

**Gabriel G. Crognale**

**v.**

**Town of New Hampton**

**Docket No.: 8303-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" interest-and-penalty assessment of \$231.04, incurred from a July 15, 1988 notice of tax lien for 1987 taxes on a vacant, 14.2-acre lot (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer proved the interest and penalty was improperly assessed.

The Taxpayer argued the assessment was unwarranted because:

- (1) the Property was purchased on June 1, 1987 and the title search performed found no tax lien on the Property;
- (2) the former tax collector sent the July 1, 1988 lien notice (for unpaid 1977 taxes) to the previous owner and stated a courtesy copy was sent to the Taxpayer which was never received;

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(3) nowhere on any of the 1988, 1989 or 1990 tax bills was there any mention by the Town of back taxes due;

(4) the notice of impending tax lien dated November 9, 1990 was sent to the Taxpayer; and

(5) the 1987 taxes have been paid but the interest and penalty are inappropriate.

The Town argued the assessment was proper because:

(1) the 1987 tax bill was sent to Dean Latour who owned the Property on April 1, 1987;

(2) notice of tax lien was sent July 15, 1988 by certified mail to the owner of record on April 1, 1987, Dean Latour;

(3) RSA 80:60 requires deeding notification to the owner of record as of April 1, or the current owner of record if known;

(4) it is the seller's responsibility to forward the tax bill to the new owner; and

(5) the previous tax collector did notify Mr. Crognale by courtesy mail of the tax lien.

#### Board's Rulings

Based on the evidence, the board finds that the Town acted inappropriately by not notifying the owner of record of the notice of tax lien. RSA 80:60 states:

Notice of Lien. The collector shall give notice of the impending lien at least

30 days prior to the execution of said lien. Notice shall be sent by certified or registered mail return receipt requested, to the last known post office address of the current owner, if known, or of the person against whom the tax was assessed. The notice shall state the name of the current owner, if known, or the person against whom the tax was

assessed, the description of the property as committed to the tax collector, the date and time on which the last payment shall be accepted, and the amount of the tax, interest, and costs to the date of executing the tax lien. The returned receipt or the returned unclaimed notice shall be prima facie evidence that the collector has complied with the notice requirements of this section.

The board finds the Town did not comply with the statutory mandate to send notice to the current owner, if known. There is no question in anyone's mind that the Town was aware of the current owner's name and address. In fact, the Town stated a courtesy copy of the notice was sent to the current owner, although the Taxpayer claims he never received the notice and the board has no proof that a copy was sent to the Taxpayer. Further, the board asked the Town to supply it with a copy of the July 15, 1988 notice of tax lien and the Town only submitted a return receipt signed by Mr. Latour, the former owner.

If the interest and penalty assessment has been paid, it shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law.

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Thus, new evidence

and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Gabriel G. Crognale, Taxpayer; and Chairman, Selectmen of New Hampton.

Dated: May 2, 1994

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Valerie B. Lanigan, Clerk