

Margaret and James Farrenkopf, Sr.

v.

Town of Campton

Docket No.: 12736-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$12,975 (land \$8,550; buildings \$4,425) on a .25-acre lot with a mobile home (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden.

The Taxpayers argued the assessment was excessive because:

- (1) the trailer is only 240 square feet, is not permanently hooked up to utilities, is still on wheels and has the tongue, and thus the trailer should not have been taxed as realty;
- (2) the Town assessed the trailer because it does not have a commercial license plate;
- (3) the land was assessed higher than other lots, including larger lots; and

(4) there is an electrical transmission easement on the lot, which has been cleared.

The Taxpayers asserted they thought the land was worth approximately \$9,500.

The Town argued the assessment was proper because:

- (1) the department of revenue advised the Town that many of the trailers in this development might be taxable realty;
- (2) the Property includes a deck and a doorway; and
- (3) under RSA 72:7-a, the trailer, which is not registered and is on the site year-round, is taxable.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$9,575 (land \$8,125; shed and deck \$1,450). This assessment is ordered because:

- (1) we find the Town erred in taxing the trailer; and
- (2) the land assessment should have been adjusted due to the transmission line easement on the Property (We used -5%).

None of the Taxpayers' other arguments were meritorious.

Regarding the first issue, the board rules that, based on the facts presented in this case, the trailer is neither taxable as manufactured housing under RSA 21:21 (II) and RSA 72:7-a nor taxable as personal property that has become a fixture to real estate under RSA 21:21 (I) and RSA 72:6.

Our analysis is in four steps:

- 1) review of the statutes;
- 2) determination of whether the Property is a "manufactured house" or personal property;
- 3) if personal property, determination of whether it is taxable as real estate; and
- 4) review of the constitutionality of the pertinent statutes.

Statutes

The pertinent statutes are:

RSA 21:21 Land; Real Estate.

- I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.
- II. Manufactured housing as defined by RSA 674:31 shall be included in the term "real estate."

RSA 72:6 Real Estate.

All real estate, whether improved or unimproved, shall be taxed except as otherwise provided.

RSA 72:7-a Manufactured Housing

I. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year; except that manufactured housing as determined by the commissioner of revenue administration, registered in this state for touring or pleasure and not remaining in any one town, city or unincorporated place for more than 45 days, except for storage only, shall be exempt from taxation.

RSA 674:31 Definition.

As used in this subdivision, "manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a.

The various statutes dealing with manufactured housing were intensely studied and generally amended in 1983. A review of the legislative records and minutes reveals the intent of the amendments was to treat manufactured housing as real estate for both local property tax and state transfer tax purposes and to separate it from travel trailers, which were to remain as vehicles to be registered by the state. The threshold size for manufactured housing of 320 square feet was chosen to correspond with HUD minimum size standards for living units.

Taxable as Manufactured Housing

RSA 674:31 states four conditions must exist for a unit to be taxable as manufactured housing: 1) it must be larger than 320 square feet; 2) it must have a permanent chassis; 3) it must be designed to be used as a dwelling; and 4) it must be connected to basic utilities. In the present case, the trailer has a permanent chassis, is used as a seasonal camp, has power and simple water and sewer hookups, but the trailer is less than 320 square feet. Thus, the trailer is not "manufactured housing" as defined in RSA 674:31 and as taxable under RSA 72:7-a.

trailer is considered personal property eligible for registration as a "trailer" with the division of motor vehicles under RSA 259:113 and RSA 261:141. Further, RSA 261:69 and RSA 261:70 make it clear that a unit should not be assessed as manufactured housing and registered as a motor vehicle at the same time.

Taxable as Real Estate

Having determined the trailer is personal property does not automatically mean the trailer is not taxable. In fact, three different possibilities exist.

- 1) The trailer can be registered as a motor vehicle if it is "to be driven on the ways of this state"(RSA 261:40) and thus remain as mobile personal property.
- 2) The trailer can exist simply as immobile personal property without being registered and used on the highways and without taking on the aspects and rights of realty.
- 3) The trailer can by its very use and nature become a fixture to the realty and taxable as such.

The second option is the case with the Taxpayer's trailer. In arriving at this decision, no one fact was controlling. Whether a trailer is taxable as real estate requires a case-by-case analysis, considering all factors. The board was convinced by the collective weight of the following facts.

