

**Charles L. and Lindy Bean**

**v.**

**Department of Revenue Administration**

**Docket No.: 18058-99HR**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 198:54, the department of revenue administration's ("DRA") denial of the Taxpayers' claim for education property tax hardship relief for 1999. The DRA denied this claim on the ground that the Taxpayers' total household income exceeded the statutory maximum. RSA 198:51, III (d)(\$50,000 for married persons). Based on a review of the entire record, including testimony at the hearing on July 6, 2000, the decision of the DRA is affirmed and 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). In matters involving an appeal from a determination of the DRA, the DRA "is

the defendant and the [T]axpayer is the plaintiff,” as the DRA correctly points out in its Memorandum of Law (the “DRA Memorandum”).

The Taxpayers argued they were entitled to relief because:

- (1) the Taxpayer husband was disabled with a stroke in 1997, which prevented him from continuing to work;
- (2) due to this disability, the Taxpayers decided to withdraw money, previously tax deferred in IRA and pension accounts, into a “Roth IRA” account;
- (3) this conversion to a Roth IRA added substantial amounts (\$103,578 in “IRA distributions” and \$18,244 in “pensions & annuities”) to the adjusted gross income computed on their 1998 federal income tax return;
- (4) the Taxpayers had to pay substantial taxes on these amounts out of their personal savings, even though they did not receive any cash proceeds from the rollover;
- (5) if these amounts are excluded, the Taxpayers’ household income falls below the \$50,000 ceiling; and
- (6) the Taxpayers also believe it is unfair to base their income eligibility on ‘past’ or accumulated income (earned in prior years and reflected in these rollovers) rather than ‘current’ or sustainable income, which consists primarily of long term and social security disability and pension benefits, which is well under this eligibility ceiling.

The DRA argued the denial was proper because:

- (1) education property tax hardship relief is governed by several statutory eligibility requirements, which include, for a married couple, “total household income,” defined to mean

“adjusted gross income for federal income tax purposes,” of \$50,000 or less, RSA 198:50, III and 198:51, III (d);

(2) in 1998, the last year of reference for the 1999 claim, the Taxpayers’ total household income, as stated on their hardship relief application and reflected on their 1998 federal income tax return, was their adjusted gross income of \$129,831;

(3) no authority exists to look beyond the statutory definition of total household income to determine eligibility for education property tax hardship relief; and

(4) the Taxpayers voluntarily chose to roll over their IRA and pension accounts into a Roth IRA in order to save on future taxes and this rollover resulted in the increase in their 1998 adjusted gross income.

### **Board's Rulings**

Based on the evidence, the board affirms the decision of the DRA denying the Taxpayer’s claim for hardship relief. Under the applicable statute, the board may only reverse or modify the decision of the DRA “when there is an error of law or when the board finds the commissioner’s [DRA’s] actions to be arbitrary or unreasonable.” RSA 195:54, II. The Taxpayers have not sustained their burden of establishing any error of law or arbitrary or unreasonable action by the DRA in this case.

The DRA and the board are constrained to apply the statute enacted by the Legislature and signed into law by the Governor. This statute is unambiguous both in establishing income eligibility criteria for property tax hardship relief and in using “adjusted gross income for federal income tax purposes” as the exclusive criterion for income eligibility. Specifically, “household

income"/adjusted gross income cannot exceed \$50,000 "for a married person or head of a New Hampshire household" and \$25,000 for a single person. RSA 198:50, III and 198:51, III (d).

The DRA's regulations require submittal of pages 1 and 2 from the Taxpayers' 1998 federal income tax return for the determination of income eligibility regarding hardship relief from the 1999 property tax. REV 1203.05(a)(1).

The Taxpayers also submitted their 1997 federal income tax return to the DRA. This return shows an adjusted gross income of \$19,175. While this might have entitled them to relief if property tax hardship relief had been available for the 1997 year, that is unfortunately not the case. The Legislature left no discretion for the DRA to consider prior or future income in administering claims for education property tax hardship relief for 1999, the first year of the statewide education property tax and the hardship relief statutes.<sup>1</sup>

The board understands and sympathizes with the plight of the Taxpayers in this case: they face diminished income prospects due to the husband's unfortunate medical condition and the wife's desire to attend to his needs. The board also understands why the Taxpayers may

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<sup>1</sup> The DRA's "emergency" regulations, adopted shortly after the statute was passed and effective December 13, 1999, require consideration of household income as determined from the Taxpayers' 1998 federal income tax return. See REV 1203.05 (a) (1) and 1202.01(c) (2). In the next year, income eligibility will presumably be based on the adjusted gross income calculated on the 1999 federal income tax return. The Taxpayers may qualify for hardship relief in future years, if they file a claim and meet all the income eligibility and other requirements in effect for those periods.

have chosen to withdraw their tax deferred IRA savings and retirement accounts and pay substantial federal taxes in 1998 (in order to roll over these sums into a Roth IRA in the hope of avoiding future taxes on income earned by these sums.) These insights into the Taxpayers' voluntary tax planning choices (in the midst of a difficult personal situation) do not, however, provide a valid basis for ignoring the statute and regulations applicable to all homeowners.

The DRA's Memorandum correctly points out that the statute, as presently enacted, "provides no alternative method for determining a claimant's income eligibility."<sup>2</sup> Consequently, the board can find no error of law or arbitrary or unreasonable action on the part of the DRA in this case. The decision of the DRA is therefore affirmed.

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

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<sup>2</sup>The Memorandum also cites Bradley Real Estate Trust v. Taylor, Commr., 128 N.H. 441, 444 (1986) for the proposition that the DRA is constrained to apply the language and meaning of the statute and not "substitute its own standards." In Bradley, the Court disagreed with the DRA when it tried to go beyond the "literal" statutory definition of "Gross business profits" as a specific line item on the taxpayer's federal income tax return. Similarly in this case, the board believes the DRA is constrained to apply the definition of household income as "adjusted gross income for federal income tax purposes," a definition contained in the education property tax hardship relief statute. RSA 198:50, III.

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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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 Charles L. and Lindy Bean, Taxpayers; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: July 24, 2000

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Lynn M. Wheeler, Clerk