

Marie L. Moran

v.

Town of Seabrook

Docket No.: 18087-99EX

DECISION

The "Taxpayer" appeals the "Town's" denial of the Taxpayer's request for an elderly exemption for the 1999 tax year. For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, she was entitled to the statutory exemption for the year under appeal. See RSA 72:23-m; and TAX 204.06. We find the Taxpayer failed to meet this burden.

The Taxpayer argued she was entitled to an elderly property tax exemption from the Town because:

- (1) not all of her total "social security benefit" of \$12,126 was received in cash: a small portion (\$546) was deducted by the federal government for "Medicare premiums" she was obliged to pay back to the Social Security Administration; and
- (2) if these Medicare premiums are excluded, her 1999 income falls below \$15,000, qualifying her for the Town's elderly exemption.

The Town argued the denial of the elderly exemption was proper because:

- (1) the Town's income eligibility limit of \$15,000 was exceeded by \$161.31, when the Medicare premiums of \$546 are included in the Taxpayer's "net income from all sources" under RSA 72:39-a and 72:39-b;
- (2) Town officials have no authority to waive or modify the \$15,000 income limit established by the voters in the Town; and
- (3) Medicare premiums are properly part of the Taxpayer's total social security "Benefits Paid" and the federal document ("Form SSA-1099 -- Social Security Benefit Statement") confirms this point.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet the Town's income eligibility requirement and is, therefore, not entitled to an elderly exemption.

The Taxpayer's application for an elderly exemption was denied by the Town on February 22, 2000. As noted above, her application filed with the Town reflected a total income for 1999 which exceeded the Town limit of \$15,000 by \$161.31. In providing the figures used in computing her total income, the Taxpayer listed social security benefits of \$12,126, the same amount shown as "Benefits Paid in 1999" and "Net Benefits for 1999" on Form SSA-1099 supplied to her by the Social Security Administration. This form further describes her benefits as comprising two items: a "check or direct deposit" amount of \$11,580; and "Medicare premiums deducted" of \$546.

The parties agree that if the latter item is excluded from her income computation, the

Taxpayer would have qualified for the elderly exemption. Since the Town included this item in determining the Taxpayer's income, the sole issue on this appeal is whether the Taxpayer can sustain her burden of establishing the Town's determination was erroneous as a matter of law.

The board has undertaken further research to increase its understanding of Medicare premiums to resolve this issue. The Medicare system is organized into Part A (a mandatory "Basic Hospital Insurance Plan") and Part B (a voluntary "Supplemental Medical Insurance" plan to cover physician and other outpatient services). All persons aged 65 and over receive Part A benefits, and no payment of insurance premiums is required to participate or receive them. Part B, on the other hand, is entirely voluntary, and does require the payment of insurance premiums as a condition for participation. See, generally, William Thomas, All About Medicare (1990).

Of particular relevance to this case is the federal agency practice of deducting Medicare premiums (for Part B coverage) from the payments recipients of social security, like the Taxpayer in this case, would otherwise be entitled to receive. As noted by a Medicare authority, persons not receiving benefits "will pay the premiums directly to the government," but "covered persons will have the premiums deducted from their Social Security benefits." Id. at 36. The Taxpayer fit into this latter category. In 1999, Medicare premium deductions for Part B coverage totaled \$546 (\$45.50 per month).

In this context, the board must determine whether the line drawing and conclusion reached by the Town [i.e., the Taxpayer's income exceeded \$15,000 (by \$161.31) and therefore she was not eligible for the elderly exemption] was proper. The elderly exemption statute, RSA

72:39-a, was enacted in 1996 and prescribes four separate conditions for eligibility. In addition to residency, ownership and net asset conditions (not at issue in this case), the statute requires “net income from all sources” to be not more than a prescribed amount, which was \$15,000 for the Town in 1999. See also RSA 72:39-b. The statute now clearly states that “social security or pension payments” must be included in the determination of net income.¹

The board accepts the Town’s conclusion that Medicare premiums deducted by the Social Security Administration (before payment of other benefits to the recipient) should be treated as “social security . . . payments” and, therefore, part of the Taxpayer’s “net income from all sources” under the elderly exemption statute. A tax exemption statute should be construed “to give full effect to the legislative intent of the statute.” Wolfeboro Camp School v. Town of Wolfeboro, 138 N.H. 496, 499 (1994). The intent of the elderly exemption statute is to determine ability to pay property taxes based upon a comprehensive determination of income, including social security and other sources.

Whether Medicare premiums are deducted on behalf of recipients, or first paid out and then repaid by the recipients, should not change the outcome for income determination purposes, since either method results in a voluntary purchase of additional insurance coverage. The deduction of premiums from benefits otherwise receivable simply makes the system operate

¹Prior to 1996, when RSA 72:39-a was enacted, the net income criteria for an elderly exemption excluded, rather than included, “Social security payments” but was much lower in amount. See former RSA 72:40, II(d) (repealed in 1996).

more efficiently, avoiding the need for additional check-writing to the government.

A contrary conclusion, while favorable to the Taxpayer, is less than fair to recipients who might be entitled to the local property tax elderly exemption but who don't receive federal social security benefits. A person who is not yet retired, for example, may simply not qualify for social security benefits. See, generally, William Thomas, Social Security Manual (1990) at p. 61. Such a person would have to pay (Part B) Medicare premiums directly (rather than by deduction from other social security benefits) and no offset would be allowed for those payments in determining his or her income for RSA 72:39-a purposes. Thus, two taxpayers, one of whom pays the Medicare premium by check (or, for that matter, purchases alternative private insurance) and the other who has the Medicare premium deducted from other benefits, would receive disparate treatment independent of their ability to pay property taxes, which is the basis for the elderly exemption at issue in this case. This unfairness need not result if, as here, voluntary Medicare premiums deducted by the Social Security Administration before payment of other benefits is treated as part of the recipient's "net income from all sources."

For these reasons, the Taxpayer's appeal is denied. The board commends both the Taxpayer and the Town for the diligence reflected in their presentations. At the hearing, the Town's representative expressed sympathy for the Taxpayer's situation and noted the Town was in the process of deciding whether the income ceiling of \$15,000 should be adjusted upwards. If this occurs, the Taxpayer may qualify for an elderly exemption in future years.

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 Marie L. Moran, Taxpayer; and Chairman, Board of Selectmen of Seabrook.

Date: November 8, 2000

Lynn M. Wheeler, Clerk