

Robert Preston

v.

Town of Pelham

Docket No.: 13826-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 taxation of eight "trailers" with a \$7,000 total assessment. The Taxpayer also owns, but did not appeal, two other lots in the Town with a combined \$110,300 assessment. For the reasons stated below, the appeal for abatement is granted based on the nontaxability of the trailers.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this burden.

Taxpayer's Arguments

The Taxpayer argued the trailers should not have been assessed because:

- (1) the trailers have been on the property for 20 years but were not taxed until 1992;
- (2) information from the department of revenue administration (DRA) indicated that trailers that can easily be moved are not taxable;

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- (3) one trailer was removed before April 1, 1993;
- (4) four trailers are semi-truck trailers with inflated tires, and these trailers can be moved; and
- (5) one trailer (shown in Municipality A as blue and white) was on the lot following an oil spill, was then used for storage and held for sale;
- (6) the two other trailers are old truck bodies used for storage, and they are sitting on railroad ties.

Town's Arguments

The Town argued the trailers were properly assessed because:

- (1) the trailers were being used as storage sheds and thus were taxable similar to utility sheds; and
- (2) the Town questioned the road-worthiness of the trailers.

The Town argued that deciding this appeal should be based on: 1) whether the trailers were not registered for highway use; 2) the trailers were not all roadworthy; 3) the trailers were used as surrogates for storage buildings; and 4) the trailers were used in connection with the real estate.

Board's Rulings

Based on the evidence and our analysis of the applicable law, the board finds the trailers are not taxable. Unfortunately, the statutes on point are not always clear in their application to these types of trailers.

The board's analysis focuses on whether the trailers are: 1) taxable under RSA 72:6; or 2) taxable under RSA 76:7-a.

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The RSA 72:6 analysis requires us to examine the RSA 21:21 statutory definition of "real estate," which includes: a) traditional real estate and fixtures (RSA 21:21 I); and b) "manufactured housing" as defined in RSA 674:31.

The RSA 72:7-a analysis requires us to decide whether the trailers constitute "[m]anufactured housing suitable for use for domestic, commercial or industrial purposes ***."

This decision begins with a description of the trailers followed by the board's analysis.

Description of Trailers

The assessment card shows six trailers at \$1,000 each and two trailers at \$500 each. The Taxpayer testified that one of the \$1,000-assessed trailers was off the property by April 1, 1993, and should not have been included on the assessment card. The remaining trailers consisted of the following.

- One mobile-home trailer assessed at \$1,000 (blue and white)
- Two truck-body trailers without chassis or wheels on railroad ties assessed at \$500 each
- Four semi-tractor trailers with wheels; none registered; some roadworthy; some not; but all could be moved around on the site; assessed at \$1,000 each

The Taxpayer uses the trailers for storage, some of which is related to the property's present use. The Taxpayer has sold similar trailers in the past, but some of the trailers have been on the lot for approximately 20 years. None of the trailers have any utilities.

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Taxability Under RSA 72:6

"All real estate, whether improved or unimproved, shall be taxed except as otherwise provided." RSA 72:6. RSA 21:21 defines real estate as follows. **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."

Under RSA 21:21 I, real estate that has been traditionally (under the common law) treated as real estate is also treated as real estate under RSA 72:6. Included as real estate under RSA 21:21 I, and thus under RSA 72:6, are fixtures. Black's Law Dictionary 574 (5th ed. 1979) defines "fixtures" 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 ***." In The Saver's Bank v. Anderson, 125 N.H. 193, 195 (1984), the court stated as follows.

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 adaption to the use or purpose of that 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 in original; citations omitted.)

Based on the above quotes and the presented facts, these trailers are not fixtures for several reasons, including the following.

1) While some of the trailers have been on the property for a substantial amount of time, the Taxpayer testified that he has previously sold similar trailers, has moved around the existing trailers, and has no intention to make the trailers a permanent part of the realty. Thus, the Taxpayer has no intention of making the trailers fixtures.

2) Regardless of the Taxpayer's intent, the trailers are not annexed to the land so as to become intrinsically and inseparably part of the realty.

RSA 21:21 also treats as real estate manufactured housing as defined under 674:31, which states as follows.

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 trailers do not meet this definition for several reasons. Except for the Taxpayer's mobile-home type trailer, the trailers are not "designed to be used as a dwelling ***" as required by RSA 674:31. The one mobile-home

type trailer is not considered taxable manufactured housing because:

1) the trailer was on the lot because it was involved in an oil-spill accident, which the Taxpayer's insurance company concluded warranted buying a

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replacement trailer for the former owners (The board did not receive any evidence on whether the trailer was habitable.);

2) the trailer was not hooked up to any utilities and was not being used for occupancy; and

3) the trailer was used for storage and sale (Taxpayer testified he had been trying to sell it.).

