

Charles W. Moritz

v.

City of Manchester

Docket No.: 17392-97EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "City's" June 16, 1998 denial of the Taxpayer's application for elderly exemption pursuant to RSA 72:39-a on a 14,000 square-foot lot with a single-family home assessed at \$109,700 (land \$49,500; buildings \$60,200) (the Property). For the reasons stated below, the appeal is granted, and the Taxpayer is eligible for the appropriate 1997 elderly exemption.

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

The Taxpayer argued he was entitled to the exemption because:

- (1) he had been receiving the exemption since 1991;
- (2) the Property was sold June 20, 1997, and taxes were prorated at the closing;
- (3) he was not aware the exemption was removed by the City until noticed by

the buyers that he owed them additional money; and

(4) his application was late because he did not receive the City's written notices that a new application must be filed.

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

- (1) the City made every reasonable effort (through the radio, newspapers, two written notices, and in some cases telephone calls) to notice taxpayers that they must requalify;
- (2) the Taxpayer failed to timely file his application; and
- (3) if the board finds the Taxpayer's application was timely, there is no question that he qualifies for the exemption.

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

The question to be answered in this case is whether the City's denial of the Taxpayer's elderly exemption based on his lack of refiling financial statements in 1997 is warranted given the facts in this case. We find it is not, and the City shall grant the Taxpayer the elderly exemption for which he was eligible for in 1997.

A summary of the facts are as follows.

1) Effective July 23, 1996, the legislature enacted RSA 72:39-a and b, providing for a singular elderly exemption statute with a time period for municipalities to adopt the statute by January 1, 1998, with specific exemption amounts and income and asset requirements.

2) The City of Manchester adopted on March 18, 1997, RSA 72:39-a and b.

3) During the summer of 1997, the City undertook a media and mailing campaign to make existing recipients of elderly exemptions aware of the need to refile financial information pursuant to RSA 72:33 VI.

4) On June 20, 1997, the Taxpayer sold his Property on which he had received the elderly exemption since 1991 and moved to a rental property in the City.

5) Despite the City's two mailings, which included first class letters to the Taxpayer, the Taxpayer did not receive either letter nor were the letters returned to the City as undeliverable; further, the purchaser of the Taxpayer's Property, Elaine Michaud, also did not receive any notices from the City intended for the Taxpayer.

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6) While the City did telephone some taxpayers who had not responded to the mailings, they did not recall calling the Taxpayer.

First, the board commends the City for its diligence in attempting to make sure that previously eligible taxpayers were aware of the changes in the elderly exemption statute. The Taxpayer also exhibited due diligence as evidenced by his description of the sale of the Property and his notification to the post office of his change of address. From the facts presented to the board, it is not possible to definitively determine why the City's mailings did not reach the Taxpayer. However, the board is convinced based on the Taxpayer's forthrightness and thoroughness that it was not due to any imprudent action on his part. On one hand, given its efforts, the board does not find the City's discretion to be totally unreasonable. However, on balance, justice would be better served in granting the Taxpayer his elderly exemption for 1997. The Taxpayer would have continued to have received his

elderly exemption but for the fact the legislature significantly revised the elderly exemption statutes. The board is unable to find any fault attributable to the Taxpayer, and thus, granting his 1997 elderly exemption is more in keeping with the intent of the elderly exemption statutes than not.

The City shall refund the amount of the taxes related to the 1997 elderly exemption with interest at six percent per annum from date paid to refund date. RSA 76:17-a; RSA 72:34-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; 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

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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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles W. Moritz, Taxpayer; and Chairman, Board of Assessors, City of Manchester.

Date: December 16, 1998

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Valerie B. Lanigan, Clerk

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