

**Joseph and Margot Martin**

**v.**

**Town of Weare**

**Docket No.: 19558-02PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$14,000 on a 1999 camper trailer (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was improper because:

(1) the trailer was purchased and set up in a private campground (Cold Springs) located in the Town;

- (2) although the campsite was rented for an annual fee, no sewer or water services are provided from mid-October to April of each year;
- (3) there is very limited access to the Property during the winter months, except on a 'walk in' basis, because the campground is gated and closed to vehicular traffic and no overnight camping stays are permitted during these months;
- (4) the trailer should not be taxed because it is not a "permanent" structure;
- (5) in any event, they did not know of the Town's policies regarding the taxation of trailers and the exception made for those trailers not located onsite before May 15 of each year; and
- (6) the Taxpayers sold the trailer in August, 2002 and had it removed from the campground.

The Town argued the assessment was proper because:

- (1) the trailer meets all the definitional criteria for "manufactured housing" set forth in RSA 674:31 and is subject to taxation;
- (2) trailers can be taxed whether or not they are permanent in nature and whether or not water and sewer services are provided year round;
- (3) the Town had a policy (reflected in a March 15, 1999 memo set forth as Municipality B) of not taxing trailers removed during the winter months, so long as they remained offsite until May 15 of each year; and
- (4) the Taxpayers did not meet their burden of proving they were entitled to an abatement.

### **Board's Rulings**

Based on the evidence, the board finds the Property is subject to taxation and, since no evidence was presented regarding its value as of the assessment date, the appeal is denied.

RSA 21:21, II explicitly provides that “[m]anufactured housing as defined by RSA 674:31 shall be included in the term ‘real estate.’” RSA 72:6 authorizes property taxation as follows: “[a]ll real estate, whether improved or unimproved, shall be taxed except as otherwise provided.” Cf. King Ridge, Inc. v. Town of Sutton, 115 N.H. 294, 299 (1975) (apparent legislative policy behind this statute is to provide municipalities with broad power to tax real property within its boundaries).

The board finds the Property meets all of the elements of the definition of “manufactured housing” contained in RSA 674:31. In addition to the minimum dimension and size specifications, the trailer has plumbing, heating and electrical systems. There is no requirement in the statute that connections for these systems be “permanent” (rather than seasonal) in nature. The legislature may have thought including such a requirement would be unwise in light of many ‘stick-built’ camps and other structures that are used seasonally (with lack of heat, water and road access in winter, for example), but are still subject to property taxation, irrespective of their limited use. Thus, even if the Cold Springs Campground, where the trailer was located, is closed from mid-October to April and water and sewer hookups are discontinued, these facts do not mean the Property cannot be assessed and taxed. In summary, there is no exception for trailers that qualify as manufactured housing under the statutory definition.

The Taxpayers arguments regarding how the square footage should be measured are without merit. It is proper for assessment purposes to measure square footage using the outer dimensions of the structure.

The Taxpayers do not dispute the trailer was on the campsite from 2000 through August, 2002 when it was sold. RSA 72:7-a,I further recognizes that manufactured housing “is taxable

as real estate in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year.”<sup>1</sup>

The Taxpayers claim they did not know of the Town’s ability to tax the trailer. Lack of prior knowledge of whether property is subject to taxation or the Town’s assessment policies is not a valid means of avoiding taxes. Cf. Oakland Joint Venture v. Department of Revenue Administration, BTLA Docket No. 3604-87 (March 7, 1988) (taxpayer cannot use ignorance of law as a defense: request for abatement denied).

While the board has considered all of the Taxpayers’ arguments, including whether the trailer is a permanent structure, the lack of year-round sewer and water connections, and their lack of awareness of the tax and the Town’s assessment policy, these arguments are unavailing. As emphasized by the Town, decisional law, as well as the statutes discussed above, makes it clear the Property is subject to taxation. See, e.g., Municipality Exhibits C, D and E. (containing the order from Gosselin v. Town of Weare, Hillsborough Sup. Ct., Docket No. 96-E-0342, and the board’s decisions in Donahue, et al. v. Town of Weare, Docket No. 16366-95PT and Monroe v. City of Laconia, Docket No. 19175-01PT).

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

<sup>1</sup> The board need not rule on the validity of the Town’s stated policy (reflected in Municipality B) of not taxing trailers that are moved offsite during the winter months so long as they are not returned to the campground before May 15. The Taxpayers acknowledge the trailer was not moved offsite and was in the campground through this period. Their lack of awareness of the Town’s policy of not assessing certain trailers is not a ground for abatement. Cf. Appeal of Cannata, 129 N.H. 399, 401 (taxpayers required to pay “their fair share of taxes” even if others are arguably underassessed).

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

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph and Margot Martin, 4 Granite Avenue, Salem, New Hampshire 03079 Taxpayers; Chairman, Board of Selectmen, Town of Weare, Post Office Box 190, Weare, New Hampshire 03281; and Craig A. Nichols, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, New Hampshire 03258, representative for the Municipality.

Date: June 23, 2005

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Anne M. Stelmach, Clerk