above, the board orders the entire assessment of \$2,600 be abated. If taxes have been paid, the taxes shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Raymond C. Cummings, Taxpayer; and Chairman, Selectmen of Belmont.

Dated: March 1, 1992

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Town's" rehearing motion (the Motion). For the reasons stated below, the Motion is denied.

The Motion only challenged the board's fixture analysis. The Town did not challenge the board's conclusion that the "Unit" was not real estate under RSA 72:6. The board reached that conclusion because the Unit was less than 320 square feet, which is required for a mobile home to be considered real estate under RSA 674:31 and RSA 21:21 II. While reviewing the Motion and the board's decision, the board decided we should expand on the discussion concerning the Unit's taxability as a fixture given RSA 674:31.

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There are two ways to view the effect that RSA 674:13 and RSA 21:21 II have on the taxability of the Unit under RSA 72:6:

- (1) The Unit is not real estate under RSA 674:31 and RSA 21:21 II, but it is still taxable under RSA 72:6 as personalty that has become a fixture; and
- (2) The Unit is not real estate under RSA 674:31 and RSA 21:21 II, and thus is not taxable under RSA 72:6 even if it is a fixture.

The board's decision was based on number one. The board reads RSA 674:31 as stating if a unit is greater than 320 square feet, it is real estate and thus taxable under RSA 72:6. However the board concluded RSA 674:31 does not preclude a unit from being treated as a fixture and thus taxable under RSA 72:6.

While we did not follow the second interpretation, it warrants brief discussion. Under this interpretation, units less than 320 square feet are not manufactured housing under RSA 674:31 and thus are not real estate under RSA 21:21 II. As such, they are not taxable under RSA 72:6. In other words, taxable fixtures are subsumed under the RSA 72:6 phrase "real estate," and thus no fixture analysis would be performed.

Since we followed the first interpretation, we now turn to the fixture issue. We affirm our decision, but we focus on the objective evidence. The analysis of the taxability of fixtures under RSA 72:6 is both dependent on and

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independent of the common law on fixtures. We make this observation after reading the caselaw on fixtures and after reviewing those decisions in light of RSA 72:6. For instance, under the common law a building of one person that is located on the land of another is considered personalty if the building owner has the right to remove the property. Dame v. Dame, 38 N.H. 429, 430 (1859); see also Pleasant Valley Campground v. Rood, 120 N.H. 86, 88 (1988); compare RSA 75:2 (building on land of another taxable). Both of these cases turned on the parties' agreements, and as pointed out in Pleasant Valley Campground, id. at 88, fixture analysis does not apply when the parties have an agreement as to whether an item is personalty or realty. Those cases, along with the Savers Bank v. Anderson, 125 N.H. 193 (1984), focused on the rights as between the parties. None of these cases dealt with whether the property was realty for taxation purposes, which requires a much different analysis. Such analysis begins with RSA 72:6 and the cases that have addressed RSA 72:6. Specifically, the court has stated municipalities have broad power to tax real property under RSA 72:6 even if the Property is personalty at common law. Kings Ridge, Inc v. Town of Sutton, 115 N.H. 294, 298-99 (1975).

Deciding whether property is personalty or taxable realty requires looking at the objective factors to decide whether the property has sufficient characteristics of real estate to be taxable as such. See id. We turn to the

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objective evidence available to the board. (Concerning the subjective evidence of the Taxpayer's intentions, the Town overemphasized the weight attributed to these intentions.) The following objective evidence was reviewed:

- 1) the land upon which the Unit sits is owned by the association not the Taxpayer;
- 2) the Taxpayer only holds a one-year site permit, albeit renewable;
- 3) the Unit was still on wheels with the front held up with cinder blocks; and
- 4) the Unit lacked any permit foundation or coupling to the land.

The fact that the Unit was hooked up to water and sewer does not, in and by itself, make the Unit a fixture. Utility hook-ups can be easily disconnected without damaging either the land or the Unit. Given this evidence, the unit was not a taxable fixture.

CONCLUSION

The Motion is denied for failing to state any "good reason" to show the board erred. See RSA 541:3,4.

SO ORDERED.

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Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Raymond C. Cummings, Taxpayer; and Tim Bates, Esquire, representing the Town of Belmont.

Dated:

Valerie B. Vanigan, Clerk

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Dated:

Valerie B. Vanigan, Clerk

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