

Darlene D. Cole

v.

Department of Revenue Administration

Docket No.: 25420-09LM

DECISION

On October 20, 2010, the board received the “Taxpayer’s” Low and Moderate Income Homeowner’s Property Tax Relief appeal of the department of revenue administration’s (“DRA”) denial. The DRA denied the claim because the property filed for was not the Taxpayer’s primary residence as of April 1.

Pursuant to RSA 198:57, III(b), claimants eligible for relief must have resided in their homestead as of April 1 of the year for which the claim is made. RSA 198:56, II, defines homestead as “the dwelling owned by the claimant,... and used as the claimant’s principal place of residence and the claimant’s domicile.” RSA 654:1 defines domicile as, “that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence.”

Based on RSA 198:57, III(b), the statutory definitions of homestead and domicile, the Taxpayer’s appeal explanation and the DRA’s response, the board finds the Taxpayer did not reside in the property (234 Pembroke Hill Road) being filed for and thus, 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, postage prepaid, to: Darlene D. Cole, 423 Buck Street, Pembroke, NH 03275, Taxpayer; and Peter M. Colbath, CPA, Assistant Director, Document Processing, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Date: December 14, 2010

Anne M. Stelmach, Clerk