

Frank J. and Lucy J. DePippo

v.

Department of Revenue Administration

Docket No.: 18109-99HR

FINAL ORDER

This order responds to both parties' statements 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 due to untimely filing. Based on the evidence contained in the file, the board orders the appeal be marked: "Dismissed due to untimely filing in accordance with RSA 198:51, VI; no further action; no costs."

The "Taxpayers" did not respond to the board's order.

The Department of Revenue filed its statement on May 2, 2000, which was one day past the filing deadline. The DRA stated it was, "in agreement with the board that the case should be dismissed *** ." By way of clarification, the board's order requested statements as to why the board should not dismiss the appeal based on the reading of the law and the evidence in the file. The board does not consider DRA's May 2, 2000 letter a statement as requested by the board. Further, the letter implies a silent agreement between this board and DRA as to the outcome of this appeal, which is not the case.

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. This matter involves a timely filing issue. The requirement for timely filing is in the nature of a statute of limitations and, thus, further appeal to the board is precluded. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's powers are entirely statutory); Arlington American Sample Book Company v. Board of Taxation, 116 N.H. 575, 576 (1976) (untimely appeal barred); see also Daniels v. B & J Realty, 134 N.H. 174, 176 (1991) (administrative boards do not have the authority to extend statutory deadlines). If the law clearly prescribes a filing deadline, the board must apply that deadline without exception because it lacks the authority to waive a deadline for any reason. In this case, the deadline to file at DRA was February 11, 2000. The attached photocopy of the Taxpayers' envelope clearly shows a February 23, 2000 postmark and meter date.

Based on the issues stated above, 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 Frank J. and Lucy J. DePippo, Taxpayers; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Dated: June 2, 2000

Lynn M. Wheeler, Clerk

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