

**Joseph A. and Carol Lacasse**

**v.**

**City of Berlin**

**Docket No.: 17577-97EX**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 72:34-a, the "City's" May 6, 1998 denial of the Taxpayers' application for tax deferral provided under RSA 72:38-a. The Taxpayers also applied for exemption under RSA 72:37-a (improvements for the disabled) and RSA 72:37-b (disabled). The Taxpayers own an 85-acre lot with a single-family home assessed at \$53,600 (land \$44,900; buildings \$8,700) (the "Property"). For the reasons stated below, the appeal is denied in part and granted in part.

The Taxpayers have the burden of showing they were entitled to the statutory exemption or credit for the year under appeal. See RSA 72:23-m; TAX 204.06. The Taxpayer carried this burden.

The Taxpayers argued they were entitled to the exemption because:

(1) the application was timely filed with the City; even though the tax year for which deferral was requested was listed as 1994, they were seeking any type of assistance; and

(2) Mr. Lacasse was living in a trailer on the Property in 1997 and continually since that time.

The City argued its denial of the exemption was proper because:

- (1) the Taxpayers failed to timely file their application for the 1997 tax year;
- (2) even if the application was timely filed, the Taxpayers were not living on the Property because of the condemnation order, and therefore, do not qualify for the exemption; and
- (3) the board of assessors felt some attempt to pay the back taxes should have been made given the fact the Taxpayers were selling timber.

### **Board's Rulings**

First, the board denies the Taxpayers' appeal of the denial of RSA 72:37-a and 37-b exemptions. RSA 72:37-a exempts improvements to residential real estate to assist disabled persons. Because no such improvements exist at the Property, this appeal is denied. RSA 72:37-b enables municipalities to adopt an exemption for disabled individuals. However, since Berlin has not adopted the provisions of RSA 72:37-b, this appeal is also denied.

The Taxpayers also filed a RSA 72:38-a appeal.

RSA 72:38-a was generally amended in 1995 including the addition of paragraph VI which outlines the basis for this board's or the court's review of an appeal.

VI. When a taxpayer appeals the denial of a deferral application to the superior court or board of tax and land appeals, the court or board may reverse or affirm, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the court or board is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable.

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Based on the evidence, and as detailed below, the board finds the City's denial of the Taxpayers' request for RSA 72:38-a tax deferral for elderly and disabled was unreasonable, and

thus, grants a RSA 72:38-a tax deferral for 1997.

The first issue raised at hearing by the City as a basis for its denial was the Taxpayers' request for a 1994 tax deferral was not timely when submitted to the City on March 31, 1998. The board finds the Taxpayers' application was filed on March 31, 1998, and is timely for a 1997 application. The City is indeed correct that an application at that time for a 1994 tax deferral is grossly untimely. However, it was clear, based on the chain of events testified to at the hearing, the Taxpayers were intending to apply for any applicable tax deferral and were unaware at that time of the annual filing timelines. Moreover, the Taxpayers testified they specifically requested the 1994 year in their application because they had just received approval in 1997 for a 1993 tax deferral by the City. The board finds the City, when receiving the application, should have noted that it was untimely for the year requested but that, if the Taxpayers desired, it would be treated as an application for the 1997 tax year. The timeline for filing such application for the 1997 tax year with the City of Berlin was April 6, 1998. See RSA 72:1-d; RSA 76:16-d II (1997) (the board determined Berlin's notice of tax date to be February 6, 1998, and thus, the Taxpayers' application deadline was April 6, 1998). Further supporting the conclusion that the March 31, 1998 application should have been processed as a 1997 deferral application was the City's May 6, 1998 denial letter in which it stated the Taxpayers' timeline to appeal the decision was October 6, 1998, a timeline applicable to a 1997 denial, not a 1994 denial. Also, the Taxpayers' financial information submitted with the application was current information more applicable to the 1997

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tax year than the 1994 tax year. Without ascribing any blame, the board notes the City should have advised the Taxpayers of its inability to act on a 1994 request in 1998 but that it could be treated as a 1997 application. See Charbonneau v. Town of Rye, 120 N.H. 96, 99 (1980). "We

remind the town that it is their function to provide assistance to all their citizens.” *See N.H. CONST. pt. 1, art. 1.*

The City’s second basis for denying the application was that the Taxpayers were not “living in the home” as required by RSA 72:38-a I (c). On June 2, 1997, the City Health Department issued an order to condemn the Property (based on chapters 147 and 155-B) and ordered the Taxpayers to vacate the premises immediately. This condemnation was based on the City’s finding that the Property was unsanitary, unsafe and not fit for human habitation. All inventory of taxable property and any exemptions, deferrals or tax credits are made as of April 1 each year. RSA 76:2 (“... all property taxes shall be assessed on the inventory taken in April ...”); RSA 74:1 (“... inventory of taxable estate taken April 1...”); and RSA 72:33 I (exemptions, deferrals and tax credits are based on qualification as of April 1 of the year requested). The board finds no evidence was submitted as of April 1, 1997, that the Taxpayers were not living at the Property. Based on the testimony and evidence, the board concludes the Taxpayers were living on the Property, albeit perhaps in a trailer adjacent to the house, and thus, meet the RSA 72:38-a requirement of residing at the property for which the deferral is requested. The condemnation order requiring the Taxpayers to vacate the Property did not occur until several months later.

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Lastly, while not specifically argued by the City, the board is mindful of the requirement that a deferral is discretionary on the part of the assessors (and on appeal to the board or court) when “in their opinion the tax liability causes the taxpayer an undue hardship or possible loss of the property.” RSA 72:38-a I. Based on the evidence, specifically the Taxpayers’ testimony and financial documents, the board concludes that not granting a tax deferral would likely cause

undue hardship to the Taxpayers. The board understands the City's reluctance to grant a deferral partially as its representative stated that none of the \$10,000 of timber income had been applied towards the outstanding taxes. However, based on the board's review of the Taxpayers' finances and their testimony as to the use of those funds to live on and to pay legal fees relative to the City's condemnation action, the board finds the Taxpayers' moderate expenses exceed their income, and thus, finding that there exists a financial hardship due to the taxes is appropriate in granting the 1997 tax deferral. The City shall record a lien at the registry for the 1997 tax deferral as provided in RSA 72:38-a V.

Lastly, the board notes the frustration it often has in its limited jurisdiction in dealing with hardship appeals. The board's jurisdiction is usually limited to the issues and the tax years under appeal. However, we fully recognize that the financial situations that generate such appeals are usually not isolated to any one year. Consequently, in this case, the board strongly encourages the City and the Taxpayers, despite their history of differences, to explore possibilities for the Taxpayers to be able to continue to own the Property and reside there and still, as best as possible, meet their delinquent and future tax obligations to the City. We realize this is easier

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said than oftentimes it is to carry out; however, we believe it is in the best interest of both parties to actively pursue what alternatives may exist in achieving these two goals.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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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 Joseph A. and Carol Lacasse, Taxpayers; David C. Wiley of the Department of Revenue Administration, Agent for the City of Berlin; and Chairman, Board of Assessors, City of Berlin.

Date: July 7, 1999\_\_\_\_\_

Lynn M. Wheeler, Clerk

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