

John R. and Phyllis Belfontaine

v.

City of Laconia

Docket No.: 17364-97EX

and

Joseph C. Stitt

v.

City of Laconia

Docket No.: 17384-96EX

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" March 3, 1998 (Belfontaine) and November 12, 1996 (Stitt) denials of each of the Taxpayers' requests for an RSA 72:35 veteran's tax credit based on service-connected total disability. These appeals were consolidated for hearing. For the reasons stated below, the appeals are granted.

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

The Taxpayers argued they were entitled to the tax credit because:

(1) both Taxpayers have been declared 100% totally and permanently disabled by the U. S. Veteran's Administration (VA);

(2) it need not be a singular disability to be classified a total and permanent service-connected disability;

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(3) disability by definition is the inability to pursue an occupation due to a physical or mental impairment;

(4) earlier versions of the department of revenue administration (DRA) rules defined "total and permanent service-connected disability" as it relates to both RSA 72:35 and RSA 72:36-a was to be determined by the VA; current DRA rule REV 403.07 does not contain a reference to RSA 72:35 due to a clerical error; and

(5) use of the VA's determination by municipalities results in consistent administration of the veteran's exemption.

The City argued the denial of the tax credit was proper because:

(1) the plain language of the statute requires a single, permanent and total disability and one or more lesser disabilities does not qualify for the tax credit under the statute;

(2) the City is not bound by the determination of the VA;

(3) REV 403.07 is only applicable to the provisions of RSA 72:36-a; and

(4) neither taxpayer was found by the VA to have a singular 100% disability; therefore, neither qualifies for the tax credit.

Board's Rulings

Based on the evidence, the board finds both Taxpayers are eligible to receive a tax credit pursuant to RSA 72:35.

Foremost, before getting into the detail of its findings, the board concludes the veteran tax credit for service-connected total disability was designed to give assistance to a veteran who has a service-connected disability, received an honorable discharge, and is unable, as a result of the disability, to be gainfully employed. The board has determined there is ambiguity in the wording of RSA 72:35 and, thus, has arrived at this ruling based on a review of the recent history of RSA 72:35, the history of DRA's rules as required by RSA 72:36 and by the testimony received at hearing. The board does understand the thrust of the City's arguments; however, we disagree with the City's narrow interpretation.

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"A tax exemption statute is construed not with rigorous strictness but to give full effect to the legislative intent of the statute' ***." Wolfeboro Camp School, Inc. v. Town of Wolfeboro, 138 N. H. 496, 499 (1994). Further, the board is hopeful that clarification of eligibility for the veteran's tax credit will occur legislatively or through clear and exact rules by DRA pursuant to RSA 72:36.

The applicable statute, RSA 72:35 IV (a), reads:

Upon its adoption by a city or town as provided in RSA 72:35-a, any person who has been honorably discharged or an officer honorably separated from the military service of the United States and who has a total and permanent service-connected disability, or who is a double amputee or paraplegic because of a service connected injury, or the surviving spouse of such a person, shall receive a yearly tax credit in the amount of \$1,400 of property taxes on his residential property.

The City argued that the word "a" preceding the phrase "total and permanent service-connected disability" should be read to mean a singular cause resulting in a disability. The board disagrees. The word "A" is

defined as follows.

The word "a" has varying meanings and uses. "A" means "one" or "any," but less emphatically than either. It may mean one where only one is intended, or it may mean any one of a great number ***. The article "a" is not necessarily a singular term; it is often used in the sense of "any" and is then applied to more than one individual object. Black's Law Dictionary 1 (5th ed. 1979).

As this definition indicates, "a" is not necessarily singular in nature; the context of its usage determines its meaning. The board rules that an individual need not have a singular cause of disability to qualify under the statute. The state of being disabled can result from the cumulative effect of multiple causes, resulting in an individual, as the Taxpayers argued, being unable to pursue an occupation due to physical or mental impairment.

Because the statute is arguably ambiguous, the board did review the legislative history to the extent submitted at the hearing and the recent amendments to RSA 72:35. If a statute is ambiguous, legislative history can be a valuable aid in ascertaining the intended meaning of a statute. King v. Sununu, 126 N.H. 302, 307 (1985). In determining legislative intent and in

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construing a statute, the basic purpose -- the problem the statute was intended to remedy -- should be considered. Inquiry must be made into the statute's declared purpose and essential characteristics. Rix v. Kinderworks Corp., 136 N.H. 548, 550 (1992); American Automobile Association v. State, 136 N.H. 579, 585 (1992). In 1983, the legislature generally amended RSA 72:35. The testimony of William Johnson, former State Senator in the legislature at that time, and the letter from Representative Paul A. Golden (Taxpayers' Ex. #3) clearly support the contention that the legislature did not intend to

reduce the total and permanent disability tax credit to a singular cause. Illustrative of the legislature's intent not to narrow the applicability of the veteran's tax credit was the removal in 1983 of the previous requirement in RSA 72:35 of military service during certain periods of conflict (RSA 72:28) for anyone to receive the total disability exemption. Removal of this prerequisite broadened the applicability of the tax credit. It would be inconsistent to then argue, as the City does, that the legislature intended to narrow the applicability to a single cause of disability.

Chapter 400 of the DRA rules relates to credits and exemptions from property taxes. REV 403.07 reads as follows.

Total and Permanent Service Connected Disability. Eligibility for the tax credit based on total and permanent service connected disability, as referenced in RSA 72:36-a, shall be evidenced by written verification from the U. S. Veteran's Administration that the veteran has been so classified.

