

Joseph S. Haas

v.

Town of Boscawen

Docket No.: 27805-14PV

DECISION

The board has completed a full review of the file in this docket, including:

- (1) the “Taxpayer’s” appeal document filed on September 1, 2015;
- (2) the “Town’s” September 11, 2015 checklist enclosing a copy of the assessment-record card (“ARC”) for the Property (Map 49, Lot 36, 1.5 acres on “Tote Road” assessed for \$2,100);
- (3) the Town’s September 16, 2015 Motion to Dismiss (“Motion”); and
- (4) the Taxpayer’s September 28, 2015 response to the Motion (entitled “BTLA: Motion to Reconsider,” hereinafter referred to as “Objection”).

Based on this review, the board grants the Motion and dismisses the appeal for the following reasons.

As best as can be determined from the Taxpayer’s discursive pleadings, he seeks to challenge New Hampshire’s “local and state-wide” system of property taxation used to support education because he believes this system is unconstitutional in one or more respects. The board agrees with the Town’s position that the appeal should be dismissed. Lacking any claim of disproportional assessment or “poverty and inability to pay” by the Taxpayer, the two grounds

for a tax abatement recognized by the supreme court, the board is without authority to hear and decide the constitutional claims the Taxpayer seeks to litigate against the Town.

[See, e.g., Porter v. Town of Sandwich, 153 N.H. 175, 177 (2006), citing Bretton Woods Co. v. Carroll, 84 N.H. 428, 431 (1930), Ansara v. City of Nashua, 118 N.H. 879, 880 (1978), and other cases.]

The Taxpayer's reliance on one recent supreme court decision, Eby v. State of New Hampshire, 166 N.H. 321 (2014), is misplaced. In Eby, the court affirmed the dismissal of an action challenging a state-wide gambling tax and mentioned, in passing, RSA 21-J:28-b, IV: that statute is limited to an appeal of "a tax assessment made by the New Hampshire Department of Revenue Administration" and allows a taxpayer "to raise additional claims *addressing constitutional issues*" as part of that appeal. 166 N.H. at 343 (italics added by supreme court).

In this appeal, however, the Taxpayer filed an action against a municipality, not the DRA, to challenge a local property tax assessment of \$2,100. The board's authority to hear and decide such appeals is limited by statute (RSA 76:16-a) and does not include jurisdiction over the constitutional issues the Taxpayer seeks to raise. [See Appeal of Land Acquisition, 145 N.H. 492, 494 (2000); cf. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003) (the "New Hampshire tax abatement statutes provide the exclusive remedy to a taxpayer dissatisfied with an assessment").]

In the Motion, the Town notes similarities between this appeal and prior appeals filed by the Taxpayer that were dismissed by the board (BTLA Docket Nos.: 24496-08PT, 26508-11PT

and 27121-12PV). As in those appeals, the board finds the Taxpayer has not presented any proper basis for maintaining this appeal.

For all of these reasons, the Motion is granted and the appeal is dismissed.

A motion for rehearing, reconsideration or clarification (collectively “rehearing motion”) of this decision must be filed within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37(a). 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(f). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

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Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph S. Haas, P.O. Box 3842, Concord, NH 03302, Taxpayer; and Chairman, Board of Selectmen, 116 North Main Street, Boscawen, NH 03303, Municipality.

Dated: October 21, 2015

Anne M. Stelmach, Clerk