

Gary F. & Deborah J. Horton

v.

Town of Epping

Docket No.: 8782-90

**DECISION**

This decision relates to whether the "Taxpayers" timely filed with the "Town." This issue was raised by the board when the Town, in response to the board's questionnaire, indicated the Taxpayers filed their application for abatement with the Town on March 6, 1991, which was past the Town's filing deadline. After reviewing the submitted material and for the reasons stated below, the board is denying the Taxpayers' appeal as filed untimely.

Taxpayers filed their abatement application with the Town on March 6, 1991, but the RSA 76:16 filing deadline was January 14, 1991. The Town, however, after Taxpayers' request, accepted the Taxpayers' abatement application because the Taxpayers stated they were unaware of the change in the appeal time limit. The Town, therefore, reviewed the assessment. Taxpayers then appealed to the board on March 11, 1991 which was timely. The Taxpayers now ask the board to accept their appeal even though they filed late with the Town.

The Taxpayers' request raises two issues: (1) Can the Town waive an

untimely filing; and (2) Does the board have statutory authority to accept an appeal when it has been untimely filed with the Town.

Regarding the first issue, the Taxpayers did not timely file with the Town, and the Town's acceptance does not cure the untimeliness because the Town lacks the authority to waive the untimeliness. See Daniels v. Henniker, \_\_\_ NH \_\_\_ (April 26, 1991). Regarding the second issue, this board cannot waive the Taxpayers' failure to timely file with the Town. RSA 76:16-a; TAX 201.02(c). RSA 76:16 requires taxpayers to apply for an abatement with their municipality "within 60 days of the notice of tax." The board is without authority to deviate from the statutory limitations. Appeal of Gillin, 132 NH 311, 313 (1989).

Given the law, the Taxpayers' appeal with the board is dismissed due to untimely filing with the Town.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

Date:

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Gary and Deborah Horton and Chairman, Selectmen of Epping.

Date: \_\_\_\_\_

Melanie J. Ekstrom, Deputy Clerk