

Georgetta M. and Yasmin Monchgesang

v.

City of Nashua

Docket No.: 23371-08EX

DECISION

The “Taxpayers” appeal, pursuant to RSA 72:34-a, the “City’s” 2008 denial of their application for an RSA 72:39-a elderly property tax exemption. 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 for the year under appeal. See RSA 72:34-a; RSA 72:39-a; and Tax 204.05. The board finds they did not meet this burden.

The Taxpayers, represented by their friend Penny Ferreira, argued they were entitled to the elderly exemption because:

- (1) they are a mother and daughter who own and reside on the “Property” (18 Teak Drive);
- (2) one of the Taxpayers lost her job and had health issues which required her to withdraw funds from her IRA;
- (3) this withdrawal caused the Taxpayers to exceed the City’s income limit (\$36,000) by a very small amount (\$2,466); and

(4) while they do not want to ‘take away tax money from the City,’ their exemption application should have been granted.

The City argued the denial of the elderly exemption was not erroneous because:

(1) the City’s Ordinance (Section 295-4 of Article III of the City’s General Code) prescribes a \$36,000 maximum combined net income in order to qualify for this exemption;

(2) the total income computation for the Taxpayers is \$38,346 which exceeded this maximum;

(3) the City receives hundreds of applications and the assessor’s office does not have discretion to modify the requirements of the ordinance; and

(4) the Taxpayers did not meet their burden of proving the City erred in denying the elderly exemption.

Board’s Rulings

Based on the evidence and arguments presented, the board finds the Taxpayers did not meet their burden of proving the City committed reversible error in denying the RSA 72:39-a elderly property tax exemption. See RSA 72:34-a (Appeal From Refusal to Grant Exemption, Deferral, or Tax Credit); and Tax 204.05 (Burden of Proof). The appeal is therefore denied.

To qualify for an elderly exemption, “the elderly person must: (1) own the property in question, either alone or jointly; (2) have resided in this State for at least five years; (3) have no more than a certain amount of net income; and (4) own net assets of no more than a defined amount.” Pennelli v. Town of Pelham, 148 N.H. 365, 367 (2002).¹ Only the third requirement, net income, is at issue in this appeal.

¹ “The evident purpose of the elderly tax exemption ‘is to protect elderly homeowners from loss of their homes by reason of taxation beyond their means.’” Id. at 368, quoting from Opinion of the Justices, 115 N.H. 228, 232 (1975).

The board heard undisputed evidence regarding the seriously declining health of one of the Taxpayers and her loss of employment, but must decide this appeal based upon the plain meaning of the statutes enacted by the legislature and the specific standards voted upon by the municipality's governing body. In this instance, the statutes allow each municipality to set its own income maximum for an elderly exemption. See RSA 72:39-b (Procedure for Adoption and Modification of Elderly Exemption).

There is no dispute the City duly enacted an ordinance raising the maximum to \$36,000 in 2005. There is also no dispute the Taxpayers, to meet their financial needs, withdrew funds from an IRA in 2007. The taxable amount of these withdrawals (as shown on one of the Taxpayer's 2007 federal income tax return), when combined with other income and social security benefits, exceeded this maximum income limitation.

The legislature defined the term net income very broadly for purposes of the elderly exemption in RSA 72:39-a ("net income" is "all moneys received, from any source including social security or pension payments" with only three categories of deductions, none of which apply here). The board, of course, has no authority to modify this statutory definition. See, generally, Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and powers are limited by statute).²

For all of these reasons, the appeal is denied.

² At the hearing, the City's representatives expressed empathy for the Taxpayers' situation and agreed to provide information regarding other tax relief programs they may qualify for. It is also possible, of course, the Taxpayers' income and other circumstances may change to the point where they qualify for an elderly exemption if a timely application is made to the City for a future tax year.

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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Georgetta M. and Yasmin Monchgesang, 18 Teak Drive, Nashua, NH 03062, Taxpayers; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: December 19, 2008

Anne M. Stelmach, Clerk