

Lucille McMann

v.

Town of Northumberland

Docket No.: 13155-92EX

DECISION

The "Taxpayer" appeals pursuant to RSA 71-B:5 I and RSA 71-B:11, the "Town's" handling of her application for an RSA 72:38-a elderly tax lien. For the reasons stated below, the Taxpayer's appeal is granted.

The Taxpayer argued the Town routinely delays making a decision on the Taxpayer's application until the property is about to be lost due to the unpaid taxes. The Taxpayer claims that under RSA 72:38-a, the Town's procedure is incorrect, and the Town should act on the application for the tax year for which it is filed. In this case, the Taxpayer claims the Town should have granted her 1992 application and filed an RSA 72:38-a lien instead of filing a tax lien.

The Town was excused from attending the hearing but filed numerous letters with the board explaining its position. Basically, the Town argued the procedure has worked in the past, stating the board of selectmen has always granted the elderly tax lien before the property was sold for taxes.

The Town argued this approach leaves open the possibility of the Taxpayer making a tax payment, gives the Town control over the property and ensures that the Town does not tax dollars in the future.

Board's Findings

Based on the board's interpretation of RSA 72:38-a, the Taxpayer's appeal must be granted. RSA 72:38-a requires municipalities to act upon the application for the exemption, and if granted, to file the elderly tax lien rather than a nonpayment lien. This conclusion is evidence by a reading of RSA 72:38-a and the deadline stated therein. There is nothing in the statute that supports the Town's present procedures. Additionally, the Taxpayer correctly pointed out that the composition of the board of selectmen may change from year to year. Thus, a situation could arise where the elderly lien was not timely granted and yet a tax sale could be so imminent as to cause stress and even the loss of the property due to the change in composition. Finally, RSA 72:38-a provides a 5% interest on unpaid taxes whereas the collection statutes -- RSA 76:13 (12%) and RSA 80:69 (18%) -- provide for much higher interest rates. Clearly the legislature intended to provide the elderly lien benefit to the elderly citizen upon application. The legislature did not intend the municipalities to obtain a benefit by delaying the granting of the lien.

Based on the above, the board orders the following:

- 1) the Town shall release the tax lien for the 1992 tax year; and
- 2) the Town shall file an RSA 72:38-a elderly tax lien with interest at 5% from the date of the bill. The Town shall file with the board, copying the Taxpayer's attorney, documentation showing compliance. This order shall be complied within 20 days from the clerk's date on this order.

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Findings of Fact

1. granted.
2. granted.
3. granted.
4. granted.
5. granted.
6. granted.
7. granted.
8. granted.
9. granted.
10. granted.
11. neither granted nor denied.

Rulings of Law

1. granted.
2. neither granted nor denied.
3. granted.
4. granted.

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 prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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 John E. Tobin, Jr., Esq., Attorney for Lucille McMann, Taxpayer; and Chairman, Selectmen of Northumberland.

Dated: March 1, 1994

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Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Town's" March 9, 1994 request for clarification of the "board's" decision dated March 1, 1994. The request is granted. The board hereby amends number three of its Rulings of Law on page three as follows:

#3. Granted in the amount of \$1,595.81 plus 5% annual interest.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that the foregoing order has been sent, postage

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prepaid to John E. Tobin, Jr., Esq., Attorney for Lucille McMann, Taxpayer;
and Chairman, Selectmen of Northumberland.

Dated: May 4, 1994

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Valerie B. Lanigan, Clerk