

Elm Grove East LLC

v.

Town of Farmington

Docket No. 25923-10PT

DECISION

The board has received the “Town’s” October 12, 2011 “Response” to its September 29, 2011 checklist. In its Response, the Town provided a copy of the Taxpayer’s RSA 76:16 abatement application (“Application”) which was denied because the Application was not signed by the Taxpayer. For the following reasons, the board dismisses this appeal.

RSA 76:16, III, reads as follows:

The [abatement application] form shall include the following and such other information deemed necessary by the board: * * *

(g) a place for the applicant’s signature with a certification by the person applying that the application has a good faith basis and the facts in the application are true.

In harmony with this statute, the board’s rule, Tax 203.02(b), states the abatement application: “shall . . . include[] all of the following: * * * (4) The taxpayer’s signature on the abatement application certifying that the taxpayer has a good faith basis and the facts contained [in the application] are true.” Further, Tax 203.02(d) provides:

The taxpayer shall sign the abatement application. An attorney or agent shall not sign the abatement application for the taxpayer. An attorney or agent may, however, sign the abatement application along with the taxpayer to indicate the attorney's or agent's representation. The lack of the taxpayer's signature and certification shall preclude an RSA 76:16-a appeal to the board unless it was due to reasonable cause and not willful neglect.

The unsigned and undated Application was filed with the Town on March 1, 2011. The lack of the Taxpayer's signature certifying the applicant has a good faith basis for seeking abatement and that facts in the Application are true thus precludes an appeal to the board. "[T]he information required by RSA 76:16, III, including the taxpayer's signature and certification that the information submitted is true, affects the right to seek tax relief." Appeal of Wilson, 161 N.H. 659, 663 (2011).

Consequently, the appeal is 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

Michele E. LeBrun, Chair

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify copies of the foregoing Decision have been mailed this date, postage prepaid, to: Newton Kershaw, III, 18 Orange Street, Manchester, NH 03104, Taxpayer's Representative; and Town of Farmington, Chairman, Board of Selectmen, 356 Main Street, Farmington, NH 03835.

Dated: November 17, 2011

Anne M. Stelmach, Clerk