

**5 Tallwood Drive Realty, LLC**

**v.**

**Department of Revenue Administration**

**Docket No. 26097-12BP**

**ORDER**

The board has reviewed the “Taxpayer’s” May 24, 2012 “Motion” requesting a “rehearing” with respect to the board’s April 27, 2012 Decision dismissing this appeal and the “DRA’s” May 31, 2012 “Response” to the Motion and rules as follows. The suspension order entered on May 30, 2012 is hereby dissolved. The Motion is denied because it fails to satisfy the standards stated in RSA 541:3 and Tax 201.37 for granting a rehearing motion and for the additional reasons discussed below.

The board issued the Decision after reviewing the DRA’s “Motion for Summary Judgment” filed on March 23, 2012 (“Summary Judgment Motion”) and noting the Taxpayer’s failure to file any objection or other response to that motion. The Summary Judgment Motion was based on the Taxpayer’s undisputed failure to appear at a scheduled January 3, 2012 hearing before the DRA’s Hearings Bureau, leading to the conclusion that the Taxpayer had failed to exhaust its administrative remedies with the DRA before appealing to the board. The board has applied this principle to dismiss an appeal where the taxpayer failed to attend the requisite DRA

hearing. (See International Leather Goods, LLC v. Department of Revenue Administration, BTLA Docket No 24728-10BP (August 27, 2010).)

As set forth in its January 9, 2012 “Final Order,” the DRA dismissed the Taxpayer’s request for abatement of the business profits tax on this procedural ground and in accordance with its own rules. (See Rev 204.09 (i), also cited and discussed in International Leather, pp. 2, 5 and 6.) While the Taxpayer did file a timely “Request for Reconsideration of Final Order” with the DRA on January 20, 2012, this document does not explain why the Taxpayer failed to attend the January 3, 2012 DRA hearing or give any reasons why this non-attendance should be excused.

Similarly in this appeal, the Motion fails to explain why the Taxpayer did not respond to the arguments presented by the DRA (during the 30-day time period prescribed in RSA 491:8-a, IV for summary judgment motions) regarding why the appeal to the board should be dismissed. Prior to the DRA’s filing of the Summary Judgment Motion, the board did schedule a May 2, 2012 hearing on the merits, but that hearing date became moot when the board, on April 27, 2012, granted the Summary Judgment Motion and dismissed the appeal.

Now that dismissal has occurred, it is simply too late for the Taxpayer (as stated in the Motion) to request a ‘continuance’ of the appeal until certain other “IRS” and/or “bankruptcy” developments involving another entity take place. Aside from this continuance request, the Taxpayer states no other grounds for granting the Motion.

For these reasons, the Motion is denied.

Any appeal must be by petition to the supreme court within thirty (30) days of the Clerk’s date shown below, see RSA 541:6, with a copy to the board as required by Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

**CERTIFICATION**

I hereby certify that a copy of the foregoing Order has this date been mailed, postage prepaid, to: 5 Tallwood Drive Realty, LLC, c/o Robert C. Washburn, CPA, 36 Warren Street, Concord, NH 03301, representative for the Taxpayer; and Kathryn E. Skouteris, Esq., State of New Hampshire, Department of Revenue Administration, 109 Pleasant Street, Concord, NH 03301.

Date: 6/11/12

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Anne M. Stelmach, Clerk