

Harrison F. Gray Revocable Trust  
Harrison F. Gray, Trustee

and

Barbara A. Gray Revocable Trust  
Barbara A. Gray, Trustee

v.

City of Concord

Docket No.: 17360-97EX

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 72:34-a, the "City's" March 23, 1998 denial of the Taxpayers' application for elderly exemption pursuant to RSA 72:39-a. The Taxpayers each own a one-half interest in a single-family home on an 8,320 square-foot lot assessed at \$89,400 (land \$35,800; buildings \$53,600) (the Property). For the reasons stated below, the appeal is denied.

The Taxpayers have the burden of showing they were entitled to the statutory credit or exemption for the year under appeal. See RSA 72:23-m; TAX 204.06. The Taxpayers failed to carry this burden.

The Taxpayers argued they were entitled to the exemption because:

- (1) Mr. Gray is 82 years old and they have lived at the Property for 9 years;
- (2) their total yearly income is \$28,882; and

(3) they are in debt and cannot afford to pay the taxes.

The City argued its denial of the exemption application was proper because although the Taxpayers meet the asset limitation, their income exceeds the \$26,400 limit for married couples.

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#### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to qualify for the elderly exemption. Pursuant to RSA 72:39-b, the City voted to modify the elderly exemption limits for qualified taxpayers. To qualify, married taxpayers must have a combined net income of not more than \$26,400 and own net assets not in excess of \$50,000. The Taxpayers' total yearly net income is \$28,882 which is in excess of the City's \$26,400 limit; therefore, they do not qualify for the elderly exemption.

In their appeal, the Taxpayers stated they were concerned about how they could afford to pay the taxes. The board wants to inform the Taxpayers about the tax deferral allowed by RSA 72:38-a. A copy of that law is attached. Under this law, the Taxpayers can apply to the City by March 1, 1999, for a deferral of their 1998 taxes. The City would then determine if the taxes cause an undue hardship on the Taxpayers. If the taxes cause such hardship, the City can then defer either all or part of the taxes. The tax deferral is recorded at the registry of deeds and accrues 5% interest per year. The unpaid taxes are paid later when the Property is sold or transferred or when the owners die. This deferral allows people to stay in their homes when taxes

cause an undue burden.

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

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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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Harrison F. Gray as Trustee of the Harrison F. Gray Revocable Trust and Barbara A. Gray as Trustee of the Barbara A. Gray Revocable Trust, Taxpayers; and Chairman, Board of Assessors, City of Concord.

Date: December 16, 1998

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Valerie B. Lanigan, Clerk

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