

Donald A. Sisson

v.

Town of Epping

Docket No.: 21510-06OS

ORDER

In response to the board's January 24, 2006 order, the Epping town administrator, Stephen R. Fournier, filed a letter on February 7, 2006. The letter states the Epping board of selectmen is accepting and will review abatement requests under RSA 76:16 to determine if the increase in assessments as a result of the 2005 reassessment causes certain individuals to be unable to pay their taxes due to "poverty and inability to pay".

The letter is correct in noting the selectmen do have the authority to grant abatements pursuant to RSA 76:16 for good cause if an individual can show "poverty and inability to pay." Barksdale v. Town of Epsom, 136 N.H. 511, 514-16 (1992); Briggs' Petition, 29 N.H. 547 (1854). The board notes, however, the criteria for granting such abatements are significantly different than the criteria for granting RSA 72:39-a elderly exemptions. Elderly exemption qualifications are statutory relating to certain residency and income and asset criteria. Qualifications for determining if good cause exists to grant a RSA 76:16 abatement for "poverty and inability to pay" is not statutory but rather contained in case law and is significantly different

than the elderly exemption criteria. The seminal case that sets out the criteria for determining poverty and inability to pay is Ansara v. City of Nashua, 118 N.H. 879 (1978) (copy attached). The criteria enunciated therein is that taxpayers who claim “they are entitled to an abatement because of poverty and inability to pay, and who have some equity in their homes, must show it is not reasonable for them to relocate, refinance, or otherwise obtain additional public assistance.” Id. 881. Consequently, if the Town is to grant any abatements for “poverty and inability to pay,” the criteria enunciated in Ansara must be met.

The assessing statutes clearly grant municipalities the initial responsibility to assess and abate property. However, the state has reserved the oversight responsibility of local assessing actions to both the department of revenue administration (“DRA”) in its RSA ch. 21-J authority and the board in its RSA 71-B:16 reassessment authority to ensure municipalities comply lawfully with the assessing provisions in this state. Cf. Sirrell v. State, 146 N.H. 364 (2001). The board can intercede in municipal assessing functions when a municipality “fraudulently, improperly, unequally, or illegally” assesses or abates taxes. RSA 71-B:16. Because there is no evidence the Town has, to date, granted any abatements improperly, the board will not retain jurisdiction of this matter. Rather, the board expects the Town selectmen to comply with the applicable law summarized above and leave it to the DRA, through its RSA 21-J:11-a assessment review and reporting responsibilities, to review that Epping’s “assessment practices substantially comply with applicable statutes and rules.” The board notes Epping is scheduled for such assessment review for tax year 2005 and thus the DRA should review the Town’s compliance with granting these abatements consistent with the above outlined law.

For the reasons stated above, the board closes the record and file in this docket.

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 a copy of the foregoing Order has this date been mailed, postage prepaid, to: Donald A. Sisson, PO Box 438, Epping, NH 03042, Taxpayer; Chairman, Board of Selectmen, Town of Epping, 157 Main Street, Epping, NH 03042; Guy Petell, New Hampshire Department of Revenue Administration, PO Box 457, Concord, NH 03301-0457; and Robert Boley, New Hampshire Department of Revenue Administration, PO Box 457, Concord, NH 03301-0457, Interested Parties.

Date: 2/24/06

Anne M. Stelmach, Clerk