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August 19, 2022

Via Hand Delivery

State of New Hampshire
Department of Revenue Administration
Hearings Bureau
Attn: Denise A. Daniel, Hearing Officer
109 Pleasant Street, PO Box 1467
Concord, NH 03302-1467

Re: ***Docket Number 22-096***
Town of Haverhill / Woodsville Fire District Tax Rate 2022

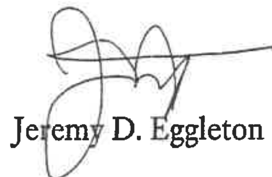
Dear Ms. Daniel:

Please find enclosed in connection with the above-referenced matter, Woodsville Fire District's Motion for Reconsideration.

A copy of this submission is being sent contemporaneously to Peter C.L. Roth, Revenue Counsel to the Municipal and Property Division of the New Hampshire Department of Revenue Administration, via e-mail and U.S. mail to 109 Pleasant Street, PO Box 457, Concord, NH 03302-0457.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions.

Very truly yours,



Jeremy D. Eggleton

JDE/lvm
Enclosure
cc: Woodsville Fire District

LEGAL
AUG 22 2022
NH DRA

Lynnette V. Macomber, Esq.
Peter C.L. Roth, Esq. (Revenue Counsel)

State of New Hampshire

Department of Revenue Administration

Woodsville Fire District – Request for Reconsideration, 2022 Warrant Articles

Docket Number 22-096

Woodsville Fire District's Motion for Reconsideration With Incorporated Memorandum of Law

Introduction

Woodsville Fire District (the "District") respectfully moves the Commissioner of the Department of Revenue Administration ("Commissioner") to reconsider her decision of August 12, 2022 (the "Order"), finding that she lacks subject matter jurisdiction to reverse a decision of the Municipal and Property Division (the "Division") to disallow two voter-approved warrant articles that impact Woodsville's 2022 tax rate. The Commissioner has subject matter jurisdiction over the tax rate setting process pursuant to RSA 21-J:35 and the authority to reverse the determination of the Division, which concluded without any basis that (i) Woodsville's operation of its fire department may be *ultra vires* and (ii) Woodsville's enabling legislation does not permit Woodsville to receive appropriated funds from the Town of Haverhill, despite the clear language of Woodsville's enabling statute which provides that "[a]ny appropriations to the Woodsville fire district shall be as directed by warrant articles duly voted by the voters present and voting at each annual Haverhill town meeting." N.H. Laws 2021, 124:1 (SB26, 2021; HB2 91:434 (2021)).

The Commissioner's Order does not address the merits the Division's improper decisions despite a three-hour hearing held on August 1, 2022 to address same. At that hearing, Woodsville produced evidence and records demonstrating that it was formed as a village fire

district in 1885 and that its acts – including operation of a fire department – were ratified by the legislature in 1899. N.H. Laws 1899, 196:2 (Exhibit 5). Woodsville explained at length, in briefing and at the hearing, why the Division's interpretation of the plain language of Woodsville's enabling law (as amended in 2021), is in error. The very status of Woodsville as a validly formed village district was called into question by the Division, despite decades of recognition of Woodsville's status as a village fire district by the Division. Woodsville offered uncontroverted evidence that its fire department appropriations have never been disallowed by the New Hampshire Department of Revenue Administration. Yet: despite her clear authority over issues related to the tax rate setting process, the Commissioner concluded she lacks subject matter jurisdiction to address these issues because (i) Woodsville is not the "proper party" to request a hearing under RSA 21-J:35, VI; and (ii) even if Woodsville could request the hearing contemplated by RSA 21-J:35, VI, the Commissioner lacks subject matter jurisdiction to consider the matter until after a tax rate has been set.

That simply is not the case, as the Commissioner has authority under RSA 21-J:35 generally to allow or disallow appropriations warrant articles, and the inherent authority to reconsider her own decision to disallow a warrant article – just as the Division did when Woodsville asserted the DRA lacked authority to disallow Woodsville's RSA 31:95-e warrant article (a non-appropriations related article). See Order, p.2 (noting the Division rescinded its disallowance of the RSA 31:95-e warrant article on May 20, 2022).

