

Meng Chi Tsen and Susan H. Francis

v.

Department of Revenue Administration

Docket No.: 18176-99HR

FINAL ORDER

The board's July 5, 2000 Order directed the parties to file statements as to why this appeal should not be dismissed due to untimely filing of the Education Property Tax Hardship Relief Application ("Application"). The board has reviewed the statements filed by the department of revenue administration ("DRA") and by the "Taxpayers". The DRA argues that the appeal should be dismissed because the Taxpayers' Application was untimely (the filing deadline was February 8, 2000, the Taxpayers signed their Application on April 10, 2000, and it was received by the DRA on April 11, 2000).

The Taxpayers, on the other hand, believe the late filing should be excused because they "did not receive a notice from the Department of Revenue Administration concerning hardship relief" and therefore "did not make a timely claim." Nothing in the education property tax hardship relief statute or the DRA's own regulations, however, obligated the DRA to provide specific notice to the Taxpayers of their right to apply for hardship relief or the applicable time lines.

The board has carefully reviewed the DRA's obligations in this regard. All the statute requires is that "The commissioner shall publicize notice of the education property tax hardship relief provisions in a suitable manner." RSA 198: 52, IV. The DRA's regulations require the agency to provide applications at local municipal offices, on the DRA's web site, or by request to the DRA by calling its "forms line" or at its office. REV 1203.02.

The Taxpayers do not claim that the DRA failed to meet these responsibilities to the public as a whole, but only that they did not receive specific notification from the DRA. No such obligation exists under either the applicable law or the DRA's regulations. Imposing such a requirement would be unreasonable, especially in light of the large number of potential claimants for hardship relief. While the lack of individual notice to each potential claimant may seem "unfair" to the Taxpayers, a contrary rule would be excessively onerous and inefficient.

The Taxpayers also appear to confuse their right to appeal the DRA's denial to this board with their own obligation to provide adequate grounds for reversing that denial once an appeal is filed. In this case, even after considering the Taxpayers' statement, the board can find no ground for reversing the DRA's decision.

As stated in the board's prior Order, and in the DRA's statement, the board has no authority to waive statutory deadlines and the statute is clear that applications for hardship relief must be filed with the DRA "within 60 days of the due date of the taxes." RSA 198:51, VI. See the authorities cited in the board's July 5, 2000 Order. The appeal is denied because the Taxpayers' failed to meet this statutory deadline.

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

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 Meng Chi Tsen and Susan H. Francis, Taxpayers; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Dated: July 31, 2000

Lynn M. Wheeler, Clerk