

Mary J. Perkins

v.

Department of Revenue Administration

Docket No.: 18062-99HR

DECISION

The "Taxpayer" appeals, pursuant to RSA 198:54, the determination by the department of revenue administration ("DRA") of the Taxpayer's education property tax hardship relief application. 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 Taxpayer owns three lots with a total assessed value of \$281,000 (\$229,200 for Lots 3 and 4; and \$51,800 for Lot 10) in the "Town;"
- (2) Lots 3 and 4 are assessed together, and Lot 10 is assessed separately, by the Town;

- (3) Lot 10 is quite small and is “essential” to the use of Lots 3 and 4 because of inadequate parking on those lots;
- (4) hardship relief should be based on the total combined value of all three lots;
- (5) the Taxpayer rents the Property in July and August and so applied for hardship relief based on 78 percent of the total assessed value of the three lots; and
- (6) the Taxpayer’s 1999 taxable income was below \$20,000 and so she applied 66 2/3 percent to the net rate increase rather than 33 1/3 percent.

The DRA argued the denial was proper because:

- (1) Lot 10 is self-contained and is not necessary for Lots 3 and 4, which the Taxpayer uses as her residence, and therefore the value of Lot 10 should be excluded from the property tax hardship relief computation;
- (2) the Taxpayer’s adjusted gross income (\$21,316.79) on her 1998 federal income tax return entitled her to 33 1/3 percent of the net rate increase rather than 66 2/3 percent; and
- (3) the Taxpayer’s application for hardship relief incorrectly stated a lower assessed value (78 percent of the total assessed value of all three lots), but she is entitled instead to 100 percent of the assessed value of Lots 3 and 4 (up to the maximum homestead value for Bridgewater of \$240,000).

Board's Rulings

When reviewing the DRA’s determination, the board’s RSA 198:54, II authority is limited to errors of law or when the board finds the commissioner’s actions to be arbitrary or

unreasonable. Based on the evidence presented at the hearing, the board finds no error of law or arbitrary or unreasonable action in the DRA's determination of the amount of hardship relief the Taxpayer was entitled to receive.

Lots 3 and 4 are contiguous and contain the Taxpayer's dwelling place. Lot 10 is vacant land and is taxed separately by the Town. Under the definition contained in the hardship relief statute, "'homestead' means the dwelling owned by a claimant . . . and used as the claimant's principal place of residence and the claimant's domicile for purposes of RSA 654:1." The Taxpayer testified that part of Lot 10 may sometimes be used by summer renters for parking purposes, especially when a boat trailer is present. Such occasional use, however, does not make Lot 10 part of the Taxpayer's dwelling for homestead purposes, especially when this lot is taxed separately by the Town.¹

Although it excluded Lot 10 from the computation, the DRA gave the Taxpayer the benefit of 100 percent of the assessed value (for Lots 3 and 4), rather than the 78 percent (of all three lots) she claimed on the application. The DRA concluded the statute only requires the homestead be the Taxpayer's principal ("primary") place of residence, not that she "physically occupy the homestead for an uninterrupted 12-month period. Temporary absences are not counted against the residency requirement." See the DRA's "Memorandum of Law" at p. 4. The

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¹Cf. RSA 75:9: "**Separate Tracts.** Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land . . . are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately . . . In determining whether or not contiguous tracts are separate estates, the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately . . . "; and Fearon v. Town of Amherst, 116 N.H. 392, 393-94 (1976) and authorities cited therein.

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Taxpayer's reduction of 22 percent based on her rental of the Property for part of the year was therefore not necessary.

The DRA adjusted the claim for hardship relief downward because it was the Taxpayer's 1998 adjusted gross income rather than her 1999 adjusted gross income that determined the limitation factor. The correct limitation was 33-1/3 percent rather than 66-2/3 percent because the Taxpayer's adjusted gross income for federal income tax purpose was over \$20,000 in 1998 (\$21,316.79). Compare RSA 198:51, IV(c)(1)(C) and (B).

Based on each of these adjustments, the DRA properly determined the amount of hardship relief the Taxpayer was entitled to receive (\$150.49). Consequently, the appeal of the Taxpayer is denied.

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

Paul B. Franklin, Chairman

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 Mary J. Perkins, Taxpayer; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: September 14, 2000

Lynn M. Wheeler, Clerk