

**M. Joan Curcio and Diana S. Parker**

**v.**

**Town of Eaton**

**Docket No. 25144-09PT**

**DECISION**

On September 16, 2010, the board sent a checklist to the “Town” requesting specific timely filing information including the filing date of the “Taxpayers” 2009 abatement application with the Town. The Town reported the abatement application was filed with the Town on March 9, 2010 and attached a copy of the abatement application which contained the signatures of the two taxpayers, Ms. Parker on 2/24/10 and Ms. Curcio on 03/01/10. The board then, on October 20, 2010, provided the Taxpayers an opportunity to submit “sufficient evidence” the abatement application was filed on or before March 1, 2010 in accordance with RSA 76:16.

On October 26, 2010, the Taxpayers responded to the board’s inquiry and enclosed a copy of the abatement application filed with the Town asserting the abatement application was mailed to the Town on February 24, 2010. The board notes, however, the copy of the abatement application filed by the Taxpayers contains only the 2/24/10 signature of Ms. Parker and not the subsequent 03/01/10 signature of Ms. Curcio.

Timely filing of an abatement application is a statutory prerequisite a taxpayer must meet for the board to have jurisdiction in an appeal. RSA 76:16-a; Tax 203.02; and Appeal of Estate of Van Lunen, 145 N.H. 82, 86 (2000). The board finds the Taxpayers have failed to provide “competent evidence” the abatement was timely filed. Pursuant to RSA 80:55, I(b), a document “shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the document was deposited in the United States mail on or before the date for filing. Tax 102.28 defines “filed” as being either hand-delivered, postmarked by the United States Postal Service or receipted for delivery by a courier service.

Here, the Town did not retain the cancelled envelope nor did it date stamp the abatement application. Nonetheless, the later signature by Ms. Curcio dated March 1, 2010 conflicts with the assertion by the Taxpayers the abatement application was mailed on February 24, 2010 and no evidence was provided by the Taxpayers to support this mailing. Consequently, the board finds the Taxpayers have not carried their burden of providing “competent evidence” of the timely filing of the abatement application pursuant to RSA 80:55,I(b).

Last, in a December 23, 2010 letter, the Town indicated it had “no objection to the property tax abatement... going forward.” While gracious, neither the Town nor the board has the authority to waive or extend statutory deadlines. Daniel v. B & J Realty, 134 N.H. 174, 176 (1991).

Therefore, for the above 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

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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 Decision has this date been mailed, postage prepaid, to: M. Joan Curcio and Diana S. Parker, 17 Staples Crossing, Eliot, ME 03903 Taxpayers; Chairman, Board of Selectmen, Town of Eaton, PO Box 88, Eaton Center, NH 03832; and Northtown Associates, LLC, 1794 Presidential Highway, Jefferson, NH 03583, Contracted Assessing Firm.

Date: January 10, 2011

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Anne M. Stelmach, Clerk