

Alane M. Barrett

v.

Department of Revenue Administration

Docket No.: 18134-99HR

DECISION

The "Taxpayer" appeals, pursuant to RSA 198:54, the department of revenue administration's ("DRA") denial of the Taxpayer's 1999 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, who was represented at the hearing by her spouse, Richard J. Barrett, Sr., argued she was entitled to relief because:

(1) the Taxpayer's spouse is a legal resident of Massachusetts, not New Hampshire, where he

works and owns his own residence and several income properties and files a Massachusetts state income tax return;

(2) the Taxpayer is the claimant of property tax relief and maintains the homestead property in the Town of Moultonborough as a residence separate from her spouse;

(3) the Taxpayer and her spouse maintain separate financial and credit card accounts;

(4) the Taxpayer has her own sources of income and qualifies for hardship relief because her own adjusted gross income (ignoring the income of her spouse) is \$16,610.24, which is below the relevant ceiling of \$25,000; and

(5) the statute's legal definitions should be applied rather than the intention of the legislature.

The DRA argued the denial was proper because:

(1) the Taxpayer and her spouse filed a joint federal income tax return and their adjusted gross income for federal income tax purposes was \$80,388.96, which is in excess of the \$50,000 ceiling specified in RSA 198:51, III (d) for "a married person or head of a New Hampshire household";

(2) the domicile or legal residence of her spouse is irrelevant since the Taxpayer voluntarily chose to file a joint federal income tax return;

(3) the homestead at issue in this case is owned by her spouse and by the Taxpayer as "joint tenants with right of survivorship";

(4) the spouse shares in "the benefit of the homestead" by visiting the Taxpayer on weekends

and by sharing in the deduction for payment of property taxes on their joint federal income tax return; and

(5) the Taxpayer does not qualify for property tax hardship relief simply because she has income sources of her own that are separate from her spouse.

Board's Rulings

In an appeal of a denial of a hardship relief claim by the DRA, “the board may reverse or affirm, 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.”

RSA 198:54, II. In this case, the board finds the DRA properly denied the application for hardship relief because the Taxpayer’s adjusted gross income exceeds the statutory eligibility level, and therefore, the board dismisses the appeal.

RSA 198:51, III provides: “[a]n eligible hardship relief claimant is a person who:

(a) Owns a homestead or interest in a homestead subject to the education property tax;

(b) Has resided in such homestead for a period of one year, except such persons as are on active duty in the United States armed forces or are temporarily away from such homestead but maintain the homestead as a primary domicile;

(c) Realizes in any year after the effective date of the reenactment of the statewide property tax under RSA 76:3 in this act a net increase in property taxes, exclusive of municipal and county taxes, which exceeds the local education property tax portion of such claimant’s local property taxes for the tax year ended March 31, 1999; and

(d) Realizes total household income of \$25,000 or less if a single person and \$50,000 or less if a married person or head of a New Hampshire household.

The Taxpayer meets the requirements of subparagraphs a, b and c but not subparagraph d

for the reasons that follow.

The Taxpayer owns with her husband, as joint tenants with rights of survivorship, a property located in Moultonborough identified as Map 3, lot 51 on which the hardship relief is claimed. The Taxpayer claims the Moultonborough residence as her principal place of residence. The Taxpayer and her husband also own another residential property at 130 Newton Street, Lawrence, Massachusetts, at which her husband resides during the week. The Taxpayer and her husband filed a joint federal income tax return in 1998 showing a total adjusted gross income of \$80,388.96, of which the Taxpayer's business income contributed \$3,820.66. The balance was comprised of Mr. Barrett's salary and income from two duplex properties in Lawrence, Massachusetts.

The board finds the Taxpayer's "household income" as defined in RSA 198:50, III¹ is in excess of \$50,000 and, therefore, does not qualify for the hardship relief. RSA 198:51, III (d) requires the household income be less than \$50,000 if the claimant is a married person, as the Taxpayer is in this case. The mere fact that Mr. Barrett does not claim the Moultonborough residence as his principal place of residence does not change the requirement that the Taxpayer's eligibility is based on the adjusted gross income as contained in her jointly-filed 1998 federal income tax return. Mr. Barrett's assertion that RSA 198:50, III provides that income be included in "household income" only if the spouse or member of the household resides in the homestead is misplaced. The residency provision of RSA 198:50, III applies to the income of a non-spousal member of the claimant's household in determining total household income. That is not the

¹RSA 198:50, III. "Household income" means the sum of the adjusted gross income for federal income tax purposes of the claimant and any member of the claimant's household who resides in the homestead for which a claim is made.

situation in this case. Here, the Taxpayer and her husband are both married and own property jointly with rights of survivorship. While they may have separate financial accounts, Mr. Barrett contributes both financially and physically to the maintenance in the Moultonborough property and shares in its enjoyment and benefits. Thus, consideration of Mr. Barrett's income is proper in determining eligibility of the Taxpayer both from a simple reading of the entire hardship relief statute² and in keeping with the intent of the statute.

In short, the Taxpayer and her husband chose to file their 1998 federal income tax return as "married filing jointly" and consequently, the Taxpayer as a married individual is bound by the eligibility requirements for the education property tax hardship relief to the adjusted gross income on her joint federal income tax return.

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

² The board must read the language at issue in the context of the entire statute "as a whole" and the statutory scheme. Barksdale v. Town of Epsom, 136 N.H. 511, 514-516 (1992); Great Lakes Aircraft Co., Inc. v. City of Claremont, 135 N.H. 270, 277-278 (1992).

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 Alane M. Barrett, Taxpayer; and Kathleen J. Sher, Esq., Counsel for the Department of Revenue Administration.

Date: July 24, 2000

Lynn M. Wheeler, Clerk