

Nynex/New England Telephone Co.

v.

City of Somersworth

Docket No.: 23668-07PT

ORDER

This Order responds to the October 29, 2008 “Motion to Dismiss Appeal as Untimely” (the “Motion”) filed on behalf of the “City” by its attorneys, Mitchell Municipal Group, P.A. The Motion is denied.

The relevant procedural facts can be summarized briefly and are not in dispute. The “Taxpayer” filed this appeal by mail postmarked September 2, 2008 and received by the board on September 4, 2008. (September 2nd fell on a Tuesday, one day after the “Labor Day” legal holiday when the courts and the post office (as well as the board) were all closed.)

The thrust of the Motion (see p. 1) is that the Taxpayer’s appeal document was “untimely and must be dismissed.” The board does not agree for several reasons.

There is no doubt this tax abatement appeal would have been untimely if filed in the superior court. See Phetteplace v. Town of Lyme, 144 N.H. 621 (2000), cited in the Motion (at pp. 1 -3). The City’s reliance on Phetteplace is entirely misplaced, however, because the supreme court noted the board’s filing rules were different and did not suggest or imply that such rules were improper.

Id. at 623-24.

More importantly, RSA 76:16-e, which the Motion fails to cite, is dispositive of the issues raised by the City. This statute, effective August 5, 2000 (six months after Phetteplace was decided) provides: “The timely filing and mailing of any document relative to the administration and appeal of any state or municipal tax, either by a municipality or the board of tax and land appeals, shall be determined in accordance with RSA 80:55.” (Cf. RSA 21-J:28-b, VII: “Compliance with the filing deadlines in this section relative to the department of revenue administration or the board of tax and land appeals shall be in accordance with RSA 80:55.”)

The board’s timely filing rules conform to these statutes. In particular, Tax 102.28(b)(2) refers to RSA 80:55 and explicitly provides that the postmark date is the applicable date to determine if a document is timely filed with the board. RSA 80:55, III further provides that if the date for filing is a Saturday, Sunday or legal holiday, “the filing shall be considered timely if performed on the next business day.” See also Tax 201.03(a).

As noted above, the postmark of September 2, 2008 (the next business day after a legal holiday) makes this appeal timely, contrary to the assertions in the Motion. Given the simple statutory basis for resolving this question, the board need not address any of the remaining arguments in the Motion.

In summary, the Motion is denied.

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 copies of the foregoing Order have been mailed this date, postage prepaid, to: James F. Doherty, Thomson Tax & Accounting, 22 Thomson Place, MS-11F1, Boston, MA 02210, representative for the Taxpayer; Chairman, City Council, City of Somersworth, 1 Government Way, Somersworth, NH 03878; and Laura Spector, Esq., Mitchell Municipal Group, P.A., 25 Beacon St. East, Laconia, NH 03246, counsel for the City.

Dated:

Anne M. Stelmach, Clerk