The Commissioner's power to reinstate a warrant article is not determined by the timing of when the tax rate is set, nor who seeks the hearing contemplated by RSA 21-J:35, VI. The Division has demonstrated that the DRA is empowered to reverse its warrant article

determinations *before* the tax rate is set. Order, p.2. In addition, the Commissioner overlooked the power granted by the legislature pursuant to RSA 21-J:13, VII(c) (instructing the commissioner to adopt rules pursuant to RSA 541-A relative to "[t]he method by which a local unit of government may appeal a decision made by the department in the establishment of tax rates under RSA 21-J:3, XV."). Clearly the legislature intended to empower local government units, such as Woodsville, to be able to appeal a decision made by the department in the establishment of tax rates, which is what Woodsville has done. The Commissioner has subject matter jurisdiction to decide whether the department erred in disallowing two warrant articles that directly impact Woodsville's tax rate. Woodsville respectfully requests the Commissioner to reconsider her Order of August 12, 2022, and issue a ruling finding that the Division erred in its decision to disallow warrant articles that were validly approved by the voters of Haverhill.

I. Woodsville Has Standing to Request Reconsideration of the Division's Decisions which Impact Woodsville's Tax Rate.

The record establishes the following facts. Woodsville has its own tax rate, which is set by the DRA under RSA 21-J:34-35. Woodsville is notified by the DRA of its tax rate each year, and also receives notice of the Town of Haverhill's tax rate each year. In years past, Woodsville received funds from Haverhill consistent with its enabling legislation, N.H. Laws 2009, 147:1. Until this year – following an *ex parte* campaign by Haverhill's Town Manager urging the DRA to disallow the funding articles (see Exhibit 14) – the DRA never disallowed Woodsville's or Haverhill's appropriations related to Woodsville's receipt of funds from Haverhill on the basis that one municipality cannot fund another municipality. As the DRA recognizes, special legislation *can* allow such a funding arrangement because the legislature has plenary control over matters related to taxation and appropriations. See Exhibit 15 (May 4, 2022 DRA Notice

Disallowing Articles 27 and 28) ("Under applicable New Hampshire judicial precedent one municipal entity cannot make an appropriation for another unless special legislation so provides."). Woodsville's special legislation so provides. N.H. Laws 2021, 124:1 ("Any appropriations to the Woodsville fire district shall be as directed by warrant articles duly voted by the voters present and voting at each annual Haverhill town meeting."). Yet, the Division concluded Woodsville's legislation "does not authorize the Town to appropriate money for the Woodsville fire district's highway department" and "does not authorize funding Woodsville's fire department because we have not seen any evidence that the Woodsville fire district properly organized a fire department consistent with New Hampshire law. See N.H. Gen. Laws, 107:1 (1878)." The Division stated that funding "an *ultra vires* activity cannot be considered a lawful purpose." Ex. 15, p.2. It further stated that "if the Town or the Woodsville fire district can produce evidence showing that a village district was formed in conformity with the requirements of law then extant, we will reconsider the deletion of Article 28." Id. The letter stated that the "revised appropriations amount for 2022 is $4,680,056." Id.

Woodsville provided the information requested by the Division regarding its formation, although Woodsville was not directly approached for that information anytime in 2021 or 2022. The Division, therefore, should have been estopped from refusing to consider the information subsequently provided by Woodsville at the Division's invitation, regardless of whether Woodsville is the "proper party" to request a hearing under RSA 21-J:35, VI. The Division has not honored its promise to reconsider its decision regarding Article 28, despite the evidence presented by Woodsville regarding its history and formation in 1885. Yet, the Division did reconsider a decision it made regarding one of Woodsville's warrant articles. Order, p.2. It did

so after Woodsville pointed out that the DRA lacks authority to disallow a non-appropriation related warrant article; evidently, the DRA agreed. For the same reason, the Division – which administers RSA 21-J:35 for the Commissioner – can reverse a decision to disallow a warrant article where it erroneously found that the article was for a purpose prohibited by law.

In light of this, the contention that Woodsville lacks standing to request reconsideration of the Division's May 4, 2022 decision, rings hollow. The Commissioner's Order cites to the language of RSA 21-J:35, VI, to conclude that Woodsville has no recourse when it comes to an issue involving Haverhill's warrant articles. That statute provides that:

> VI. Any town, city, or unincorporated place which is dissatisfied with the tax rate set under this section may, within 10 days of notification, request an oral hearing on this matter before the commissioner of revenue administration. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules he shall adopt under RSA 541-A. After hearing, the decision of the commissioner shall be final.

