

Diana L. Peterson

v.

City of Laconia

Docket No.: 23970-08EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2008 denial of the Taxpayer’s request for tax deferral as provided under RSA 72:38-a. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, she was entitled to the deferral for the year under appeal. See RSA 72:34-a; RSA 72:38-a; and Tax 204.05.

The Taxpayer argued she was entitled to the tax deferral because:

- (1) she is disabled and her husband is handicapped, they have extreme medical bills, and neither are capable of getting a job;
- (2) last year she had to purchase a new oil tank, was recently forced to put in a new furnace and the home is in need of many repairs;
- (3) her car (a Pontiac Transport van) is 20 years old and is needed to carry oxygen and a scooter for her husband; it recently required repairs which cost \$2,000;

(4) she has attempted to refinance the home but has been refused (and has a first and second mortgage on the Property);

(5) fuel assistance was received this year but she does not qualify for any other assistance and she goes to the food pantry once a month to help with grocery expenses; and

(6) to meet her living expenses, she is drawing down her savings which will soon be exhausted.

The City stated the sole basis for denial of the tax deferral was the Taxpayer had paid her taxes in full for 2008.

Board's Rulings

For the reasons that follow, the board finds a partial deferral of \$3,000 on the Taxpayer's 2008 tax liability is reasonable.

RSA 72:38-a provides for certain elderly and disabled taxpayers to defer payment of taxes if certain criteria and standards are met. In particular, a resident property owner may apply if they are "either at least 65 years old or eligible under Title II or Title XVI of the federal Social Security Act", has owned the homestead for at least 5 years if qualifying as an elderly applicant or one year if qualifying as a disabled applicant, and lives in the residence. The assessing officials may grant a deferral for a person that meets the basic qualifications "if in their opinion the tax liability causes the taxpayer an undue hardship or possible loss of the property."

Here, the Property owner, Diana Peterson, meets the basic eligibility requirements as she receives disability payments under the Federal Social Security Act (see PA-30 Elderly and Disabled Tax Deferral Application), has owned the Property since 2003 and resides there with her husband. Thus, the sole issue for the board to resolve is whether the City was unreasonable in its decision to deny the Taxpayer's request for a deferral of \$4,000 of her 2008 tax liability (total \$4,143) on the basis that she had already paid her taxes.

The city assessor, Mr. Jon Duhamel, testified at hearing the denial had been made by the City board of assessors for the sole reason that her taxes had been paid and to his knowledge they had not considered the financial and health status of Ms. Peterson and her husband. He also testified upon questioning that other taxpayers who had become delinquent in their taxes had been granted RSA 72:3-a deferrals.

Based on a review of the Taxpayer's financial statement submitted to the City at the time of the request and the Taxpayer's testimony at the hearing, the board concludes the City's denial solely on the basis of the Taxpayer having paid the taxes is unreasonable. To determine whether the tax liability would cause an undue hardship or possible loss of the Property, such conclusion must be reached in context of the Taxpayer's overall financial situation not just whether the taxes have been paid or not. One taxpayer could choose to pay their taxes to the detriment of other similarly important expenses that go unpaid while another taxpayer could choose to pay critical expenses (such as mortgage, heat, utility bills) and let the taxes be delinquent. At the time of application to the City, the Taxpayer's financial statement indicated her expenses exceeded the total household income by approximately \$400 per month which necessitated drawing down her \$12,000 retirement savings account to pay both regular monthly bills and unanticipated repairs such as replacement of the furnace, fuel tank and automobile repairs. At the hearing, the Taxpayer stated that through careful management of her expenses, including obtaining fuel assistance and groceries from the food pantry, their monthly deficit had been reduced to approximately \$138 per month but their retirement savings account had continued to be reduced by 60% to approximately \$8,000.

Taking into account the Taxpayer's financial situation outlined above, including the relatively limited cash and vehicular assets (1984 Chevy Corvette that is not registered or used as

the primary means of transportation) as described in their financial form, and the Taxpayer's disabled status and her husband's handicap, the board finds it unreasonable not to grant a partial deferral of the 2008 taxes so as to allow the Taxpayer to meet the household monthly expenses and to provide some nominal funds (in addition to her retirement funds) for unanticipated repairs and maintenance. The Taxpayer has shown diligence by seeking additional assistance. The Taxpayer testified she had sought to refinance the Property but had been denied by the first mortgage holder due to difficult economic times. The Taxpayer also testified she had applied for other assistance but had only been eligible for heating fuel aid in addition to monthly groceries at a food pantry. The board finds the Taxpayer's continued reliance upon depleting her retirement bank account as a means to supplement the monthly household income is short-term and causes an undue hardship. Even with the board's grant of the \$3,000 partial deferral, the Taxpayer may still need to deplete her cash and vehicular assets to meet her ongoing expenses.

RSA 72:38-a was intended to allow eligible taxpayers who are having financial difficulties in maintaining their homes to be able to seek a deferral of their taxes to some time in the future (see RSA 72:38-a, IV) while the City secures the deferral up to 85% of the equity value of the property and receives 5% interest on the deferred taxes. The standards for granting such a deferral are as noted previously in the statute but appear to be intentionally less severe than receiving an abatement of taxes due to poverty or inability to pay under RSA 76:16. That route of relief requires a taxpayer who has equity in their home to show why it would not be reasonable "for them to relocate, refinance, or otherwise obtain additional public assistance" before receiving any tax relief. Ansara v. City of Nashua, 118 N.H. 879, 881 (1978). Whereas an abatement due to poverty and inability to pay under RSA 76:16 and Ansara provides for no recouping of the tax loss by the municipality, RSA 72-38-a does provide for the municipality to

be reimbursed the full amount of the deferral plus 5% interest when the property is liquidated.

Thus, the board concludes that under RSA 72:38-a, a taxpayer need not show that they are entirely destitute to be able to “tap” the equity of their house to produce a living situation that is not subject to “undue hardship or possible loss of the property.”

Consequently, the board orders the City to refund the Taxpayer \$3,000 of her 2008 taxes and concurrently file a lien of the granted tax deferral pursuant to RSA 72:38-a, V. As the statute provides and as Mr. Duhamel testified, the Taxpayer’s permanent application provides a vehicle for the deferral to be sought on an annual basis just as the municipality has a responsibility to review the eligibility and need on an annual basis. See RSA 72:34 (municipalities authority to determine the eligibility of an exemption or deferral) and RSA 72:38-a, II-a (“municipalities may require an annual application for the tax deferral...”). The board would certainly encourage the parties to communicate on an annual basis as to either any change in eligibility or any change in the need for a deferral and, thus, its magnitude.

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.

Diana L. Peterson v. City of Laconia

Docket No.: 23970-08EX

Page 6 of 6

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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Diana L. Peterson, 83 Opechee Street, Laconia, NH 03246, Taxpayer; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: June 2, 2009

Anne M. Stelmach, Clerk