

**Elaine M. Desmond**

**v.**

**Department of Revenue Administration**

**Docket No.: 25422-09LM**

**DECISION**

On October 25, 2010, the board received the “Taxpayer’s” appeal of the department of revenue administration’s (“DRA”) denial of its Low & Moderate Income Homeowner’s Property Tax Relief Application. The DRA denied the claim because it was filed on August 19, 2010, after the deadline of June 30, 2010.

Pursuant to RSA 198:57, VI, (a) “Complete applications for state tax relief shall be filed with the department of revenue administration between May 1 and June 30 following the due date of the final tax bill as defined in RSA 76:1-a for state education property taxes; (b) The commissioner may accept late filed, but complete, applications filed on or before November 1, under the following circumstances: (1) The claimant satisfies the commissioner that the claimant was prevented from timely filing the application due to accident, mistake or misfortune; (2) The claimant or other adult member of the household requested an extension of time to file his or her federal income tax return.”

The requirement for timely filing is in the nature of a statute of limitations and, thus, further appeal to the board is precluded. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board’s powers are entirely statutory); Arlington American Sample Book Company v. Board of

Taxation, 116 N.H. 575, 576 (1976) (untimely appeal barred); see also Daniels v. B & J Realty, 134 N.H. 174, 176 (1991) (administrative boards do not have the authority to extend statutory deadlines). The Taxpayer asserts the lateness in filing is due to her being unaware of the tax relief program and being given the application form at her town office in August 2010. The board finds lack of knowledge of the program does not rise to being an “accident, mistake or misfortune” given the DRA’s efforts to inform the public and the general availability of the application form. Therefore, the board has no jurisdiction to hear the appeal because the application form was not timely filed and the appeal is dismissed. Now that the Taxpayer is aware of the program, an annual application should be timely filed with DRA if they seek this relief in subsequent years.

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

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Albert F. Shamash, Esq., Member

**CERTIFICATION**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Elaine M. Desmond, 6R Bonnie Lane, Derry, NH 03038, Taxpayer; and Peter M. Colbath, CPA, Assistant Director, Document Processing, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Date: December 14, 2010

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Anne M. Stelmach, Clerk