RSA 21-J:35, VI. The Commissioner concluded that "the District does not have standing to contest the Town of Haverhill's tax rate" and "the Town of Haverhill is the entity permitted under statute to appeal." Order, p.8. The Commissioner found that "only a town, city, or unincorporated place may appeal its own tax rate" because otherwise "if I were to accept the District's position that any town, city, or unincorporated place may appeal any other town, city or unincorporated place's tax rate, despite not having received notice of those tax rates, it leads to an absurd result, not to mention contravening the plain intent of the statute." Id. The Order does not explain what "absurd result" would occur, nor what the "plain intent" of the statute is. In so finding, the Order misconstrues Woodsville's position, which was not that "any town" may appeal the tax rate of "any other town"; the statute clearly states that a town may only do so if it is *dissatisfied* with the tax rate set under the chapter. By providing that qualification to the entity

seeking review of a tax rate decision, the legislature guarded against the "absurd result" implied by the Order. Unless a municipality has a legitimate reason to be dissatisfied with the tax rate set, it would not be able to request a hearing. There is no language in the statute supporting the Commissioner's imposition of language that re-writes the statute to provide that a town may only request a hearing about its tax rate where that request does not involve the warrant articles of another town. The legislature could have specified that "[a]ny town, city, or unincorporated place which is dissatisfied with ***its*** tax rate set under this section . . .". It did not do so. The Commissioner's interpretation of the statute is impermissible because it requires considering "what the legislature might have said" and adding "language that the legislature did not see fit to include." Courts will not uphold such an interpretation. State v. Smith, 163 N.H. 427, 428 (2012).

In any event, Woodsville provided evidence that it *does* receive notice of Haverhill's tax rate under the statute each year. Further, the Order does not address Woodsville's argument that its request for a hearing pertains to *Woodsville's* tax rate – because the decision to disallow Haverhill's warrant articles appropriating funds to Woodsville (consistent with N.H. Laws 2021, 124:1), directly impacts Woodsville's tax rate. The Division acknowledged this in its briefing. See Div. Br., p.6 (acknowledging that the warrant articles would lower Woodsville's tax rate). Therefore, even if the Commissioner's interpretation of the statute is correct, Woodsville has standing because it is dissatisfied with *its* tax rate as impacted by the Division's erroneous interpretation of Woodsville's special legislation. There is no prohibition in the statute limiting the request for a hearing to issues involving that particular town's warrant articles; indeed, the Commissioner must provide notice and a detailed explanation "of all changes made in the

appropriations or revenue estimates submitted by the municipality or district in question." Woodsville would be entitled to notice of an adjustment in its appropriations and revenue estimates caused by the lack of anticipated funding that was approved by Haverhill voters. The decision to disallow Articles 27 and 28 which appropriate funding for Woodsville's highway and fire departments are therefore subject to challenge by Woodsville under the statutory scheme set forth in RSA 21-J:35, II-IV.

In addition, the Commissioner ignored RSA 21-J:13, VII(c), the legislative directive that the Commissioner establish rules by which "a local unit of government may appeal a decision made by the department in the establishment of tax rates under RSA 21-J:3, XV." Like the language of RSA 21-J:35, VI, this language is broad in granting any local unit of government the right to appeal "a decision made by the department *in the establishment* of tax rates[.]" (emphasis added). These are the precise circumstances Woodsville is in: it is a local government unit appealing a decision made by the department in the establishment of tax rates. Setting aside the timeframe for when such a request may be made, which is addressed in argument below, the Commissioner erred in concluding that Woodsville lacks standing under RSA 21-J:35, VI, to request a hearing simply because the request involves Haverhill warrant articles.

There does not appear to be any dispute that a village district may request a hearing on its own tax rate under RSA 21-J:35, VI. That is what Woodsville requested here: review of a determination that impacts its tax rate. The legislature clearly intended local government units like Woodsville to have standing to contest a decision made by the Department that affects it, and the Commissioner erred in finding that only Haverhill may request the hearing contemplated by

RSA 21-J:35, VI. At a minimum, this aspect of the Commissioner's decision must be reversed and Woodsville's appeal should be decided on its merits.

II. The Commissioner Erred in Finding She Lacks Subject Matter Jurisdiction to Reinstate a Warrant Article Until After the Tax Rate Has Been Set.

