

Charles and Geraldine DeFrancesco

v.

Department of Revenue Administration

Docket No.: 18161-99HR

DECISION

The "Taxpayers" appeal, pursuant to RSA 198:54, the department of revenue administration's ("DRA") determination of the Taxpayers' 1999 claim for property tax hardship relief. The DRA denied this claim as untimely. For the reasons stated below, the DRA's decision is reversed and the case is remanded to the DRA for determination and payment of the exact amount of hardship relief the Taxpayers are entitled to receive.

The Taxpayers argued they were entitled to relief because:

- (1) eligibility for education property tax hardship relief should be based on their original application, not the second application they filled out when they learned the first one had not been received, which the DRA rejected as untimely; and
- (2) they did, in fact, mail their original application on December 22 or 23, 1999, well before the deadline, even though the DRA has no record of receiving this document and the Taxpayers did not keep a copy of it.

The DRA argued the denial was proper because:

- (1) the Taxpayers purport to have sent their first application for hardship relief in December, but did not do so by certified mail or keep a copy of it, which would be alternative ways of confirming a timely filing;
- (2) the DRA has no record of any such document and knows of no other instance where a taxpayer has claimed he or she sent a hardship relief application to the DRA that was not received;
- (3) the only application in the DRA's file is date stamped April 21, 2000, well beyond the statutory deadline of February 15 for hardship relief applications from residents of the Town of Seabrook ("Town"); and
- (4) the Taxpayers have the burden of establishing by competent evidence that they did meet the timely filing requirement.

Board's Rulings

While Chapter 338 of the New Hampshire Revised Statutes (the statewide education property tax law) contains no specific provision as to who has the burden in this type of appeal, it is well settled that in civil actions the burden of proof is generally on the plaintiff to establish its case by a preponderance of the evidence. Dunlop v. Daigle, 122 N.H. 295 (1982); Jodoin v. Baroody, 195 N.H. 154 (1958); TAX 201.27(f). In matters involving an appeal from a determination of the DRA, the DRA "is the defendant and the taxpayer is the plaintiff," as the DRA correctly points out in its Memorandum of Law (the "DRA Memorandum").

A timely filed claim is an essential pre-requisite for education property tax hardship

relief.¹ In general, when a claim “relative to tax matters” is “[m]ailed but not received by the state,” the claim “shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the . . . claim . . . was deposited in the United States mail on or before the due date for filing.” See RSA 80:55.

The board affirms the appeal because the Taxpayers have met their burden of proof: they have established, by a preponderance of competent evidence, that they did mail² a claim for hardship relief to the DRA on or before February 15, 2000, the due date for filing such claims for residents of the Town.

¹ Compare RSA 198:51, VI (claims are to be filed with the DRA “within 60 days of the due date of the taxes”); and REV 1203.01 (a) (“no later than 60 days after the due date of the property taxes”).

²Because that document is still missing from the DRA’s files, the board cannot determine whether the original claim was mislaid by the post office, mis-processed by the DRA or mis-addressed by the Taxpayers, to name just three mistake possibilities. Because this is a claim for hardship relief and because the Taxpayers cured the error as soon as they learned of it, it is not necessary to decide culpability for the lost document in this appeal.

The DRA denied the Taxpayers' claim solely because the hardship relief application contained in its file was "postmarked after the due date for your municipality." This denial is valid only if, as the DRA apparently assumed when it denied the claim, the Taxpayers had submitted only one application, the one received by the DRA in April 2000. Prior to this appeal, no opportunity was apparently given to the Taxpayers³ to establish that they mailed their original application to the DRA in December 1999, well before the filing deadline. After hearing the sworn testimony and other competent evidence produced by the Taxpayers, however, the board finds that is "more likely than not" (the preponderance of the evidence standard) that the Taxpayers did, in fact, mail their original application on a timely basis.⁴

The chain of events presented at the hearing is quite consistent with the Taxpayers' position that they mailed their original application on December 22 or 23, 1999 before they left the state for a three-month winter stay in Florida. The Taxpayers have a specific recollection of filling out and mailing the original application several days before leaving New Hampshire on December 26, 1999. The Taxpayers stayed in Florida from December 26 until April 1, 2000, and had no knowledge the DRA was not processing their first application.

³ Under the DRA's own regulations, authority exists for the DRA to afford a party "failing to comply" with "an opportunity to reform the noncompliant document" and also for the DRA to "modify or suspend any requirement or limitation" imposed by the regulations "when the interests of justice require." REV 201.08 and 201.09

⁴In its Memorandum, the DRA concedes that the "preponderance of the evidence" standard applies to this case. Cf. RSA 541:13 (governing appeals to the Supreme Court of agency actions, establishing "burden of proof" and applying "preponderance of the evidence" standard). See also Tzimas v. Coiffures by Michael, 135 N.H. 498, 501 (1992) (applying "more likely than not" formulation in a workmen's compensation case).

They did not learn of this situation until they made an inquiry at the Town's office in April, upon their return from Florida. "Cheryl," an employee in the Town Clerk's office, phoned the DRA on their behalf and told them the DRA had no record of their application for hardship relief. She helpfully typed the envelope for the second application for them and added the property tax bills and other information they needed to complete a second application. The Taxpayers immediately sent this second application to the DRA in April 1999 in the typed envelope. It was this second application, not the first, the DRA concluded was untimely.

While, in hindsight, it might have been prudent for the Taxpayers to keep a copy of the original application mailed in December 1999 or to send it by certified mail, return receipt requested, as the DRA now asserts, nothing in the statute or the regulations required them to do so. Under both RSA 80:55 and the DRA's own regulations, see REV 202.01(a)(1) and 201.02(d), a document is "considered filed" when it is "deposited in the United States mail"; ordinary (first class) mail, not certified mail, is sufficient for this purpose.

Whether the original application was somehow lost by the United States Postal Service or mis-routed by the DRA after receipt, the Taxpayers should not suffer a denial of their claim. Regarding the latter possibility, a DRA supervisor (Michael Lovely) testified at the hearing that, in his work experience at the DRA, it is possible for mail to get mis-routed even after being delivered to this agency by the Postal Service.

At the hearing, the DRA produced, for the first time, a document (Exhibit A) which provided added corroboration of the Taxpayers' sworn testimony. This document, dated April 20, 2000, is a handwritten note by a DRA employee named "Alan" referencing a contact with

“Cheryl” at the Town Clerk’s office. The Taxpayers testified, before seeing this document, that “Cheryl” called the DRA on their behalf, was informed by the DRA that it had no record of their claim, advised them to file a second claim and even addressed the envelope for them.

In summary, the board believes the Taxpayers have established, by a preponderance of competent evidence, that they timely filed an application for education property tax hardship relief in December 1999, even though the DRA, at present, has no record of receiving that document. The Taxpayers filed a second application in April 2000 only upon learning for the first time (from “Cheryl” at the Town Clerk’s office) that the DRA was not processing their original application for hardship relief. In light of these circumstances, it would be ‘arbitrary and unreasonable’ to penalize the Taxpayers for an “untimely filing.” See RSA 198:54, II. Upon remand of this case, the DRA shall review the claim on its merits and determine the exact amount of education property tax hardship relief the Taxpayers should receive. The DRA shall make such determination within 30 days of the date of this order, copying the board with its notice to the Taxpayers. The Taxpayers shall, upon receipt of the DRA’s ruling, notify this board in writing whether it is still necessary to proceed further with 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. 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(e). 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Charles and Geraldine DeFrancesco, Taxpayers; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: August 21, 2000

Lynn M. Wheeler, Clerk