

Tim and Suzette Autrey

v.

Town of Swanzev

Docket No. 24829-09PT

DECISION

The board has reviewed the “Taxpayers” September 15, 2010 letter, filed in response to the Clerk’s August 30, 2010 letter advising them of the “Town’s” position that they did not file the “tax year 2009 Inventory of Taxable Property (‘Inventory’) as required by law.” See RSA ch. 74 (Annual Inventory of Polls and Taxable Property). This appeal for tax abatement on the “Property” is dismissed, pursuant to RSA 74:7-1, for the following reasons.

The Taxpayers did not complete and return to the Town the required Inventory at all for tax year 2009. They were required to file the form either by April 15, 2009 (under RSA 74:7) or, at the latest, by May 31, 2009 (“before June 1”) if they were “prevented by accident, mistake, or misfortune” from “returning the same to the selectmen or assessors on or before April 15” (under RSA 74:8). The extension of time to file due to “accident, mistake or misfortune” is simply not available if no return of the Inventory sent by the Town is made before June 1.

In explaining why no Inventory was completed and returned to the Town for tax year 2009, the Taxpayers state they did not purchase the Property “until October 30, 2010” (sic) and they have no knowledge as to the filing of records with the town before that date.

Notwithstanding these explanations, this appeal must be dismissed because the board simply does not have jurisdiction to proceed. Under the statutes and case law, “compliance with RSA chapter 74 (the Inventory filing requirement) is a condition precedent to the right to appeal” and the board has no “discretion to permit an appeal by a noncomplying taxpayer.” Pelham Plaza v. Town of Pelham, 117 N.H. 178, 180 (1977), quoted in Appeal of Brady, 145 N.H. 308, 309 (2000). Cf. Rye Beach Country Club v. Town of Rye, 143 N.H. 122, 125 (1998) (“a properly filed inventory is a jurisdictional prerequisite for the superior court [or the board] to order an abatement. See RSA 76:17 [and RSA 76:16-a]. (Citation omitted.)”).

In Brady, the taxpayer (who purchased the property in April) argued he should be excused from the Inventory filing requirement due to “accident, mistake, or misfortune” (because the previous owner had failed to file the Inventory mailed by the municipality in March) and that he should not be bound “by the previous owner’s failure to file.” 145 N.H. at 309 and 310. The supreme court disagreed and found these arguments “unavailing,” holding the taxpayer accountable for the failure and neglect of the previous owner. Id. Similarly here, the mere fact the prior owner may not have been diligent in filing the Inventory when it was received is unavailing.

The Town complied with its obligations under RSA ch. 74 by sending the Inventory “to the last known address” of the Property owner at the time of the mailing. See RSA 74:5.

For these reasons, the appeal is hereby dismissed.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

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 Decision has this date been mailed this date, postage prepaid, to: Tim and Suzette Autrey, 101 Highland Circle, Swanzey, NH 03446, Taxpayers; Chairman, Board of Selectmen, Town of Swanzey, PO Box 10009, Swanzey, NH; and Vision Appraisal Technology, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: October 6, 2010

Anne M. Stelmach, Clerk