Richard A. Reda

v.

City of Nashua

Docket No.: 25516-11EX

DECISION

The "Taxpayer" appeals, pursuant to RSA 72:34-a, the "City's" 2011 denial of his application for an RSA 72:39-a elderly exemption. The appeal is granted for the reasons stated below.

The Taxpayer has the burden of showing, by a preponderance of the evidence, he was 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 the Taxpayer met this burden.

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

(1) the City's denial was based entirely on $695 monthly social security payments his fourteen (14) year old daughter is entitled to receive that were used entirely for her benefit;

(2) the City erred in attributing these payments as net income to the Taxpayer because this social security benefit for his daughter is not income to the Taxpayer and is not reportable as income on his tax return;

(3) the Taxpayer received the social security checks as the payee for his daughter because she is underage and federal regulations require that the money be used entirely for her benefit (see Taxpayer Exhibit Nos. 1 – 3); and

(4) the elderly exemption should have been granted.

The City argued the denial of the elderly exemption was proper because:

(1) RSA 72:39-a states net income includes "moneys received from any source, including social security or pension payments";

(2) there is no question the Taxpayer received the social security money and this occurred only because of his own eligibility for social security benefits (as a retired person);

(3) the Taxpayer used the monthly payments to help satisfy his own child support obligations under a divorce decree; and

(4) the appeal should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met his burden of proving he was eligible for the elderly exemption. The appeal is therefore granted for the following reasons.

The City's sole basis for denying the elderly exemption was because its $36,000 annual net income maximum is exceeded if the $695 monthly social security payments sent for his daughter are included in the calculation. Without these payments, the Taxpayer's net income ($29,988, based on VA benefit payments and social security retirement income) qualifies him for the elderly exemption in tax year 2011.

The board does not agree with the City that these payments are "net income" to the Taxpayer under RSA 72:39-a. The Taxpayer's daughter is fourteen (14) and is eligible to receive these payments until she reaches the age of eighteen (18). She became entitled to these

payments when the Taxpayer retired some time ago but, because she is a minor, the Social Security Administration designates him as a "representative payee" for her. The social security checks have his name on them, but are "for" her benefit. ("Richard Reda For Darcy L. Reda"; see Taxpayer Exhibit Nos. 1 and 2). While social security is clearly the source of these payments, the board finds they were sent not for the Taxpayer's own use and benefit, but for the direct use and benefit of his daughter.[1]

As noted by the Taxpayer's attorney, there are extensive federal regulations (included in Taxpayer Exhibit No. 3) that govern how "representative payees" must act. There is no evidence to suggest the Taxpayer has failed to comply with these regulations or that he misused or misapplied the social security payments received on behalf of his daughter in any way.

The City's argument that "all moneys received from any source, including social security or pension payments" must be deemed "net income," while somewhat plausible based on a very literal reading of one provision in the statute, is not consistent with the board's understanding of RSA 72:39-a and the statutory framework supporting it and leads to an unreasonable outcome. Here, the Taxpayer did "receive" in a formal sense certain social security payments, but only as a representative or fiduciary for another person, his daughter. As a fiduciary, he was not required to report the payments as income and did not do so; similarly, the payments should not be counted as net income to deprive him of the elderly exemption.

To adopt the City's interpretation would jeopardize the fulfillment of the purpose of the elderly exemption statute. See, generally, Pennelli v. Town of Pelham, 148 N.H. 365, 368-69 (2002) (RSA 72:39-a must be interpreted in light of its evident purpose -- "to protect elderly

[1] Simply because the Taxpayer's ex-wife has legal custody of his daughter and he is subject to child support obligations does not change the nature of the payments received. These additional facts do not make the social security payments net income to him.

home owners from loss of their homes by reason of taxation beyond their means. (Citation omitted.)"). There is no basis for concluding the social security payments in question are funds that could be diverted by the Taxpayer to satisfy property tax obligations and avoid losing his home, the recognized purpose of the elderly exemption statute. In other words, his limited income to satisfy these obligations does not, and should not, include his daughter's social security payments, even if he is designated as the "representative payee" for those sums.

For all of these reasons, the board finds the Taxpayer's elderly exemption application for tax year 2011 should not have been denied by the City. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value computed without application of the elderly exemption for tax year 2011 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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, <u>not the date this decision is received</u>. 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Elliott Berry, Esq. and James Christon, Esq., New Hampshire Legal Assistance, 1361 Elm Street – Suite 307, Manchester, NH 03101, counsel for the Taxpayer; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: January 27, 2012

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Anne M. Stelmach, Clerk