

Janet B. and Stephen T. Veiner

v.

Department of Revenue Administration

Docket No.: 18118-99HR

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 the Order. Based on the evidence in the file, including the statements presented by the Taxpayers, the board orders the appeal dismissed due to untimely filing in accordance with RSA 198:51, VI.

The department of revenue administration (“DRA”) denied the Application because it was due on February 11, 2000, but was postmarked on February 14, 2000. The Application was not received until February 15, 2000, four calendar days after the deadline. The Taxpayers assert that such a denial was arbitrary and unreasonable.

The Taxpayers state they mailed the Application via regular mail “at the New London, NH Post Office on Thursday, February 10, 2000.” The Application envelope was postmarked

February 14, 2000, by the Manchester, NH Post Office, apparently because New London forwards its mail through Manchester, according to the Taxpayer.

When reviewing the DRA's determinations on hardship relief applications, the board's authority 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 its 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.

While the board is not unsympathetic to the Taxpayers' predicament, the board does not find the DRA's enforcement of the statutory deadlines was either arbitrary or unreasonable. The DRA's administrative rules define filing to mean "to place a document in the actual possession of the department." REV 201.02(d). Taxpayers failed to meet the February 11, 2000 deadline for applications from the Town of New London by at least three days.

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].

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>.

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In light of the applicable law, the DRA's refusal to make a special exception to the 60-day filing deadline prescribed by statute was neither arbitrary nor unreasonable. As a result, the board dismisses the appeal on these grounds.

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.

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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: Janet B. and Stephen T. Veiner, Taxpayers; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Date: June 9, 2000

Lynn M. Wheeler, Clerk

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