

**Jane F. Colby**

**v.**

**City of Nashua**

**Docket No.: 26058-11EX**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” denial of the Taxpayer’s request for an elderly exemption for tax year 2011 as provided under RSA 72:39-a. 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 RSA 72:34-a; RSA 72:39-a; and Tax 204.05. The board finds the Taxpayer did not meet this burden.

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

- (1) she was diagnosed with a chronic illness and has incurred increased costs for medications;
- (2) part of her net income included distributions from an IRA account at Triangle Credit Union in the amount of \$12,992.70; and
- (3) the appeal should be granted.

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

- (1) the City's ordinance establishes a net income maximum of \$36,000 to qualify for the elderly exemption;
- (2) Municipality Exhibit A contains copies of the Taxpayer's financial documents submitted to the City which show her net income was \$37,951.20, which exceeds the \$36,000 maximum; and
- (3) the appeal should be denied based upon the three prior board decisions cited at the hearing.

### **Board's Rulings**

Based on the evidence and arguments presented, the board finds the Taxpayer did not meet her burden of proving the City committed reversible error in denying the RSA 72:39-a elderly exemption. See RSA 72:34-a (Appeal From Refusal to Grant Exemption, Deferral or Tax Credit); and Tax 204.05 (Burden of Proof). The appeal is therefore denied.

To qualify for an elderly exemption, the elderly person must: (1) own the property in question, either alone or jointly; (2) have resided in this State for at least three consecutive years; (3) have no more than a certain amount of net income as determined by the City for purposes of RSA 72:39-b; and (4) own net assets not in excess of the amount determined by the City for purposes of RSA 72:39-b. See RSA 72:39-a; and Pennelli v. Town of Pelham, 148 N.H. 365, 367 (2002). Only the third requirement, net income, is at issue in this appeal.<sup>1</sup>

The legislature defined the term net income very broadly for purposes of the elderly exemption in 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,

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<sup>1</sup> The board must decide this appeal based upon the plain meaning of the statutes enacted by the legislature and the specific standards voted upon by the municipality's governing body. In this instance, the statutes allow each municipality to set its own income maximum for an elderly exemption. See RSA 72:39-b (Procedure for Adoption and Modification of Elderly Exemption).

generally, Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and powers are limited by statute).<sup>2</sup>

The City's computations show a net income of \$37,951 and evidence presented by the Taxpayer indicated a slightly higher net income of \$38,053. There is no dispute the City duly enacted an ordinance setting the maximum at \$36,000. There is also no dispute the Taxpayer withdrew funds from an IRA and the taxable amount of these withdrawals, when combined with other income and social security benefits, exceeded this maximum income limitation. Money placed in an IRA is not treated as income until such time as it is withdrawn. As the City noted at the hearing, the board has decided three prior appeals from the City<sup>3</sup> where the board found that distributions from IRAs are within the definition of "net income" stated in RSA 72:39-a. The Taxpayer has cited no authority allowing the board to conclude the City erred in including the IRA distribution for the purposes of calculating the Taxpayer's net income.

For all of these reasons, the appeal is denied.

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

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<sup>2</sup> At the hearing, the City's representative expressed empathy for the Taxpayer and suggested an inspection of the Taxpayer's residence be scheduled in order to accurately account for any physical and functional depreciation and to ensure the accuracy of its physical data. Further, the Taxpayer's income and other circumstances may change to the point where they qualify for an elderly exemption if a timely application is made to the City for a future tax year.

<sup>3</sup> Stavinski v. City of Nashua, BTLA Docket No. 25500-11EX (November 14, 2011); Monchgesang v. City of Nashua, BTLA Docket No. 23371-08EX (December 19, 2008); and Poirier v. City of Nashua, BTLA Docket No. 23372-08EX (December 19, 2008).

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.

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

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Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jane F. Colby, 8 Monterey Avenue, Nashua, NH 03064, Taxpayer; and Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061.

Date: February 16, 2012

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Anne M. Stelmach, Clerk