

Celeste C. Cote and Thomas M. Buckley

v.

Town of Frankestown

Docket No.: 17893-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$103,400 (land \$29,100; buildings \$74,300) on a single-family home on a 3.56-acre lot (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 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). The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased on June 12, 1998;
- (2) the sellers of the Property received both a veteran's exemption and an elderly exemption as of April 1, 1998; and
- (3) the date of assessment on the Property was as of April 1, 1998, and the Town should not have recalculated the assessment.

The Town argued the assessment was proper because exemptions run with the person, not the property; therefore the Taxpayers are not entitled to the exemptions received by the prior owners.

Board's Rulings

Based on the evidence, the board finds the taxes should be as assessed on April 1, 1998, accounting for an elderly exemption of \$40,000 and a veteran's tax credit of \$50.

All property is assessed based on its legal status as of April 1 of each year.

74:1 Annual List. The selectmen of each town shall annually, in April, make a list of all the polls and take an inventory of all the estate liable to be taxed in such town on the first day of that month.

76:2 Property Tax Year. The property tax year shall be April 1 to March 31 and all property taxes shall be assessed on the inventory taken in April of that year.

Further, all exempt property shall be inventoried by the assessors when determining each April 1 the real estate subject to taxation. RSA 74:2.

While it is true that many of the requirements for both RSA 72:39-a (elderly exemption) and RSA 72:28 (veterans' tax credit) relate to the owner of the property, the exemption is granted on the property as it existed April 1 for each tax year. The statutes contain no proration provision for such exemptions based on change of ownership part way through the tax year. Consequently, because the owners of the Property on April 1 qualified for a \$40,000 elderly exemption and a \$50 veterans' tax credit, these deductions apply for the entire 1998 tax year and must be reflected in the final tax bill. This ruling is consistent with assessing practices that value real estate as it physically exists as of April 1 (e.g., a house constructed starting on April 2 is not assessed until the following tax year).

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The board notes that house bill 1579 introduced in the 1998 session would have allowed a proration as argued by the Town. This bill, however, was voted inexpedient to legislate and never became law. At the hearing, Selectman Thulander noted that in his capacity as a representative of the general court, he has introduced house bill 1132 in the 2000 session to also allow such a proration. The board's review of the two bills notes that the wording is identical. Until such law is passed, the board rules the current statutes do not provide for such proration.

If the taxes have been paid, the amount paid in excess of \$1,842 for the 1998 tax year 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.

SO ORDERED.

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Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Celeste C. Cote and Thomas M. Buckley, Taxpayers; and Chairman, Board of Selectmen of Frankestown.

Date: January 31, 2000

Lynn M. Wheeler, Clerk

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