- a) The trailer is not permanently hooked up to utilities.
- b) The trailer still has tires and the tongue, and it could be moved with very little work. Moving the trailer would do minimal damage to the trailer, the land or the deck.

Taxable as a Fixture

To understand why this trailer is not considered a fixture, a review of the

definition of fixtures and the authority to tax fixtures follows.

The authority to tax fixtures as real estate is found in RSA 72:6 and RSA 21:21. RSA 72:6 states: "All real estate, whether improved or unimproved, shall be taxed except as otherwise provided." This statute is to be broadly interpreted. King Ridge, Inc. v. Sutton, 115 N.H. 294, 298-99 (1975). RSA 21:21 I states: "The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein." (Emphasis added.)

In addition to these statutory criteria, the caselaw on fixtures must be examined--fixtures being taxable as realty. As stated in The Saver's Bank v.

Anderson, 125 N.H. 193, 195 (1984):

A chattel loses its character as personalty and becomes part of the realty when there exists "an actual or constructive annexation to the realty **with the intention of making it a permanent accession to the freehold**, and an appropriation or adaptation to the use or purpose of that part of the realty with which it is connected." However, if a chattel becomes an intrinsic, inseparable and untraceable part of the realty, it is deemed a fixture regardless of the intent of the parties. (Emphasis added.) (Citations omitted.)

Black's Law Dictionary defines "fixture," in part, as "an article in the nature of personal property which has been so annexed to the realty that it is regarded as a part of the land. . . . Goods are fixtures when they become so related to particular real estate that an interest in them arises under real estate law."

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Based on this review, especially the facts here, the board rules this trailer has not become such "an intrinsic, inseparable and untraceable part of the realty" to be considered taxable as a fixture. We note that a different result could be reached concerning other trailers if those trailers qualified as a fixture under the above

fixture analysis.

Constitutional Review

While not raised as an issue by either party, the board researched whether the right of reciprocal protection and taxation as provided in Pt. 1, Art. 12 of the New Hampshire Constitution was violated by RSA 21:21 (II), RSA 72:7-a and RSA 674:31 or by this decision. We find no constitutional violation.

The legislature has the authority to classify property differently for taxation as long as the classification bears some rational relationship to the statute's legislative purpose. State v. Scoville, 113 N.H. 161, 163 (1973); Belkner v. Preston, 115 N.H. 15, 17 (1975). "Inequality of taxes laid is forbidden, but inequality caused by taxing some property and not taxing other is permitted." Opinion of the Justices, 95 N.H. 548, 550 (1949). "(T)he rule of equality and proportionality does not apply to the selection of subjects for taxation, provided just reasons exist for the selections made." Opinion of the Justices, 94 N.H. 506, 508 (1947).

In the 1983 amendments dealing with manufactured housing, the legislature created two classifications -- units greater than 320 square feet to be treated as real estate and those less than 320 square feet to be treated as personal property. The legislative intent appears to have been to facilitate the assessment of real estate by

making a distinction between

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manufactured housing as real estate and travel trailers as personal property, based on size, mobility and the utility of the unit. Further, the minimum 320-square-foot size has a basis in the H.U.D. minimum living unit size. Therefore, these statutes meet the "rational basis" requirement of equal protection provisions of the New Hampshire Constitution.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$9,575

shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Rehearing and Appeal

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 prerequisite for

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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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Christopher J. Kelly, Agent for Margaret and James Farrenkopf, Sr., Taxpayers; and Chairman, Selectmen of Campton.

Dated: February 1, 1995

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayers'" April 12, 1995 letter in which the Taxpayers asserted the "Town" abated taxes in 1991 and 1992 but did not refund taxes for 1993 and 1994 because the Town had undergone a revaluation in 1993. The Taxpayers asked the board to enforce the board's February 1, 1995 decision for 1993 and 1994 even though the Town underwent a complete revaluation in 1993. The board was prepared to order the Town to follow the board's previous decision, i.e. not to tax the trailer unless it had changed. The board then received the Town's response, stating the trailer should not have been taxed for 1993 and 1994. The Town is doing the right thing. The Taxpayers' letter now requires no response.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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 Margaret and James Farrenkopf, Sr., Taxpayers; and Chairman, Selectmen of Campton.

Date: May 22, 1995

Valerie B. Lanigan, Clerk