

Michael W. and Madeline A. Belka

v.

Department of Revenue Administration

Docket No.: 18138-99HR

FINAL ORDER

This order responds to the statement filed in accordance with the board's May 24, 2000 order. The board ordered the parties to file statements as to why this appeal should not be dismissed due to untimely filing. The "Taxpayers" did not file a statement. The department of revenue administration ("DRA") filed its statement on May 23, 2000, stating the appeal should be dismissed because the Taxpayers' Education Property Tax Hardship Relief Application ("Application") was untimely (the filing deadline was February 15, 2000 and the Taxpayers filed their Application on February 25, 2000). Based on the evidence contained in the file, the board dismisses the appeal because the Application was not filed in accordance with RSA 198:51, VI.

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

Belka v. DRA
Docket No.: 18138-99HR

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 15, 2000. The Taxpayers' Application was signed on February 25, 2000 and mailed on that date; it was not timely. While the board is not unsympathetic to the Taxpayers' explanation for this delay, the present statute does not allow recognition of such reasons for a delay in filing. Therefore, 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.

Belka v. DRA
Docket No.: 18138-99HR

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 Michael W. Belka, Taxpayer; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Dated: June 26, 2000

Lynn M. Wheeler, Clerk

board\pfmldras\18138-99.lm