

Arthur E. and Dorothy N. Hill

v.

Department of Revenue Administration

Docket No.: 18192-99HR

FINAL ORDER

This order responds to both parties' statements filed in accordance with the board's July 24, 2000 order. The board ordered 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 "Taxpayers" filed a statement on July 26, 2000, stating they were in Hawaii, where Mr. Hill was receiving disability medical treatment, when the state made the announcement of relief application. Upon return to New Hampshire, about May 12, 2000, they found out about the possible tax relief and immediately took steps to gather the necessary paperwork. They stated they were within the 60-day deadline upon their notification of the tax relief. The department of revenue administration ("DRA") filed its statement on August 1, 2000, stating the appeal should be dismissed because the Taxpayers' Application was untimely (the filing deadline was February 25, 2000 and the Taxpayers filed their Application on June 6, 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.

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. In this case, the deadline to file at DRA was February 25, 2000. The attached photocopy of the Taxpayers' Application envelope clearly shows a June 6, 2000 postmark and meter date.

The Taxpayers believe the late filing should be excused because they did not receive a notice concerning hardship relief from either the DRA or the Town of Rye 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. The statute requires "[T]he 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. No obligation exists, under either the applicable law or the DRA’s regulations, for the DRA to notify individual taxpayers of the availability of hardship relief. Imposing such a requirement would be unreasonable, especially in light of the large number of potential claimants for hardship relief. While the lack of specific notice to each potential claimant may seem unfair to the Taxpayers, a contrary rule would be excessively onerous and inefficient. 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.

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 copies of the foregoing order have this date been mailed, postage prepaid, to Arthur E. and Dorothy N. Hill, Taxpayers; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Dated: August 11, 2000

Lynn M. Wheeler, Clerk