

Noella and Arnold Found

v.

Town of Pelham

Docket No.: 19421-02EX

DECISION

The ATaxpayers@ appeal, pursuant to RSA 72:34-a, the ATown=s@ 2002 denial of the Taxpayers= request for an elderly exemption as provided under RSA 72:39-a. For the reasons stated below, the appeal for exemption is denied.

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

The Taxpayers requested, and were granted, leave not to be present at the hearing.

The Town explained it had denied the exemption because, during a general review of those who had previously received elderly exemptions, the Town discovered the Taxpayers' net assets, including their savings account and the market value of the "in-law" apartment, exceeded the Town's RSA 72:39-b, I (c) net asset limitation of \$60,000. (See the Town's calculations contained in Municipality Exhibit B.)

Board=s Rulings

For the reasons that follow, the board finds the Taxpayers do not meet the eligibility requirements adopted by the Town for an RSA 72:39-a elderly exemption.

RSA 72:39-a has both an annual income and a net asset ceiling. The Taxpayers' annual net income was not at issue in this appeal, but rather the Town denied the appeal on the basis that the Taxpayers' net assets, as defined in RSA 72:39-a, I (c), exceeded the Town's adopted ceiling of \$60,000. (See copy of undated referendum article attached with the Town's March 31, 2003 letter.) The applicable portion of RSA 72:39-a reads as follows:

72:39-a Conditions for Elderly Exemption.

I. No exemption shall be allowed under RSA 72:39-b unless the person applying therefore: . . .

(c) Owns net asserts not in excess of the amount determined by the city or town for purposes of RSA 72:39-b, excluding the value of the person's actual residence and the land upon which it is located up to the greater of 2 acres or the minimum single family residential lot size specified in the local zoning ordinance. The amount determined by the city or town shall not be less than \$35,000. "Net assets" means the value of all assets, tangible and intangible, minus the value of any good faith encumbrances. "Residence" means the housing unit, and related structures such as an unattached garage or wood shed, which is the person's principal home, and which the person in good faith regards as home to the exclusion of any other places where the person may temporarily live. "Residence" shall exclude attached dwelling units and unattached structures used or intended for commercial or other nonresidential purposes.

The Taxpayers' "net assets" are comprised of: 1) the market value of the basement apartment; and 2) cash assets on deposit with a bank. The board will address its findings in that order.

Apartment Value

The Taxpayers' residence contains a basement "in-law" apartment. While the residence of taxpayers seeking an elderly exemption is excluded from their net asset calculation, RSA 72:39-a, I (c) requires separate dwelling units, such as the one in the Taxpayers' basement, be included in the net asset calculation. The Taxpayers' assessment-record card clearly delineates and assesses that area separately. The board agrees with the Town's estimate of its market value arrived at by depreciating the basement's replacement cost estimate of \$30,181 by 12% and then equalizing it by the Town's 2001 equalization ratio of .60. This calculation produces an indicated 2002 market value for the apartment of \$44,265 ($\$30,181 \times .88 \div .60$). (The 2001 equalization ratio is utilized as it was the most recent ratio available to assessing officials during the review of the 2002 elderly exemption applications.)

Bank Funds

The board first reviewed a document entitled "Elderly Exemption Asset Statement" submitted to the Town by the Taxpayers (and subsequently to the board by the Town as support for its denial of the exemption). That statement indicated a combined savings and checking account balance of \$17,262.49. These funds, when added to the calculated market value of the "in-law" apartment equaled \$61,527.49, exceeding the \$60,000 limit. During the hearing, however, the board noted the bank balance information submitted by the Town was signed and dated by the Taxpayers on February 2, 1998. Consequently, the board instructed the Town to obtain updated financial information from the Taxpayers to determine if they met the Town's eligibility standards. (See RSA 72:33, I, which allows applicants for elderly exemptions to submit financial qualification up to March 1 of the tax year for which the exemption is sought.)

In this case, since the exemption is sought for tax year 2002 (April 1, 2002 to March 31, 2003), March 2003 financial data is eligible for consideration. The Town submitted to the board with its March 31, 2003 letter, the Taxpayers' updated "Elderly Exemption Asset Statement" which indicates a total savings, checking and certificate of deposit funds of \$18,187.

The total of the bank funds and the estimated market value of the "in-law" apartment is \$62,452 and, thus, it still exceeds the Town's net asset ceiling of \$60,000. Consequently, the board concludes the Taxpayers are not eligible for RSA 72:39-a elderly exemption for tax year 2002.

Finally, the board would note that, if the Taxpayers' financial status changes in subsequent years, they could again apply, pursuant to RSA 72:33, for an elderly exemption, providing proof of eligibility at that time.

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: Noella and Arnold Found, 7 Hearthstone Road, Pelham, New Hampshire, 03076, Taxpayers; and Chairman, Board of Selectmen, Town of Pelham, 6 Main Street, Pelham, New Hampshire, 03076.

Date: May 8, 2003

Anne M. Bourque, Deputy Clerk