

Anita R. Stolte Irrevocable Trust

v.

City of Concord

Docket No.: 22569-07EX

DECISION

The “Taxpayer,” Anita R. Stolte, appeals, pursuant to RSA 72:28, the “Town’s” 2007 denial of the Taxpayer’s request for a veteran’s tax credit as provided under RSA 72:34-a. For the reasons stated below, the appeal for reinstating the veteran’s tax credit is granted.

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 and Tax 204.06.

The Taxpayer requested and was granted leave to not attend the hearing. The Taxpayer attached a note to her appeal document indicating that, upon the death of her husband, the “Property” at 49 Merrimack Street in Penacook had been placed in an irrevocable trust but she should continue to be eligible as they had received the veteran’s tax credit for many years since the Property’s purchase in 1965.

The City argued the denial of the veteran's tax credit was proper because:

- (1) the Anita R. Stolte Irrevocable Trust (the "Trust"), created on December 18, 2006, did not grant the Taxpayer either "equitable title or the beneficial interest for life in the subject Property" as provided in RSA 72:29, IV;
- (2) the trust document, at paragraph 3.2, states the Taxpayer has no interest in the principle of the Trust;
- (3) the trust document contains no specific provision for life tenancy for the Taxpayer; and
- (4) the assessing office sought the review and advice of the City attorney in reaching its decision.

Board's Rulings

Based on the evidence, the board finds the Taxpayer has a beneficial interest for life and thus the veteran's tax credit should be granted for tax year 2007.

This appeal hinges on the narrow question of law of whether the "Trust Agreement Establishing the Anita R. Stolte Irrevocable Trust" (the "Trust Agreement") entitled the Taxpayer to continue to receive the City's annual veteran's tax credit of \$150 by establishing she had an "equitable title or the beneficial interest for life in the subject Property". RSA 72:29, VI.

The board has closely reviewed the provisions of the Trust Agreement and carefully considered the City's reasonable arguments as to why the Taxpayer is not eligible for the tax credit. On balance, however, and acknowledging it is a close question of law, the board finds the Trust Agreement does provide a basis to conclude the Taxpayer does have a beneficial interest for life in the eligible Property. The board also acknowledges the Trust Agreement is not as

clear as it could be as to the Taxpayer's beneficial interest and that the Trust Agreement, in places, contains apparently conflicting provisions.¹

The Taxpayer had the Trust Agreement created in December 2006 in which she is defined as the "grantor" and in which she transferred the Property and a dollar as the property held by the Trust. The Trust Agreement also collectively defines Anita R. Stolte and her daughter, Sharon A. Wood as the "trustees" for the Trust. The "beneficiaries" are defined at paragraph 1.2 as being the children of the Taxpayer, Sharon A. Wood and William C. Stolte, Jr. As the City properly noted, the Trust Agreement contains no overt reservation of a life estate for the Taxpayer.

However, a reading of several provisions of the Trust Agreement together causes the board to conclude the Taxpayer indeed does have a beneficial interest for her life in the Property. First, "Clause 3" is entitled "Reserved Powers and Rights of Grantor." Clause 3 includes three paragraphs, the last two being stated in the negative as to what the grantor does not retain interest in and in particular paragraph 3.2 being the one the City relied upon in denying the tax credit. However, paragraph 3.1 sets up the provisions for how the Trust shall be distributed "[u]pon the death of the Grantor." Because paragraph 3.1 is part of the clause reserving powers and rights to the grantor, this paragraph can infer that during the life of the grantor no distribution of the Trust shall occur and thus the assets of the Trust, primarily the Property, exist for the benefit of the Taxpayer during her remaining life.

¹ An example of the conflicting provisions is paragraph 3.3, where the grantor does not reserve any authority to amend the Trust Agreement with paragraph 7.7 where the grantor may waive any provision of the Trust Agreement for the benefit of the grantor.

"3.3 The Grantor does not reserve any power or authority to revoke or amend any provision of this Trust."
"7.7 The Grantor may waive, release or renounce any provision of this trust for the benefit of the Grantor."

Further, “Clause 4” is entitled “Disposition During Lifetime of Grantor.” Clause 4 states in part “[d]uring the lifetime of the Grantor, the Trustee shall distribute the net income of this Trust to the Grantor, no less often than quarterly....” Again, this clause provides for any income from the Property, potentially any rental income or in-kind residency value, to accrue to the benefit of the Taxpayer. While not overtly testified to by the City or stated in the appeal document, the board assumes the Taxpayer resides at the Property, otherwise the City could have denied the request for lack of being the principal place of abode as required by RSA 72:29, II.

Considering the benefits that accrue to the Taxpayer of income or in kind income in Clause 4 and that Clause 3 states no distribution of the assets of the Trust can occur until after her death, the board concludes these provisions give rise to a beneficial interest for life in the Property as provided by statute.

The board reviewed Black’s Law Dictionary, 6th Ed. (1997), which defines in part, beneficial interest as “[i]n trust law, [it] refers to interest of the beneficiary in right to income or principal of trust funds, in contrast to trustee who holds legal title.” The board clearly understands the Trust Agreement does not define the Taxpayer as one of the beneficiaries. However, during her life, we conclude the joint, consistent reading of Clauses 3 and 4 create a beneficial interest for the Taxpayer.

Further, notwithstanding the conflict noted earlier, paragraph 7.7 gives the grantor the ability to waive any provision of the Trust Agreement for the benefit of the grantor. Thus, it is clear the grantor has reserved the ability to maintain whatever beneficial interest she has in the Property during her life.

In closing, the board again acknowledges the Trust Agreement is not as clear as it could be and, as a consequence, the City had a reasonable basis for denying the exemption. However,

reading the various provisions of the Trust Agreement in concert with each other, the board concludes the Taxpayer has a beneficial interest in the Property and is in keeping with the statutory intent of providing a veteran's tax credit for the surviving spouse of a veteran.

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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Anita R. Stolte Irrevocable Trust, Anita R. Stolte, Trustee, 49 Merrimack Street, Penacook, NH 03303, Taxpayer; and Assessor's Office, City of Concord, 41 Green Street, Concord, NH 03301.

Date: October 12, 2007

Anne M. Stelmach, Clerk