

Town of Meredith

v.

Department of Revenue Administration

Docket No.: 18829-01-ER

DECISION

The “Town” appeals, pursuant to RSA 71-B:5, II (a) (Supp. 2001), the equalized valuation determined by the commissioner of the department of revenue administration (“DRA”) for tax year 2001. For the reasons stated below, the appeal is denied.

While this statute 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, 298 (1982); Jodoin v. Baroody, 95 N.H. 154-57 (1958). The same procedure applies in tax cases. See Appeal of Town of Sunapee, 126 N.H. 214, 217-218 (1985); TAX 201.27(f); and TAX 211.04 (“[t]he municipality shall have the burden to prove the DRA erred in calculating the equalized valuation.”) The burden, therefore, lies with the Town to prove the DRA’s determination was incorrect.

The Town argued it was entitled to relief because:

- (1) the DRA's use of the median overall sale-assessment ratio for a one-year time period centered on the assessment date of April 1 (i.e., October 1 through September 30 in each year) distorts the ratio for the Town for tax year 2001;
- (2) use of the DRA method results in a 79% ratio, substantially lower than the 86.3% ratio that would result if the prior tax year period (April 1, 2000 to March 31, 2001) is used in its place;
- (3) using the prior tax year period is more appropriate because a majority of sales in the Town occurred in the second half of the period prescribed in RSA 21-J:9-a, I (April 1 through September 30) and those sales reflected appreciation at a greater rate than in the first half (October 1 through March 31);
- (4) the Town is aggrieved by the DRA's determination because use of the lower computed ratio (79%) results in a higher equalized valuation and payment of a greater proportion of taxes by the Town to the county and the State; and
- (5) the DRA has authority under RSA 21-J:9-a, III to use a different method if it finds the method used is "unrepresentative of the property within the municipality."

The DRA argued the appeal should be denied because:

- (1) the relevant statutes, RSA 21-J:3, XIII and RSA 21-J:9-a (Supp. 2001), direct the DRA to use the time period in question (October 1, 2000 through September 30, 2001), rather than the tax year time-period preferred by the Town (April 1, 2000 through March 31, 2001), to conduct the annual sale-assessment ratio study needed to determine the equalized valuation;
- (2) the DRA was consistent in using this statutorily-defined, one-year time period for all 259 incorporated municipalities and unincorporated places in the State (unless the resulting number

of sales in any municipality falls below 20 when, according to its policy, the time period is expanded beyond one year);

(3) the Town was not aggrieved by the DRA's determination because if, for illustrative purposes, the time period desired by the Town (April 1, 2000 through March 31, 2001) is used and a time adjustment applied, the resulting ratio is 77% (DRA Exhibit 9), below rather than above the ratio under appeal (79%); and

(4) the Town failed to meet its burden of proof.

Board's Rulings

Based on the evidence, the board denies the appeal for the reasons set forth below.

Under RSA 71-B:5, any municipality "aggrieved by its own equalization valuation determined by" the DRA must file an appeal with the board within 30 days. In this case, the Town filed its original appeal on May 24, 2002 of a notice of finalized equalized valuation dated April 26, 2002, based on an "overall sales-assessment ratio" of 79% determined on March 15, 2002 by the agency's Equalization Bureau (DRA Exhibits 2 and 3). The board must "hear and make a final ruling" in an equalization appeal within 60 days of its filing.

The board finds the Town failed to prove it was "aggrieved" by the DRA's determination. The Town presented no compelling evidence as to why a different period of time (April 1, 2000 to March 31, 2001) should be used to compute the ratio. Moreover, as the DRA demonstrated for illustrative purposes, if the prior tax year period proposed by the Town is used, and a time adjustment applied, the resulting ratio is lower (by 2%) rather than higher than the 79% computed by DRA for tax year 2001. This would result in a higher rather than a lower share of county and State taxation for the taxpayers in the Town.

The board also finds the Town failed to prove its allegation that the DRA's decision to use the statutory period set forth in RSA 21-J:9-a resulted in a sample that was "unrepresentative" within the meaning of RSA 21-J:9-a, III, and hence that a different time period, such as the prior tax year, should be used in its place. The board notes that property values in the Town, as well as in many other, if not all, municipalities in the State, were increasing in the relevant time period (2000 and 2001). The Town failed to demonstrate, however, why using sales in the prior tax year period (April 1, 2000 to March 31, 2001) would result in a more "representative" sample, especially if no time adjustments are made from the dates of each sale to the assessment date. In addition, the Town conceded the use of a median ratio by the DRA was proper and acknowledged the median from the sample falls closer in time to the assessment date (April 1, 2001) when sales in the statutory time period followed by the DRA, rather than the prior tax year period proposed by the Town, are utilized.

While the uniform methodology sanctioned by the legislature and employed by the DRA to determine equalized valuation for each municipality may have inherent limitations of its own, since, for example, it relies on a non-random sample (sales in a given time period) to reach conclusions about the total population of properties and uses one summary statistic (the median, in this instance), the Town failed to prove how the alternative it has proposed in this appeal (use of a prior year tax period without time adjustments) would lessen these problems or be preferable from either a statistical or an equitable perspective. In the absence of such proof, the board cannot determine the DRA's application of the time period prescribed in RSA 21-J:9-a, I was not correct.

Any appeal of this decision must be filed with the clerk of the supreme court within 20

days of the date, appearing below, that the decision is mailed to the municipality. See RSA 71-

B:5, II (a).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Concurred, unavailable for signature
Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Chairman, Selectmen of Meredith; Lena Bolton, Assessor, Town of Meredith; and, John Hayes, Esq., Department of Revenue Administration.

Date: July 23, 2002

Anne M. Bourque, Deputy Clerk