The Commissioner is empowered to establish the tax rate and adjust estimated revenues, including appropriations, under RSA 21-J:35, I-IV. While the Commissioner has delegated these duties to the Municipal and Property Division, the Commissioner retains authority consistent with the statute to adjust appropriations and revenues *prior to* the tax rate being set. See RSA 21-J:35, II-V. However, the Commissioner's Order finds that she lacks jurisdiction to review the merits of Woodsville's appeal because it was "prematurely filed pursuant to the provisions of RSA 21-J:35, VI, and N.H. Code of Admin. Rules, Rev. 207.01." This is incorrect because the filing of the appeal is not what creates jurisdiction for the Commissioner to overturn a decision of the Division. The Division is acting on the Commissioner's behalf and the Commissioner is empowered by statute to make adjustments to appropriations. The Commissioner's finding that "any order that I would make in this case would be void" is incorrect because the Commissioner has ultimate say, pursuant to statutory authority, over whether appropriations articles are deleted as contrary to the law. RSA 21-J:35, II-III. This occurs *before* a tax rate is set. RSA 21-J:35, II-V.

RSA 21-J:35, VI provides a 10-day limitation for appeals, running from the receipt of notification of the tax rates established under the chapter, but does not purport to limit the Commissioner's jurisdiction to review her own delegated determinations made by the Department to a post-tax rate setting timeframe. *That* would be an absurd result because the Commissioner, upon discovery of a clear error, would be prohibited from correcting the error until after the tax rate has already been set. The Commissioner has broad subject matter

jurisdiction over the tax rate setting process, and construing RSA 21-J:35, VI as imposing a limit on that jurisdiction is contrary to the statutory scheme. The cases relied on in the Order, including Appeal of Campaign for Ratepayers' Rights, 162 N.H. 245, 250 (2011) and Phetteplace v. Lyme, 144 N.H. 621, 625 (2000), are distinguishable because they involved statutorily created reviewing bodies with specified prerequisites to subject matter jurisdiction (the Site Evaluation Committee and the Superior Court, respectively).[1] Here, it is already within the Commissioner's jurisdiction to set the tax rate – including making determinations to allow or disallow appropriations. As the Division already did with respect to one of Woodsville's warrant articles, the Commissioner *can* by virtue of her powers under RSA 21-J:35, II-VI, reconsider her own decision about a particular appropriation before the tax rate has been finally set.

Moreover, the Department has apparently placed administrative gloss on the tax rate setting process by consistently administering it in a way that permits municipalities to seek review of an appropriations decision before the final tax rate has been set. "[S]hortly after town meetings the Division typically gives preliminary decisions on whether particular warrant articles will be approved when tax rates are set, to provide an opportunity to correct errors, hold special meetings if necessary, or to find other ways to deal with the subject addressed in an errant warrant article." Div. Br., p.4. If the Commissioner's authority is as circumscribed as the Order implies, where does statute or regulation permit the Division to give "preliminary decisions" intended "to provide an opportunity to correct errors", but then prevent the Department from correcting those errors? The answer is that the Department has ongoing subject matter

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[1] Reliance on Phettplace is further mis-placed because the Court there stated "we have held that compliance with the procedural deadline for filing an appeal is a necessary prerequisite to establishing jurisdiction." 144 N.H. at 625. (emphasis added). That case involved a filing that was made after a statutory deadline had run; it does not support the proposition that the Commissioner lacks subject matter jurisdiction here over the merits of Woodsville's appeal.

jurisdiction to correct errors related to the tax rate setting process – including an erroneous decision to disallow lawful, voter-approved warrant articles, and an erroneous assertion that Woodsville's operation of a fire department is *ultra vires*.

The Commissioner's interpretation of the law unfortunately allows the Division to make outlandish assertions against a village district that has existed, legitimately, for over 130 years, with no recourse for that village district to have the Division's interpretation overturned within the same administrative agency before its tax rate is set in error. *That* is an absurd result and contrary to the Commissioner's broad authority over the tax rate setting process. The Order leaves Woodsville uncertain as to whether the DRA will allow Woodsville to appropriate its own funding this year because of the Department's refusal to acknowledge that Woodsville's operations are not *ultra vires*. The Commissioner's refusal to address the merits of Woodsville's request for review is unreasonable, arbitrary, and capricious. The Commissioner has a duty to "[r]epresent the public interest in the administration of the department and be responsible to the governor, the general court, and the public for such administration." RSA 21-J:3, I. In so doing, the Commissioner should uphold New Hampshire's well established policy of voter-controlled appropriations; "subtle distinctions will not be made to defeat the plain intent of the voters." Baker v. Hudson Sch. Dist., 110 N.H. 389, 393 (1970).

