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New Hampshire Property Tax Round-Up - 2011

Both the New Hampshire legislature (“General Court”) and Supreme Court were active in 2011. Here is a summary of their activities.

Court Decisions

In Appeal of Ned Wilson, 161 N.H. 659 (2011), the Supreme Court held the failure of a taxpayer/applicant to sign the municipal application is fatal because it violates an express requirement of RSA 76:16, III. It should be noted BTLA (Board of Tax and Land Appeals) Rule 203.02(d) permits the BTLA to hear an appeal where the absence of the taxpayer’s signature on the municipal application was “due to reasonable cause and not willful neglect.” While this exception appears to conflict with RSA 76:16, III and the Supreme Court’s holding in Wilson, the court also found in Wilson that Rule 203.02 is a “reasonable rule for carrying out the BTLA’s’ functions,” so some confusion remains for taxpayers who take their appeals to the BTLA. The prudent court of action is to make sure taxpayers sign the municipal application.

The Supreme Court also addressed who qualifies as an “aggrieved party” where real estate is subject to a triple net lease. In determining whether other land of the owner must be introduced for purposes of determining proportionality, one must look to see if the owner is the taxpayer on those parcels. "We now clarify that when a taxpayer owns more than one parcel in any given municipality, a request for abatement on one will always require consideration of the

assessment on any other parcels for which the owner is also the taxpayer." Appeal of City of Lebanon, 161 N.H. 463, 469 (2011). The key, however, is whether the owner/taxpayer also is the taxpayer for those other parcels.

In Appeal of City of Lebanon, the taxpayer owed two lots, one of which was subject to a seventy-five year, triple-net sublease giving the subtenant the right to pursue tax abatements. (The subtenant also had the right to terminate the lease after twenty-five years.) The court held that the owner/taxpayer was required to introduce evidence of disproportionality only for the lot it challenged, which was not the lot subject to the long-term, triple-net lease. The court's ruling was quite broad and may open the door for much shorter leases. The court did not seem to consider the length of the lease important. In fact, it appears irrelevant. What seems to matter is who has the obligation to pay taxes as between the landlord and tenant.

Appeal of City of Concord, 161 N.H. 344 (2011), clarified the "charitable purpose" legs of the four-part test for organizations seeking a charitable tax exemption under RSA 72:23, V and RSA 72:23-l. The purpose, both as "established and administered," must primarily benefit the public versus the organization's members.

In Appeal of David H. Johnson, 161 N.H. 419 (2011), the court held that two properties owned by the same person and connected by a private right of way do not "adjoin" for purposes of RSA 75:9, which requires such lots be assessed separately. The court also clarified that assessors may not "assemble" lots under current ownership for valuation purposes if the lots do not adjoin, which they did not in this case.

One of New Hampshire's superior courts issued an interesting decision instructive for over-aggressive appraisers. The property in question was a tired retail plaza with old leases that did not reflect current market values. The city's appraiser took market rent for a *new* plaza and

discounted it, somewhat arbitrarily, by 30%. The taxpayer's appraiser compared the market rents for a building of comparable quality (presumably) against the actual rents. The judge thought the city's appraiser went too far with his approach, so he discounted that appraiser's testimony completely and went with the taxpayer's number. Had the city's appraiser not "jumped the shark" and been more reasonable (in the judge's eyes), perhaps the judge would have split the difference between the figures, which is what he did for two other plazas in the same case also under appeal.

Legislative Changes

Chapter 206, Laws of 2011, eliminated the requirement that taxpayers in municipalities with inventories file the inventory to preserve the right to appeal the assessment. Chapter 224 reduced the number of BTLA members from four to three, eliminated the requirement that one member be an attorney, and reduced the terms from five years to three. Both laws went into effect July 2011.