

Kevin R. Currie

v.

Town of Sutton

Docket No.: 8433-90 LC

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:10, the "Town's" August 8, 1990 land-use-change tax (LUCT) of \$4,984.60 assessed on 10 acres of the Taxpayer's property (the Property). The LUCT was based on a \$49,846 full-value assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the Town's LUCT assessment was erroneous or excessive. See TAX 205.07. We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the LUCT was erroneously assessed because the Property still qualified for current use even though he had cleared the land. The Taxpayer argued that the clearing was done to reclaim the land as pasture land, a qualifying use, and therefore, no LUCT should have been assessed. The Taxpayer explained that his reclamation efforts were hampered by extenuating circumstances, including, a) the logger's poor job in clearing land, which resulted in rutting the land and the road; b) the wet conditions on the land, which delayed working on the land; and c) the assessment of the LUCT, which financially hindered

the Taxpayer's ability to pay for reclamation.

The Town argued the LUCT was properly assessed because the Taxpayer did not perform the reclamation necessary to qualify the Property as permanent pasture, which is the category applied for by the Taxpayer. The Town submitted a chronology, with supporting documents, and the board refers to that chronology for the factual background of this appeal.

Board's Rulings

Based on the evidence, the board finds the Town improperly assessed the LUCT tax. The board finds no LUCT tax was due because the Property still qualified for current use, albeit in a different category than stated by the Taxpayer.

Under RSA 79-A:7, the LUCT tax must be assessed when the land "is changed to a use which does not qualify for open space assessment." This statute must be read in connection with RSA 79-A:1, which recites the declaration of public interest behind the current-use statute. Specifically, RSA 79-A:1 declares that it is "in the public interest to encourage the preservation of open space *** by maintaining the character of the state's landscape ***. It is further declared to be in the public interest to prevent the conversion of open space to more intensive use by the pressure of property taxation ***." Because the Property continued to qualify in a current-use category while the Taxpayer was performing his reclamation efforts, the board finds that no LUCT should have been assessed, and the nonassessment is consistent with the purpose of current use.

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The Property, before reclamation was categorized as wild land, specifically productive -- inactive farm. Under the Criteria For Current Use Assessment (1983) inactive farmland was defined as follows.

- (a) A tract of land of at least ten (10) contiguous acres which is being kept open by generally accepted methods, but not cropped. It is devoid of woody growth and has potential for growing livestock forage or food and fiber for human use. The intent being to preserve scenic qualities, improve wildlife habitat, and maintain an agricultural land reserve[.]

Under this definition the Property did not qualify as inactive farm land in 1983 because the Property was not devoid of woody growth. However, the Property apparently would have qualified as productive wildland, i.e., unmanaged forest land. (A copy of the 1983 criteria is attached to this decision.)

In 1989 and 1990, the Taxpayer took steps to reclaim the Property into pasture land. The Taxpayer had the Property clear cut, and as best he could, he began the stumping, rooting, and other reclamation work needed to again make this land open pasture land. However, due to various circumstances, the Taxpayer was unable to complete the reclamation work in 1990. Apparently, because of the noncompletion of the reclamation, the Town assessed the LUCT. Based on the above, the board finds the Taxpayer's activity on the land did not result in a change to an unqualified use. Rather, while the work was being performed, the land continued to qualify in current use. Specifically, the Property would have qualified as inactive farmland under Criteria for Current Use Assessment (1990) Rev. 1205.04 (2) c. 1., which states as follows.

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Inactive farmland shall be:

A tract of land which is being kept open by generally accepted methods, but not cropped. It shall be devoid of woody growth and shall have potential for growing livestock forage or food and fiber for human use, the intent being to preserve scenic qualities, improve wildlife habitat, and maintain an agricultural land reserve ***.

The Town, in its September 11, 1990 letter, agreed the Property would have qualified as inactive farmland.

The board concludes that reclamation necessarily involves work over a period of time. Such reclamation efforts can only occur in accordance with the condition of the land and weather. Thus, a generally accepted method of reclamation would be to do the work during the time of the year when the least amount of damage would occur to the land. This, by its very nature, will often result in reclamation efforts occurring over a reasonable period of time. Furthermore, it was obvious this reclamation work was being done to open up a prior pasture and not for more intensive use of the land. Therefore, the board finds the Town incorrectly assessed the LUCT. Additionally, the Town incorrectly assessed the Property at ad valorem values for 1990.

One final note, the Taxpayer, before he began the reclamation work, failed to notify the Town of the reclamation efforts and of the change in the current-use category. These actions did not comply with current use criteria Rev. 1204.5 (b). However, as the board has held in the past, failure to comply with Rev. 1204.5 (b) does not result in the imposition of an LUCT. Clearly, RSA 79-A:7, which controls the board's decision, allows land to be changed from one category to another without requiring prior notification.

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RSA 79-A:7 has been revised to include a new paragraph VII, which now requires prior notification but the penalty for failure to notify is a \$50 fine and not the imposition of the LUCT.

Based on the above, the Town is ordered to do the following:

- 1) abate the LUCT, the filing fee and any interest charged on the LUCT (The refund shall include 6% interest from the date the LUCT was paid to the date the refund is made.);
- 2) the Taxpayer shall submit a current-use application consistent with this decision, provided the Property is still in the same condition as it was in 1990;
- 3) the Town shall abate the 1990 over payment taxes (current-use assessment versus ad valorem assessment) and any subsequent tax years with 6% interest from the date paid to refund date; and
- 4) the Town shall correct its records and the registry records consistent with this decision.

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. 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

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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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin R. Currie, Taxpayers; and Chairman, Selectmen of Sutton.

Dated: May 23, 1994

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Valerie B. Lanigan, Clerk