STATE OF MAINE KENNEBEC, ss

STATE BOARD OF PROPERTY TAX REVIEW Docket No. 2000-009

INTERNATIONAL WOOLEN COMPANY, INC.

Petitioner

٧.

DECISION

TOWN OF SANFORD,

Respondent

This matter came before the State Board of Property Tax Review on appeal by Petitioner International Woolen Company from the refusal of the Board of Assessment Review of Respondent Town of Sanford to abate the valuations established for IWC's property, five parcels of real estate and personalty constituting a textile plant. The Board convened on September 18, 2001, to consider the town's motion to dismiss the appeal based on lack of jurisdiction. Present on behalf of the Board were Members Malachi Anderson, Walter H. Foster, Robert C. Libby, and Bertrand Turmel, and Chairman and Chair of Panel B Eric E. Wright.

IWC was represented by Barbara T. Schneider, Esq. Theresa L. Pepin, the finance manager of IWC's plant during the relevant times in this case, testified for IWC. William H. Dale, Esq. represented the Town of Sanford. Lawrence S. Dolby, the town's assessor, and his assistant, George Greene, testified for the town. The Board, after hearing and public deliberation, granted the town's motion to dismiss the appeal.

JURISDICTION

The Legislature has established certain deadlines that are crucial to the review of property tax assessments. These deadlines require that taxpayers file timely applications for abatement, that municipalities through their assessors and the local boards of assessment review, decide cases within a time certain, and that taxpayers timely appeal denials of requested abatements. The purpose of such deadlines is to lend finality to the review process. *Town of Vienna v. Kokernak*, 612 A.2d 870, 873-74 (Me. 1992).

If assessors or reviewing authorities ignore deadlines for issuing decisions, the taxpayer may proceed to the next forum for review. On the other hand, if the taxpayer fails to file a timely application or timely appeal to the next forum, it loses the right to have the assessment reviewed for that tax year. Ultimately this Board must determine whether the municipality and the taxpayer have met these obligatory deadlines. If they have not, the Board lacks jurisdiction to hear the case.

Specifically, 36 M.R.S.A. § 841 requires that a taxpayer file an application for abatement within 185 days from the date of commitment. The assessor must act on an application for abatement within 60 days from the date that it is filed. *Id.* § 842. If the assessor does not act

¹ Some municipalities do not have boards of assessment review, in which event appeals go to the county commissioners. The time periods we discuss are the same whether appeals go to a board of assessment review or county commissioners, but since the Town of Sanford has a board of assessment review, our discussion will be stated in that context.

within that time, the application is deemed denied, and the taxpayer has 60 days within which to pursue an appeal to the board of assessment review. *Id.* §§ 842, 843. If that board does not act within 60 days of the date the appeal is filed, the appeal is deemed denied, *id.* § 843, and the taxpayer has 60 days within which to appeal to the State Board of Property Tax Review. *Id.* § 843(1-A).² A taxpayer may agree, however, to extend the 60-day period within which the assessor or the board of assessment review must act. *Id.* §§ 842, 843.

Although the language of these sections requires that such an agreement be in writing, the Law Court in *Kokernak* determined that a taxpayer can implicitly agree to extend the time within which boards of assessment (or county commissioners³) may decide applications for abatements and appeals from denials of abatements. 612 A.2d at 874. The Court reasoned that the purpose of the requirement that the assessor and local board issue a decision within 60 days is to protect the taxpayer from the municipal officers' failure to act. Should these officers fail to act, thus allowing a claim to languish, a taxpayer would be deprived of control or finality by precluding it from exercising the right to proceed, within the time specified, to the next forum for review.

² This assumes the properties have an individual or aggregate equalized valuation of at least \$1,000,000, a point not in dispute in this case. If property is assessed at a lower valuation, the taxpayer's appeal from the board assessment review is to the Superior Court. See 36 M.R.S.A. § 843(1).

³ The town concedes, and we agree, that *Kokernak*, which arose under 36 M.R.S.A. § 844, involving county commissioners, is equally applicable to review of boards of assessment under section 843, as here.

The Court in *Kokernak* did not specifically address the question of when an agreement is effectuated by implication. The Board has historically interpreted sections 842 and 843 and the *Kokernak* decision, however, to require that any such agreement, whether written or implicit, be reached *within* the 60-day period to be effective. This is consistent with the Law Court's recognition that there be finality to these matters.

In the present case, the town acknowledges that the assessor intentionally failed to act on IWC's application for abatement⁴ within the required 60-day period and therefore the application was deemed denied as of the end of that time period. IWC concedes that within that 60-day period it did not explicitly agree to extend the period for review.

Consequently, according to the town, because IWC was required, and failed, to appeal to the board of assessment review within 60 days from the deemed denial date, it is precluded from further appeal to that board, and we lack jurisdiction to hear the matter.

IWC, on the other hand, asserts that it implicitly agreed to extend the time within which the assessor was required to issue a decision on its application for abatement. Thereafter, when the assessor finally issued a decision beyond the 60-day period, IWC contends that it timely

⁴ As noted, this case in fact involves five real estate parcels and personal property used in association with IWC's manufacturing. Because the properties are all parts of a single plant, we shall treat them and the several applications for abatement as one.

filed its appeal to the board of assessment review and then to the State Board. By this view, the Board has jurisdiction.

The sole question for the Board is whether, as a matter of fact, IWC implicitly agreed to extend the time within which the assessor may act on its application for abatement. Should the Board find that no such agreement was effectuated, the Board lacks jurisdiction to hear the matter. Conversely, should the Board determine that IWC implicitly agreed to an extension of the 60-day period to act on the application for abatement, then, given that all other pertinent deadlines have been satisfied, the Board has jurisdiction.

