

Michele S. LaCerva

v.

City of Nashua

Docket No. 25493-11EX

DECISION

The board has considered the July 15, 2011 response from the “City” to the board’s July 12, 2011 Order (“Order”), as well as the “Taxpayer’s” July 19, 2011 letter to the board enclosing further documentation. In the Order, the board enclosed the “Jarry” decision (Jarry v. City of Nashua, BTLA Docket No. 21476-O5EX (February 27, 2006)) and asked the City to respond as to why the board should not grant this appeal without a hearing based on the statutory and common law cited and applied in Jarry. Upon review of the arguments and evidence presented, the board finds the appeal should be granted. In other words, as in Jarry (and another recent appeal, Latvis v. City of Nashua, BTLA Docket No. 25480-11EX (August 2, 2011)), the board finds the “Taxpayer” met her burden of proving she timely filed for a disability exemption (see RSA 72:37-b) when the “accident, mistake or misfortune” exception in the exemption and tax credit statutes (see RSA 72:33, I-a) is properly applied.

The City does not dispute the Taxpayer did not receive the required “disability qualification determination” until “Friday April 15 at 5:00 o’clock PM” and could not file her

application then because “City Hall closes at 5 PM.” (See p. 1 of the City’s response.) These facts are also stated in the Taxpayer’s appeal document. The additional documents she has provided to the City and the board indicate “Social Security” determined her to be “permanently disabled” and that this federal agency made this eligibility determination retroactive to December, 2010.

The board need not restate here the reasoning contained in the Latvis and Jarry decisions. Suffice it to say the board finds if the Taxpayer had attempted to file her application for a disability exemption with the City before receiving the eligibility determination, the City would have contended her application was premature. The delay in issuance of the agency determination was beyond the control of the Taxpayer. Presumably, because of possible government backlogs or processing timelines, the agency determination took months to occur but was made retroactive, which is a further indication the delay was not the fault of the Taxpayer. While the City, as in Latvis, attempts to distinguish the Jarry case and contend the outcome should be different, the board disagrees for the reasons stated in these two decisions. In brief, the board agrees with the Taxpayer that the “accident, mistake or misfortune” exception stated in the statute applies to the undisputed facts presented in this appeal.

For all of these reasons, the board finds the City erred in denying the Taxpayer’s disability exemption application as untimely and finds the Taxpayer is entitled to the credit applied for in tax year 2011.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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(g). 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Michele S. LaCerva, 128 Ash Street, Nashua, NH 03060, Taxpayer; and City of Nashua, Chairman, Board of Assessors, PO Box 2019, Nashua, NH 03061.

Date: 8/5/11

Anne M. Stelmach, Clerk