

Richard A. and Priscilla Sanborn

v.

Department of Revenue Administration

Docket No.: 18106-99HR

FINAL ORDER

This order responds to the statement filed in accordance with the board's April 11, 2000 order. The board ordered the parties file statements as to why this appeal should not be dismissed because the "Taxpayer" failed to meet the residency requirements pursuant to RSA 198:51, III (b). The Taxpayers did not file a statement. The department of revenue administration ("DRA") filed a statement on May 2, 2000, stating the appeal should be dismissed based on the Taxpayers' failure to comply with the residency requirements. Based on the evidence contained in the file, the board dismisses the appeal because the Taxpayers did not meet the residency requirements of RSA 198:51, III (b).

AUTHORITY

When reviewing the DRA's determination, the board's RSA 198:54, II authority is limited to errors of law or when the board finds the commissioner's actions to be arbitrary or

unreasonable. The board finds the DRA's denial of the Taxpayers' Education Property Tax Hardship Relief Application ("Application") was proper.

Pursuant to RSA 198:51, III, (b), claimants eligible for hardship relief must have resided in their homestead for a period of one year. RSA 198:50, II, defines homestead as "the dwelling owned by the claimant *** and used as the claimant's **principal place of residence** and the claimant's domicile for purposes of RSA 654:1 ***." (Emphasis added.) RSA 654:1 defines domicile as, "the voter's residence to which, upon temporary absence, he has the intention of returning. This domicile is that place in which he dwells on a continuing basis for a significant portion of each year."

The Taxpayers have two properties: one in Hebron and one in Holderness. The DRA granted the Taxpayers' Application for their primary residence in Holderness, but denied the Taxpayers' Application for the cottage in Hebron because the cottage is a secondary residence.

The board finds the DRA's actions were proper. RSA 198:50 clearly limits hardship relief to a claimant's principal place of residence. The Taxpayers' income tax returns, Applications and property-tax bills, including those mailed from the Town of Hebron, list a rural route mailing address out of Plymouth for Holderness. Clearly, the Taxpayers' primary residence is in Holderness and the Hebron property is a secondary cottage and, thus, the board must deny the appeal.

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(a). 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(f). 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.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to Richard A. and Priscilla Sanborn, Taxpayers; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Date: June 15, 2000

Lynn M. Wheeler, Clerk

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