

Frances P. Clark

v.

City of Concord

Docket No.: 17107-97EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 denial of the Taxpayer's request for an elderly exemption as provided under RSA 72:39-a on a 11,620 square-foot lot with a two-family residence (the Property). For the reasons stated below, the appeal is granted.

The Taxpayer has the burden of showing she was entitled to the statutory exemption or credit for the year under appeal. See RSA 72:23-m; TAX 204.06. We find the Taxpayer carried this burden.

The Taxpayer argued she was entitled to an elderly tax lien because:

- (1) she owns the Property with her son as joint tenants with rights of survivorship (JTWROS) but resides in the home alone;
- (2) she owns a camp in Hopkinton with her son as JTWROS;
- (3) the equalized value of the Hopkinton property is \$63,141; only one half of the value of the Hopkinton property is attributable to the Taxpayer (RSA 72:41); and

(4) her assets and income do not exceed the City's limitations.

The City argued the denial of the elderly exemption was proper because:

(1) the Property in Hopkinton is owned jointly and the contributory value of the asset is 100%;

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(2) the value of the apartment should be considered since the Property would be marketed as a two-family dwelling if it was going to be sold; and

(3) the City agrees, if the board finds the Taxpayer is eligible for exemption, that no proration is necessary.

Board's Rulings

Based on the evidence, the board finds the Taxpayer qualifies for the RSA 72:39-a elderly exemption proportionate to her interest in the Property, or one-half of the exemption.

The hearing was held on August 12, 1998. During the board's deliberations, questions arose relative to the Taxpayer's assets and income. Therefore, the board held an additional hearing to receive further evidence on November 30, 1998. In its November 5, 1998 preliminary order the board:

1) preliminarily found that only one-half of the value of the Hopkinton property should be attributed to the Taxpayer's assets; 2) sought specific information regarding the Taxpayer's income and expenses; and 3) advised the parties that they should be prepared to address whether the exemption should be prorated in accordance with RSA 72:41 if the Taxpayer meets the eligibility requirements. While the board was disappointed that the Taxpayer's attorney's (Mr. Russell) presentation was not as thorough as the board asked him to be and neither party addressed the RSA 72:41 proration issue, the board finds the

Taxpayer is entitled to an RSA 72:39 elderly exemption.

Hopkinton Property

The board finds when calculating a taxpayer's assets for exemption purposes, which assets are owned with one other person as JTWROS, that only one-half of the property's value should be considered in determining the taxpayer's total assets.

Joint tenancy is defined as, "[a]n estate in fee simple, fee tail (a conveyance to a person and "the heirs of his body"), for life, for years, or at will, arising by purchase or grant to two or more persons. Joint tenants have one and the same interest, accruing by one and the same conveyance,

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commencing at one and the same time, and held by one and the same undivided possession *** [a] single estate in property owned by two or more persons under one instrument." Black's Law Dictionary 1313 (5th ed. 1979). In a joint tenancy, each co-tenant has exactly the same rights as the other co-tenants and carries with it the right of survivorship. See SMH, Inc., Multistate Real Property 39 (1985).

In this case, the Taxpayer owns property in Concord and in Hopkinton with her son as JTWROS. If one of the party's dies, the remaining party will have 100% interest in both properties. Under this type of ownership, each owner is presumed to have equal shares and each is liable for his/her own indebtedness, i.e. taxes, mortgages, etc. 4 George W. Thompson, Commentaries on the Modern Law of Real Property (1979). "One joint tenant or tenant by the entirety does not share a liability arising against the other by negligent or other independent acts." "Each joint tenant is individually responsible for all of the joint indebtedness incurred by them and they may place the

entire property in lien therefor." American Law of Property A Treatise on the Law of Property in the United States, Volume II (1952). "Each co-tenant is presumed to be responsible for his proportionate share to the common burden of taxes, mortgages, etc." Indeed, if that is the case, any asset they have in the property can also be viewed separately.

Based on the above, the board finds the Taxpayer is liable for only her portion of the Hopkinton property, or one-half. In calculating her total assets, only one-half of the equalized value of the Hopkinton property or \$31,571 should be considered by the City (Hopkinton assessment \$71,350 ÷ 113% equalization ration = \$63,142 ÷ 2 = \$31,571).

Although the board finds that the value of the Hopkinton property should be apportioned, it does not agree with Attorney Russell that the RSA 72:41 proration statute applies to this property. RSA 72:41 deals with a proration of property exempted under RSA 72:39-b which is not the case with the Hopkinton property.

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Income and Assets

Based on the evidence, the board finds that the Taxpayer's income is within the guideline set by the City or \$18,400. This was not disputed by the City. Upon review of the assets, the board also finds the Taxpayer is within the City's \$50,000 limitation. As stated above, the board finds the value attributed to the Taxpayer for the Hopkinton property to be \$31,571. The board has concluded that some value should be assigned to the apartment. Although the Taxpayer has chosen not to rent the apartment, should the Property be sold it would be sold as a two-family residence and an adjustment should be made for its value. Based on a review of the assessment-record card

and the testimony of Mr. Mitchell, Concord's Acting Director of Real Estate Assessments, the board has concluded a market value of \$15,500 for that portion of the Property is reasonable. This amount should then be divided for the Taxpayer's share of ownership or \$7,750.