Taxability Under RSA 72:7-a

The legislature may make a type of property taxable as realty even if that property was personalty at common law. King Ridge Inc. v. Town of Sutton, 115 N.H. 294, 299 (1975). RSA 72:7-a I, which was enacted before RSA 21:21 added manufactured housing to the definition of real estate, states as follows.

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.

Does the term "manufactured housing" in RSA 72:7-a mean manufactured housing as defined in RSA 674:31? The board, in prior decisions, has

concluded that the RSA 674:31 definition applies to RSA 72:7-a. One reason for this conclusion is that RSA 72:7-a was amended in 1983 by substituting the term "manufactured housing" for "a house trailer, travel trailer or mobile home." The RSA 72:7-a change occurred in the same legislative session that

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defined manufactured housing in the planning statutes, and that added this RSA 674:31 definition to the RSA 21:21 definition of "real estate." Additionally in 1983, the legislature added RSA 21:46, which states: "The words mobile home shall mean manufactured housing as defined by RSA 674:31." Before its 1983 amendments RSA 72:7-a included the words "mobile home." Taken together, the board reads the amendments and enactments of RSA 72:7-a, RSA 21:21 II, RSA 21:46 and RSA 674:31 as being the legislature's attempt to enact a consistent definition of manufactured housing to be used for planning and taxation.

The DRA apparently shares the conclusion that the RSA 674:31 definition of manufactured housing should be read into RSA 72:7-a. New Hampshire Association of Assessing Officials State Statute Course Section XII (Oct. 1994) written by Jeff Earles, of the DRA.

Thus, because the trailers do not meet the RSA 674:31 definition of "manufactured housing," the trailers cannot be taxed under RSA 72:7-a.

The Town correctly directed the board's attention to the RSA 72:7-a words "commercial or industrial purposes." The Town asserted these words, in essence, meant the RSA 72:7-a definition of manufactured housing was more expansive than the RSA 674:31 definition. The board has considered this assertion but ultimately has not accepted it. First, we refer back to the 1983 statutory history of the term "manufactured housing." The board concludes to be taxable under RSA 76:7-a units must be more substantial than

just truck trailers and must have some of the attributes of units designed and built for dwellings (manufactured housing) or some type of human occupancy

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(portable office unit). Such factors might include: windows, doors, electricity, plumbing, and insulation. The Taxpayer's trailers, except the blue and white one, lacked such features.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$75,000 (land \$53,700; buildings \$21,300) 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. 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 Procedure

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 in 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

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limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert Preston, Taxpayer; and Chairman, Selectmen of Pelham.

Dated: June 17, 1996

Valerie B. Lanigan, Clerk

0006

Robert Preston

v.

Town of Pelham

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ORDER

This order responds to the "Town's" reconsideration motion, which is denied. The motion failed to establish the board's decision was erroneous in fact or law. See RSA 541:3.

The board's decision adequately addressed the issues raised by the motion, but the board wanted to respond to two issues.

First, the Town argued the board erred by not addressing RSA 72:7. The board did not cite RSA 72:7 because the board concluded storage trailers do not constitute "buildings," as used in RSA 72:7. Certainly, a plain-meaning approach to the word "building" would not include truck trailers. RSA 72:7-a addresses structures that are not traditional buildings but that nonetheless are taxable. The board decided the trailers were not manufactured housing

under RSA 72:7-a.

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Second, while the board understands that the "Taxpayer" uses the trailers in connection with the property, the board considers that to be a value attributable to the Taxpayer's use of the property and not attributable to any transferrable real estate value.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Robert Preston, Taxpayer; and Chairman, Selectmen of Pelham.

Date: July 29, 1996

Valerie B. Lanigan, Clerk

Robert Preston

v.

Town of Pelham

Docket No.: 13826-93PT

ORDER

A limited hearing was held on October 12, 1999, pursuant to a hearing notice dated May 21, 1999. This hearing was held to receive testimony from the parties on the supreme court's ruling in Appeal of Town of Pelham, __ N.H. __ (May 11, 1999) which affirmed in part, reversed in part, and remanded the appeal to the board of tax and land appeals, requiring the board apply the standards outlined in Pelham to determine whether trailers constitute buildings under RSA 72:7.

