

**Monique Gamache**

**v.**

**Town of Hudson**

**Docket No.: 25543-11EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “Town’s” denial of the Taxpayer’s application for an RSA 72:39-a elderly exemption. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, she was entitled to the statutory exemption or credit for the year under appeal. See Tax 204.05. The board finds the Taxpayer did not meet this burden.

The Taxpayer requested permission to not attend the December 1, 2011 hearing and her request was granted. She argued in the appeal document and her correspondence (see her November 28, 2011 letter to the board) she was entitled to the elderly exemption because: (1) she is 78 years old and has lived in New Hampshire all her life, but “live[s] 3½ months in Florida for my health”;

(2) her Florida property is a mobile home and her reasons for obtaining a Florida driver's license pertain to an auto accident, the death of her husband and a replacement vehicle she purchased in that state; and

(3) the elderly exemption should have been granted.

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

(1) based on its investigation (detailed in Municipality Exhibits A and B), the Taxpayer was a resident of Florida for some years, did not reside in New Hampshire for the three consecutive years preceding her application and therefore did not meet the statutory qualifications for a tax year 2011 exemption;

(2) the documents obtained by the Town indicate the Taxpayer did not obtain a New Hampshire driver's license until October 22, 2010, filed her 2009 federal income tax return as a resident of Florida, claimed a home in Florida (at 12462 Harker Street, Brooksville, Florida 34613-2621) was her primary residence, received a homestead property tax exemption from that state for the years 1995 through 2008 based on this claim and was denied an exemption in 2009 by the Hernando County, Florida because that county determined she was receiving "dual exemptions" (in New Hampshire as well as Florida);

(3) the Taxpayer does not meet the requirements of RSA 21:6, which states what is required to be considered a resident of New Hampshire (see Attachment E to Municipality Exhibit A);

(4) all of the Taxpayer's actions, "either alone, or also in combination with other actions, prove that the property owner (the Taxpayer) did not have NH residency until at the earliest October 22, 2010" (see the Town's January 5, 2011 letter to the board);

(5) the Town denied the Taxpayer's application for an elderly exemption in the prior year (tax year 2010); and

(6) the appeal for the 2011 exemption should be denied.

Following the December 1, 2011 hearing, and during its deliberations, the board decided to request further documentation and explanation from the parties regarding certain issues “pertaining to the Florida homestead exemption” issue as it pertains to the Taxpayer’s arguments for a New Hampshire elderly exemption. (See December 5, 2011 Order, giving each party thirty (30) days to respond.) The Town responded with its January 5, 2011 letter, copying the Taxpayer. The Taxpayer submitted no response.

### **Board’s Rulings**

Based on the evidence presented, the board finds the Taxpayer failed to meet her burden of proving she was entitled to the tax year 2011 elderly exemption. The appeal is therefore denied.

The elderly exemption statute is clear that no elderly exemption can be granted unless the applicant “has resided in this state for at least 3 consecutive years preceding April 1 in the year in which the exemption is claimed.” See RSA 72:39-a, I. The legislature has defined a “resident or inhabitant” to mean “a person who is domiciled or has a place of abode or both in this state . . . and who has, through all of his (her) actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.” RSA 21:6. The Town denied the exemption because, upon investigation and review of this provision, the Town’s assessor concluded the Taxpayer was a resident of Florida and did not reestablish residency in New Hampshire until, at the earliest, October 22, 2010, the date when she applied for and received a New Hampshire license.

The board has considered the Taxpayer’s attempts to explain her out-of-state activities in response to the Town’s denial of her elderly exemption application, but is unable to conclude,

based on the evidence presented, she met her burden of proving the Town erred in refusing to grant her application.<sup>1</sup> The burden of proof for this statutory requirement rests with the Taxpayer, as it does for all of the eligibility requirements established by the legislature.<sup>2</sup> The board has no authority to waive or modify the applicable statutory requirements, see Appeal of Land Acquisition, 145 N.H. 492, 494 (2000), including those set forth in RSA 72:39-a and RSA 21:6. The appeal is therefore denied.

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(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).

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<sup>1</sup> Nothing in the Decision is meant to imply or suggest a property owner who travels to another state for health or other reasons, while still remaining a resident of New Hampshire (satisfying the statutory definition of residency in RSA 21:6), could not qualify for an exemption.

<sup>2</sup> See RSA 72:34-a; Tax 204.05 (“The Taxpayer shall have the burden to prove (he or she) was entitled to the statutory exemption, deferral or tax credit for the year under appeal”); and, e.g., Heinz v. Town of Hampstead, BTLA Docket No. 24973-10EX (January 24, 2011) (taxpayer bore burden of proving he was entitled to RSA 72:28 veteran’s tax credit); cf. Thomas v. Town of Bethlehem, BTLA Docket No. 1812-82 (June 26, 1984) (taxpayer met burden of proving residency and appeal of denial of elderly exemption granted even though she was “temporarily absent” from the town).

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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: Monique Gamache, 8 Clark Street, Hudson, NH 03051, Taxpayer; and Chairman, Board of Selectmen, Town of Hudson, 12 School Street, Hudson, NH 03051.

Date: February 16, 2012

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Anne M. Stelmach, Clerk