The board has calculated the total assets as follows.

Hopkinton property	-	\$31,571
Apartment	-	7,750
Oldsmobile	-	4,200
Stocks	-	250
Bank account	-	<u>100</u>
Total assets	-	\$43,871

Proration

RSA 72:41 Proration. If any entitled person or persons shall own a fractional interest in residential real estate, each such entitled person shall be granted exemption in proportion to his interest therein with other persons so entitled, but in no case shall the total exemption to all persons so entitled exceed the amount provided in RSA 72:39-b.

RSA 72:41 deals with the proration of property exempted under RSA 72:39-b. As the Taxpayer owns the Property with her son, the exemption granted must be in proportion to her interest in the Property or one-half of the exemption.

It is the board's understanding that the City has adopted an \$80,000 valuation reduction for taxpayer's who qualify over age 80. Therefore, the reduction to be granted to the Taxpayer is in the amount of \$40,000.

Findings of Fact and Rulings of Law

In these responses, "neither granted nor denied" generally means one of

the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted.
13. Granted, with the date corrected to May 20, 1965.
14. Neither granted nor denied. This is not an applicable statute.
15. Granted, appellant qualifies under RSA 72:39-a.
16. Denied.
17. Denied.

18. Neither granted nor denied.
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19. Neither granted nor denied.

20. Granted.

21. Denied.

22. Neither granted nor denied.

23. Denied.

Rehearing

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 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles A. Russell, Esq., Counsel for Frances P. Clark, Taxpayer; and Chairman, Board of Assessors of Concord.

Date: December 14, 1998

Valerie B. Lanigan, Clerk

0006

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PRELIMINARY ORDER

The "Taxpayer" filed a 1997 appeal of the "City's" denial of her request for an elderly exemption. A hearing was held on August 12, 1998, at which the parties presented arguments on the singular issue of whether the total value or one-half the value of the Hopkinton property owned jointly by the Taxpayer and her son should be considered part of the Taxpayer's assets.

Preliminarily, after research on the nature of joint tenancy, the board concludes that only one-half of the value of the Hopkinton property should be attributed to the Taxpayer's assets. The board's ruling will be detailed in the final decision of this appeal.

However, during the board's deliberations, other questions arose relative to the Taxpayer's assets and net income that were not presented at the initial hearing. Consequently, the board has scheduled an additional hearing for **Monday, November 30, 1998 at 1:00 PM at the board's offices in**

Concord (hearing notice attached) to receive evidence on the following issues and further arguments as to whether the Taxpayer is eligible for a 1997 elderly exemption.

The parties should be prepared to address the following items:

Assets

- 1) the value of the Taxpayer's 1990 Oldsmobile;

2) the total value of the individual retirement account (the board notes on the Taxpayer's 1997 elderly exemption application (Application) the original value was crossed off and replaced with the notation of "none.");

3) documentation to reconcile the inconsistency on the Application between total checking and savings accounts of \$86.93 and interest received on bank accounts of \$103.37;

4) documentation to resolve the inconsistency on the Application, which stated no market value for stocks, bonds, mutual funds or certificates, yet dividends received of \$35.26; and

5) estimate of value of the Taxpayer's interest in the second living unit owned by the Taxpayer and Joseph R. Clark (son) at 35 Bradley Street and whether such value should be considered as part of the Taxpayer's net assets.

Net Income

1) the net income limitation adopted by the City for tax year 1997 pursuant to RSA 72:39-b;

2) the Taxpayer's estimates of the yearly pension and social security (items A and B on the Application) monthly payments or another period;

3) the estimate of yearly dividends received (item G on the Application does not indicate whether annually, quarterly or monthly);

4) the net rental income from the second living unit jointly owned by the Taxpayer at 35 Bradley Street; and

5) copies of the Taxpayer's 1996 and 1997 federal income tax returns.

The board notes that many of these documents were requested in the City's February 11, 1998 letter to the Taxpayer's attorney, which apparently was not answered (see City's following letter of March 20, 1998). Just as the

City was attempting to gather information to determine the Taxpayer's eligibility, so must this board have all the evidence before it can determine whether the Taxpayer was eligible for exemption in 1997.

Additionally, the parties should be prepared to address whether any exemption should be prorated in accordance with RSA 72:41 if the Taxpayer meets the eligibility requirements.

Because this is a preliminary order, parties shall not file rehearing motions to this preliminary order. Rehearing motions shall be filed after the board issues its final decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that copies of the foregoing preliminary order have this date been mailed, postage prepaid, to Charles A. Russell, Esq., Counsel for Frances P. Clark, Taxpayer; and Chairman, Board of Assessors, City of Concord.

Dated: December 14, 1999

Valerie B. Lanigan, Clerk