

Margaret and Thomas J. Stavinsky

v.

City of Nashua

Docket No.: 25500-11EX

DECISION

On October 18, 2011, the “City” filed a Motion to Dismiss this appeal (the “Motion”). Upon review, the board grants the Motion and dismisses the appeal.

The sole ground for dismissal of the RSA 72:39-a elderly property tax exemption stated in the Motion (¶6) is that the “Taxpayers” “concede that their combined net income exceeds the maximum income value permitted.” The permitted amount stated in the City’s ordinance (in Article III, § 295-4) is \$40,000 for a married couple. (Motion, ¶3.)

The Taxpayers’ application to the City details their income for calendar year 2010. In that year, the Taxpayers ‘cashed out’ several IRA’s (individual retirement accounts) because of medical expenses and Medicaid requirements, as explained by their daughter and representative in the appeal document.

Money placed in an IRA is not treated as income until such time as it is withdrawn. Therefore, the City did not err in counting the withdrawn IRA funds as income for purposes of applying the maximum income requirement in its ordinance.

The Motion (§4) cites two prior appeals heard and decided by the board where the withdrawal of IRA funds to pay for medical and other expenses resulted in exceeding the City's income threshold for an elderly exemption. As noted in these prior appeals, the legislature defined the term net income very broadly for purposes of the elderly exemption. See 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).

The appeal is therefore dismissed.

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

Margaret and Thomas Stavinsky v. City of Nashua
Docket No.: 25500-11EX
Page 3 of 3

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 Decision has this date been mailed, postage prepaid, to: Teri Haggar, 7 Linda Lane, Merrimack, NH 03054, Taxpayers' Representative; and Stephen M. Bennett, Esq., Office Of Corporation Counsel, City of Nashua, 229 Main Street, Nashua, NH 03061, counsel for the City.

Date: November 14, 2011

Anne M. Stelmach, Clerk