

Lynda A. Moores

v.

Town of Rollinsford

Docket No.: 21576-05PT

ORDER

In a July 27, 2006 order, the board determined that “based on the Taxpayer’s July 18, 2006 response, it appears more likely than not that the inventory was filed timely with the ‘Town’ for tax year 2005.” The Town filed a letter on August 4, 2006 which the board considered a request for reconsideration (“Request”) of its July 27, 2006 order pursuant to RSA 541:3 and TAX 201.37. After receiving the Request, the board provided an opportunity for the Taxpayer to respond and she did so on August 21, 2006. Based on the information contained in the Request and the Taxpayer’s response, the board rescinds its July 27, 2006 order and dismisses the appeal as the board concludes the Taxpayer did not timely file her 2005 RSA ch. 74 inventory; thus, her appeal is barred in accordance with RSA 74:7-a.

The Town in its Request outlined and presented evidence of its detailed procedure of generating two copies of mailing labels, one to be placed on the inventory when mailed to taxpayers, and the second to be placed on the side of the inventory as it is returned to the Town. The Request contained a copy of the page of mailing labels indicating the Taxpayer’s inventory

had not been returned and thus the Taxpayer's second mailing label had not been detached from the printed form. The Town also submitted a copy of a second master list indicating an RSA 74:7-a monetary penalty was to be applied to the Taxpayer's property because of the lack of inventory being filed; also a copy of the Taxpayer's final 2005 tax bill was submitted showing the assessment of the \$50 dollar penalty. The Town also indicated in its Request that it had double checked other "M" files to ensure the Taxpayer's inventory had not been misfiled.

The Taxpayer's letter provided no specific recollection or evidence of the inventory having been returned. Instead, she simply asserted she had routinely returned the inventory in past years and had no reason not to return it for 2005.

Based on the above submissions from the Town and the Taxpayer, the board concludes the Town's system of mailing and receiving inventories is a good and generally reliable system and, while not 100% infallible, provides a high level of certainty the Taxpayer's inventory was not returned.

The Taxpayer in her letter also argues the filing of the inventory is irrelevant under the circumstances because no changes in the property had occurred from the prior tax year and the case should proceed to be decided on its merits. While there is always a strong desire to resolve cases on their merits, where the statutes provide the specific prerequisite jurisdictional requirement of filing an inventory, the board has no latitude of allowing an appeal to proceed if it determines, on the balance of evidence, the inventory was not filed, as it has in this case.

The following cite from a recent supreme court decision, Appeal of Brady, 145 N.H 308, 309 (2000) clearly states the rights of the taxpayers and the authority of the board are strictly statutory.

‘The powers of the board and the rights of taxpayers appearing before the board are entirely statutory and are limited by the terms of the statute.’ *Appeal of Gillin*, 132 N.H. 311, 313, 564 A.2d 459, 460 (1989) (quotation omitted). RSA 74:7-a provides in pertinent part:

Any person who fails to file a fully completed inventory form on or before April 15, unless granted an extension under RSA 74:8, shall pay a penalty Any person who fails to file an inventory form and who becomes liable to pay the penalty specified in this section shall lose the right to appeal the denial of an abatement which is claimed on the grounds of improper assessment valuation

RSA 74:7-a, I (Supp. 1997). RSA 76:16-a, I (Supp. 1999) provides that ‘any person aggrieved, having complied with the requirements of RSA 74’ may appeal the Town’s failure to abate property taxes to the board. ‘RSA 76:16-a, I ... makes clear that compliance with RSA chapter 74 is a condition precedent to the right to appeal.... RSA 76:16-a, I ... does not confer upon the board discretion to permit an appeal by a noncomplying taxpayer.’ *Pelham Plaza v. Town of Pelham*, 117 N.H. 178, 181, 370 A.2d 638, 640 (1977) (construing an earlier version of the statute).

In summary, because the board has determined from the evidence submitted the Taxpayer did not file her 2005 inventory, the board has no authority to allow the appeal to continue and therefore dismisses 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. 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Lynda A. Moores, 4 Cottage Lane, Rollinsford, NH 03869, Taxpayer; and Town of Rollinsford, Chairman, Board of Selectmen, PO Box 309, Rollinsford, NH 03869.

Date: September 11, 2006

Anne M. Stelmach, Clerk