

Nicol E. Polka

v.

Department of Revenue Administration

Docket No.: 18378-99HR

FINAL ORDER

This order responds to the statements filed in accordance with the board's October 25, 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"). See RSA 198:51, VI. The "Taxpayer" filed a statement with the department of revenue administration ("DRA") (rather than the board) on November 15, 2000, stating, "I regret that the application was not in on a time, however, that should not preclude me from receiving a refund based on income status." The DRA filed its statement on November 13, 2000, stating its position that "the case should be dismissed without a hearing." Having reviewed these statements and the evidence contained in the file, the board dismisses the appeal.

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 the board's October 25, 2000 Order and the authorities cited therein. If the law clearly prescribes a filing deadline, the board must apply that deadline without exception because it lacks the authority to waive that deadline. In this case, the deadline to file at DRA was February 11, 2000. The attached photocopy of the Taxpayer's Application envelope clearly shows a September 1, 2000 postmark and meter date; 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

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 Nicol E. Polka, Taxpayer; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Dated: December 12, 2000

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Lynn M. Wheeler, Clerk

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CERTIFICATION

I hereby recertify that copies of the foregoing order have this date been mailed, postage prepaid, to Nicol E. Polka, Taxpayer; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Dated: December 21, 2000

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Lynn M. Wheeler, Clerk