

**Clyde F. Brown**

v.

**Department of Revenue Administration**

**Docket No.: 18436-00HR**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 198:54, the department of revenue administration's ("DRA") determination of the Taxpayer's 2000 education property tax hardship relief application. The Taxpayer requested, and was granted, leave to not attend the hearing. For the reasons stated below, the appeal is denied.

While Chapter 338 (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).

The Taxpayer argued he was entitled to reimbursement of 100% of the school tax increase rather than 50% as allowed by the DRA. He argued while Marilyn Hill was also named in the deed to the homestead, Ms. Hill did not reside there or pay any of the expenses associated

with the homestead.

The DRA argued the relief granted in the amount of \$227.29 was proper because Mr. Brown shares the title of the homestead with Ms. Hill. Pursuant to RSA 198:51, V, the DRA adjusted the assessed value to reflect the 50% ownership of Mr. Brown.

### **Board's Rulings**

Based on the evidence, the board finds the DRA's actions were neither unreasonable nor arbitrary, and therefore, sustains the DRA's adjustments of the Taxpayer's application.

RSA 198:51, V, reads:

**V.** If a homestead is owned by 2 or more persons as joint tenants or tenants in common, and one or more of such joint owners do not principally reside at such homestead, hardship relief applies to the proportionate share of the homestead value that reflects the ownership percentage of the claimant. Only one claim may be filed for a single homestead.

While the Taxpayer never submitted a copy of the deed with his application, he consistently represented that he held joint title interest with Ms. Hill, but she did not reside there or pay any of the homestead expenses. This is the specific situation that RSA 198:51, V, is intended to address by allowing only the proportionate share of the eligible owner's school tax increase. Consequently, the DRA's 50% allocation based on Mr. Brown's interest in the Property is appropriate and complies with the law.

As the board noted during the April 23, 2001 hearing, the DRA had settled with the Taxpayer in 1999 for 100% of the amount of the school tax increase. However, the board has reviewed the 1999 settlement agreement and notes that paragraph 5 specifically limited the settlement to the 1999 tax year and that it should "not be construed as, an admission by any party as to the relative merits of any of the legal positions advocated by the parties in this case."

(Settlement Agreement dated June 19, 2000.) At the hearing the DRA represented this settlement was perhaps appropriate for 1999 given the infancy of the new statewide property tax law, the DRA's administration of it and the lack of clarity of certain facts in that specific case. However, regardless of what the parties agreed to in 1999, the board is required to look at the facts submitted in the 2000 appeal and arrive at a decision consistent with the law. Consequently, the board rules the DRA's proportionate allocation is reasonable and the Taxpayer's appeal is denied.

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Clyde F. Brown, Taxpayer; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: April 27, 2001

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Lynn M. Wheeler, Clerk

**Clyde F. Brown**

**v.**

**Department of Revenue Administration**

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**ORDER**

The board has reviewed the “Taxpayer’s” concerns as expressed in his letter received May 7, 2001. The board will treat this letter as a “Motion for Reconsideration” (“Motion”) of the board’s Decision dated April 27, 2001 (“Decision”).

The Motion does not raise any new issues that were not raised on appeal and addressed in the Decision. Therefore, the Motion is denied.

Pursuant to RSA 541:6, any appeal of this order by the Taxpayer to the supreme court must be filed within thirty (30) days of the date on this order.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid to Clyde F. Brown, Taxpayer; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: May 23, 2001

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Lisa M. Moquin, Temporary Clerk

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