

Scott J. and Sandra A. Viveiros

v.

Town of Easton

Docket No.: 26703-12PT

ORDER

The board has reviewed a Report of Settlement Meeting and Order signed by the “Taxpayers” and two “Town” selectmen on March 31, 2014 (the “Settlement Order”).¹ The Settlement Order states “Appeal settled during Settlement Meeting and no hearing is necessary. A written settlement agreement, covering essential terms, signed by the parties. . . is attached.” The “Settlement Agreement” referenced in the Settlement Order consists of two pages and was also signed by the Taxpayers and the Town selectmen on March 31, 2014.

In the first half of the Settlement Agreement, the parties agree to abate the assessments for tax year 2012 and 2013. In each of those two years, the Taxpayers did file tax abatement applications with the Town and, dissatisfied with the Town’s response, the Taxpayers filed an appeal to the board of the 2012 assessment. The board finds no reason to question the abated values agreed to by the parties for 2012 and 2013 to the extent those values were the basis of the resolution of their disputes regarding those two tax years.

¹ The board’s file includes a prior Report of Settlement Meeting and Order (signed on February 27, 2014 by the Taxpayers and on March 3, 2014 by the Town selectmen) which states a “written settlement agreement . . . will be submitted.”

The second half of the Settlement Agreement, however, states that it pertains “to the 2011 tax year” and is inherently problematical in light of the contradictory statements contained with respect to that tax year. The board finds this second half is a material part of the Settlement Agreement rather than being incidental or superfluous to it. After acknowledging the Taxpayers did not request an abatement from the Town in 2011 and did not file a timely abatement request, the Town agrees to pay a “partial refund of taxes paid for year 2011 based upon a negotiated value” but then goes on to recite, in contradictory fashion, that “[t]his negotiated payment shall not be construed as an abatement. . . .”

Tax 201.23(c) requires “the board [to] reject any settlement which would result in disproportionate, illegal, or fraudulent assessment or taxation.” This rule is based on RSA 71-B:16, a statute giving the board “broad authority to remedy the inequities of improper and illegal taxation.” Appeal of Wood Flour, Inc., 121 N.H. 991, 994 (1981). This authority extends to tax abatements, as well as to the original assessments of property. Id. (“The legislature obviously intended the board to scrutinize the legality of abatements as rigorously as it reviews the lawfulness of assessments.”)

It is well established that an “abatement” generally refers to any reduction in assessed value for taxation purposes. LSP Assoc. v. Town of Gilford, 142 N.H. 369, 373 (1997). To the extent the parties have agreed, in the second half of the Settlement Agreement, the Town will abate the 2011 assessment (by reducing the assessed value) and issue a partial refund for taxes paid (in the amount of \$1,136.65), the Settlement Agreement must be rejected. The board has consistently found that municipalities do not have authority to grant abatements unless taxpayers timely file an abatement request pursuant to RSA 76:16, I. See, e.g., Appeal of Wood Flour, 121 N.H. at 993 and 991 (affirming board’s decision to vacate abatements granted for prior tax years

when no abatement applications had been filed with the municipality); and In re: Town of Seabrook, BTLA Docket No. 26624-12OS (February 6, 2013) (requiring reimbursement of abatements granted to taxpayer for prior years when no abatement applications had been filed).

In summary, the board finds adequate grounds exist for rejecting the Settlement Agreement pursuant to Tax 201.23(c). Without a valid settlement or, alternatively, a voluntary withdrawal of the appeal by the Taxpayer, this appeal will remain open. The docket is therefore marked “ready to schedule” and a hearing on the merits will be scheduled in due course.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify that a copy of the foregoing Order has been mailed this date, postage prepaid, to: Scott & Sandra Viveiros, 250 Paine Road, Easton, NH 03580, Taxpayers; R. Matthew Cairns, Esq., Gallagher Callahan & Gartrell, PO Box 1415, Concord, NH 03302, counsel for the Town; and Chairman, Board of Selectmen, Town of Easton, 1060 Easton Valley Road, Easton, NH 03580.

Date: 5/20/14

Anne M. Stelmach, Clerk