James P. Fay, Sr.

v.

Town of Marlow

Docket No.: 16705-96EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "Town's" April 21, 1997 denial of the Taxpayer's 1996 application for an adjusted elderly exemption as provided under RSA 72:43-e. Further the board asserts its RSA 71-B:16 II jurisdiction for the 1997 tax year relative to Mr. Fay's eligibility for an elderly exemption. The Taxpayer owns a 29-acre lot with a mobile home and barn assessed at $49,300 (land $30,200; buildings $19,100) (the Property). For the reasons stated below, the appeal is granted in part and denied in part.

The Taxpayer has the burden of showing he was entitled to the statutory exemption or credit for the year under appeal. See RSA 72:23-m; TAX 204.06. The Taxpayer carried this burden for 1996 and failed to carry this burden for 1997.

The Taxpayer argued he was entitled to the statutory exemption because: (1) his only assets in both 1996 and 1997 were the real estate;

(2) his only income in 1995, 1996 and 1997 were social security payments of $12,924 (Medicare premiums of $553.20), $13,320 (Medicare premiums of $510.00) and $13,704 (Medicare premiums of $525.60) respectively; and

(3) after the sale of lot 3 (original house and 12.1 acres) in December 1995, all the proceeds were used in paying off the mortgage, installing a well and

septic and purchasing and setting up a used manufactured home on lot 1, the remaining 29 acres.

The Town argued its denial of the Taxpayer's exemption application was proper because:

(1) there was confusion as to which year was being applied for and what was the applicable elderly exemption statute;

(2) any one receiving social security benefits has a deduction for Medicare contributions; federal income tax liability is based on the total benefits paid which includes Medicare premiums; and

(3) the Taxpayer's 1997 social security payments, even excluding the Medicare premiums, exceed the $13,400 income limits voted in at the 1997 town meeting.

Board's Rulings

At the beginning of the hearing, the board received testimony relative to which tax years, 1996 and 1997, the Taxpayer had requested the elderly exemption. The board at the hearing ruled that the Taxpayer had requested a 1996 elderly exemption and had timely filed an appeal on such to this board. To resolve the confusion caused by the change in RSA 72:33 (1996 Supp.) and

RSA 72:39-a (1996 Supp.)[1], the board asserts its RSA 71-B:16 II jurisdiction for tax year 1997. Thus, this decision addresses the Taxpayer's eligibility for an elderly exemption under the applicable statutes, and income and asset requirements for the two years.

1996 Elderly Exemption

For 1996 the adjusted elderly exemption (RSA 72:43-e through g) was in effect in Town. The eligibility requirements of RSA 72:43-g read:

72:43-g Conditions. No exemption shall be allowed under RSA 72:43-f or 43-h unless the applicant:

I. Has resided in the state for at least 5 years preceding April 1 of the year in which the exemption is claimed;

II. Had in the calendar year preceding said April 1 a net income from all sources of less than $10,000, or if married, a combined net income of less than $12,000, such net income to be determined by deducting from all monies received from any source whatsoever the amount of any of the following or the sum thereof:

(a) Life insurance paid on the death of an insured;
(b) Expenses and costs incurred in the course of conducting a business enterprise;
(c) Proceeds from the sale of assets;
(d) Social Security payments.

[1] The Town's denial had been based on an assumption that it was a 1997 application and thus needed to comply with the asset and income requirements voted at the 1997 town meeting.

III. Owns net assets not in excess of $30,000, excluding the value of the person's actual residence and the land upon which it is located up to the greater of 2 acres or the minimum single family residential lot size specified in the local zoning ordinance. "Net assets" means the value of all assets, tangible and intangible, minus the value of any good faith encumbrances. "Residence" means the housing unit, and related structures such as an unattached garage or woodshed, which is the person's principal home, and which he in good faith regards as his home to the exclusion of any other places where he may temporarily live. "Residence" shall exclude unattached structures used or intended for commercial or other nonresidential purposes.

The board finds the Taxpayer was eligible for the statutory exemption amount of RSA 72:43-f (1996 Supp.). First, the Taxpayer testified that he had resided in this state for more than 5 years. Second, Mr. Fay's total income for "the calendar year preceding" (i.e., 1995) was limited solely to his social security payments which according to RSA 72:43-g II (d) are to be deducted from any other income. Mr. Fay testified he had no other income in 1995. Therefore, Mr. Fay meets the $10,000 net income requirement. Third, the board finds that Mr. Fay's net assets are not in excess of $30,000. The Town had questioned whether additional land that Mr. Fay had previously owned (lot 2 of Taxpayer's exhibit 8) was still owned by him in 1996 and would disqualify him from the net asset requirement. Based on a copy of the deed submitted by the Town at the board's request subsequent to the hearing, lot 2

was transferred from Mr. Fay to a Patricia and Gerald Collins on June 3, 1996. As this transfer occurred prior to the March 1 1997 deadline for applying and being financially qualifying for such an exemption (RSA 72:33 I 1996 Supp.), the board finds that lot 2 was no longer an asset to be considered in determining Mr. Fay's eligibility for 1996. Mr. Fay's remaining real estate, after excluding the housesite and residence as allowed in RSA 72:43-g III, is less than the $30,000 limit.

Consequently, the Town shall grant the appropriate assessed value exemption as detailed in RSA 72:43-f (depending on Mr. Fay's age at that time) and refund the taxes in excess of the remaining assessment with 6 percent interest per annum from date paid to date of refund.

1997 Elderly Exemption

At the March 1997 town meeting, the Town adopted the new elderly exemption statute, RSA 72:39-a and b, inserting a net income qualification of not more than $13,400 for a single individual. Also with the revision of the elderly exemption statutes, RSA 72:39-a removed social security payments as deductions from all other income and included them as part of the net income calculation. RSA 72:39-a I (b) (1997 Supp.) in part states:

> The net income shall be determined by deducting from all moneys received, from any source including social security or pension payments, the amount of any of the following or the sum thereof:
>
> (1) Life insurance paid on the death of an insured;
> (2) Expenses and costs incurred in the course of conducting a business enterprise;
> (3) Proceeds from the sale of assets. (Emphasis added.)

The board finds Mr. Fay did not qualify because his net income was in excess of $13,400. RSA 72:33 (1996 Supp.) allows the financial qualification of an individual applying for elderly exemption to be determined as late as March 1 of the following year. Thus, the board agrees with the Town's argument that for determining the 1997 eligibility, the actual net income received during the calendar year 1997 should be reviewed by the Town (compare with the previous language in RSA 72:43-g which required that the "calendar year preceding" would be the time period for determining income and net assets). In 1997 Mr. Fay, whether considering the medicare premiums as part of his net income or not, exceeded the $13,400 income limitation voted by the Town.

In conclusion, the board expresses its appreciation for the professionalism and the understanding shown by the Town and the Taxpayer during the hearing. As has been stated, the change and interplay of the elderly exemption statute and exemption application statutes resulted in understandable confusion on the part of all parties. While the board's conclusions as to eligibility are not as consistent as common sense would hope, they do correspond to the facts for each year and the applicable statutes.

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, <u>not the date this decision is received</u>. 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James P. Fay, Sr., Taxpayer; and Chairman, Selectmen of Marlow.

Date: April 21, 1998

Valerie B. Lanigan, Clerk

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to James P. Fay, Sr., Taxpayer; and Chairman, Selectmen of Marlow.

Date: April 28, 1998

Valerie B. Lanigan, Clerk