

Fallons Rexall Store

v.

Town of Hampton

8365-90

DECISION

The Taxpayer appeals, pursuant to RSA 76:16-a, the Town's 1990 assessment of \$12,600 consisting of four parking spaces leased from the Town of Hampton (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeals on written submittals. The board has reviewed the written submittals and issues the following decision.

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 failed to carry his burden and prove any disproportionality.

The Taxpayer argued the assessment was excessive because the lease payments are not for any specific parking space; the lease payment only entitles the Taxpayer to look for a vacant parking space in a 1000 car lot, therefore, the tax is illegal.

The Town argued the assessment was proper because for the 1990 tax year, the assessor's office discovered that there were many parking spaces

leased by private individuals from the State of New Hampshire, the Town and the Hampton Beach Village District. These leased parking spaces are taxable under RSA 72:23, I; the valuation is based upon the gross income of \$1400 minus estimated expenses of \$140 and capitalized at the rate of ten (10%) percent.

We find the Taxpayer failed to prove the assessment was disproportional. We also find the Town supported the Property's assessment. RSA 72:23, I does allow for the taxation of property owned by public institutions and leased to private individuals. "Lands and the buildings and structures thereon and therein and the personal property owned by the state, cities, towns, schools districts, and village districts unless said real or personal property is used or occupied by other than the state or a city, town, school district or village district under a lease or other agreement the terms of which provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property...." (RSA 72:23, I). The Taxpayer argues the lease does not specify distinct parking spaces and the lot is often full. The amount of the rent recognizes these conditions, and the lease still must be of significant enough value to the Taxpayer or else the lease would not be renewed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert A. Fallon, Pres., Taxpayer and Chairman, Selectmen of Hampton.

Dated: October 31, 1991

Melanie J. Ekstrom, Deputy Clerk