

Michael J. DiStefano

v.

Town of Seabrook

Docket No.: 12818-92EX

DECISION

The "Taxpayer" appeals pursuant to 72:34-a the "Town's" denial of the Taxpayer's RSA 72:28 veteran's exemption request. For the reasons stated below, the appeal is denied.

The Taxpayer actively served in the United States Army for three and one half years, beginning January 18, 1955. In January 1955, the Taxpayer spent 90 days in basic training at Sampson Training Center in Geneva, New York. He never fought in the "Korean Conflict", but he claimed he was entitled to an exemption because he entered military service before the January 31, 1955 date stated in RSA 72:28 VI (f).

The Town argued the appeal should be denied since RSA 72:28 I (a) requires 90 days of service during the dates of conflict stated in the statute, and the Taxpayer only served 13 days during the dates provided by RSA 72:28 VI (f) for the Korean Conflict -- June 25, 1950 - January 31, 1955.

Board's Findings

Based on the board's interpretation of RSA 72:28, the appeal must be denied. RSA 72:28 I states the following:

The following person shall qualify for the Veteran's Exemption:

- (a) Every resident of this state who served not less than 90 days in the armed forces of the United States in any qualifying war or armed conflict listed in this section and was honorably discharged***.

RSA 72:28 VI (f) places the dates for the Korean Conflict as June 25, 1950 - January 31, 1955. The board reads RSA 72:28 as requiring 90 days of service during the time period stated in the statute. In this case the Taxpayer only served 13 days during that stated period, not the 90 days required by the statute. Therefore, the appeal must be denied.

The Taxpayer requested a refund of his \$65 filing fee, which is granted.

The board's clerk shall issue a refund check to the Taxpayer. The board is refunding the filing fee under its discretionary power and based on the inequity of requiring a veteran to pay \$65 to obtain a decision concerning a \$50 exemption.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in

board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael J. DiStefano, Taxpayer; and Chairman, Selectmen of Seabrook.

Dated: March 1, 1994

0008

Valerie B. Lanigan, Clerk

Michael J. DiStefano

v.

Town of Seabrook

Docket No.: 12818-92EX

ORDER

This order responds to the "Taxpayer's" request to clarify the board's March 1, 1994 decision. The Taxpayer's request is granted.

The decision erroneously stated on page 1, paragraph 2 that the Taxpayer actively served in the United States Army. The board hereby amends its decision to read:

"The Taxpayer actively served in the United States Air Force ***."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Page 2

DiStefano v. Town of Seabrook

Docket No.: 12818-92EX

CERTIFICATION

I hereby certify a copy of the foregoing Order has been mailed this date, postage prepaid, to Michael J. DiStefano, Taxpayer; and Chairman, Selectmen of Seabrook.

Dated:

Valerie B. Lanigan, Clerk

0005