The record demonstrates that the Division's decisions were erroneous and contrary to law, and should be corrected by the Commissioner. Even if Woodsville needed to wait until its final tax rate was set to request the hearing under RSA 21-J:35, VI, there is no reason the Commissioner cannot reverse the appropriation decision sooner consistent with her powers to set the tax rate under RSA 21-J:35. The Commissioner's conclusion that she lacks subject matter

jurisdiction to review the Division's decision until after she has set the tax rate is incorrect and should be reconsidered. It is within the Commissioner's authority and jurisdiction to rescind the disallowance of the warrant articles that were erroneously disallowed under RSA 21-J:35, II-III, just as the Division could rescind its decision made on her behalf. The tax rate being set under RSA 21-J:35, VI triggers a limitation period of sorts for a municipality to seek review; but it does not contain statutory requirements that confer jurisdiction in the first instance, unlike the cases cited in the Order (pp.8-9). The Commissioner's jurisdiction over appropriation determinations exists throughout the tax rate setting process contemplated by RSA 21-J:34-35. It was error for the Commissioner to conclude that she lacks jurisdiction to review the Division's decision carried out on her behalf until after a tax rate has been set. Courts "will not defer to an agency's statutory interpretation when . . . it clearly conflicts with the statutory language or is plainly incorrect. Doe v. Comm'r of New Hampshire Dep't of Health & Hum. Servs., 174 N.H. 239 (2021).

Woodsville respectfully moves the Commissioner to reconsider her findings that (i) Woodsville is not entitled to raise issues regarding Haverhill's warrant articles in connection with an appeal brought under RSA 21-J:35, VI, and (ii) that the Commissioner lacks subject matter jurisdiction to review the Division's decision until after the tax rate has been set. There is no dispute that the determination to disallow Haverhill's warrant articles – based on an interpretation of *Woodsville's* enabling legislation – impacts Woodsville's tax rate. That is sufficient to give Woodsville standing to request a hearing under RSA 21-J:35, VI. See also RSA 21-J:13, VII(c) (local government unit to be provided with a method for appealing a decision made by the department in the establishment of tax rates). The Commissioner has the statutory

authority to "compute and establish the tax rate" and "adjust" the "estimated revenues". RSA 21-J:35, I, IV. From the time reports are collected under RSA 21-J:34 through the time the tax rate has been set, the Commissioner may make adjustments to appropriations and adjust estimated revenues. See id. The Commissioner, therefore, has subject matter jurisdiction to issue a decision on the merits in this case and should issue a ruling finding that Woodsville has established its fire department operations are not *ultra vires*, and that its enabling legislation expressly authorizes the voters of the Town of Haverhill to vote to approve appropriations to the Woodsville Fire District as set forth in the plain text of N.H. Laws of 2021, 124:1 (Exhibit 11).

Conclusion

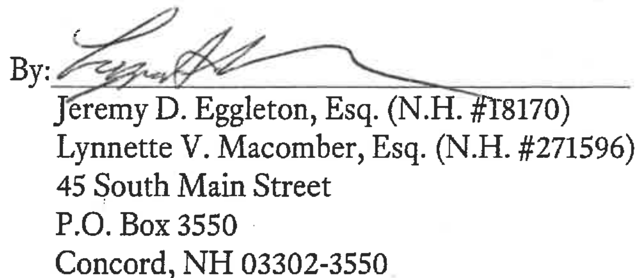
For the reasons set forth above and in Woodsville's related briefing of this matter, incorporated herein by reference, Woodsville respectfully requests that the Commissioner reconsider her determination that she lacks subject matter jurisdiction to consider the merits of whether Haverhill Warrant Articles 27 and 28 are valid, and issue an order reversing the Division's disallowance of voter-approved appropriations that were made lawfully and in accordance with the authority granted by the legislature in Woodsville's enabling legislation.

Respectfully submitted,

Woodsville Fire District

By its Attorneys,
ORR & RENO, P.A.

Date: August 19, 2022



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I hereby certify that a copy of the foregoing was sent contemporaneously this date to the N.H. Department of Revenue Administration, Municipal and Property Division, to Peter Roth, Esq., via e-mail and U.S. Mail.

Date: August 19, 2022

By: */s/ Lynnette V. Macomber*
Lynnette V. Macomber, Esq.