

Susan L. Gosma
v.
Town of Walpole

Docket No. 8489-90

Decision

This decision relates to the issue of whether the "Taxpayer" timely filed with the "Town." This issue was raised by the board when the Town, in response to the board's questionnaire, indicated the Taxpayer filed her application for abatement with the Town on July 6, 1990. For the reasons stated below, the Taxpayer's appeal is dismissed.

RSA 76:16 requires taxpayers to apply for an abatement with their municipality "within 60 days of the notice of tax ***." RSA 76:16-a I then requires the taxpayer to appeal to this board "within 6 months after notice of such tax ***." Thus, the question is what does "notice of tax" mean since any valid appeal must be taken from that date. RSA 76:16-a I states, "`Notice of such tax' means the date the department of revenue administration determines to be the last date of mailing tax bills by the taxing district." See also TAX 201.02(c). The DRA determined the notice-of-tax date for the Town was December 19, 1990. Thus, the abatement application had to be filed with the Town between December 19, 1990, and February 19, 1991, and the appeal to this board had to be filed between December 19, 1990, and June 19, 1991. The Taxpayer failed to so file, having filed with the Town before December 19, 1990, the notice-of-tax date. So, the Taxpayer's attempted appeal must fail because of her noncompliance with RSA 76:16 and RSA 76:16-a.

The result here may seem harsh. The dissent would have us interpret the timelines loosely and allow the appeal, and we would if we were empowered to do so. However, at this time, the board does not have the authority to deviate

from the statutorily created deadlines. See Appeal of Gillin, 132 N.H. 311,
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(1989) (Board cannot deviate from statutes.), Appeal of Roketenetz, 122 N.H. 869, 870 (1982) (Timely filing requirement is a jurisdictional prerequisite.), Arlington Sample Book Company v. Board of Taxation, 116 N.H. 575, 576 (1976) (Board cannot even deviate from deadlines when there has been accident, mistake or misfortune.); see also, Daniel v. B&J Realty, _____ N.H. _____ (April 26, 1991).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Member

Michele E. LeBrun, Member

Date: June 17, 1991

Dissenting Opinion

I respectfully disagree with the majority's decision to dismiss the Susan L. Gosma appeal for it not having been timely filed with the Town.

The majority is technically correct in their literal adherence to the applicable statute, RSA 76:16, and rule Tax 201.02 (c).

76:16 By Selectmen or Assessors. Selectmen or assessors, for good cause shown, may abate any tax assessed by them or their predecessors. Any person aggrieved by the assessment of a tax and who has complied with the requirements of RSA 74, may, within 60 days after notice of the tax, and not afterwards, apply in writing to the selectmen or assessors for an abatement of tax.

Tax 201.02(c) 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 60 days 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. . .

In this case, the Taxpayer filed a written appeal with the Town on July 6, 1990, as a result of having received her June bill reflecting an increase in the assessment from 1989. The only indiscretion in this case is that the Taxpayer followed all the correct appeal procedures except that she started too early with the Town. The Board of Tax and Land Appeals (hereafter BTLA) has consistently followed and interpreted the above statute and rule to mean that taxpayers must appeal only from the final tax bill issued for the tax year and not from the half year bill as allowed by RSA 76:15-a I. The final mailing of tax bills in by the Town, as determined by the Department of Revenue Administration, was December 19, 1990.

76:15-a Semi-Annual Collection of Taxes in Certain Towns and Cities.

I. Taxes shall be collected in the following manner in towns and cities which adopt the provisions of this section in the manner set out in RSA 76:15-b. A partial payment of the taxes assessed on April 1 in any tax year shall be computed by taking the prior year's tax rate; provided, however, that whenever it shall appeal to the selectmen or assessors that certain individual properties have physically changed in valuation, they may use the current year's appraisal times 1/2 the previous year's tax rate to compute the partial payment.

To continue such a strict application of the law, when all other procedures have been duly met, results in the inequitable result of having the case dismissed due only to the Taxpayer's diligence and perhaps lack of knowledge of the less than definitive timeliness.

The cases construing our tax abatement statutes over a long period of time do not encourage the slothful, are designed to penalize the contumacious but also indicate some concern for the taxpayer. The reminder 'that the machinery of government would not work if it were not allowed a little play in its joints' (Bain Peanut Co. v. Pinson, 282 U.S. 499, 501) has relevance here. H.J.H. Inc. v. State Tax Commission 108 N.H. 203, 205, (1967)

While the issue in the H.J.H. Inc. case dealt with the timely filing of an inventory and those statutes have been substantially amended since 1967, the general concept of construing the tax abatement statutes with any eye for

equity still applies to this case.

This Taxpayer was not slothful or contumacious. She filed an appeal early after the Town, as allowed by RSA 76:15-a, taxed her in June based on a new assessment. In August of 1990, the Taxpayer received an explanation from the selectmen about the increased assessment. Not satisfied the Taxpayer continued her appeal and "at the time. . . was told that an appeal to the state would have to wait until after the entire tax year was over." (See Taxpayer's letter to BTLA April 26, 1991.) She then timely filed with the BTLA on February 7, 1991.

The timeline of filing with the Town (RSA 76:16 (1990 supp)) is not as well defined as the timeline for filing with BTLA (RSA 76:16-a (1990 supp)). RSA 76:16-a includes a further definition of "notice of tax" that RSA 76:16 does not. While this Board understands this was an unintentional legislative oversight and will hopefully be corrected if the present HB 652 is passed, I believe it could be construed to have more meaning by either a taxpayer or a town in advising a taxpayer of the appeal process. Such an interpretation could explain why the Taxpayer in this case was advised to wait until the final tax bill to appeal to BTLA and allowed an appeal earlier with the town.

However, the main issue is that the Taxpayer was diligent, neither party is prejudiced by the continuance of this appeal, and injustice would result by its dismissal. Therefore, I would rule that the taxpayer has timely filed her appeal with the Town for the 1990 tax year.

Paul B. Franklin, Member

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Susan L. Gosma, taxpayer; and the Chairman, Selectmen of Walpole.

Melanie Ekstrom, Deputy Clerk

Date: June 17, 1991

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