The board finds the promulgation of REV 403.07 in 1994 incorrectly omitted reference to RSA 72:35 as it had in earlier versions of the rule (see Taxpayers' Ex. #1). RSA 72:36 requires the commissioner to adopt rules to interpret various exemption statutes, including RSA 72:35 and RSA 72:36-a. It is clear by the context of the DRA Chapter 400 table of contents and title that REV 403.07 was intended to apply to tax credits wherever total and permanent service-connected disability was a criteria.

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However, even if one argued that REV 403.07 was not in error, the board's ruling would be the same. Administrative rules are intended to carry out the intent of the statutes and not substantively modify their purpose.

Based on the board's earlier rulings relative to interpretation of RSA 72:35, the lack of reference to RSA 72:35 in REV 403.07 is of no effect.

Lastly, the board finds the VA to be the appropriate entity to make a determination of veterans' total and permanent disability. The City argued that DRA's rule REV 403.07 did not specifically apply to RSA 72:35 and that the schedular rating for veterans that are less than 100% disabled is not determinative of the total and permanent service-connected disability assignment. First, as the board has already found, DRA rule REV 403.07 is in error in not making reference to RSA 72:35. The previous DRA rules make it abundantly clear that the VA determination of total and permanent service-connected disability has been the long-standing practice of interpreting and administering RSA 72:35. Further, the board finds, based on the testimony, that VA's review of veterans' disabilities is rigorous and thorough. To subject veterans to a repetitive review at the municipal level for a tax credit seems to the board to be unwarranted and could at times invade the medical privacy of the individuals. The board understands the City's concern about individuals being rated totally disabled when their disabilities total less than 100%. However, as the board has already stated, the VA's review appears thorough. Further, the reality is someone has to make the determination of whether such disabilities cause an individual to be unable to obtain gainful employment and the VA is the one most appropriate to do so.

If full taxes have been paid for the tax years in question, the City shall reimburse the Taxpayers in the amount of the tax credit plus interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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;

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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

Arthur E. Bean, Temporary Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John R. and Phyllis Belfontaine, Taxpayers; Peter V. Millham, Esq., Counsel for Joseph C. Stitt, Taxpayer; Timothy Bates, Esq., Counsel for the City of Laconia; and Chairman, Board of Assessors, City of

Laconia; and Dennis Viola, Representative for John R. and Phyllis Belfontaine, Taxpayers.

Date: September 21, 1998

Valerie B. Lanigan, Clerk

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Joseph C. Stitt

v.

City of Laconia

Docket No.: 17384-97EX

ORDER

This order is being issued to correct the board's September 21, 1998 decision. Specifically, the docket number in the caption heading was erroneous and is being corrected to read as follows:

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To further clarify, if full taxes have been paid for tax year 1997, the City shall reimburse Mr. Stitt in the amount of the tax credit plus interest at six percent per annum from date paid to refund date.

The remainder of the final decision stands.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Arthur E. Bean, Temporary Member

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Certification

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Peter V. Millham, Esq., Counsel for Joseph C. Stitt, Taxpayer; Timothy Bates, Esq., Counsel for the City of Laconia; and Chairman, Board of Assessors, City of Laconia.

Date:

Valerie B. Lanigan, Clerk

Joseph C. Stitt

v.

City of Laconia

Docket No.: 17384-97EX

ORDER

This order responds to the "Taxpayer's" September 14, 1998 letter. The board reads this letter as an RSA 541:3 reconsideration request. To the extent matters in the letter have not been addressed by this order, the Taxpayer should consider them denied. The following, however, warrant addressing.

First (Taxpayer's paragraph 420), the board does not rule on costs until a decision is rendered.

Second (Taxpayer's paragraph 424), the Taxpayer and the Town will be allowed to respond to the board's review appraiser's report. The intent of the board's September 8, 1998 order was to place a reasonable limit on filings. The board does not have unlimited time to spend on this one case. Each case must be given a meaningful review, but the board is authorized to place limits on the material and motions that are filed. Given the record in this case, the board concluded it should explicitly state that no further

filings would be accepted unless authorized by the board.

Third (Taxpayer's paragraph 426), as stated above, the board must place reasonable limits on filings or this case will go on and on. The Taxpayer will not be allowed to file a rebuttal to the Town's rebuttal.

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Fourth (Taxpayer's paragraphs 427-434), the board strikes these paragraphs from the letter. As the September 8, 1998 order states, the board will not accept additional documents from the parties. The board sees these paragraphs as additional arguments, and therefore, they violate the board's order. More importantly, the paragraphs are totally inappropriate in their accusations against Mr. Roberge. Mr. Roberge has represented municipalities before this board for many years. While the board does not always agree with his analyses, arguments or conclusions, we have never found him to be dishonest or manipulative. To the contrary, he has attempted to reasonably and accurately present the respective municipality's position. The Taxpayer should be forewarned that if he continues in this course of conduct, the board will have to consider what options are available to it to thwart the Taxpayer's abuse of this process. The comments are not only offensive to Mr. Roberge, they are offensive to this board. The Taxpayer should be advised that tax appeals are very serious proceedings, and the board insists that all parties treat each other and the board with respect.

Pursuant to this order, the board's clerk is instructed to sufficiently

mark the original September 14, 1998 letter to show that the material in paragraphs 427-434 has been stricken by this order. This way, the record is clear that the board disapproved of the Taxpayer's specious allegations and misuse of this forum.

Until authorized by the board, if the Taxpayer attempts to file any other document, the board will simply return the document.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing order has this date been mailed, postage prepaid, to Francis C. Dow, Taxpayer; Gary J. Roberge, Sr., Agent for the Town of Newton; and Chairman, Selectmen of Newton.

Dated: September 21, 1998

Valerie B. Lanigan, Clerk

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