DISCUSSION

The Board first notes that several facts are not in dispute. IWC on September 27, 1999, timely filed its application for abatement, which was received by the assessor on September 30, 1999. Dolby, the Assessor for the Town of Sanford, informed Pepin of the basis for denial of an abatement by letter dated February 21, 2000, and hand-delivered to Pepin on March 3, 2000. Thereafter, on April 20, 2000—within 60 days of its receipt of the February 21st letter—IWC filed an appeal to the town's board of assessment review. The local board did not act on the appeal, which therefore was deemed denied 60 days later, on June 19, 2000. On August 17, 2000—on the 59th day from the date of the local board's deemed denial—IWC filed an appeal to this Board.

Dolby asserts that in previous tax years he had discussed his valuation of the plant property with Pepin and that the assessment was always acceptable to IWC. Before commitment of the taxes for the April 1, 1999, tax year, Dolby reviewed the 1999 assessed valuation of the plant property with Pepin at her request. At that time Dolby informed Pepin that he did not intend to make any changes to the valuation assigned to the plant property because it was "fair and equitable." Dolby chose to await submission of any new information, and when none was presented, he allowed the application to be deemed denied by inaction, on November 29, 1999. Dolby did not specifically recall any telephone conversation with Pepin regarding the application for abatement during that 60-day period.

Thereafter, Dolby went to the plant in December 1999 to confirm that the description of the property on the assessment records was "correct and appropriate," and that he had assessed all property that in fact existed at the site. The purposes of the visit were to substantiate further, as he had already concluded, that the assessment was fair and equitable, and also to be able to defend better his position before the board of assessment review should IWC choose to appeal the deemed denial. The town's position is that, at the time Dolby visited the property, IWC had until January 28, 2000—60 days after November 29, 1999—to appeal the Assessor's deemed denial to the board of assessment review.

Dolby spoke with Pepin during that visit. He testified that Pepin at that time indicated "no problem with the assessed values as explained to her during that visit" and that she had requested from her superiors, the owners of the plant, that the outstanding property taxes be paid. In February 2000, according to Dolby, Pepin requested that he provide written substantiation for the assessment so as to convince the owners to pay the taxes that were due. Based upon the prior conversation with Pepin in December, Dolby concluded that she understood and agreed with the reasonableness of the assessment and needed written substantiation simply to support that position to her superiors so that the taxes would be paid. Dolby testified his letter of February 21, 2000, represents his having provided Pepin with that substantiation.

IWC now claims that it agreed, through Pepin, to an extension of time beyond November 29, 1999, so that Dolby could issue a written decision on the application for abatement dated September 27, 1999. Pepin asserts that on November 4, 1999, she called Dolby, who confirmed that he had received the application but had not processed it as he had been busy and that he would contact Pepin if he had any questions. Pepin now argues that this conversation evidenced an agreement by IWC that Dolby be allowed more time than the 60 days allotted by statute to issue a written decision on its application. The Board is not convinced that this conversation, in and of itself, can be construed as an agreement to extend the 60-day period.

As of November 4th, Dolby still had 25 days to complete a written decision if he chose to act on the application in that way. We do not construe the conversation as either a response to a request from Dolby for more time within which to act or a query from Pepin as to whether he required an extension within which to issue a written decision.

Moreover, Pepin did not speak again with Dolby until after the 60-day period had lapsed, when Dolby, on his own initiative, decided to visit the property in December 1999 and happened to speak with Pepin. Based on the foregoing, the Board is not convinced that IWC, through Pepin, implicitly agreed, within the 60-day period from September 27 to November 29, 1999, to extend the time within which Dolby was to consider an abatement.

The Board notes that at no time during this period did *Dolby* ask for an extension of time. Rather, absent submission of further information, he intended from the onset, as was his prerogative, to allow the 60-day period to lapse, such that the application would be deemed denied. The fact that Dolby made this choice, although not communicated to Pepin, did not deprive IWC from further appeal to the board of assessment review within 60 days of the deemed denial.

Pepin further relies on her having asked Dolby, when he visited the plant in December, "What is the next step?" Dolby responded that he still was "crunching numbers" and that he would get back to her.

Thereafter, according to Pepin, she left messages at Dolby's office before

she received the letter dated February 21, 2000, which she forwarded to the plant's owners, who thereafter sought an appeal to the board of assessment review. The Board notes that any conversation in December occurred outside the controlling 60-day period and cannot form the basis of an agreement to extend the time in which Dolby was to rule on the application for abatement. Further, it does not necessarily contradict Dolby's position that Pepin understood the reasonableness of the assessment and simply required documentation to support her position that the taxes should be paid by the owners.

The Board finds that IWC, within the 60-day period that the assessor is given to decide an application for abatement, neither implicitly nor in writing agreed to extend that time. Accordingly, IWC failed to file a timely appeal to the board of assessment review within 60 days of the Assessor's deemed denial on November 29, 1999. The Board therefore lacks jurisdiction to hear the matter. By a vote of 3-2, the Board grants the Town's motion to dismiss. Mr. Turmel and Mr. Wright dissent for reasons stated at the hearing.

APPEAL

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. If this decision is not

appealed, it shall become binding on the parties at the end of the 30-day period.

DATE: December 11, 2001

Cric E. Wright, Esq.

Chair, Panel B

State Board of Property Tax Review