

B. Joey D. Holmes

v.

Department of Revenue Administration

Docket No.: 18048-99HR

DECISION

The "Taxpayer" appeals, pursuant to RSA 198:54, the department of revenue administration's ("DRA") determination of the Taxpayer's 1999 Education Property Tax Hardship Relief Application ("Application"). The Taxpayer requested, and was granted, leave to not attend the hearing. TAX 202.06(d). For the reasons stated below, the appeal is denied.

While Chapter 338 (the statewide education property tax law) contains no specific provision as to who has the burden in this type of appeal, it is well settled that in civil actions the burden of proof is generally on the plaintiff to establish its case by a preponderance of the evidence. Dunlop v. Daigle, 122 N.H. 295 (1982); Jodoin v. Baroody, 195 N.H. 154 (1958); TAX 201.27(f).

The Taxpayer argued she was entitled to relief because:

1) the DRA granted her only 66 2/3%, rather than 100%, of the net rate increase in her property

taxes because the DRA included interest income in her total household income;

2) this, in her view, amounts to “double taxation,” since she pays a state interest and dividend tax on this amount; and

3) the current-use portion of her property’s assessed value should not have been excluded.

The DRA argued the denial was proper because:

1) the Taxpayer’s household income, reflected on her 1998 federal income tax return, exceeded \$15,000;

2) the statutory definition of “household income” is “adjusted gross income for federal income tax purposes,” RSA 198:50, III;

3) including interest income subject to state taxation in the definition of household income does not amount to “double taxation,” but is only a “gauge” to establish eligibility for hardship relief;

4) since the Taxpayer’s 1998 adjusted gross income exceeded \$15,000, she is entitled to 66 2/3%, not 100%, of the net rate increase prescribed in RSA 198:51, IV (1); and

5) the current-use value of \$488 was properly excluded from the Taxpayer’s 1998 assessed value of \$110,528 to result in an adjusted value of \$110,040.

Board's Rulings

The board’s authority over education property tax relief appeals is contained in RSA 198:54, II, which states the board “may reverse, wholly or partly, or may modify the decision brought up for review when there is an error of law or when the board finds the commissioner’s actions to be arbitrary or unreasonable.” The board finds the DRA committed no error of law and did not act arbitrarily or unreasonably in this case and its determination that the amount of

education property tax hardship relief due the Taxpayer was \$234.77 is correct.

In her appeal, the Taxpayer essentially raised two issues: 1) the assessed value of the “homestead” should include the property in current use; and 2) a large portion of her reported income is interest income which she has already paid interest and dividend taxes on, resulting in double taxation. Further, the Taxpayer argues the percentage of net rate increase calculation should be 100%, not 66 2/3% because interest income should not be included in the total household income. The board addresses each issue below.

RSA 198:50, II defines “Homestead” as “a dwelling owned by a claimant... which is owned and used as the claimant’s principal place of residence....” “Homestead” is further defined as not including land and buildings taxed under RSA 79-A, the current-use taxation statute. The Taxpayer owns four lots in the Town of Grantham. The land assessed on Maps 216-21, 216-31 and 216-34 is in current use. Of the land and buildings assessed on Map 216-16, the value of land assessed in current use (\$488) needs to be deducted from the total net value of \$110,528 for a “Homestead” value of \$110,040 (residential land and buildings assessed at ad valorem).

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). In this case, the statute is quite clear that its

definition of “Homestead” specifically exempts land in current use. Therefore, the DRA’s use of \$110,040 as the value of the “Homestead” is correct.

The Taxpayer’s 1998 federal income tax return (1040 form) showed an adjusted gross income of \$16,390. Of this amount, \$4,616 was taxable interest earned. The Taxpayer argued she paid interest and dividend tax on the \$4,616 so this amount should not be considered to affect the eligibility percentage of the net rate increase in the education property tax based upon her household income. In essence, the Taxpayer claimed double taxation. First, as the board stated above, if the statutory language is clear and unambiguous, the board should not modify it. In this case, the Taxpayer’s 1998 income tax return indicated a total adjusted gross income of \$16,390. The statute allows 66 2/3% of the net rate increase if the total household income is more than \$15,000 but less than \$20,000. RSA 198:51, IV (c) (1) (B).

The board finds that using the Taxpayer’s total adjusted gross income, including interest income, in the calculation of net rate increase does not constitute double taxation of the Taxpayer’s interest income. As the DRA aptly stated in its memorandum submitted at the hearing, the RSA 198:51, IV(c) income scales do not affect the amount of tax due. The income scales merely determine the amount of hardship relief rebate the Taxpayer is entitled to. Using the Taxpayer’s income as a method to determine hardship relief does not constitute double taxation of the Taxpayer’s interest and dividend income. “The dispositive inquiry in cases involving alleged double taxation is whether the two taxes are determined by ‘separate and distinct factors.’” First Financial Group of N.H., Inc. v. State, 121 N.H. 381, 386 (1981); citing Opinion of the Justices, 111 N.H. 210, 212 (1971); and Opinion of the Justices, 106 N.H. 202,

207 (1965).

Property taxes and interest and dividend taxes are determined by ‘separate and distinct factors.’ Property taxes attach to the ownership interest a taxpayer has in real property (i.e., land, buildings) and the interest and dividend tax attaches to an income stream. Thus, the Taxpayer is not paying taxes on the same income twice: the Taxpayer is paying taxes (i) on interest income and (ii) on real property owned. RSA 198:51, IV (c) merely uses “Household income” as a scale to ensure those taxpayers who are at most risk of serious, adverse economic consequences receive hardship relief from property taxes. “Household income” is defined as “the sum of the adjusted gross income for federal income tax purposes of the claimant... who resides in the homestead for which a claim is made.” RSA 198:50, III. In this case, the Taxpayer’s 1998 “Household income” was \$16,390, which entitles her to 66-2/3 % of the net rate increase.

The DRA determination is sustained.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to B. Joey D. Holmes, Taxpayer; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: July 24, 2000

Lynn M. Wheeler, Clerk

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