

Gerald and Maureen A. D'Agostino

v.

Department of Revenue Administration

Docket No.: 18116-99HR

FINAL ORDER

The board has reviewed both its April 11, 2000 "Order," regarding the issue of whether this appeal should now be dismissed due to lack of timely filing of the "Taxpayers'" Application for Education Property Tax Hardship Relief ("Application"), and the parties' additional statements submitted in response to that Order. Based on the evidence in the file, including the statements presented by the Taxpayers, the board dismisses the appeal due to untimely filing in accordance with RSA 198:51, VI.

The DRA denied the Application because it was due on February 15, 2000 but was postmarked on February 22, 2000. The Taxpayers appear to concede the late filing but claim that they completed and returned the Application within four days of receiving it "in the mail."

When reviewing the DRA determinations on hardship relief applications, the board's authority to act is limited to correcting an "error of law or when the board finds the

commissioner's action to be arbitrary or unreasonable." RSA 198:54, II. As stated in the board's Order, the requirement for timely filing is in the nature of a statute of limitations and the board has no authority to extend statutory deadlines. See the case authorities cited in the Order.

Filing deadlines are strictly adhered to in New Hampshire, especially when they involve the question of whether a party has a right to process an appeal. As stated in Dermody v. Town of Gilford, 137 N.H. 294, 296 (1993), "Most jurisdictions require strict compliance with statutory time restrictions. [Citation omitted.] One day's delay may be fatal . . . New Hampshire follows this majority rule regarding compliance with statutory time requirements" [court "powerless" to act on property appeal filed one day late]; see also Phetteplace v. Town of Lyme, Grafton No. 97-845, Slip. Op. at 4¹ (N.H. Jan. 31, 2000) [dismissal of property tax appeal filed one day late].

Applying the law to the facts of this case, the board does not find that the DRA's enforcement of the statutory deadlines was either arbitrary or unreasonable. The Taxpayers failed to meet the February 15, 2000 deadline for applications from the Town of Hampton by at least seven days. The determinative issue is when the Application is filed, not how promptly the Taxpayers may have filled out the Application (four days in this case).²

¹ This opinion can be found on the Internet at the following State of New Hampshire website: <http://webster.state.nh.us/courts/supreme/opinions/0001/phette.htm>.

² Nothing in the law requires the municipality or the state to deliver the Application to taxpayers. Instead, it is the taxpayer's responsibility to obtain it from the municipality or the DRA directly. See REV 1203.02.

As a result, the board dismisses the Taxpayers' appeal on these grounds.

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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

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Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to: Gerald and Maureen A. D'Agostino, Taxpayers; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Date: June 2, 2000

Lynn M. Wheeler, Clerk

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