

Scotch Pine Properties

v.

Town of Loudon

Docket No.: 22490-05OS

DECISION

The “Taxpayer” appeals its payment of property taxes on a manufactured home owned by a former tenant (Todd Rumrill) who rented a space identified as Lot #10 on the Taxpayer’s land (operated as the Scotch Pines Mobile Home Park). On September 7, 2006, the Taxpayer paid to the “Town” under protest (to satisfy the requirement imposed by the Town for issuance of a building permit for Lot #10) the sum of \$4,573.16, representing four years of unpaid taxes owed by Mr. Rumrill on the manufactured home. On October 30, 2006, the Taxpayer filed this appeal seeking a refund.

The board has jurisdiction to hear this appeal. See RSA 71-B:5, I and RSA 71-B:11. The board finds the Taxpayer met its burden of proving it is not liable for the back taxes on the manufactured home and is entitled to a refund. The appeal is therefore granted.

The Taxpayer argued:

- (1) it did not, and does not, own the manufactured home and it is still owned by Mr. Rumrill;
- (2) because of unpaid rent owed on Lot #10, the Taxpayer began tenant eviction proceedings against Mr. Rumrill in December, 2005 with a “Notice to Quit” and obtained a “Writ of Possession” from the District Court on June 21, 2006;

- (3) the Writ of Possession allowed the Taxpayer to regain possession of Lot #10, but not the manufacture home which had been abandoned by Mr. Rumrill and which was then moved and stored at another location in the park;
- (4) wanting to improve and re-rent Lot #10, the Taxpayer applied for a building permit from the Town, which was not granted until payment of back taxes owed, and the Taxpayer did so under protest;
- (5) the Taxpayer has never consented to being taxed on the manufactured home (see RSA 73:10);
- (6) RSA 73:16-a (Personal Property on Land of Another), as amended in 1991, does not permit the Town to collect the tax from the Taxpayer because it provides: “The provisions of this section shall not apply to manufactured housing subject to taxation pursuant to RSA 72:7-a. The tax due on the manufactured housing shall only be assessed to the owner of the manufactured housing, and not upon the owner of the land upon which the manufactured housing is left”;
- (7) in addition to this exclusion, RSA 73:16-a has a “notice in writing” provision to the owner of the land which the Town did not comply with;
- (8) the Taxpayer pays a separate tax to the Town on the land it owns, including Lot #10, and has never consented to being taxed on the manufactured home owned by Mr. Rumrill; and
- (9) the Taxpayer is entitled to a full refund of the \$4,573.16 paid and is not obligated to pay the additional tax of \$71.19 assessed by the Town after issuance of its final tax bill for tax year 2006 on the manufactured home.

The Town argued the appeal should be denied because:

- (1) the Town assumed the Writ of Possession obtained by the Taxpayer gave it ownership of the manufactured home on Lot #10, as well as repossession of the land;
- (2) the Taxpayer is in possession of the manufactured home, neither Mr. Rumrill nor his finance

company has reclaimed it, and it is still being stored on the Taxpayer's land rather than being moved elsewhere;

(3) the Taxpayer is liable for a jeopardy assessment under RSA 76:10-a;

(4) RSA 80:2-a prohibits the removal of the manufactured home from the location where it was last taxed until all property taxes owed have been paid in full, which the Taxpayer did; and

(5) the Selectmen correctly decided not to grant an abatement to the Taxpayer.

Board's Rulings

Based on the evidence presented and the applicable statutes, the board finds the Taxpayer met its burden of proving it was not obligated to pay the taxes on the manufactured home which the Town required to be collected. The Taxpayer is entitled to a full refund and the appeal is therefore granted.

As noted by the Taxpayer, and now conceded by the Town, RSA 73:16-a, as amended in 1991, explicitly precludes assessing the RSA 72:7-a tax on a manufactured home against the owner of the land on which it is situated. By reason of this statutory amendment, it is now clear that only the owner of the manufactured home is subject to this tax, not the owner of land in the mobile home park on which it may be located or may have been left. This remains true unless, of course, the owner of the land "consent[s] to be taxed" under RSA 73:10. It is undisputed the Taxpayer never gave such consent, but only paid the back taxes on the manufactured home under protest because of the Town's refusal to issue a building permit without collection of these sums.

Upon review, the board finds the Writ of Possession, by its terms, did not make the Taxpayer the owner of the manufactured home, but simply gave the Taxpayer the right to regain possession of Lot #10, the land on which it was situated. After obtaining this relief from the District Court, the Taxpayer moved the manufactured home still owned by Mr. Rumrill to a storage area on its land.

The board disagrees with the Town's argument regarding the relevance of RSA 80:2-a. This statute requires the "owner" of the building or structure to provide proof of payment of taxes before it is moved from the location where it was last taxed. The Taxpayer, however, has never claimed ownership of the manufactured home. In addition, it did not move the manufactured home until after obtaining a Writ of Possession for the land (Lot #10) on which it was situated.

For similar reasons, the board cannot find the Taxpayer was liable for a jeopardy assessment under RSA 76:10-a. That statute can be applied by the Town under appropriate circumstances only to "the owner or person to whom such property is assessed." The Taxpayer did not own the manufactured home and was never assessed for it, either under RSA 72:7-a or otherwise.

As noted at the hearing, the Town has a remedy for the back taxes owed. It can proceed against Mr. Rumrill, the owner of the manufactured home, or undertake lien proceedings to take possession and sell the manufactured home to recover the taxes owed. The manufactured home is still within the Town's jurisdiction for taxation and lien purposes. The Taxpayer does not dispute the Town's interest in the manufactured home. A different question could arise, of course, if there was such a dispute or if the Taxpayer was using Mr. Rumrill's manufactured home (by renting it to another, for example), rather than simply storing it (without water and sewer connections).

For all of these reasons, the board finds the Taxpayer is entitled to a full refund of the back taxes paid and is not obligated for any additional taxes assessed on the manufactured home owned by its former tenant, Mr. Rumrill. The Town is therefore ordered to issue a full refund of the amount paid (\$4,573.16), with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has been mailed this date, postage prepaid, to: Scotch Pine Mobile Home Park, c/o Marie Sherman, 7021 Shaker Road, Loudon, NH 03307, Taxpayer; David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, representative for the Town; Chairman, Board of Selectmen, Town of Loudon, PO Box 7837, Loudon, NH 03307; and Todd Rumrill, PO Box 7863, Loudon, NH 03307.

Dated: 2/8/07

Anne M. Stelmach, Clerk