

Robert G. Kashulines

v.

Town of Hudson

Docket No.: 14832-93EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 74:34-a, the "Town's" April 26, 1994 denial of the Taxpayer's request for an elderly exemption under RSA 72:43-h. The "Property" consists of a 7.6-acre lot with a house and a barn assessed at \$454,000. For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing he was entitled to the statutory exemption or credit for the year under appeal. Tax 204.06. We find the Taxpayer failed to carry this burden.

The Taxpayer argued he was entitled to the elderly tax lien because he is 66 years old and has lived on the Property for 65 years.

The Town argued the denial of the elderly tax lien was proper because:

- (1) the Taxpayer does not qualify for the exemption because he has rental income; and
- (2) the Property is in his mother's estate.

Board's Rulings

Based on the evidence, we find the Taxpayer does not qualify for the exemption.

Under RSA 72:43-h (c) and the Town's ordinance on the exemption, to qualify for the exemption a taxpayer must:

- (1) have been a New Hampshire resident for at least 5 years;
- (2) own the real estate, individually or jointly, for which the exemption is sought;
- (3) have a net income of less than \$10,000 (if single); and
- (4) own net assets less than \$100,000, excluding the value of the taxpayer's residence.

Below, with reference to the numbered paragraphs above, is the board's analysis of each criteria.

(1) The Taxpayer, as a lifelong New Hampshire resident, met the first criteria.

(2) The Taxpayer, as a joint owner of the Property, qualified under the second criteria.

(3) The Taxpayer did not meet criteria 3 because his combined net income was over \$10,000. The Taxpayer testified that his total net income was \$52,000. The Taxpayer did not submit any documentation to support this number. The Taxpayer, however, testified that he received \$442 a month from social security (\$5,304 a year), and he netted approximately \$5,000 - \$6,000 from rental income from the Property. The Taxpayer also submitted a profit and loss statement from farming, and that statement indicated that he earned \$1,158 in 1992. Thus, based on only these three items of income (social security, rental and farm), the Taxpayer's net income exceeded the \$10,000 criteria.

(4) The Taxpayer also did not meet the last criteria because he owns assets in excess of \$100,000, excluding the value of his residence. In this case, the residence only consists of the "unit" or the part of the Property the Taxpayer occupied. The Taxpayer did not estimate the Property's worth. But he stated it was for sale in 1995 for \$399,000 and had an \$18,000 mortgage. Additionally, the Town had assessed the Property at \$454,000, which indicated a 1993 equalized value of \$384,745 (assessment divided by 1.18, the equalization ratio). The Taxpayer owns 63% of the Property, and thus his ownership interest is worth approximately \$242,390. Even if we exclude the value of the unit occupied by the Taxpayer with land appurtenant thereto, the Taxpayer has assets in excess of \$100,000. Furthermore, the Taxpayer did not testify about whether he had any other assets.

Because the Taxpayer does not meet all of the criteria, the Taxpayer was not entitled to the elderly exemption, and the Town was correct to deny him the exemption.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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

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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 Robert G. Kashulines, Taxpayer; and Chairman,
Selectmen of Hudson.

Dated: March 14, 1995

Valerie B. Lanigan, Clerk

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