

**Francine H. Byron**

**v.**

**Town of Danville**

**Docket No.: 23132-07EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” 2007 denial of the Taxpayer’s request for an RSA 72:39-a elderly exemption on property located at 45 Pine Street (Map 4, Lot 43) (the “Property”) assessed for \$316,000. For the reasons stated below, the appeal is granted in part.

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 72:39-a; and Tax 204.05. The Taxpayer carried this burden.

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

- (1) her entire income consists of a monthly annuity check and her social security check;
- (2) the high number of deposit entries in her checking account are reimbursements from her daughter and son-in-law for expenditures such as bills for the home they share or for personal items, but are not part of her income; and
- (3) she owns the Property and her daughter and son-in-law’s names were only added to the deed in order to spare them from the probate court procedures at the time of the Taxpayer’s death.

The Town argued the denial of the elderly exemption was proper because, based on a review of the Taxpayer's bank statements and annuity and social security income, her total income exceeds the limits established by the Town for the exemption.

### **Board's Rulings**

Based on RSA 72:39-a and RSA 72:41, the board finds the Taxpayer is entitled to a partial exemption proportionate to her ownership interest in the Property.

The Town determined the Taxpayer was not eligible for the elderly exemption because her income exceeded the income limits established by the Town. The Town requested several income related documents from the Taxpayer and, after reviewing the information provided, determined the Taxpayer's income exceeded the Town's \$32,000 income limitation and denied the exemption request. In response, the Taxpayer testified the numerous entries in her checkbook recording deposits of various amounts were merely reimbursements from her daughter and son-in-law for expenditures concerning either the home or personal items such as groceries. The Taxpayer stated she rarely carried cash; instead, she did most of her financial transactions through the use of an "ATM" and checking account.

The board finds these reimbursements do not comprise or add to the Taxpayer's "net income" as envisioned by RSA 72:39-a, I. The statute does not directly address such a living expense reimbursement arrangement. However, it is clear from the evidence that such reimbursements do not increase the Taxpayer's "net income" above the total of her combined annuity and social security. Rather, such payments by her family members simply reimburse her for living expenses she had paid for up front or are allocated between her and her daughter and son-in-law who also reside at the Property.

The board does not agree that net income is synonymous or equivalent to cash receipts for purposes of the elderly exemption statute. As the supreme court noted in Pennelli v. Town of Pelham, 148 N.H. 365, 366 (2002), an earlier appeal construing and applying the same elderly exemption statute, RSA 72:39-a, in favor of the taxpayer: “We first look to the plain and ordinary meaning of the words used. (Citation omitted.) In this case, the plain language of the statute speaks for itself.” The plain and ordinary dictionary definition of “income” is a gain or recurring benefit “that derives from capital or labor.” Webster’s Ninth New Collegiate Dictionary, at p. 610 (1991). There is no dispute the receipts relied upon by the Town to deny the Taxpayer an elderly exemption were not derived from either her own capital or her own labor, but rather were transfers from her own family members used for common and shared living expenses. Significantly, the Taxpayer has so little actual income that she has not had to file a federal income tax return since 2003 and the Town has not argued she had an obligation to do so based on these receipts. Clearly, not all cash receipts qualify as income to be reported on the income tax return. Excluded, for example, are gifts that may have been received and/or reimbursements for amounts expended for the benefit of others. In addition, and as also noted in Pennelli, “[t]he evident purpose of the elderly tax exemption ‘is to protect elderly homeowners from loss of homes beyond their means.’ Citation omitted.)” Id. at 368. The board finds this statutory purpose would not be served by counting the receipts as net income.

Further, based on the testimony of the Taxpayer, the board does not agree with the Town’s determination that over \$8,000 of the Taxpayer’s 2007 reimbursements exceeded actual or apportioned living expenses, especially if the calculations are done on a one-third basis of allocation rather than a one-half basis. The Taxpayer’s total income should be determined by adding the income from her annuity to the income from her social security checks. The

Taxpayer testified she receives approximately \$1,100 per month from an annuity and \$1,033 per month from social security. On an annual basis, based on her testimony, the Taxpayer receives approximately \$25,600 in income. This total falls below the \$32,000 limit established by the Town and makes the Taxpayer eligible for an RSA 72:39-a elderly exemption.

The Taxpayer owns the Property with her daughter and son-in-law as evidenced by the 2001 warranty deed contained in Municipality Exhibit A at page 35. The warranty deed transferred the Property from the Taxpayer to the Taxpayer and her daughter and son-in-law as joint tenants with rights of survivorship. The board understands the Taxpayer's motivation for the transfer was to avoid having to probate the Property at the time of her death. However, the deed causes a fractioning of interests in the Property between the Taxpayer and her daughter and son-in-law. As a consequence, RSA 72:41<sup>1</sup> requires any exemption be in proportion to the eligible person's fractional interest in the residential real estate. Cf. Pennelli, 148 N.H. at 369. ("Pursuant to RSA 72:41, apportionment is based upon the extent of the elderly individual's ownership interest in the property"). Consequently, the board finds the elderly exemption to be one-third of the eligible amount, in this case \$126,000 divided by three or \$42,000.

For these reasons, the board finds, pursuant to RSA: 72:41, the Taxpayer is entitled to a \$42,000 (one third of \$126,000) elderly exemption reflecting her fractional interest in the Property.

If the taxes have been paid on the amount above \$274,000 (\$316,000 - \$42,000), they shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

---

<sup>1</sup> RSA 72:41 provides: "**Proration.** If any entitled person or persons shall own a fractional interest in residential real estate, each such entitled person shall be granted exemption in proportion to his interest therein with other persons so entitled, but in no case shall the total exemption to all persons so entitled exceed the amount provided in RSA 72:39-b."

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

\_\_\_\_\_  
Douglas S. Ricard, Member

\_\_\_\_\_  
Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Francine H. Byron, 45 Pine Street, Danville, NH 03819, Taxpayer; and Chairman, Board of Selectmen, Town of Danville, PO Box 11, Danville, NH 03819.

Date: March 19, 2008

\_\_\_\_\_  
Anne M. Stelmach, Clerk