

Raymond A. and Lilian H. Henry

v.

Town of Dalton

Docket No.: 19380-02EX

DECISION

The “Taxpayers” appeal, pursuant to RSA 72:34-a, the “Town’s” 2002 denial of the Taxpayers’ application for an elderly exemption as provided under RSA 72:39-a. For the reasons stated below, the appeal is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, they were entitled to the statutory exemption of credit for the year under appeal. See RSA 72:23-m; RSA 72:33; and TAX 204.06. We find the Taxpayers failed to carry this burden.

The Taxpayers requested and were granted leave not to attend the hearing held on February 5, 2003, but argued in their written submissions that they were entitled to an elderly exemption because:

(1) they have very limited income, consisting entirely of social security and pension benefits, and substantial expenses for Medicare supplement insurance, utilities and other items;

(2) while their income in 2001 exceeded the Town’s \$20,400 threshold for married persons, it is

not sufficient to permit them to pay their expenses and the property taxes on the Property; and
(3) the Taxpayers' ages and medical conditions prevent them from seeking employment to obtain additional income.

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

- (1) the Taxpayers were granted an elderly exemption for the prior tax year based on the Taxpayers' application when their total income fell below \$20,400 (see Municipality Exhibit A);
- (2) in their application for an elderly exemption for tax year 2002, however, the Taxpayers admitted their total income was not less than \$20,400; and
- (3) the Taxpayers failed to meet their burden of proof.

Board's Rulings

Based on the evidence, the board finds the appeal must be denied.

To obtain an elderly exemption under RSA 72:39-a, the Taxpayers must meet various qualifications, including specific asset and income limitations. The parties do not dispute the Taxpayers meet the asset eligibility requirement, but the Town contends the Taxpayers, by their own admission, have stipulated their income exceeds the income limitation of "\$20,400 for married persons" established in RSA 72:39-a and approved by the Town's voters "a few years ago." See Municipality Exhibit B..

In a letter to the board dated December 2, 2002, the Taxpayers stated they receive \$1,411 and \$556 per month in social security and pension benefits, respectively. On an annual (12 month) basis, these two income items total \$23,604, more than \$3,000 above the net income threshold (\$20,400) specified in RSA 72:39-a, I (b) and adopted by the Town. In this statute, the legislature defined net income to exclude only three categories of items not applicable here

(life insurance proceeds, business enterprise costs and expenses, and asset sale proceeds), but did not permit any allowances for personal living expenses. The Taxpayers are now 84 and 77, respectively, and have serious health issues requiring considerable medical and other expenditures. The statute regrettably does not permit the Town or the board to take these additional hardship circumstances into consideration for the purpose of determining eligibility for an elderly exemption under RSA 72:39-a.

The board notes the selectmen's expressed regret that an elderly exemption could not be granted in this case and their intention to place a warrant article on the ballot of the next Town meeting for the purpose of increasing the income limits for an elderly exemption. The board also notes the availability of an alternative remedy under RSA 72:38-a which may help alleviate the Taxpayers' burden of paying taxes on the Property. Under RSA 72:38-a, they may elect to apply annually to the Town for a deferral (as distinct from an exemption) of their tax liability if the selectmen determine "the tax liability causes the taxpayer[s] an undue hardship or possible loss of the property." However, the board finds for tax year 2002 the Town did not err in denying the Taxpayers an elderly exemption under RSA 72:39-a and, therefore, the appeal 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Arthur E. Bean, Jr., Temporary Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Raymond A. and Lillian H. Henry, 8 Ridgeview Drive, Dalton, New Hampshire, 03598, Taxpayers; and Chairman, Board of Selectmen, Town of Dalton, 741 Dalton Road, Dalton, New Hampshire, 03598.

Date: February 24, 2003

Anne M. Bourque, Deputy Clerk