

Howard D. and Leona E. Elliott

v.

Department of Revenue Administration

Docket No.: 18131-99HR

FINAL ORDER

This order responds to both parties' statements filed in accordance with the board's April 28, 2000 order. The board ordered the parties file statements as to why this appeal should not be dismissed due to untimely filing. The "Taxpayers" filed a statement on May 12, 2000, stating their Education Property Tax Hardship Relief Application ("Application") was untimely due to health problems and because the Taxpayers' representative received erroneous information from a town official regarding how to compute the deadline for filing the Application. The department of revenue ("DRA") filed its statement on May 11, 2000, stating the appeal should be dismissed because the Application was untimely (the filing deadline was February 15, 2000 and the Taxpayers filed the Application on February 16, 2000). Based on the evidence, the board dismisses the appeal because the Application was not timely filed in accordance with RSA 198:51, VI.

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 including the extenuating ones stated by the Taxpayers. In this case, the deadline to file at DRA was February 15, 2000. A photocopy of the Taxpayers' Application envelope shows a February 16, 2000 postmark and, thus, the board denies the appeal.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this order 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 Howard D. and Leona E. Elliott, 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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