

STATE OF MAINE
KENNEBEC, SS.

STATE BOARD OF PROPERTY TAX REVIEW
DOCKET NUMBER: 94-44 & 96-032

MOBILE IMAGING CONSORTIUM)
 Petitioner)
)
v.)
)
CITY OF PORTLAND)
 Respondent)

DECISION

This matter came before the State Board of Property Tax Review (hereinafter, the "Board") on the timely appeal by Mobile Imaging Consortium (the "Petitioner") from the denial by the City of Portland of the Petitioner's property tax abatement applications for the 1993, 1994 and 1995 and tax years. The subject of this appeal is personal property only, consisting of two mobile magnetic resource imaging (MRI) units. Petitioner is seeking abatement of the entire 1993 assessment on the first unit (the "Sanford scanner," Docket No. 94-44) and the entire assessment for years 1993, 1994 and 1995 on the second unit (the "Norway scanner," Docket No. 96-032).

Petitioner, a Maine company whose principal place of business is in Portland, possesses two mobile scanners which travel to hospitals in southern and central Maine on a regular schedule. On April 1, 1993, the Sanford scanner was allegedly located at Henrietta Goodall Hospital in Sanford, and on April 1, 1993, 1994 and 1995 the Norway scanner was allegedly located at Stephens Memorial Hospital in Norway. The Towns of Sanford and Norway assessed personal property taxes against Petitioner on the scanners for the appropriate tax years and the taxes were paid in full by Petitioner. Subsequently, the City of Portland assessed taxes against Petitioner for the same two scanners for the tax years at issue. The value of the scanners is not in dispute, rather the Petitioner is challenging the City's authority to tax this equipment if it is not actually located in the City on the first of April.

Hearing was held on March 6, 1996 and September 4, 1996 before Board members

Stephen Morgan, Robert Libby, and Lynwood Hand¹ to consider questions of jurisdiction.

The first jurisdictional issue is whether the taxes had been paid when due on the Sanford scanner. There is no dispute that taxes were paid on time on the Norway scanner. The Assessor testified that in the summer of 1993 he made a supplementary assessment on one of the two scanners and that the bill was paid on time. According to Petitioner, the bill related to the Sanford unit.

The Board notes that in order to bring an abatement appeal, the taxpayer must comply with certain payment requirements:

A taxpayer must pay an amount of current taxes equal to the amount of taxes paid in the next preceding year or the amount of taxes in the current tax year not in dispute, whichever is greater, by the due date in order to enter an appeal under this section.

36 M.R.S.A. § 843(4).

Based upon the evidence, the Board finds, by unanimous vote, that the taxes on the Sanford scanner were paid on time. Therefore, the Board does not lack jurisdiction in this matter due to failure to pay the taxes when due.

The remaining jurisdictional issue concerns the Board's ability to hear and decide matters other than valuation questions, specifically questions relating to a municipality's authority to tax. Petitioner asserts that the Board has implied statutory authority under 36 M.R.S.A. §§ 841(1), 842, and 843(1-A) to hear appeals other than valuation appeals and cites Freeport Minerals Co. v. Town of Bucksport, 437 A. 2d 642, 644 (Me. 1981), Berry v. Daigle, 322 A. 2d 320 (Me. 1974), City of Lewiston v. All Maine Fair Association, 138 Me. 39, 43 (1941), and Maine Central Railroad Co. v. Town of Dexter, 588 A. 2d 289 (Me. 1991) in support of this position.

¹A fourth Board member, Harry Hodson, was present for the first day of hearing but unable to attend the second day. By agreement of the parties and the Board, deliberations proceeded without the participation of Mr. Hodson.

The City apparently concurs with Petitioner's interpretation of the Board's authority, construing the language of the statute to allow the Board jurisdiction in the instant appeal.

The Board's authority to hear and decide tax abatement appeals is set forth in pertinent part at 36 M.R.S.A. §§ 271, 843 and 844 which, when read as a whole, reasonably dictate that the Board hear matters involving issues relating solely to overvaluation. Specifically sections 843 and 844 include wording to the effect that if the local board or county commissioners find that the taxpayer is "over-assessed" then an abatement shall be granted and an appeal may be pursued. The term "over-assessed" is used in both sections. A reasonable interpretation of such wording when considered in the context of the entire statute relating to property tax appeals dictates that the Board hear those cases involving solely overvaluation. Furthermore, case law also dictates a similar result. In Berry the Law Court has indicated as follows:

"Remedy by application for abatement of taxes is not available where an entire assessment is alleged to be void or the taxing authority is challenged as invalid . . . Abatement which is always initially requested from the assessor, is restricted to the issue of over-taxation . . . see Kittery Elec. Light Co. v. Assessors of Kittery, 219 A. 2d 728 (Me. 1966)."²

Berry, 322 A. 2d at 324.

The Board notes that statutory authority clearly grants the Board jurisdiction in matters of overvaluation. The Board notes further that the composition of the Board is such that it is qualified to

²In February of this year the Law Court decided the matter of City of Lewiston v. Tri-State Rubbish, Inc., 671 A. 2d 955 (Me. 1996) which addresses the issue of the authority of the municipality to tax personal property within the context of a collection case rather than an abatement case. This case therefore supports the analysis that the Board has no jurisdiction to hear the matter now before it.

consider facts relevant to valuation, as each panel has an assessor member, an engineer member, and a real estate member.³ Due to the foregoing, in addition to the reasons stated above, the Board considers its authority and function to be limited primarily to real estate matters.

Based on the foregoing the Board finds that it lacks jurisdiction to hear this matter and this petition is hereby dismissed. For the record, the Board notes that it appears the parties may join an appeal from the Board's decision with a declaratory relief action whereby the Superior Court may determine the issue of authority to tax. In Berry the court indicated that "[t]he joinder of claims for abatement review and declaratory relief is permissible in the same proceeding." Berry, 322 A. 2d at 324.

Any party wishing to appeal this Decision must file a Petition for Review in the Superior Court within (30) days of the date of receipt of this Decision, pursuant to 5 M.R.S.A. §§ 11001-11008 (1990). If this Decision is not appealed, it shall become binding on the parties at the end of said 30-day period.

DATED: _____

Dec 4, 1994


Lynnwood Hand, Chair
Panel B, State Board of Property Tax Review

³The Board is made up of fifteen members divided into three panels of five members each. "The membership [is] equally divided among attorneys, real estate brokers, engineers, retired assessors and public members." See 36 M.R.S.A. § 271(1).