

**Lorraine E. Charland**

**v.**

**City of Nashua**

**Docket No.: 21533-05EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2005 denial of the Taxpayer’s request for disability exemption as provided under RSA 72:37-b. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, she was entitled to the statutory exemption or credit for the year under appeal. See RSA 72:34-a; RSA 72:37-b; and TAX 204.06.

The Taxpayer argued she was entitled to the disability exemption because:

- (1) the City granted her a disability exemption each year from 2001 through 2004;
- (2) it was determined in 1996 that she was permanently disabled;
- (3) she asked her accountant to supply financial information requested by the City in 2005;
- (4) the Taxpayer believed the information requested by the City in 2005 was for tax year 2006 and she did not fill out the back of the form; and

(5) she purchased the two Maine properties with a partner in 2001, but is in a lawsuit regarding it (Taxpayer Exhibit No. 1) and has not been collecting money from one of the properties since 2003.

The City argued the denial of the disability exemption was proper because:

- (1) the Taxpayer was requested to submit an application by April 15, 2005, but she did not do so until January 24, 2006, making her tax year 2005 application untimely;
- (2) the City discovered in 2006 the Taxpayer has owned two properties in Maine since February, 2001 and she exceeds the City's net asset requirement (\$125,000) because of these properties, even after taking into account the recorded encumbrances against them;
- (3) the Taxpayer failed to disclose this asset ownership in prior years, causing the error in granting the exemption; and
- (4) the Taxpayer failed to meet her burden of proving she is entitled to an exemption.

### **Board's Rulings**

Based on the evidence, the board finds the City's denial of the Taxpayer's 2005 disabled exemption is appropriate and compliant with the statutes.

To comply with the cyclical assessment review performed by the New Hampshire Department of Revenue ("DRA") pursuant to RSA 21-J:11-a and the assessing standards boards guidelines, the City in 2005 requested the City's approximately 70 existing disabled exemption recipients, including the Taxpayer, submit certain residency and financial information to re-qualify for the exemption. The City provided two letters to Ms. Charland dated January 14, 2005 and February 14, 2005 stating such financial forms must be received by April 15, 2005. Ms. Charland did not submit the form until January 24, 2006 well after the City's stated deadline and after the City had set its tax rate and sent out its final 2005 tax bill. Ms. Charland testified

her accountant had sent the City such information sometime during 2005 but she provided no evidence to support her assertion and the City stated it had never received the information from her accountant.

As a result, the board rules the Taxpayer did not submit her financial information to reestablish her qualifications for the disabled exemption in a timely manner and thus the City properly denied the exemption for 2005. The legislature authorizes a municipality to periodically obtain such information and, if not provided, to deny the exemption. See RSA 72:33, VI:

“The assessing officials may require applicants for any exemption or tax credit to file the information listed in RSA 72:34, or the statement required by RSA 72:33, V periodically but no more frequently than annually. Failure to file such periodic statements may, at the discretion of the assessing officials, result in a loss of the exemption or tax credit for that year.”

We find the City proceeded appropriately under this statute in requesting the information, setting a reasonable timeline of April 15, 2005, and providing multiple notices to Ms. Charland to provide the information in a timely fashion. Ms. Charland did submit the form with some information to the City on January 24, 2006. However, the board agrees with the City that it was untimely at that date for a 2005 disabled exemption because it is well after the RSA 72:33 provisions that applications for such exemptions be filed by April 15 of the year for which the exemption is sought (with an extension up to the time the tax rate is set if accident, mistake or misfortune is shown) and the fact the City had established a thorough system for requesting the information from taxpayers. Further, the information once supplied by Ms. Charland was incomplete, incorrect and not signed. Thus, the board finds the assessing officials' discretion to remove the exemption for 2005, as RSA 72:33, VI provides, was reasonable and not arbitrary or discriminatory.

Even if, for argument purposes, the Taxpayer's untimely and incomplete filing of information could be excused, the board finds the Taxpayer failed to carry her burden to show she met all the criteria to receive the disabled exemption. The testimony and evidence at hearing indicated the Taxpayer had some net value in two Belfast, Maine properties that she had not disclosed to the City, but that the City through its own investigation had determined she jointly owned with another individual. While the Taxpayer presented some general testimony as to occupancy difficulty with one of the two rental properties due to water damage, and a partnership dispute, she presented no evidence to counter the City's estimate of her net asset value in those properties and other personal items owned by the Taxpayer, including bank accounts, and vehicles.

In summary, the board finds the City properly removed the Taxpayer's disabled exemption for 2005 because of her lack of timely providing information as required by RSA 72:33. Apart from this requirement, the Taxpayer failed to prove she had net assets less than the City's 2005 threshold amount of \$125,000, set pursuant to RSA 72:37-c.

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(f). 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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Lorraine E. Charland, 15 Mason Street Nashua, NH 03060, Taxpayer; and City of Nashua, Chairman, Board of Assessors PO Box 2019 Nashua, NH 03061.

Date: August 3, 2006

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Anne M. Stelmach, Clerk