

Timothy M. and Brenda S. Leahy

v.

Department of Revenue Administration

Docket No.: 18460-00HR

FINAL ORDER

On March 23, 2001, the board received the “Taxpayers” RSA 198:54 appeal of the department of revenue administration’s (“DRA”) denial of the Taxpayers’ Education Property Tax Hardship Relief Application (“Application”) for property located in Monroe. The DRA denied the Application because it was untimely.

The notice of tax date for Monroe was November 15, 2000, and the tax due date was December 15, 2000. Pursuant to RSA 198:51, VI, claims for hardship relief must be filed with the DRA within 60 days of the due date on the taxes. Based on the notice of tax date and the statute, the deadline within which to file hardship relief applications with the DRA was February 13, 2001. The Application was signed on February 25, 2001 and postmarked on February 26, 2001; therefore, it was not timely.

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)

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(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 unless a valid exception is recognized.

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. The board reviewed the Taxpayers' March 22, 2001 letter, which explained why the Application was filed late. However, the current statute does not provide the board with the authority to extend an education property tax hardship relief application due to accident, mistake or misfortune. Based on the evidence contained in the file, including the DRA's photocopy of the Taxpayers' mailing envelope with a post office meter date of February 26, 2001, the board dismisses the appeal because the Application was not filed in compliance with RSA 198:51, VI.

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 Timothy M. and Brenda S. Leahy, Taxpayers; and Ms. Jan M. Wickens, Hardship Relief Bureau Manager, Department of Revenue Administration.

Dated: April 27, 2001

Lynn M. Wheeler, Clerk