

Estate of Mary Webster Harris

v.

Town of Holderness

9508-90

Peter Hiam

v.

Town of Holderness

9578-90

Webster Land Corp. and Nancy Grady

v.

Town of Holderness

9579-90

DECISION

This decision addresses the issue of whether the taxpayers', RSA 76:16-a appeals must be dismissed because the taxpayers failed to comply with RSA ch. 74 and RSA 76:16-a. Procedurally, the issue is whether the board should grant the taxpayers' rehearing motion concerning the board's December 10, 1991 order that dismissed the appeals because of noncompliance with RSA ch. 74 and RSA 76:16-a. For the reason stated below, the rehearing motion is denied, and the board's earlier dismissal is affirmed.

Facts

In tax year 1990, the taxpayers were required to file an RSA 74 inventory by April 15, 1990, or June 1, 1990, if granted an extension under RSA 74:8. None did.

The Town was suppose to deliver inventory blanks to all property owners. RSA 74:5. An inventory blank was sent to "Hiam," but he failed to file the completed inventory. The Town, however, did not deliver an inventory to "Harris" or "Webster." The Town neither notified the taxpayers of their failure to file nor assessed the RSA 74:7-a monetary penalty. The taxpayers learned of this issue through the board's inquiry.

Discussion

The board has decided the taxpayers lost their right to appeal under RSA 76:16-a because they did not comply with RSA ch. 74. The Town failure to notify the taxpayers of their noncompliance and failure to assess the RSA 74:7-a monetary penalty does not alter this conclusion.

To appeal a tax assessment to this board a taxpayer:

1) must have timely filed an RSA 76:16 abatement application with the municipality, RSA 76:16-a; and

2) if required by the municipality, must have timely filed a completed inventory, RSA 76:16, RSA 74:7-a.

Both RSA 76:16 and 16-a condition a taxpayer's right to appeal, and this board's jurisdiction, on the taxpayer "having complied with the requirements of RSA 74 ***." Our focus, thus, is on what is required for a taxpayer to comply with RSA 74.

RSA 74:(To file an RSA 76:16 abatement application, a taxpayer must have filed a completed inventory if the municipality requires inventory. RSA 76:16.)

Clearly, under these statutes, the board lacks jurisdiction over these appeals. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's powers entirely statutory). The taxpayers, however, assert

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ORDER

To assist the board with the pending RSA 74:7-a issue, the board orders the "Town" selectmen to file an affidavit responding to the following, (unless noted, all with reference to the 1990-1991 tax year):

- (1) did the Selectmen vote, pursuant to RSA 74:4-a, to not require inventories?;
- (2) supply any documentation, including minutes, supporting your answer to #1;
- (3) describe the Town's general procedure (i.e., for approximately 1988-1991) for sending out inventories or requiring inventories;
- (4) supply the form submitted to the Department of Revenue pursuant to RSA 74:4-a II;
- (5) review the Town records concerning these Taxpayers and inform the board if inventories were delivered to the Taxpayers and

if so, when and how; and

(6) supply any documents supporting your answer to #5.

The Town shall file the affidavit with supporting documents within 10 days of the clerk's date below, copying the Taxpayers.

The Taxpayers shall then have 10 days from filing to respond to the Town's filing.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

I certify that copies of the foregoing order have been mailed this date, postage prepaid, to Dennis N. Perrault, Esq., Representative for the Taxpayers; and Chairman, Selectmen of Holderness.

Valerie B. Lanigan, Clerk

Dated: April 3, 1992

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