Comcast Corporation

v.

City of Lebanon

Docket No.: 23339-06PT

ORDER

This order responds to the "City's" March 11, 2008 Motion for Reconsideration ("Motion") of the board's February 11, 2008 order ("Order") denying the City's January 21, 2008 Motion to Dismiss. The Taxpayer filed an objection to the Motion on March 17, 2008. For the following reasons, the Motion is denied.

In short, the Motion, through convoluted logic, argues the board's September 24, 2007 amendment of Tax 203.02(d) is confirmation the board had existing authority, contrary to its holding in Belmar/PAG Limited Partnership v. City of Nashua, et al., Docket No. 21029-04PT (May 18, 2006), to dismiss a taxpayer's appeal due to taxpayer failure to sign the abatement application as provided for in RSA 76:16, III.

We disagree. At the time this issue was raised in Belmar and at the time of Comcast Corporation filing its abatement application with the City, there existed no specific statute or rule enunciating the penalty for not complying with the taxpayer signature on the abatement application. Thus, the board in its Order relied upon its prior holding in Belmar as being applicable. While the board did state in Belmar this is an issue the legislature may

wish to address, the fact the legislature declined to do so did not preclude the board through its RSA 71-B:8 rulemaking authority from adopting a rule to "implement, interpret, or make specific" … (RSA 541-A:1, XV) the provisions of RSA 76:16, III which the board has the authority to administer. However, the amendment to the rule was not effective (see RSA 541-A:16, III) nor did it have the force of law (RSA 541-A:22, I and II) until adopted pursuant to the requirements of RSA Ch. 541-A.

Moreover, the rulemaking process by an executive branch administrative agency, such as the board, is a function overseen and approved by the legislative branch through the "joint legislative committee on administrative rules", see RSA 541-A:2 and 541-A:13, and adopted only after a regimented procedure providing for public input both during the development of the rule and at a public hearing before the joint legislative rules committee. Thus, having followed that process, the amended rule Tax 203.02(d) has been reviewed and determined by the legislative branch as being in concert with the legislative intent of RSA 76:16. However, the applicability of the rule occurs only after it is properly adopted. As noted in the Order, because the abatement application was filed with the City on June 12, 2007, prior to the board's subsequent amendment on September 24, 2007 of Tax 203.02(d), the new provisions of the rule were not effective at that time.

Pursuant to RSA 541:6 and RSA 71-B:12, any appeal to the supreme court by the City must be filed within thirty (30) days of the date of this order denying the Motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Christopher Maffucci, Esq., Casner & Edwards, LLP, 303 Congress Street, Boston, MA 02210, Representative for the Taxpayer; Shawn M. Tanguay, Esq., Gardner Fulton & Waugh P.L.L.C., 78 Bank Street, Lebanon, NH 03766, Representative for the City; and Chairman, Board of Assessors, City of Lebanon, 51 North Park Street, Lebanon, NH 03766.

Date: 3/26/08

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Anne M. Stelmach, Clerk