

**Michael D. Carrier**

**v.**

**Town of Belmont**

**Docket No.: 17478-97PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$11,700 on a trailer in the Winnisquam Campground (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is a travel trailer containing less than 320 square feet;
- (2) the deck is not attached to the trailer and was made in multiple sections so that it could be easily moved;

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- (3) the trailer has all the necessary lights for over the road use and is registered for that purpose;
- (4) the trailer was removed from the lot/site it was on and placed in a holding area when the campground decided to become condominiumized and the lot was determined to be too close to the electric lines even though the Taxpayer had not given approval for the removal;
- (5) the trailer was occasionally moved from the site and taken over the road; and
- (6) the trailer was sold on June 2, 1997 and the Town should have apportioned the taxes between the owners.

The Town argued the assessment was proper because:

- (1) the trailer contained more than 320 square feet as there were two tip outs that should be counted in the living area;
- (2) the apportionment of taxes can be a contractual agreement between the buyer and seller and not within the Town's responsibility or jurisdiction;
- (3) the deck should not have been assessed; and
- (4) the trailer was assessed properly according to RSA 72:7-a I.

### **Board's Rulings**

Based on the evidence, the board finds the trailer was not taxable for the 1997 tax year for the following reasons.

The board's analysis focused on whether the trailer is: 1) taxable under RSA 72:6; or 2) taxable under RSA 72:7-a.

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 trailer constitutes “[m]anufactured housing suitable for use for domestic, commercial or industrial purposes \*\*\*.”

### **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 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 and manufactured housing as defined by RSA 674:31 is included in the term real estate under RSA 21:21 II.

**RSA 674:31 Definition.**

As used in this subdivision, “manufactured housing” means any structure, transportable in one of 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 Taxpayer testified that the trailer measured 34.5 feet long by 8 feet wide from tongue to back or a total of 276 feet. Mr. Earl (the Town’s representative) testified that he had recently measured the trailer four times. His measurements were 36 feet long by 8 feet wide with two tip-outs, one 3 feet by 7 feet and the other 4 feet by 7 feet for a total size of 337 feet. RSA 674:31 defines “‘manufactured housing’ as any structure...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, ....” There is a slight disagreement as to the size of the trailer in the traveling mode, 34.5 feet versus 36 feet. This difference is inconsequential when the tip-outs are factored in (Taxpayer’s measurements including tip-outs equal 325 square feet; Town’s measurements with tip-outs equal 337 square feet). Without consideration of the tip-outs, the trailer would measure less than 320 square feet; however, the statute is clear that it must be measured “when erected on site” which is more than 320 square feet. There is no question that the trailer was manufactured to allow more interior space by designing tip-outs and the Town has properly measured the trailer as it is sited.

## **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 incorporated 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 defined manufactured housing in the planning statutes, and that added this RSA 674:31 definition to the RSA 21:21 definition of "real estate." 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.

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Therefore, the board concludes the RSA 674:31 definition of manufactured housing should

be read into RSA 72:7-a. RSA 72:7-a defines manufactured housing as taxable if it was brought into the state on or before April 1 and remains here after June 15 in any year. The Taxpayer stated he was notified prior to April 1st that his lease was not going to be renewed on the site his trailer was sited on. The trailer was removed from the lot on April 21st and placed in a circle with other trailers to be sold. Under the RSA 72:7-a definition, the trailer was not set up on a lot “suitable for domestic ... purposes ...” beyond April 21st and was, therefore, not taxable.

If the taxes have been paid for the tax year 1997, the amount paid shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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 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.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Michael D. Carrier, Taxpayer; Jeffrey M. Earls, Assessor for the Town of Belmont; and Chairman, Selectmen of Belmont.

Date: April 29, 1999

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Lynn M. Wheeler, Clerk

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**Michael D. Carrier**

**v.**

**Town of Belmont**

**Docket No.: 17478-97PT**

**ORDER**

This “Order” responds to the “Taxpayer’s” September 21, 2000 motion for costs (“Motion”) and the “Town’s” September 28, 2000 response to the Motion. For the following reasons, the Motion is denied.

The board’s decision in this matter was dated April 29, 1999. The Taxpayer is requesting costs because: 1) the Town failed to deal with the Taxpayer in good faith once the application for abatement was filed; 2) the refund was not received until September 15, 2000; and 3) the refund lacked the costs the Taxpayer expended in presenting his case to the board.

The board’s authority to assess costs is contained in two statutes: RSA 76:17-b and RSA 71-B:9. Further, board rule TAX 201.39 allows the board to order a party to pay the other party’s costs “when the board finds the matter was frivolously brought, maintained or defended ... .” Generally, the courts and this board do not have the authority to award costs against a municipality in a tax abatement case unless there is a specific statute authorizing such an assessment of costs. See Tau Chapter of Alpha XI Delta Fraternity v. Town of Durham, 112

N.H. 233, 235 (1972). RSA 76:17-b does give the board specific authority to have the filing fee reimbursed by the town if the tax assessment was due to a “clerical error or a plain and clear error of fact and not of interpretation as determined by the board of tax and land appeals ... .”

Under the board’s RSA 71-B:9 authority to assess costs, the court has allowed the assessment of attorney’s fees against the state or one of its political subdivisions only where bad faith is found in the process of securing “a clearly defined and established right.” Harkeem v. Adams et al, 117 N.H. 687, 691 (1977). The court further states that bad faith is shown where the party in question has acted vexatiously, wantonly, obdurately or obstinately. The board finds the Taxpayer’s arguments are not convincing that the actions of the municipality constitute bad faith or that the municipality frivolously maintained the appeal. The issue raised under appeal as to the taxability of the Taxpayer’s trailer required a detailed analysis by the board which was outlined in its decision. The board finds the Town’s denial of the abatement application was not due to a clerical error or plain and clear error of fact; therefore, was not frivolously maintained or defended.

The board is disturbed by the length of time it took the Town to refund the taxes paid. However, the Taxpayer could have filed a motion for enforcement of the board’s decision pursuant to TAX 203.05(j) “no earlier than 2 months and a day after the clerk’s date on the decision and no later than 3 months after the clerk’s date on the decision” yet failed to do so. The Taxpayer waited until August 16, 2000, some 15 months after the date of the decision, to contact the Town.

Lastly, the board’s award of costs and the amount of refund of taxes have no bearing on each other. The refund is based on the amount of taxes overpaid plus the statutory 6% interest.

As stated above, the board only has authority to order the refund of a filing fee and the assessment of attorney's fees when "bad faith" or "clear error of fact" has been determined.

Motion for costs denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing order has this date been mailed, postage prepaid, to Michael D. Carrier, Taxpayer; Jeffrey M. Earls, Agent for the Town; and Chairman, Selectmen of Belmont.

Dated: October 18, 2000

Lynn M. Wheeler, Clerk