The board rules the seven trailers (four semi-tractor trailers, two truck-body trailers and one mobile home trailer) ("Trailers") are taxable as buildings based on the standard the court enunciated at page 3 of Pelham.

"A trailer is taxable as a building, if by its use it: (1) is intended to be more or less permanent, not a temporary structure; (2) is more or less completely enclosed; (3) is used as a dwelling, storehouse, or shelter; and 4) is intended to remain stationary."

Based on the facts presented in this case, all the Trailers meet these four standards.

Standards #1 and #4: Intended to be more or less permanent and to remain stationary.

The “Taxpayer” testified that he had acquired the four semi-tractor trailer trailers and the two truck-bodies for storage purposes. While additional semi-tractor trailers were initially purchased with intent of resale, the four on the “Property” in 1993 had been retained specifically to store materials and supplies associated with the Taxpayer’s business on the Property. As of the appeal year (1993), some of the trailers had been on the Property for 15 years. The Taxpayer testified that he had intended to construct a storage building but that the permitting cost of the “Town” was such that he dropped the plans and used the trailers for the same storage purpose. This scenario clearly highlights the owner’s intent to continue to use the trailers as buildings for storage. Neither the fact that the trailers had been recently relocated on the Property to better accommodate a U-Haul rental franchise, nor the fact that the four semi-tractor trailers were roadworthy and could be easily removed from the Property, negate the Taxpayer’s clear intention to keep the trailers on his Property for storage purposes.

The blue mobile home, while arriving at the Property for a different reason, has been used in a similar fashion as the semi-tractor trailers for storage. Again, while the Taxpayer stated he always had the mobile home for sale, his several years use of the structure clearly shows his intention to use it as a storage facility.

Standard #2: More or less completely enclosed.

The Trailers have the ability to be more or less completely enclosed. Clearly the blue mobile home and the four semi-tractor trailers all have the ability to have the doors completely closed providing a relatively water tight structure for storing materials. The two truck bodies also have doors that allow them to be completely enclosed and made water tight. The Taxpayer has also since added a lean-to shed roof to one of the truck bodies to enable an individual to stay dry while loading gas tanks stored within the truck body. This shed roof is a clear indication of

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the owner's on-going intent to use the truck body as a storage building.

Standard #3: Used as a dwelling, storehouse or shelter.

The Taxpayer's clear intent is reflected in the long use of these Trailers as storage buildings and as an alternative to a more conventionally constructed storage shed.

In conclusion, the specific facts presented in this case, lead the board to conclude that all four components of the standard have been met to constitute the Trailers as buildings under RSA 72:7. As a consequence, the board reverses its earlier decision of June 17, 1996, and rules the Trailers are taxable buildings under RSA 72:7.

On a general note, municipalities must carefully perform similar distinct analyses in any case to determine if a trailer is taxable as a building pursuant to RSA 72:7 and Pelham.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Douglas S. Ricard, Member

Steven H. Slovenski, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Robert Preston, Taxpayer; Diane M. Gorrow, Esq., Counsel for the Town of Pelham; and Chairman, Board of Selectmen of Pelham.

Date: October 25, 1999

Lynn M. Wheeler, Clerk

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ORDER

This order responds to the “Taxpayer’s” motion for rehearing and clarification (Motion). The board grants in part and denies in part the Motion.

First, the board denies the Taxpayer’s first argument that because trailers were not defined as buildings under RSA 72:7 in tax year 1993, no taxes should be paid on the trailers. The supreme court’s decision Appeal of Town of Pelham, __ N.H. __ (May 11, 1999), simply clarified the word “building” as contained in RSA 72:7 in 1993 and for many years prior. On remand, the board’s order of October 25, 1999 (Order) found that in accordance with RSA 72:7 the trailers were taxable as buildings in 1993. In short, Appeal of Town of Pelham did not create new law, it simply clarified existing law.

The board grants the Taxpayer’s request for clarification of whether the Order pertained to seven trailers or eight trailers. On page 3 of the board’s decision of June 17, 1996 (Decision),

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the board found that one of the \$1,000 assessed trailers was not on the property on April 1, 1993.

The balance of the Decision addressed the remaining seven trailers. On remand, the board's Order found the seven trailers to be taxable. Consequently, the Town, if it has not already done so, shall abate the taxes associated with the \$1,000 assessment on the eighth trailer with interest from the date of payment to the date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Steven H. Slovenski, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Robert Preston, Taxpayer; Diane M. Gorrow, Esq., Counsel for the Town of Pelham; and Chairman, Board of Selectmen of Pelham.

Date: December 1, 1999 _____

Lynn M. Wheeler, Clerk

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