

# **Bond Case Briefs**

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## **TAX - NEW HAMPSHIRE**

### **Appeal of New Hampshire Electric Cooperative, Inc.**

**Supreme Court of New Hampshire - June 2, 2017 - A.3d - 2017 WL 2407213**

Electric cooperative appealed an order of the Board of Tax and Land Appeals (BTLA) denying 16 of cooperative's 23 individual tax abatement appeals regarding its property located in 11 municipalities for one tax year and 12 municipalities for the subsequent tax year.

The Supreme Court of New Hampshire held that:

- BTLA was not required to find that market value equaled net book value;
- BTLA had sufficient evidence to properly reject Department of Revenue Administration (DRA) appraisals;
- Evidence was sufficient to support BTLA determination that cooperative's appraisals were not credible;
- Cooperative did not present sufficient credible evidence to prove disproportionality;
- Doctrine of judicial estoppel did not apply to prevent municipalities from using local assessment values; and
- BTLA did not violate requirements that taxation be uniform and proportional.

Board of Tax and Land Appeals (BTLA) had sufficient specific evidence in electric cooperative's tax abatement claim that, notwithstanding impact of regulation, market value of cooperative's property was not limited to its net book value, and thus BTLA was not required to find that market value equaled net book value, despite contention that Public Utilities Commission (PUC) would limit any utility purchaser to return based on net book value. Even though PUC disfavored passing acquisition costs to customers, PUC had approved sales above net book value, regulations on cooperative provided benefits, and BTLA heard expert testimony that cooperative's market value exceeded its net book value.

Board of Tax and Land Appeals (BTLA) had sufficient evidence from which it could properly reject Department of Revenue Administration (DRA) appraisals and allocated values in electric cooperative's tax abatement claim. BTLA examined DRA's appraisals, heard testimony from DRA's appraiser, and heard testimony from municipalities' experts that criticized DRA's procedures, assumptions, calculations, and conclusions, and BTLA was not required to accept testimony from DRA's appraiser that his allocation procedure based on original cost was proper.

Evidence was sufficient to support Board of Tax and Land Appeals (BTLA) determination in electric cooperative's tax abatement claim that cooperative's appraisals did not result in a credible opinion of market value. Appraiser limited his income analysis to simple arithmetic average of previous three years of expenses, and appraiser's opinion that buyer would not pay more for utility property than rate base was contradicted by seven of 11 sales that appraiser cited.

Board of Tax and Land Appeals (BTLA) made specific factual findings that supported its conclusion that electric cooperative had not presented sufficient credible evidence to meet its burden of proving disproportionality in its tax abatement claim, and thus there was no error in BTLA's statement that

cooperative's remaining criticisms of municipal assessors' appraisal methods could not, standing alone, carry cooperative's burden; BTLA's explanations for why it rejected cooperative's testimony and appraisals were supported by record, and evidence upon which cooperative relied to challenge other appraisals was primarily methodological.

Doctrine of judicial estoppel did not apply to prevent municipalities from assessing electric cooperative's property at local assessment values that were greater than Department of Revenue Administration's (DRA) assessed values; DRA equalization process was not legal proceeding, and municipalities did not take inconsistent positions, as they submitted local assessed values as correct market value of property to DRA.

Board of Tax and Land Appeals (BTLA) did not violate principles of uniform and proportional taxation by refusing to apply doctrine of judicial estoppel to prevent municipalities from assessing electric cooperative's property at local assessment values that were greater than Department of Revenue Administration's (DRA) assessed values. Purpose of doctrine was to protect integrity of judicial process by prohibiting parties from deliberately changing positions according to exigencies of moment, and purpose was not implicated.