

**David Avery**

**v.**

**City of Laconia**

**Docket No.: 17908-99EX**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" August 17, 1999 denial of the Taxpayer's request for an RSA 72:35 IV veteran's tax credit based on service-connected total disability exemption. For the reasons stated below, the appeal is denied.

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. We find the Taxpayer failed to carry this burden.

The Taxpayer argued he was entitled to the tax credit because:

- (1) the Veteran's Affairs (VA) has determined that he is unemployable;
- (2) the total of all disabilities is 130%; and
- (3) the intent of the statute was to help veterans who can no longer be gainfully employed.

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

- (1) the VA's March 3, 1999 letter states combined disability of 90%, thus entitling the Taxpayer

Page 2

Avery v. City of Laconia

Docket No.: 17908-99EX

to receive compensation at the 100% rate;

(2) the statute requires total and permanent service-connected disability; and

(3) there is nothing in the VA documentation stating the Taxpayer is totally and permanently disabled.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to show he was entitled to the veteran's tax credit under RSA 72:35.

In reviewing RSA 72:35, the board will apply the following general rules of statutory interpretation and construction.

The board must first look to the statute's language and consider the statute's plain meaning. HEA Realty v. City of Nashua, 136 NH 695, 697 (1993); Rix v. Kinderworks Corp., 136 N.H. 548, 550 (1992).

In construing statutes, the board should first examine the language and, where possible, ascribe plain and ordinary meaning to the words unless the statute itself suggests otherwise. Appeal of Astro Spectacular, 138 N.H. 298, 300 (1994); Appeal of Campton School District, 138 N.H. 267, 269 (1994).

If the language is clear and unambiguous, the board must apply such interpretation and not modify it by construction. State v. Dushame, 136 N.H. 309, 313 (1992); Penrich, Inc. v. Sullivan, 136 N.H. 621, 623 (1993).

The board must read the language at issue in the context of the entire statute and the statutory scheme. Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992); Great Lakes Aircraft Co., Inc. v. City of Claremont, 135 N.H. 270, 277 (1992).

In reviewing the Taxpayer's arguments, the board has paid particular attention to the most relevant section of RSA 72:35, which is RSA 72:35 IV (a).

**72:35 Tax Credit for Service-Connected Total Disability.**

IV. (a) 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. (Emphasis added.)

The criteria for establishing eligibility for the veteran's tax credit as set out in RSA 35 IV (a) expressly states that the veteran must be classified as totally and permanently disabled. As pointed out by the City, the Taxpayer has no documentation from the VA stating the Taxpayer is totally and permanently disabled. The Taxpayer presented a March 3, 1999, letter from the VA, stating the Taxpayer was currently unemployable due to a service-connected disability and was being paid at the 100% rate. The Taxpayer pointed to this as an indication that the VA intended for the Taxpayer to be eligible for the tax credit. The board disagrees. If that were the case, the VA would have stated the Taxpayer was totally and permanently disabled. Further, the board refers to the February 10, 1998 letter from the VA to the Taxpayer. In that letter, the VA states the Taxpayer will be examined in the future to review the disabilities as they are subject to improvement and their evaluations are not considered permanent. These words indicate to the board that the VA does not consider the Taxpayer's condition, as of the date of the veteran's tax credit application, to be necessarily permanently disabling. The ongoing evaluations of the Taxpayer and the VA's revised degrees of disability indicate the Taxpayer's medical condition has not stabilized and requires periodic evaluations to ascertain the correct amount of disability.

Additionally, the board reviewed two previous board decisions concerning RSA 72:35

Page 4

Avery v. City of Laconia

Docket No.: 17908-99EX

veteran's tax credit appeals involving the City of Laconia (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) (copies attached) and has determined the instant case is different in that, in the previous two cases the VA specifically stated the applicants for the veteran's tax credit were totally and permanently disabled. In the instant case, the Taxpayer has been unable to provide any documentation that the VA has classified him as totally and permanently disabled. The board finds the City correctly pointed out the difference between these cases. The VA is the appropriate agency to determine the extent of a veteran's disability, and it is appropriate that the board review the VA's correspondence thoroughly to determine its position concerning the evaluation of the veteran. The board was unable to locate in any of the Taxpayer's submissions any documentation to support his testimony that he was totally and permanently disabled. The VA's statements indicate the evaluation of the veteran applicant is an ongoing process that will be reviewed periodically. At some point, the Taxpayer may become totally and permanently disabled, but as of the date of this appeal, this is not the case.

The Taxpayer asserted the board should look at the intent of the statute, not just the words, as the intent of the statute is to protect veterans from unreasonable taxation. However, the board must follow the statute and relevant case law.

The statute's words are the touchstone of the legislature's intention. Thus, the legislative intent is based not on what the legislature might have intended, but rather, on what was stated in

the statute. Dushame, 136 N.H. at 314.

If a statute is unambiguous, the legislative history should not be examined or considered.

State v. Gagnon, 135 N.H. 217, 221 (1991).

This case law indicates to the board that the Taxpayer is not eligible for the veteran's tax credit. A clear reading of the words in the statute of RSA 73:35 IV (a) indicates that for the veteran to be eligible, he must be totally and permanently disabled and the Taxpayer has not submitted sufficient evidence to support this position. Given these constraints, the board finds the Taxpayer is not eligible in 1999 for the veteran's tax credit and denies the appeal. We also find the City supported its denial of the Taxpayer's request for a tax credit.

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David Avery, Taxpayer; and Chairman, Board of Assessors of Laconia.

Date: March 13, 2000

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Lynn M. Wheeler, Clerk